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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2022

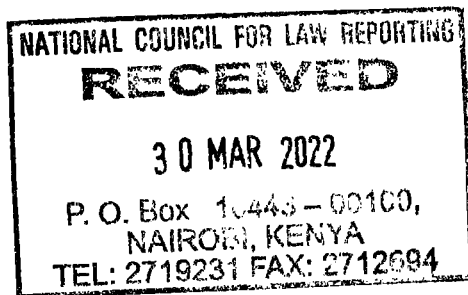
NAIROBI, 25th February, 2022

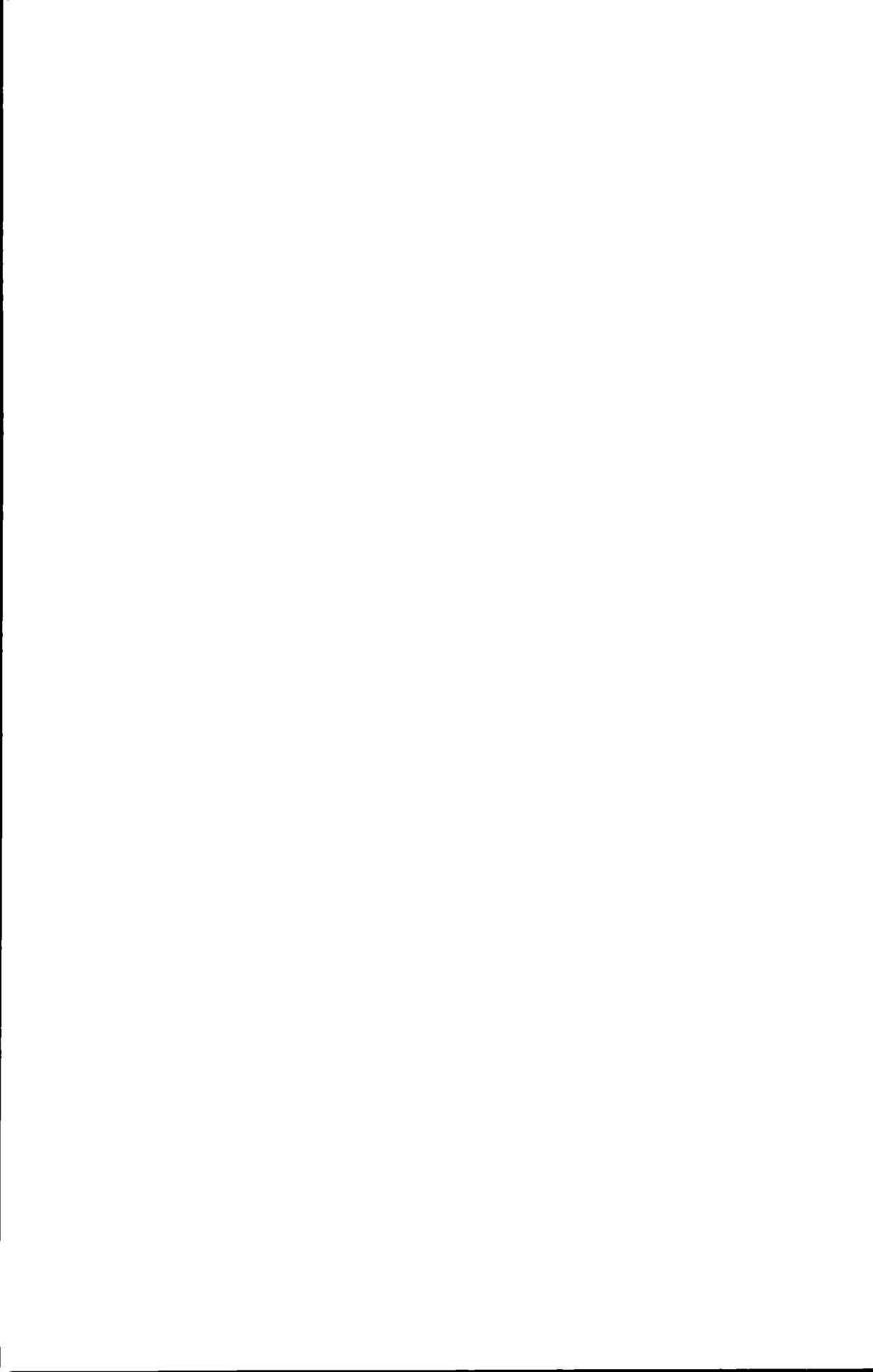
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THE LAND CONTROL BILL, 2022

A Bill for

AN ACT of Parliament to regulate certain transactions in land for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Land Control Act, 2022. Short title.
2. In this Act, unless the context otherwise requires— Interpretation.

“agricultural land” means—

 - (a) an area not designated as a city or urban area under the Urban Areas and Cities Act, 2011; or No. 13 of 2011.
 - (b) land declared by the Cabinet Secretary, by notice in the *Gazette*, to be agricultural land for the purposes of this Act;

other than land which, by reason of any condition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non- agricultural purpose;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to land;

“appeals committee” means the Land Control Appeals Committee appointed under section 15;

“controlled transaction” means one of the transactions specified in section 3;

“co-operative society” means a society registered as a co-operative society under the Co-operative Societies Acts; Cap. 490.

“land” includes an estate, interest or right in land;

“land control area” means an area to which the Cabinet Secretary has applied this Act under section 3(2);

“land control committee” means a Land Control Committee appointed under section 4;

“mortgage” includes charge;

“private company” means a private company within the meaning of section 9 of the Companies Act, 2015;

“Chief Land Registrar” means the Chief Land Registrar appointed under section 12 of the Land Registration Act, 2012; No. 3 of 2012.

“older member of society” means a person who has attained the age of sixty years;

“registrar” means any person charged with the registration of dealings in land under a written law or, in relation to shares, the person keeping the register of the shares;

“share” means a share within the meaning of the Companies Act, 2015. No. 17 of 2015.

“youth” means the collectivity of all individuals in the Republic who—

- (a) have attained the age of eighteen years; but
- (b) have not attained the age of thirty-five years.

3. (1) This Act shall apply to all transactions relating to— Application.

- (a) disposition of land within an area not designated as a city or urban area under section 4 of Urban Areas and Cities Act, 2011; No. 13 of 2011.
- (b) disposition of land within an area planned or designated for agricultural use under the Physical and Land Use Planning, 2019; and No. 13 of 2019
- (c) disposition of land used for agricultural purposes.

(2) The Cabinet Secretary may, in consultation with the National Land Commission and the approval of the National Assembly, designate specific land control areas and transactions to be subject to the provisions of this Act.

PART II—ESTABLISHMENT OF LAND CONTROL COMMITTEES

4. (1) The Chief Land Registrar shall, by notice in the *Gazette*, appoint a Land Control Committee in each constituency Establishment of committees.

(2) Each land control committee shall comprise—

- (a) a chairperson;
- (b) the Deputy County Commissioner appointed under section 15 (2)(b) of the National Government Co-Ordination Act, 2013 who shall be the secretary of the committee; No. 1 of 2013
- (c) the sub-county administrator appointed under section 50 of the County Governments Act, 2012; No. 17 of 2012
- (d) two persons, being one man and one woman, aged sixty years and above; and
- (e) two other persons, one being a youth, with demonstrated knowledge and experience in land law, surveying, land administration or dispute resolution.

(3) The members of a land control committee appointed under subsection 2(a), (d) and (e) shall serve for a single term of four years.

(4) The Chief Land Registrar shall commence the recruitment process at least three months before the expiry of the term of the members of a land control committee.

5. (1) A person shall qualify for appointment as chairperson of a land control committee if the person— Qualifications for appointment.

- (a) holds a degree from a university recognized in Kenya;
- (b) demonstrates knowledge of the culture, traditions and dispute resolution mechanisms of the people living in the geographical area under the jurisdiction of the land control committee; and
- (c) meets requirements under Chapter 6 of the Constitution.

(2) A person shall qualify for appointment as a member of a land control committee under section 4(2) (d) and (e) if the person—

- (a) holds a secondary school certificate;
- (b) demonstrates knowledge of the culture, traditions and dispute resolution mechanisms of the people living in the geographical area under the jurisdiction of the land control committee; and

(c) meets requirements under Chapter 6 of the Constitution.

6. (1) Whenever a vacancy occurs in the office of the chairperson or a member of the land control committee appointed under section 4(2) (d) and (e), the Chief Land Registrar shall constitute a selection panel comprising—

Procedure of appointing committee members.

- (a) the Deputy County Commissioner as chairperson;
- (b) a person nominated by the constituency office established under Regulations made pursuant to the Parliamentary Service Act, 2019 as the secretary;
- (c) a person representing persons living with disabilities; and
- (d) two persons, being one man and one woman, representing the business community.

No. 22 of 2019.

(2) The selection panel shall—

- (a) advertise the vacancies within seven days of the constitution of the panel;
- (b) shortlist applicants on the basis of merit;
- (c) interview the shortlisted applicants in an open forum; and
- (d) submit the results of the interview to the Chief Land Registrar for appointment.

(3) In appointing members of a land control committee, the Chief Land Registrar shall ensure gender balance.

7. The office of a member of a land control committee shall become vacant if the member—

Vacancies in a land control committee.

- (a) resigns in writing to the Chief Registrar;
- (b) dies;
- (c) is adjudged bankrupt;
- (d) is convicted of an offence and is sentenced to a term of imprisonment for a period of at least six months without the option of a fine;

- (e) has been absent from three consecutive meetings of the committee without reasonable cause; or
- (f) is incapacitated by mental or physical illness and is unable to discharge the functions of the office.

8. The members of a land control committee shall be paid such allowances as may be determined by the Cabinet Secretary on the recommendation of the Salaries and Remuneration Commission.

Remuneration.

9. The functions of a land control committee shall be to—

Functions of a land control committee.

- (a) review and grant consent to any sale, charge, transfer, grant, exchange for value or no value, lease, assignment, grant of easement or right of way in relation to agricultural land;
- (b) review and grant consent for any combination or subdivision of agricultural land;
- (c) grant consent for the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a company, co-operative society or any entity owning agricultural land on behalf of persons who have contributed to its purchase;
- (d) grant consent for the exercise of the power of sale by chargee under section 97 of the Land Act, 2012 for agricultural land;
- (e) review any other dealings in land referred to it by the Chief Registrar;
- (f) resolve any dispute over general boundaries within their jurisdiction;
- (g) settle any land dispute referred to it by willing parties pursuant to Article 60 (1)(g) and Article 159(2)(c) of the Constitution;
- (h) handle any matter referred to the Committee in pursuance of section 20 of the Environment and Land Court Act, 2012;
- (i) undertake fact-finding and evidence-gathering in matters covered under the, Law of Succession Act, the Environment and Land Court Act, 2011, the Land Registration Act, 2012, the National Land Commission Act, 2012 and the Land Act, 2012 upon request of parties or the courts.

No. 6 of 2012.

No. 19 of 2011.

Cap. 160.
No. 19 of 2011.
No. 3 of 2012.
No. 5 of 2012.
No. 6 of 2012.

**PART III—CONTROL OF DEALINGS IN
AGRICULTURAL LAND**

10. (1) Unless with the express consent of a land control committee under this Act, any transaction affecting agricultural land situated within a land control area shall be void.

Transactions affecting agricultural land.

(2) This section does not apply to—

- (a) the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or
- (b) a transaction to which the Government or the Settlement Fund Trustees or a county is a party.

11. (1) A party to a controlled transaction may apply to their respective land control committee for the grant of consent in the prescribed form within six months of the making of the agreement for the controlled transaction.

Review of transactions and grant of consent.

(2) Despite subsection (1) the Environment and Land Court may extend the period for making an application where it considers that there is sufficient reason so to do, upon such conditions as it may think fit.

(3) An application under this section shall be accompanied with—

- (a) a copy of the agreement of the controlled transaction for which consent is sought;
 - (b) a copy of the cadastral map of the land affected by the transaction;
 - (c) a certified copy of the title document of the land affected by the transaction;
 - (d) spousal consent to the transaction;
 - (e) details of the acreage of land held by each party within the geographical area under the jurisdiction of the committee; and
 - (f) any other prescribed document.
- (4) The land control committee shall—

- (a) maintain a register of all applications in the prescribed form, physically and electronically; and
- (b) avail the register for inspection by the members of the public subject to any prescribed fee upon application and any other condition that may be prescribed by the Cabinet Secretary through regulations.

12. (1) The secretary of a land control committee shall publish, at least fourteen days before the date of a review hearing, a list of all applications—

Notice and attendance to review hearings.

- (a) at the office of the Chief Land Registrar;
- (b) at the constituency office of the area member of Parliament;
- (c) at each chief's office within the constituency; and
- (d) on the sub-county website.

(2) Any member of the public may file an objection to an application before the land control committee in the prescribed form.

(3) The parties to an application or any other matter before a land control committee and any interested party may attend a review hearing in person or be represented by an advocate.

(4) A land control committee may require any other party with information that may assist its fair determination of an application to appear and produce documents before it, after giving the person at least forty-eight hours' notice.

(5) A land control committee may, after giving at least twenty-four hours' notice, enter upon and inspect any land in the exercise of its functions under this Act.

(6) A land control committee shall hear and determine an application under this Act within thirty days of its receipt of the application.

(7) A person who willfully refuses or neglects to appear before a land control committee commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.

13. (1) In reviewing an application under this Act, a land control committee shall consider— Grant or refusal of consent

- (a) the authenticity of the documents lodged together with the application;
- (b) existing interests of spouses, children, siblings or affected parties; and
- (c) the prescribed minimum and maximum land holding acreages in respect of private land in the geographical area within its jurisdiction.

(2) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control committee shall—

- (a) have regard to the effect which the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of standards of good husbandry within the land control area;
- (b) act on the principle that consent ought generally to be refused where—
 - (i) the person to whom the land is to be disposed of—
 - (a) is unlikely to farm the land well or to develop it adequately; or
 - (b) is unlikely to be able to use the land profitably for the intended purpose owing to its nature; or
 - (c) already has sufficient agricultural land; or
 - (ii) the person to whom the share is to be disposed of—
 - (a) already has sufficient shares in a private company or co-operative society owning agricultural land; or
 - (b) would, by acquiring the share, be likely to bring about the transfer of the control of the company or society from one person to another and the transfer would be likely to lower the standards of good husbandry on the land; or

- (iii) the disposing party will be left with inadequate land for housing, subsistence, undertaking cultural activities such as burial and prayers;
 - (iv) the transaction is likely to render the remaining portion of the land incapable of providing housing and livelihood to the spouses, siblings or children residing on the land;
 - (v) the terms and conditions of the transaction, including the price to be paid, are markedly unfair or disadvantageous to one of the parties to the transaction; or
 - (vi) the purchase price does not accord with the value of the land calculated on the basis of a land value index developed under section 107A of the Land Act, 2012. No. 6 of 2012.
 - (vii) in the case of the division of land into two or more parcels, the division would be likely to reduce the productivity of the land;
- (c) refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not—
- (i) a citizen of Kenya; or
 - (ii) a private company or co-operative society all of whose members are citizens of Kenya; or
 - (iii) group representatives incorporated under the Land (Group Representatives) Act; or Cap. 287.
 - (iv) a state corporation within the meaning of the State Corporation Act. Cap. 446.

(3) Upon conclusion of its review, a land control committee shall read a decision signed by its chairperson, secretary and one other designated member at an open forum in the presence of the parties to the transaction.

(4) The committee shall avail the written and signed decision to the parties and remit copies to the Chief

Registrar and the Registrar of the Environment and Land Court.

(5) A person aggrieved by the decision of a land control committee may lodge an appeal with the Land Control Appeal Committee within thirty days of the decision

(6) Where an application for the consent of a land control committee has been refused, then the agreement for a controlled transaction shall become void unless appealed within the prescribed timelines.

14. (1) Any money or other valuable consideration paid in the course of a controlled transaction that becomes void under this Act shall be recoverable as a debt by the person who paid it from the person to whom it was paid.

Recovery of consideration for a void transaction.

(2) A person shall not pay or receive any money or enter into or remain in possession of any land in furtherance of a voided controlled transaction.

(3) A person who knowingly contravenes subsection (2) commits an offence and shall, upon conviction, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

15. (1) The Cabinet Secretary shall, through a competitive process, appoint such Land Control Appeals Committees as may be necessary by notice in the *Gazette*.

Appointment of appeal committees.

(2) An appeal committee shall comprise—

(a) a chairperson who shall be a person qualified to be appointed as a judge of the High Court; and

(b) four other persons who must possess a degree from a university recognized in Kenya and have knowledge and expertise in matters relating to land management, law, community service, dispute resolution or physical planning.

(3) An appeal committee shall hear and determine an appeal within thirty days of its lodging.

(4) The Cabinet Secretary may make rules governing the conduct of business and affairs of an appeals committee.

PART IV—MISCELLANEOUS

16. Any person who knowingly makes any false statement in an application or appeal under this Act, or who knowingly gives any false information to any person in connection with the determination of an application or appeal under this Act commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both. False statements

17. The Cabinet Secretary may, by notice in the *Gazette*, prohibit any controlled transaction or any class of controlled transaction. Prohibition of land transactions

18. The Cabinet Secretary may, by notice in the *Gazette*, exempt— Exemptions.

- (a) any land or share, or any class of land or share; or
- (b) any controlled transaction, or any class of controlled transaction; or
- (c) any person in respect of controlled transactions or some class of controlled transaction,

from all or any of the provisions of this Act on such conditions as he or she may think fit to impose.

PART V—PROVISIONS ON DELEGATED POWERS

19. (1) The Cabinet Secretary may make regulations for prescribing anything which may be prescribed under this Act, and generally for carrying into effect the purposes and provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), regulations may prescribe—

- (a) the forms to be used and the fees to be paid for things to be done under this Act;
- (b) the procedure for the making of applications and appeals under this Act, and the particulars and material to be furnished;
- (c) the convening of and procedure at meetings of a land control committee;
- (d) the convening of and procedure at meetings of an appeals committee; and

(e) the manner of conducting surveys and studies to ascertain the minimum and maximum land holding acreages in respect of private agricultural land;

(3) For the purposes of Article 94 (6) of the Constitution—

(a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the land control committees and appeals committees to discharge their functions more effectively;

(b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;

(c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2
No. 23 of 2013.

PART VI—TRANSITION, SAVING AND REPEAL

20. (1) The Cabinet Secretary shall, as far as it is practicable, appoint members of the land control boards existing before the commencement of this Act as members of the land control committees established under this Act.

Transition and saving.

(2) Any consent or direction given under the Land Control Act before the commencement of this Act shall be deemed as a consent or direction given under this Act.

Cap. 302.

(3) Any application for consent made under the Land Control Act which immediately before the commencement of this Act has not been finally determined under that Act shall be deemed to be an application duly made under this Act, and it shall be forwarded by the person in whose possession it is to the appropriate land control committee for determination in accordance with this Act.

Cap. 302.

21. The Land Control Act is repealed.

Repeal of Cap. 302.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to repeal and replace the Land Control Act, Cap. 302 to align the law governing dealings in agricultural land with the provisions of the Constitution of Kenya 2010, the Environment and Land Court Act, 2011, the Land Registration Act, 2012 and the Land Act, 2012.

The Bill proposes the establishment of Land Control Committees in each constituency to replace the current Land Control Boards. The land control committees are to comprise persons drawn from within the locality they serve who are conversant with the traditions, customs, and way of life of the community in the area. This will enable each proposed transaction to be reviewed soberly with a view of ensuring proper utilization of agricultural land for the benefit of all. It is additionally proposed that the land control committees develop the use of alternative dispute resolution mechanisms in their operations and that they undertake evidence-gathering and fact-finding on the request of parties or the courts in matters relating to land and land use

The Bill further proposes the establishment of Land Control Appeals Committees to handle any appeals emanating from the land control committees.

PART I (Clause 1-3) of the Bill contains preliminary provisions.

PART II (Clause 4-9) of the Bill contains provisions establishing and capacitating Land Control Committees in each constituency.

PART III (Clause 10-15) of the Bill contains provisions outlining the transactions that are subject to review and the considerations to be made by land control committees before the grant or refusal of consent.

PART IV (Clause 16-18) of the Bill contains miscellaneous provisions,

PART V (Clause 19) of the Bill contains provisions granting the Cabinet Secretary for lands powers to make subsidiary legislation.

PART VI (Clause 20-21) of the Bill contains transitional, saving and repeal provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative power to the Cabinet Secretary responsible for land to make regulations for the carrying into effect of its provisions. The Bill does not limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 26th January, 2022.

WILBERFORCE OUNDO,
Member of Parliament.

