





Council of Governors




**REPORT ON
THE AUDIT OF NATIONAL
AND
COUNTY POLICY AND LEGISLATION
IN THE URBAN DEVELOPMENT
SECTOR**







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A publication by:

The Council of Governors (CoG)

Delta Corner, 2nd Floor, Opp PWC Chiromo Road, Off Waiyaki Way

P.O. Box 40401 - 00100 Nairobi, Kenya

Email: info@cog.go.ke

Phone: +254 (020) 2403313/4

Mobile: +254729777281

<http://www.cog.go.ke>

Kenya Law Reform Commission (KLRC)

Address: Reinsurance Plaza, 3rd Floor, Taifa Road

P.O. Box 34999-00100 Nairobi, Kenya


Email: info@klrc.go.ke

Phone: (+254) 0799030716, (+254) 20 2241201

Fax: (+254) 20 2225786

Twitter: klrcKE **Facebook:** Kenya Law Reform Commission

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Foreword by Chairman, Council of Governors



In the year 2010, Kenya promulgated a new Constitution which introduced a two tier system of governance: the National Government and forty-seven (47) County Governments. The Fourth Schedule of the Constitution assigns thirty-five (35) functions to the National Government under part one (1) and fourteen (14) functions to County Governments under part two (2). Devolved functions primarily focus on service delivery to the citizens. County Governments have been bestowed with both legislative and executive authority to facilitate the performance of their functions and exercise of their powers.

It is however worth noting that despite the strides made in the country with respect to the devolved system of governance, existing and in force are still National laws that were enacted before the promulgation of the Constitution. Some of these laws undermine devolution by dint of the structures they had created and the powers they had conferred on various institutions, thereby impeding devolution's full implementation. On this premise, CoG and KLRC initiated the legal and policy audit aimed at scrutinizing National and County policies and laws with a view to establishing their alignment to the Constitution, specifically the devolved system of governance.

The study reveals that there are a myriad of National laws and policies that are not in tandem with the Constitution. Some of the key recommendations highlighted in the report are that some National laws need to be repealed while others require amendments in order to ensure conformity with the Constitution. For stakeholders to improve the policy and legislative environment that devolution operates in, they should read the report and collaborate in its implementation. This will ensure that both the National and County laws and policies conform to the letter and spirit of the Constitution, eventually leading to improved service delivery to the people of Kenya.

Thank you!

H.E. Hon. FCPA Wycliffe Ambetsa Oparanya, EGH, CGJ

Chairman, Council of Governors

Foreword by the Attorney General



This Report is the product of a study commissioned by the Council of Governors (CoG) and the Kenya Law Reform Commission (KLRC) across seven sectors, the key objectives of which were to audit the county government policies and legislation with the view of analysing their compliance with the Constitution, to audit all the national policy and legislation with a view of ascertaining the extent to which they conform to the devolved system of governance and to identify gaps and challenges and make recommendations for harmonization and alignment.

The sectors prioritized were Agriculture, Health, Natural Resource Management, Land and Physical Planning, Urban Development, Trade and Investment and Public Finance Management.

At this point in time, and while Kenya is still in transition from the old constitutional order to the new constitutional dispensation, it is clear from the Report that there are significant challenges around the extent of compliance with the laid down constitutional, legal and policy frameworks with respect to governance at both levels of government that need to be addressed. The Report provides the general trends that need to be tackled in the quest for compliance with the constitutional framework. Some of the notable findings include ambiguities in legislation, persistence of the old order in terms of laws, policies and practices across all sectors under review, inadequate consultation and cooperation between the two levels of government that can support and facilitate holistic development of laws and policies and a dearth of capacity to facilitate effective development of laws and policies that are clear, coherent, comprehensive and compliant with applicable constitutional provisions.

The Report has been enriched by the generous, earnest and thoughtful insights by sector experts through a peer review process. Further, the involvement of the stakeholders in reviewing the initial reports provided invaluable input in exploring together the serious topics that surround our common governance goal in addition to extensive discussion with the national and county government officials, civil society organizations, and representatives of the community-based organizations and networks that deal with sectoral governance issues.

As stated above, I wish to reiterate that this Report presents a comprehensive audit of the national and county legislation and policy approach and reveals the gaps and challenges that need immediate attention in the process of developing sufficient and responsive laws and policies that will actualize the devolved system of governance and the country's economic blue print, Vision 2030.

I wish to take this opportunity to sincerely thank the members of the team for their meritorious and sincere effort in writing this enlightening Report. My heartfelt gratitude also goes to the stakeholders and sector experts for their tireless efforts and enriching contribution and co-operation which led to the successful completion of the Report.

P. Kihara Kariuki

Attorney-General

Foreword By Chairperson, Kenya Law Reform Commission



Devolution is one of the hallmarks of the Constitution of Kenya, 2010. Devolution has not only improved the economic and social welfare of people in many places, (some of which were traditionally marginalised), but has, to a great extent, increased the democratic space in our country, since the people are now part of the decision-making processes. As a country, we have indeed overcome several challenges and milestones in a bid to make the devolution dream a reality.

The Kenya Law Reform Commission (KLRC) is established by the Kenya Law Reform Commission Act, No. 19 of 2013 and is mandated to keep under review all the law and recommend its reform by undertaking research and comparative studies relating to law reform as well as related legislative impact assessments. The Commission also provides advice, technical assistance and information to the national and county governments with regard to the reform or amendment of any branch of law. The execution of this mandate includes undertaking a detailed audit of all the existing pieces of legislation, policies and administrative procedures and harmonizing them with the Constitution.

The Council of Governors (CoG) conducted a baseline survey which revealed that most of the laws in respect of key devolved functions were largely not compliant with the Constitution of Kenya, and key devolution Articles including Articles 173, 174 and the Fourth Schedule to the Constitution which demarcates the functions to be undertaken by the national and county governments. As a consequence of the survey findings, the Commission in partnership with COG undertook an audit of the national and county policies and law across seven devolved sectors. The purpose of the audit was to analyse national and county policies and legislation to determine their compliance with the Constitution with particular reference to devolution.

The Audit Report is one among the initiatives that we hope will help policymakers and relevant institutions in their efforts to entrench devolution. The Report focuses on seven devolved sectors namely: Health, Public Finance Management, Agriculture, Trade and Investments, Land and Physical Planning, Urban Development and Natural Resource Management as provided in the Fourth Schedule to the Constitution.

The Report documents the findings of the audit process in the identified seven sectors. It provides an analysis of the national and county policies and legislation and

identifies the gaps and challenges with these instruments of governance. It further outlines recommendations for harmonization and alignment which will inform the success of counties in implementing devolution and will ensure the achievement of the collective aspirations of Kenyans, given the critical role of devolution in our current dispensation. The publication of this Report is a culmination of a highly participatory and consultative process in line with the constitutional requirements of public and stakeholder participation and engagement.

Through this Report, the Commission and CoG will spearhead and undertake the proposed policy and legislative reforms in partnership with the relevant sector Ministries, Departments and Agencies (MDAs). The successful implementation of the Report therefore calls for a coherent and cross-sectoral approach and a coordinated response across all levels of government, private sector and other non-state actors. Towards this end, all MDAs at both levels of government are expected to work closely together to make the proposed recommendations a reality. Finally, in publishing this Report, the Commission and CoG reaffirm their unwavering commitment and support to ensure conformity with the Constitution and respect for devolution.

I would like to thank all those who contributed to the development of the Report and subsequent finalization in one way or the other.

Thank you very much.

Mbage Ng'ang'a

Chairman KLRC



Acknowledgements

The development and finalization of this Report benefited from the contribution of various institutions and individuals. Various stakeholders including Ministries, Departments and Agencies (MDAs) at both levels of Government, the Private Sector, Non-State Actors, Parliament and the Office of the Attorney-General were consulted and their views considered. The stakeholders interacted with the Draft Report and gave their practical position on the issues raised. We sincerely thank them all for their invaluable contribution.

The audit process that culminated into development and publication of this Report was made possible through the generous financial support of the United States International Development (USAID) through the Agile and Harmonized Assistance to devolved Institutions (AHADI) and the Danish International Development Agency (DANIDA) through the International Development Law Organization (IDLO), the United Nations Development Programme and the World Bank. We are forever grateful to Ms. Waceke Wachira, USAID-AHADI Chief of Party and Mr. Romualdo Mavedzenge, IDLO Kenya Country Director, and their respective committed teams for their patience especially during those times when processes slowed down.

We acknowledge the excellent work done by the core technical committee comprising Ms. Joan Onyango (KLRC), Ms. Rosemary Njaramba (CoG), Ms. Zipporah Muthama (CoG), Mr. Justice Gatuyu (KLRC), Ms. Mukami Kibaara (CoG) and Ms. Christabel Wekesa (KLRC) which laid the foundation for the development of this Report. The Technical Committee incorporated the Office of the Attorney General & Department of Justice, Senate, IGRTC and Ministry of Devolution and ASALS whose input we sincerely appreciate. It is through their enthusiasm, hard work and commitment that we credit the accomplishment of this mission. We especially thank the staff of KLRC and COG (the joint secretariat of the Technical Committee) for their dedication and tireless efforts in ensuring successful completion of this Report. Special mention must go to the KLRC Chairman, Mr. Mbage Ng'ang'a who at various points was personally involved in the audit process.

We commend Dr. Conrad Bosire and the team of sector consultants namely: Peter Mwangi for the exhaustive research in the policy and legal frameworks. They worked

tirelessly with the technical committee to constantly revise, edit and improve the contents of this publication. It is through this effort that we have this comprehensive Report.

Finally, we are indebted to the people of Kenya for according us the opportunity to serve and being the reason we continue to evaluate ourselves as a Country.

Thank you!

Ms. Jacqueline Mogeni, MBS

CEO, Council of Governors

Mr. Joash Dache, MBS

CEO/Secretary, KLRC

Council of County Governors

The Council of Governors (CoG) is a non-partisan organisation established under Section 19 of the Intergovernmental Relations Act (IGRA 2012). The Council of Governors comprises of the Governors of the forty-seven Counties. Main functions are the promotion of visionary leadership; sharing of best practices and; offer a collective voice on policy issues; promote inter-county consultations; encourage and initiate information sharing on the performance of county governments with regard to the execution of their functions; collective consultation on matters of interest to county governments.

CoG provides a mechanism for consultation amongst county governments, share information on performance of the counties in execution of their functions, facilitate capacity building for Governors, and consider reports from other intergovernmental forums on national and county interests amongst other functions. The vision of the Council of Governors is to have prosperous and democratic counties delivering services to every Kenyan.

Kenya Law Reform Commission

The Kenya Law Reform Commission (the Commission) is established by the Kenya Law Reform Commission Act, No. 19 of 2013 (the Act). Presidential assent was given on 14 January 2013 and the Act came into force on 25th January 2013. The Commission has a statutory and ongoing role of reviewing all the law of Kenya to ensure that it is modernized, relevant and harmonized with the Constitution of Kenya. Following the promulgation of the Constitution in 2010, the Commission has an additional mandate of preparing new legislation to give effect to the Constitution. The third mandate is found in the County Governments Act, No. 17 of 2012 which requires the Commission to assist the county governments in the development of their laws. This is also a requirement found in the Act.

The Act grants the Commission a body corporate status and the necessary autonomy to enable it discharge its mandate as envisaged under the Act. The Commission is wholly funded by the Government but welcomes support from its partners.

Before the enactment of the Act, the Commission operated as a Department within the Office of the Attorney-General before being moved administratively to the Ministry of Justice, National Cohesion and Constitutional Affairs in 2003.

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Abbreviations

AHADI	Agile and Harmonized Assistance for Devolved Institutions
CARA	County Allocation of Revenue Act
CoG	Council of Governors
KLRC	Kenya Law Reform Commission
CARA	County Allocation of Revenue Act
SAGA	Semi Autonomous Government Agency
WDF	Ward Development Fund
ICT	Information and Communications Technology
NLP	National Land Policy
EPC	Export Promotion Council
PPA	Physical Planning Act
CIC	Commission for the Implementation of the Constitution
CFSP	County Fiscal Strategy Paper
CS	Cabinet Secretary
IDLO	International Development Law Organization
IGR	Intergovernmental Relations
IGRA	Intergovernmental Relations Act
IGRTC	Intergovernmental Relations Technical Committee
KLRC	Kenya Law Reform Commission
MTP	Medium Term Plan
NACADA	National Authority for the Campaign Against Drug Abuse
UNDP	United Nations development Programme
MDA	Ministries Departments Agencies

URBAN DEVELOPMENT

1. Introduction

While the Constitution devolves powers to the 47 counties in a symmetric manner, it does recognise the need for a separate framework for urban governance. In this regard, the Constitution provides that national legislation should provide for a separate framework of urban governance and this should entail: criteria for classifying urban areas into cities and other categories; principles of governance and management of urban areas; and provisions for public participation in urban governance.¹ Indeed, while the basic services are common throughout the country, the nature or process through which these services are provided differs from the concentrated urban population versus the sparsely populated and wide geographical areas in rural set ups.

Parliament passed the Urban Areas and Cities Act (UACA), which classifies urban areas into municipal, city and town status. Despite this, the general area of urban development requires an overhaul in order to align laws and policies to the constitutional provisions regarding urban governance. The expression “*urban development*” is used almost interchangeably with “*urban planning*”. They both refer to policies, laws and procedures as well as political processes, which promote responsible governance in the following areas inter alia:

- » Legitimate land tenure rights
- » Land use and planning
- » Transportation
- » The taxation of land value as the means towards optimal urban development
- » environmental sustainability issues

1 Article 184 (1).

- » The planning and design of transportation and communication networks
- » public participation governance and inclusive leadership

The principles above are reiterated by the National Urban Development Policy, which indicates that the core principles for sustainable urban development include participatory urban planning, development and governance, equity in access to resources and opportunities, and efficiency in resource use and service provision. Other principles include: social, economic and environmental sustainability, inclusivity: cities and urban areas that cater for all segments of urban residents including marginalised and vulnerable groups, and good governance. Urban areas should also have and facilitate connectivity and synergy between county, national and global urban systems, and good quality infrastructure and services, and are secure, clean and green. The audit looked at policies, laws and procedures in the thematic areas set out above in three main themes:

- (a) Devolved Government;
- (b) Land and Environment; and
- (c) Public Finance.

2. Legislation and policy on urban development

The 2010 Constitution contains institutional arrangements, principles, and provisions that require policy and legislative measures (both at the national and county governments) to ensure smooth implementation. Specifically, the Constitution requires a legal framework for separate urban governance, as well as laws and policies to facilitate the same.

There are a number of laws and policies that have been enacted or adopted (at national and county levels) and these provide a general basis for implementing urban development. The laws and policies are analysed in the table below.

Table 1: Review of Urban development legislation in a tabulated matrix

No	Name of policy/law	Issue	Rationale/concern	Recommendation
1.	<p>The National Land Policy (Sessional Paper No.3 of 2009) (National)</p>	<p>The Policy was developed before the promulgation of the Constitution. It therefore did not involve the input of the County Governments, which play a key constitutional role in land matters relating to County planning and development as per the Fourth Schedule to the Constitution.</p> <p>Development control:</p> <p>Paragraph 51 of the Policy states that the Government shall:</p> <ul style="list-style-type: none"> i. Empower all planning authorities in the country to regulate the use of land taking into account the public interest; ii. Harmonize the institutional framework for development control to facilitate coordination; iii. Establish development control standards, processes and procedures; iv. Ensure effective enforcement of development control; and 	<p>The Policy should be reviewed to incorporate the provisions of the Constitution, particularly the Fourth Schedule on distribution of functions between the national and County Governments.</p>	<p>Revise the Policy in its entirety.</p>
			<p>Paragraph 51 should be reviewed to incorporate the role of the County Governments in relation to County planning and development as per Part 2 (8) of the Fourth Schedule to the Constitution.</p>	<p>Amend Paragraph 51 to state that the National Government shall, in consultation with the relevant County Governments exercise the development control functions.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>v. Ensure that the exercise of development control takes into account local practices and community values on land use and environmental management.</p> <p>This contravenes the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>		
		<p>Land injustices</p> <p>Paragraph 61(e) of the Policy states that the Government shall establish mechanisms for the repossession of any public land acquired illegally or irregularly.</p> <p>This conflicts with the constitutional role of the National Land Commission (“the NLC”) in Article 67(2)(e) of the Constitution which gives the NLC the function of initiating investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommending appropriate redress.</p>	<p>Paragraph 61(e) should be reviewed to incorporate the role of the NLC in relation to investigating and addressing matters in relation to illegal or irregular acquisition of public land as per Article 67(2)(e) of the Constitution.</p>	<p>Revise Paragraph 61(e) to state that the NLC shall establish mechanisms for the repossession of any public land acquired illegally or irregularly.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
	<p>Leasehold Tenure</p> <p>Paragraph 80 of the Policy states that the Government shall, among other things:</p> <ol style="list-style-type: none"> i. Establish mechanisms for the creation of leasehold interests out of public, community and private land; and ii. Subject the renewal of all leases to general planning requirements. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(a) and (h) of the Constitution which gives the NLC the functions of managing public land on behalf of the National Government and County Governments and to monitor and have oversight responsibilities over land use planning throughout the country.</p> <p>It also contravenes the role of County Governments in relation to public land under Article 62(2) of the Constitution and in relation to unregistered community land under Article 63(3) of the Constitution.</p>	<p>Paragraph 80 should be reviewed to incorporate the role of the NLC in relation to management of public land on behalf of the National Government and County Governments and monitoring and having oversight responsibilities over land use planning throughout the country as per Article 67(2)(a) and (h) of the Constitution.</p> <p>It should also be reviewed to incorporate the role of County Governments in relation to public land under Article 62(2) of the Constitution and in relation to unregistered community land under Article 63(3) of the Constitution.</p>	<p>Revise Paragraph 80 to state that the National Government shall establish mechanisms for the creation of leasehold interests out of public, community and private land and subject the renewal of all leases to general planning requirements, in consultation with the NLC and the relevant County Governments.</p>	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
	<p>Allocation of public land</p> <p>Paragraph 84 of the Policy states that the Government shall, among other things:</p> <ul style="list-style-type: none"> i. Limit the amount of public land allocated to individuals or other entities depending on factors such as the intended use and the ecological zone; and ii. Eliminate incidents of multiple allocations and allocate land through public auctions except for land earmarked for the support of livelihoods in urban and rural areas. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(a) and (h) of the Constitution which gives the NLC the functions of managing public land on behalf of the National Government and County Governments and to monitor and have oversight responsibilities over land use planning throughout the country.</p>	<p>Paragraph 84 should be reviewed to incorporate the supreme role of the NLC in relation to management of public land on behalf of the National Government and County Governments and monitoring and having oversight responsibilities over land use planning throughout the country as per Article 67(2)(a) and (h) of the Constitution.</p>	<p>Revise Paragraph 84 to state that the NLC shall:</p> <ul style="list-style-type: none"> i. Limit the amount of public land allocated to individuals or other entities depending on factors such as the intended use and the ecological zone; and ii. Eliminate incidents of multiple allocations and allocate land through public auctions except for land earmarked for the support of livelihoods in urban and rural areas. 	
	<p>Land Adjudication</p> <p>Paragraph 86 of the Policy states that the Government shall, among other things:</p>	<p>Paragraph 86 should be reviewed to incorporate the role of the NLC in relation to land use planning as per Article 67(2)(h) of the Constitution.</p>	<p>Revise Paragraph 86 to state that the National Government shall, in consultation with the NLC and the relevant County Governments:</p>	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>i. Complete the processes of adjudication and consolidation; and</p> <p>ii. Ensure that adjudication and consolidation processes are speedy, transparent and accountable.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and having oversight responsibilities over land use planning throughout the country.</p> <p>It also contravenes the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>It should also be reviewed to incorporate the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>i. Complete the processes of adjudication and consolidation; and</p> <p>ii. Ensure that adjudication and consolidation processes are speedy, transparent and accountable.</p>
		<p>Land for investment</p> <p>Paragraph 94 of the Policy states that the Government shall, among other things:</p> <p>i. Compulsorily acquire all land on which mineral resources have been discovered before allocating such land to interested investors to facilitate fast access to the land and to prevent the exploitation of</p>	<p>Paragraph 94 should be reviewed to incorporate the role of the NLC in relation to managing public land on behalf of the National Government and County Governments and to monitor and have oversight responsibilities over land use planning throughout the country as per Article 67(2)(a) and (h) of the Constitution.</p> <p>It should also be reviewed to incorporate the role of the County Governments in relation to County planning and development as</p>	<p>Revise Paragraph 94 to state that the National Government shall, in consultation with the NLC and the relevant County Governments shall:</p> <p>i. Compulsorily acquire all land on which mineral resources have been discovered before allocating such land to interested investors to facilitate fast access to the land and to prevent the exploitation of local communities, environmental</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>local communities, environmental degradation and ensure restoration of land after exploitation;</p> <p>ii. Regulate the development of private resort cities and other major ventures to ensure they adhere to development planning and control and facilitate public access thereto; and</p> <p>iii. Acquire land for strategic public ventures such as sea ports, airports, and research facilities for purposes of security and planning and ensure that such land is accessible to auxiliary developers only through sub-leases.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(a) and (h) of the Constitution which gives the NLC the functions of managing public land on behalf of the National Government and County Governments and to monitor and have oversight responsibilities over land use planning throughout the country.</p> <p>It also contravenes the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>degradation and ensure restoration of land after exploitation;</p> <p>ii. Regulate the development of private resort cities and other major ventures to ensure they adhere to development planning and control and facilitate public access thereto; and</p> <p>iii. Acquire land for strategic public ventures such as sea ports, airports, and research facilities for purposes of security and planning and ensure that such land is accessible to auxiliary developers only through sub-leases.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
	<p>Land Use Management</p> <p>Paragraph 102 of the Policy states that the Government shall put in place appropriate strategies for managing sustainable growth and development of urban and rural areas.</p> <p>This contravenes the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>It also contravenes the mandate of the County Governments to manage urban areas as provided for in Section 12(1) of the Urban Areas and Cities Act, which was enacted to give effect to Article 184 of the Constitution.</p> <p>The Paragraph also contravenes Article 67(2)(h) of the Constitution which gives the NLC the mandate of monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Land Use Planning</p> <p>Paragraph 105 of the Policy states that the Government shall, among other things:</p>	<p>Paragraph 102 should be reviewed to incorporate the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution and the mandate of the NLC in relation to monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution.</p> <p>It should also be reviewed to incorporate the mandate of the County Governments in relation to urban areas as provided for in the Urban Areas and Cities Act, which was enacted to give effect to Article 184 of the Constitution.</p>	<p>Revise Paragraph 102 to state that the County Governments shall, in consultation with the National Government and the NLC, put in place appropriate strategies for managing sustainable growth and development of urban and rural areas.</p>
			<p>Paragraph 105 should be reviewed to incorporate the role of the NLC of monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution and the role of the County Governments in County planning and</p>	<p>Revise Paragraph 105 to state that the National Government shall, in partnership with the NLC and the relevant County Governments:</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>i. Develop a national land use policy as a basis for land use management;</p> <p>ii. Provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure that the planning process is integrated, participatory and meets stakeholder needs; and</p> <p>iii. Facilitate appropriate institutional and technical capacity building initiatives for accelerating plan implementation at national, regional and local levels.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and oversight responsibilities over land use planning throughout the country.</p> <p>It also contravenes the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>i. Develop a national land use policy as a basis for land use management;</p> <p>ii. Provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure that the planning process is integrated, participatory and meets stakeholder needs; and</p> <p>iii. Facilitate appropriate institutional and technical capacity building initiatives for accelerating plan implementation at national, regional and local levels.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
	<p>National and Regional Planning</p> <p>Paragraph 106 of the Policy states that the Government shall, among other things:</p> <ul style="list-style-type: none"> i. Facilitate the development of national and regional physical development plans as a basis for investment and sustainable utilization of natural resources, taking local land use practices into account; and ii. Provide for implementation of cluster settlements for easier provision of infrastructure and to stop uncontrolled subdivision of land. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and oversight responsibilities over land use planning throughout the country.</p> <p>It also contravenes the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 106 should be reviewed to incorporate the role of the NLC in relation to monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution and the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Revise Paragraph 106 to state that the National Government and the relevant County Governments shall, in consultation with the NLC:</p> <ul style="list-style-type: none"> i. Facilitate the development of national and regional physical development plans as a basis for investment and sustainable utilization of natural resources, taking local land use practices into account; and ii. Provide for implementation of cluster settlements for easier provision of infrastructure and to stop uncontrolled subdivision of land. 	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Rural Land Use Planning</p> <p>Paragraph 107 of the Policy states that the Government shall, among other things:</p> <ul style="list-style-type: none"> i. Provide for rural land use strategies to assist communities achieve optimum productivity; and ii. Make rural land use planning an integral part of land adjudication process. <p>There is no definition of “rural land” in the Constitution. However, it typically refers to land that is not within an urban centre and which is not developed.</p> <p>Article 62(2) and (3) of the Constitution set out the categories of public land which are vested in and held by the County Governments and the National Government respectively. Rural land may fall under the jurisdiction of both the National Government and the County Governments. Paragraph 107 of the Policy does not adequately provide for the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution, and specifically in relation to rural areas.</p>	<p>Paragraph 107 should be reviewed to incorporate the role of the NLC in relation to monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution and the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution, specifically in relation to rural areas.</p>	<p>Revise Paragraph 107 to state that the National Government and the relevant County Governments shall, in consultation with the NLC:</p> <ul style="list-style-type: none"> i. Provide for rural land use strategies to assist communities achieve optimum productivity; and ii. Make rural land use planning an integral part of land adjudication process.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The Paragraph also conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of having monitoring and oversight responsibilities over land use planning throughout the country.</p>		
		<p>Urban and Peri-Urban Land Use Planning</p> <p>Paragraph 109 of the Policy states that the Government shall:</p> <ol style="list-style-type: none"> i. Facilitate the preparation and implementation of local area development plans for all urban and peri-urban areas in the country in a participatory manner; ii. Establish an effective coordinating mechanism for the preparation, implementation of plans and development control; and iii. Encourage development of underutilized land within urban areas. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Paragraph 109 should be reviewed to incorporate the role of the NLC in relation to monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution and the role of the County Governments in relation to the management of urban areas and County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Revise Paragraph 109 to state that the County Governments shall, in consultation with the NLC:</p> <ol style="list-style-type: none"> i. Facilitate the preparation and implementation of local area development plans for all urban and peri-urban areas in the country in a participatory manner; ii. Establish an effective coordinating mechanism for the preparation, implementation of plans and development control; and iii. Encourage development of underutilized land within urban areas.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>It also contravenes the mandate of the County Governments to manage urban areas as provided for in Section 12(1) of the Urban Areas and Cities Act, which was enacted to give effect to Article 184 of the Constitution and their role in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>		
		<p>Regulating Use and Development of Land</p> <p>Paragraph 117 of the Policy states that the Government shall, among other things:</p> <ul style="list-style-type: none"> i. Review planning and development control legislation to harmonize the governance structures, decision-making processes, planning standards and regulations; and ii. Provide a coordinated framework for enforcing planning decisions. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Paragraph 117 should be reviewed to incorporate the role of the NLC relating to monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution and the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Revise Paragraph 117 to state that the National Government shall, in consultation with the NLC and the relevant County Governments:</p> <ul style="list-style-type: none"> i. Review planning and development control legislation to harmonize the governance structures, decision-making processes, planning standards and regulations; and ii. Provide a coordinated framework for enforcing planning decisions.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>It also contravenes the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>		
		<p>Restoration and Conservation of Land Quality</p> <p>Paragraph 124 of the Policy states that the Government shall introduce incentives to encourage the use of technology and scientific methods for soil conservation.</p> <p>This conflicts with the role of the County Governments in implementation of specific National Government policies on natural resources and environmental conservation, including soil conservation, as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 124 should be reviewed to incorporate the role of the County Governments in implementation of specific National Government policies on natural resources and environmental conservation, including soil conservation as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revise Paragraph 124 to state that the National Government shall introduce incentives to encourage the use of technology and scientific methods for soil conservation in consultation with the relevant County Governments.</p>
		<p>Land Surveying and Mapping</p> <p>Paragraph 155 of the Policy states that the Government shall, among other things, improve mapping standards in general boundary areas so that they fit into a computerized system.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the</p>	<p>Paragraph 155 should be reviewed to incorporate the role of the County Governments in land survey and mapping as part of County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>It should also be reviewed to incorporate the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC</p>	<p>Revise Paragraph 155 to state that the National Government shall, in consultation with the relevant County Governments and the NLC, improve mapping standards in general boundary areas so that they fit into a computerized system.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Constitution which gives the NLC the function of monitoring and oversight responsibilities over land use planning throughout the country.</p> <p>It also conflicts with the role of the County Governments in land survey and mapping as part of County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>the function of monitoring and oversight responsibilities over land use planning throughout the country.</p>	
		<p>Resolution of Historical Land Injustices</p> <p>Paragraph 179 of the Policy states that the Government shall, among other things, establish a suitable legal and administrative framework to investigate, document and determine historical land injustices and recommend mechanisms for their resolution.</p> <p>This conflicts with the role of the NLC in Article 67(2)(e) of the Constitution which gives the NLC the function of initiating investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommending the appropriate redress.</p>	<p>Paragraph 179 should be reviewed to incorporate the role of the NLC in initiating investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommending the appropriate redress as per Article 67(2)(e) of the Constitution.</p>	<p>Revise Paragraph 179 to state that the NLC shall establish a suitable legal and administrative framework to investigate, document and determine historical land injustices and recommend mechanisms for their resolution.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p><u>Disaster Management</u></p> <p>Paragraph 201 of the Policy states that the Government shall, among other things:</p> <ul style="list-style-type: none"> i. Establish legal, policy and institutional frameworks for the prevention and management of land-related disasters; and ii. Establish a suitable legal and administrative framework for resettlement in the event of natural disasters. <p>Disaster management is a concurrent role of the National Government under Part 1(24) of the Fourth Schedule to the Constitution and the County Governments under Part 2(12) of the Fourth Schedule to the Constitution.</p> <p><u>District Land Boards (DLBs)</u></p> <p>Paragraphs 231 and 241-246 of the Policy state that the Government shall set up District Land Boards (DLBs), to act as agents of the NLC at the district level and that they shall be accountable to the NLC in the performance of their functions.</p>	<p>Paragraph 201 should be reviewed to incorporate the role of the County Governments in disaster management as per Part 2(12) of the Fourth Schedule to the Constitution.</p> <p>Paragraph 231 should be reviewed to incorporate the devolved system of government under the Constitution.</p>	<p>Revise Paragraph 201 to state that the National Government shall, in partnership with the relevant County Governments:</p> <ul style="list-style-type: none"> ii. Establish legal, policy and institutional frameworks for the prevention and management of land-related disasters; and ii. Establish a suitable legal and administrative framework for resettlement in the event of natural disasters. <p>Revise the Policy to replace reference to DLBs with County Land Boards.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The are no districts under the Constitution.</p> <p>Local Authorities</p> <p>Paragraphs 254 and 255 of the Policy provide for land use planning functions of local authorities.</p> <p>The are no local authorities under the Constitution.</p>	<p>Paragraphs 254 and 255 should be reviewed to incorporate the devolved system of government under the Constitution.</p>	<p>Revise the Policy to replace reference to local authorities with County Governments.</p>
2.	<p>The National Urban Development Policy, 2016 (National)</p>	<p>The Policy was developed to provide a framework for the management of urbanization and urban development of Kenya.</p> <p>It involved the input of the Council of Governors' urban committee.</p> <p>Promoting Urban Industrial Development</p> <p>Paragraph 4.6 of the Policy makes the following recommendations, among others, with the County Governments as the lead agency for implementation:</p> <p>i. Fast-tracking of regulatory reforms that promote transparent procedures for allocating industrial land to investors;</p>	<p>The Policy should be reviewed to incorporate the provisions of the Constitution, especially in relation to the role of the NLC under Article 67 of the Constitution.</p>	<p>Revise the Policy.</p>
			<p>Paragraph 4.6 should be revised to incorporate the role of the NLC relating to monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution.</p>	<p>Revise Paragraph 4.6 to state that the recommendations on land use planning shall be carried out in consultation with the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>ii. Prioritizing and securing of land for industrial development; and</p> <p>iii. Improving access to serviced land for industrial development.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and oversight responsibilities over land use planning throughout the country.</p>		
		<p>Land for Urban Development</p> <p>Paragraph 6.2.1 of the Policy recommends the following measures, among others, with the County Governments as the lead agency for implementation:</p> <ul style="list-style-type: none"> i. Identifying and acquiring adequate land for urban development; and ii. Formalizing land ownership in informal neighbourhoods. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(a) and (h) of the Constitution which gives the NLC the function of management of public land on behalf of the National Government and County Governments and</p>	<p>Paragraph 6.2.1 should be revised to incorporate the role of the NLC in the function of management of public land on behalf of the National Government and County Governments and monitoring and oversight responsibilities over land use planning throughout the country as per Article 67(2)(a) and (h) of the Constitution.</p>	<p>Revise Paragraph 6.2.1 to state that the following roles shall be carried out in consultation with the NLC:</p> <ul style="list-style-type: none"> i. Identifying and acquiring adequate land for urban development; and ii. Formalizing land ownership in informal neighbourhoods.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>monitoring and oversight responsibilities over land use planning throughout the country.</p> <p>Land Allocation</p> <p>Paragraph 6.2.3 of the Policy recommends the following measures, among others, with the County Governments as the lead agency for implementation:</p> <ul style="list-style-type: none"> i. Investigating and punishing illegality and irregularity in past land allocations; and ii. Streamlining the process for the allocation of public land. <p>This conflicts with the constitutional role of the NLC in Article 67(2)(a) and (e) of the Constitution which gives the NLC the functions of management of public land on behalf of the National Government and County Governments and to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.</p>	<p>Paragraph 6.2.3 should be revised to incorporate the role of the NLC in the functions of management of public land on behalf of the National Government and County Governments and to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress under Article 67(2)(a) and (e) of the Constitution.</p>	<p>Revise Paragraph 6.2.3 to state that the following roles shall be carried out in consultation with the NLC:</p> <ul style="list-style-type: none"> i. Investigating and punishing illegality and irregularity in past land allocations; and ii. Streamlining the process for the allocation of public land.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Urban Public Open Space and Other Community Land</p> <p>Paragraph 6.2.6 of the Policy recommends establishment measures for securing such land through surveying, planning and titling, among other measures, with the County Governments as the lead agency for implementation.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(h) of the Constitution which gives the NLC the function of monitoring and having oversight responsibilities over land use planning throughout the country.</p>	<p>Paragraph 6.2.6 should be revised to incorporate the role of the NLC in the function of monitoring and having oversight responsibilities over land use planning throughout the country as per Article 67(2)(h) of the Constitution.</p>	<p>Revise Paragraph 6.2.6 to state that surveying, planning and titling shall be carried out in consultation with the NLC.</p>
		<p>Urban Informal Housing</p> <p>Paragraph 8.5 of the Policy recommends the imposition of severe penalties for invasion on public land, among other measures, with the County Governments as the lead agency for implementation.</p> <p>This conflicts with the constitutional role of the NLC in Article 67(2)(e) of the Constitution which gives the NLC the function of investigating, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.</p>	<p>Paragraph 8.5 should be revised to incorporate the role of the NLC in the function of investigating, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress as per Article 67(2)(e) of the Constitution.</p>	<p>Revise Paragraph 8.5 to state that the imposition of penalties for invasion on public land shall be carried out in consultation with the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
3.	Urban Land Use Planning, Monitoring and Oversight Guidelines (2016) (National)	<p>The Guidelines were developed by the NLC in line with its constitutional function of monitoring and having oversight responsibilities over land use planning throughout the country under Article 67(2)(h) of the Constitution.</p> <p>The NLC has power to make Regulations for the carrying out of its functions as per Section 36 of National Land Commission Act, 2012.</p>	<p>The Guidelines should form a foundation for the preparation of Regulations in relation to land use planning as part of the monitoring and oversight responsibility of the NLC.</p>	<p>The NLC should make Regulations in relation to land use planning.</p>
	The National Housing Policy (Sessional Paper No. 3 of 2009) (National)	<p>The Policy was developed before the promulgation of the Constitution.</p> <p>The Policy does not incorporate the devolved system of government and especially the functions of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Policy should be reviewed to incorporate the devolved system of government and the distribution of functions between the National Government and County Governments as set out in the Fourth Schedule to the Constitution.</p> <p>It should also be reviewed to incorporate the functions of the NLC in Article 67 of the Constitution.</p>	<p>Revise the Policy in its entirety.</p>
	Upgrading of Slums and Informal Settlements	<p>Paragraph 31 of the Policy states that the Government will streamline acquisition of land for housing the poor, adopt appropriate tenure systems, planning standards to suit given slum settlements and prevent unwarranted destruction of.</p>	<p>Paragraph 31 of the Policy should be amended to incorporate the role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>and the role of the NLC in relation to management of public land on behalf of the National Government and County</p>	<p>Paragraph 31 of the Policy should be amended to state that the National Government and County Governments, in consultation with the NLC, will streamline acquisition of land for housing the poor, adopt appropriate tenure systems, planning standards to suit given slum settlements and prevent unwarranted destruction</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>existing housing stock and displacement of the residents.</p> <p>This conflicts with the role of the County Governments in County planning and development, in relation to housing, as per Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>It also conflicts with the role of the NLC in Article 67(2)(a) and (h) of the Constitution, in relation to management of public land on behalf of the National Government and County Governments and monitoring and oversight responsibilities over land use planning</p>	<p>Governments and monitoring and oversight responsibilities over and use planning as per Article 67(2)(a) and (h) of the Constitution.</p>	<p>of existing housing stock and displacement of the residents.</p>
		<p>Rural Housing</p> <p>Paragraph 35 of the Policy states that the Government will promote a sustainable process of shelter improvement and maintenance in the rural areas.</p> <p>This conflicts with the role of the County Governments in County planning and development, in relation to housing, as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 35 of the Policy should be amended to incorporate the role of the County Governments in County planning and development in relation to housing as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 35 of the Policy should be amended to state that the National Government and the County Governments shall promote a sustainable process of shelter improvement and maintenance in the rural areas.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
	<p>Land Use Planning and Management</p> <p>Paragraph 41 of the Policy states that the Government will provide facilitation for the supply of serviced land at affordable prices by, among other things:</p> <ul style="list-style-type: none"> i. Establishing a land bank for public housing through purchase or compulsory acquisition of land that is not fully utilized; ii. Imposing a progressive tax over and above the current land rents and rates on vacant urban land after reasonable notification to help curb speculative activities and release land for development; and iii. Re-planning and re-development of existing housing estates that do not provide for maximum permissible or highest and best use of land. <p>This conflicts with the role of the County Governments in County planning and development, in relation to housing, as per Part 2(8) of the Fourth Schedule to the Constitution and Article 209(3)(a) of the Constitution which empowers County Governments to impose property rates.</p>	<p>Paragraph 41 of the Policy should be amended to incorporate the role of the County Governments in County planning and development and imposition of property rates as per Part 2(8) of the Fourth Schedule to the Constitution and Article 209(3)(a) of the Constitution and the role of the NLC in relation to management of public land on behalf of the National Government and County Governments and monitoring and oversight responsibilities over land use planning as per Article 67(2)(a) and (h) of the Constitution.</p>	<p>Paragraph 41 of the Policy should be amended to state that the National Government and the County Governments shall, in consultation with the NLC, provide facilitation for the supply of serviced land at affordable prices by:</p> <ul style="list-style-type: none"> i. Establishing a land bank for public housing through purchase or compulsory acquisition of land that is not fully utilized; and ii. Re-planning and re-development of existing housing estates that do not provide for maximum permissible or highest and best use of land. <p>Furthermore, the National Government shall, in consultation with the NLC impose a progressive tax over and above the current land rents while the County Governments shall, in consultation with the NLC impose a progressive tax over and above the current rates on vacant urban land after reasonable notification to help curb speculative activities and release land for development.</p>	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>It also conflicts with the role of the NLC in Article 67(2)(a) and (h) of the Constitution, in relation to management of public land on behalf of the National Government and County Governments and monitoring and oversight responsibilities over land use planning.</p> <p>Infrastructure</p> <p>Paragraph 44 of the Policy gives the local governments roles relating to infrastructure such as collaboration with private developers in developing infrastructure in rural and urban areas.</p> <p>This does not incorporate the devolved system of government and the role of the County Governments in relation to infrastructure such as electricity, roads and water and sewerage services, as per Part 2(5), (8) and (11) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 44 of the Policy should be amended to incorporate the devolved system of government and the role of the County Governments in relation to infrastructure development as per Part 2(5), (8) and (11) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 44 of the Policy should be amended to refer to the County Governments instead of local governments.</p>
		<p>Estate Management and Maintenance</p> <p>Paragraph 59 of the Policy states that to address the problems relating to estate management and maintenance, the following actions, among others, will be taken:</p>	<p>Paragraph 59 of the Policy should be amended to incorporate role of the County Governments in County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 59 of the Policy should be amended to state that the National Government and the County Governments shall take the proposed actions to address the problems relating to estate management and maintenance.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>i. Standards will be formulated for acceptable maintenance status of the built environment in which planned preventive and corrective maintenance works will meet legally enforceable requirements; and</p> <p>ii. Preparation and submission of approved “as-built” drawings and maintenance manuals for each new building developed will be made a pre-requisite for obtaining a “Certificate of Occupancy” by the Development Control Agencies.</p> <p>This conflicts with the role of the County Governments in County planning and development in the Fourth Schedule to the Constitution</p>		
		<p>Disaster Management</p> <p>Paragraph 64 of the Policy proposes measures that will be put in place to strengthen the country’s mechanism to manage disasters.</p> <p>Disaster management is a concurrent function of the National Government under Part 1(24) of the Fourth Schedule to the Constitution and the County Governments under Part 2(12) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 64 of the Policy should be amended to harmonize the concurrent function of the National Government and County Governments of disaster management under Part 1(24) and Part 2(12) of the Fourth Schedule to the Constitution respectively.</p>	<p>Paragraph 64 of the Policy should be amended to state the proposed measures to strengthen the country’s mechanism to manage disasters shall be carried out in consultation with the relevant County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p><u>Institutional framework</u></p> <p>Paragraph 88 of the Policy gives the local governments administrative roles relating to housing.</p> <p>This does not incorporate the devolved system of government and the role of the County Governments in relation to housing as part of County planning and development, as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 88 of the Policy should be amended to incorporate the devolved system of government and the role of the County Governments in relation to housing as part of County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Paragraph 88 of the Policy should be amended to refer to the County Governments instead of local governments.</p>
5.	<p>The National Land Use Policy (“the NLUP”) (Sessional Paper No. 1 of 2017) (National)</p>	<p>The Policy was developed with the overall goal to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land related resources in a sustainable and desirable manner at National, County and community levels.</p> <p>So as to ensure efficient, productive and sustainable use of land, the Policy proposes measures to be taken by the National Government and County Governments such as sound land use practices.</p> <p>The Policy also proposes the development of land use plans at both</p>	<p>The Policy recognizes the role the National Government and the County Governments as well as the NLC in land use planning.</p>	<p>The Policy complies with the Constitution.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		National and County levels with full participation of all stakeholders. The Policy recognizes the Constitutional mandate of the NLC in relation to land and land use and its principal responsibility for ensuring the sound implementation of planning policy. The roles of the NLC under Article 67 of the Constitution have generally not been incorporated in the NSP.	The Policy should be revised to align it with the Constitutional roles of the NLC.	Revision of the Policy to align it with the Constitution.
		Agriculture Capability Assessment The NSP proposes measures such as: i. Development application for change of user in the high potential areas should be required to present a rigorous justification for the intention; and ii. Intensification of the use of land within the urban areas other than outward growth. The proposed measures do not incorporate the role of the NLC in Article 67(2) (h) of the Constitution in relation to its monitoring and oversight responsibility over land use planning.	Revision of the NSP to incorporate the role of the NLC in land use planning as per Article 67(2) (h) of the Constitution.	Revision of the NSP state that the proposed measures will be taken in consultation with the NLC.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Urban Land Requirement Assessment</p> <p>The NSP proposes measures such as:</p> <ol style="list-style-type: none"> i. Alleviation of the wastage of land in informal settlement and encouraging of infill and mixed development; ii. Repossession of all illegally acquired land for roads infrastructure; and iii. Upgrading of slums. <p>The proposed measures do not incorporate the role of the NLC in Article 67(2)(e) and (h) of the Constitution in relation to its monitoring and oversight responsibility over land use planning and initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommendation of appropriate redress.</p>	<p>Revision of the NSP to incorporate the role of the NLC in Article 67(2)(e) and (h) of the Constitution in relation to its monitoring and oversight responsibility over land use planning and initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommendation of appropriate redress.</p>	<p>Revision of the NSP state that the proposed measures will be taken in consultation with the NLC.</p>
7.	<p>The National Slum Upgrading and Prevention Policy (National)</p>	<p>The formulation of the Policy involved the input of the County Governments and the Policy assigns roles between the National Government and County Governments in relation to the recommendations.</p> <p>However, the Policy does not incorporate the role of the NLC in Article 67(2)(a) and (h) of the Constitution in</p>	<p>Revision of the Policy to incorporate the role of the NLC in Article 67(2)(e) and (h) of the Constitution in relation to monitoring and oversight of land use planning and management of public land on behalf of the National Government and County Governments.</p>	<p>Revision of the Policy.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>relation to monitoring and oversight of land use planning and management of public land on behalf of the National Government and County Governments.</p> <p>This is despite the fact that most makeshift settlements are established on public land and one of the policy recommendations includes transfer of tenure on upgraded slums in public land to beneficiaries and repossession of land for use in slum upgrading.</p>		
8.	National Environment Policy, 2013 (National)	<p>The Policy does not effectively incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution. Forest Ecosystems</p> <p>Paragraph 4.1 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on forestry as stated in Part 2(10) of the Fourth Schedule to the Constitution. Freshwater and Wetland Ecosystems</p>	<p>Revision of the Policy to effectively provide for the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as per Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies relating to forestry as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Policy.</p> <p>Revision of the Paragraph to state that the implementation of the forest and other related laws and policies shall be carried out by NEMA, in partnership with the County Governments.</p>
			<p>Revision of the Paragraph to incorporate the role of the County Governments in the</p>	<p>Revision of the Paragraph to state that the implementation of freshwater</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Paragraph 4.2 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>implementation of National Government policies relating to freshwater and wetland resources as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>and wetland resources laws and policies shall be carried out by NEMA, in partnership with the County Governments.</p>
	<p>Coastal and Marine Ecosystems</p> <p>Paragraph 4.3 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies relating to coastal and marine resources as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of coastal and marine resources laws and policies shall be carried out by NEMA, in partnership with the County Governments.</p>	
	<p>Mountain Ecosystems</p> <p>Paragraph 4.4 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies relating to mountain resources as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of mountain resources laws and policies shall be carried out by NEMA, in partnership with the County Governments.</p>	
	<p>Arid and Semi-Arid Lands Ecosystems</p> <p>Paragraph 4.5 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies relating to arid and semi-arid lands as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of arid and semi-arid land laws and policies shall be carried out by NEMA, in partnership with the County Governments the County Governments.</p>	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>Land</p> <p>Paragraph 4.6 of the Policy states that the Government will, among other things:</p> <ul style="list-style-type: none"> i. Ensure implementation of the Constitution and the National Land Policy to incorporate sustainable conservation and management of the environment and resources; ii. Promote best practices for optimal and sustainable land use; and iii. Promote sustainable urban and peri-urban land uses. <p>The Paragraph does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to County planning and development as stated in Part 2(10) of the Fourth Schedule to the Constitution and in relation to the management of urban areas as per Section 12(1) of the Urban Areas and Cities Act, which was</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to land, County planning and development and the management of urban areas as per Part 2(10) of the Fourth Schedule to the Constitution and Section 12(1) of the Urban Areas and Cities Act.</p> <p>Revision of the Paragraph to incorporate the monitoring and oversight role of the NLC as per Article 67(2)(h) of the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of land laws and policies on natural resources and environmental conservation relating to land shall be carried out by the National and County Governments in consultation with the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>enacted in compliance with Article 184 of the Constitution.</p> <p>It also does not incorporate the functions of the NLC in Article 67(2)(h) of the Constitution in relation to monitoring and oversight of land use planning.</p>		
		<p>Soils</p> <p>Paragraph 4-7 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to soils, and especially on soil conservation as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to soil conservation shall be carried out by NEMA, in partnership with the County Governments.</p>
		<p>Minerals</p> <p>Paragraph 4-8 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to minerals as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to minerals shall be carried out by NEMA, in partnership with the County Governments.</p>
		<p>Biodiversity</p> <p>Paragraph 4-9 of the Policy does not incorporate the role of the County.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution	environmental conservation relating to biodiversity as per Part 2(10) of the Fourth Schedule to the Constitution.	to biodiversity shall be carried out by NEMA, in partnership with the County Governments.
	Wildlife Resources Paragraph 4.10 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to wildlife resources as per Part 2(10) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to wildlife resources shall be carried out by NEMA, in partnership with the County Governments.	Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to livestock shall be carried out by NEMA, in partnership with the County Governments.
	Wildlife Resources Paragraph 4.11 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to livestock as per Part 2(10) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to fisheries shall be carried out by NEMA, in partnership with the County Governments.	Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to fisheries shall be carried out by NEMA, in partnership with the County Governments.
	Fisheries Paragraph 4.12 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental	Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to fisheries as per Part 2(10) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to fisheries shall be carried out by NEMA, in partnership with the County Governments.	Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to fisheries shall be carried out by NEMA, in partnership with the County Governments.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>Industrialization and Environment</p> <p>Paragraph 5.5 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to County planning and development as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to industrialization and environment as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to industrialization and environment shall be carried out by NEMA, in partnership with the County Governments, especially in relation to development and promotion of the use of strategic environmental assessment in the industrial development plans, policies and programmes.</p>
		<p>Infrastructural Development and Environment</p> <p>Paragraph 5.6 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to County planning and development as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to infrastructural development and environment as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to infrastructural development and environment shall be carried out by NEMA, in partnership with the County Governments, especially in relation to environmental assessment and public participation.</p>
		<p>Human Settlement</p> <p>Paragraph 5.8 of the Policy does not incorporate the role of the County</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to County planning and development, especially in relation to housing, as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>Energy Use, Efficiency and Conservation</p> <p>Paragraph 5.9 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to County planning and development, specifically energy regulation, as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>environmental conservation relating to human settlement as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>human settlement, especially in relation to housing shall be carried out by NEMA, in partnership with the County Governments.</p>
		<p>Emergency Use, Efficiency and Conservation</p> <p>Paragraph 5.9 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to County planning and development, specifically energy regulation, as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to energy regulation as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental conservation relating to energy shall be carried out by NEMA, in partnership with the County Governments.</p>
		<p>Emergency Preparedness and Disaster Management</p> <p>Paragraph 5.11 of the Policy does not incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation and in relation to disaster management, as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to incorporate the role of the County Governments in the implementation of National Government policies on natural resources and environmental conservation relating to disaster management as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Paragraph to state that the implementation of laws and policies on natural resources and environmental management shall be carried out by NEMA, in partnership with the County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Air Quality</p> <p>Paragraph 6.1 of the Policy does not incorporate the role of the County Governments in the control of air pollution as stated in Part 2(3) of the Fourth Schedule to the Constitution.</p>	Revision of the Paragraph to incorporate the role of the County Governments in the control of air pollution as per Part 2(3) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to state that the functions relating to the control of air pollution shall be carried out by NEMA, in partnership with the County Governments.
		<p>Water and Sanitation</p> <p>Paragraph 6.2 of the Policy does not incorporate the role of the County Governments in the provision of water and sanitation services in the counties as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	Revision of the Paragraph to incorporate the role of the County Governments in the provision of water and sanitation services as per Part 2(10) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to state that the functions relating to the provision of water and sanitation services in the counties shall be carried out by NEMA, in partnership with the County Governments.
		<p>Noise</p> <p>Paragraph 6.6 of the Policy does not incorporate the role of the County Governments in the control of noise pollution as stated in Part 2(3) of the Fourth Schedule to the Constitution.</p>	Revision of the Paragraph to incorporate the role of the County Governments in the control of noise pollution as per Part 2(3) of the Fourth Schedule to the Constitution.	Revision of the Paragraph to state that the functions relating to the control of noise pollution shall be carried out by NEMA, in partnership with the County Governments.
		<p>Institutional Arrangements</p> <p>Paragraph 8.2 of the Policy does not incorporate the key institutional role of the County Governments in the implementation of national policies on the environment as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	Revision of the Paragraph to incorporate the institutional role of the County Governments in the implementation of national policies on the environment.	Revision of the Paragraph to incorporate the functions relating to the implementation of national policies on the environment shall be carried out by NEMA, in partnership with the County Governments.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
9.	National Report on Human Settlements and the New Urban Agenda towards Habitat III (October 2016) (National)	The preparation of the Report involved the County Governments. However, some of the recommendations do not consider the concurrent functions of the National Government and County Governments in the Fourth Schedule to the Constitution .	Revision of the recommendations to incorporate the concurrent functions of the National Government and County Governments.	Revision of the recommendations to comply with the Constitution.
		Land and Urban Planning Paragraph 3.9 of the Report recommends some of the following measures: i. Integration and prioritization of urban agriculture in planning; and ii. Strategizing of ways to ease congestion in cities. Land planning is part of the concurrent functions of the National Government and County Governments in Part 2(8) of the Fourth Schedule to the Constitution . There is therefore need for harmonization of the function in the recommendations. The Paragraph also contravenes the mandate of the County Governments to manage urban areas as provided for	Revision of the recommendations to harmonize the concurrent functions of the National Government and County Governments in relation to land planning.	Revision of the recommendations to state that integration and prioritization of urban agriculture in planning and strategizing of ways to ease congestion in cities shall be carried out in partnership with the National Government and the relevant County Governments.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>in Section 12(1) of the Urban Areas and Cities Act, which was enacted to give effect to Article 184 of the Constitution.</p> <p>Environment and Urbanization</p> <p>Paragraph 4.8 of the Report recommends the some of the following measures:</p> <ul style="list-style-type: none"> i. Capacity building and training on disaster management; and ii. Development of strategies for provision of infrastructural services in small and upcoming urban areas. <p>Disaster management and infrastructure are part of the concurrent functions of the National Government in Part 1(24) of the Fourth Schedule to the Constitution and County Governments in Part 2(12) of the Fourth Schedule to the Constitution. There is therefore need for harmonization of the functions in the recommendations.</p> <p>Housing and Basic Services</p> <p>Paragraph 7.10 of the Report recommends the some of the following measures:</p>	<p>Revision of the recommendations to incorporate the concurrent functions of the National Government and County Governments in relation to disaster management and infrastructure as per Part 1(24) of the Fourth Schedule to the Constitution and Part 2(12) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the recommendations to state that capacity building and training on disaster management and development of strategies for provision of infrastructural services in small and upcoming urban areas shall be carried out in partnership with the relevant County Governments.</p>
		<p>Housing and Basic Services</p> <p>Paragraph 7.10 of the Report recommends the some of the following measures:</p>	<p>Revision of the recommendations to incorporate the concurrent functions of the National Government and County Governments in relation to housing as per Part 1(20) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the recommendations to state that development of social housing for vulnerable groups and emphasis on urban management and shelter strategies geared towards prevention of slum growth and</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
10.	Sessional Paper No. 10 of 2012 on Kenya Vision 2030	<p>i. Development of social housing for vulnerable groups;</p> <p>ii. Emphasis on urban management and shelter strategies geared towards prevention of slum growth and approaches for effective slums and informal settlements upgrading.</p> <p>Housing is part of the concurrent functions of the National Government in Part 1(20) of the Fourth Schedule to the Constitution and County Governments in Part 2(8) of the Fourth Schedule to the Constitution. There is therefore need for harmonization of the function in the recommendations.</p> <p>The Policy was developed by the Office of the Prime Minister, Ministry of State and Planning, National Development and Vision 2030 as a long-term vision to guide the development of the country.</p> <p>Some of the foundations on which the Policy is anchored include land reform, infrastructure and energy. These include concurrent functions of the National and County Governments under the Fourth Schedule to the Constitution such as land planning, transport and electricity and gas reticulation and energy regulation.</p>	<p>Constitution and Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>The Policy should be reviewed to align it with the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p>	<p>approaches for effective slums and informal settlements upgrading shall be carried out in partnership with the relevant County Governments.</p> <p>Amendment of the Policy to align it with the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p> <p>The recommended strategies and flagship projects should also incorporate the role of the NLC under Article 67 of the Constitution.</p> <p>The Policy also mostly makes recommendations in relation to the 2008-2012 period. There is need to come up with more detailed medium-</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Paragraph 2.1 (Infrastructure) of the Policy proposes some strategies to improve infrastructure services and to maximise the economic and social impact of infrastructure development and management. These include:</p> <ul style="list-style-type: none"> i. Strengthening the institutional framework for infrastructure development and accelerating the speed of completion. Raising efficiency and quality of infrastructure projects, and increasing the pace of implementation of infrastructure projects so that they are completed in specified time frames; ii. Developing and maintaining an integrated, safe and efficient transport network; iii. Supporting the development of infrastructure initiatives around flagship projects; iv. Implementing infrastructure projects that will stimulate demand in hitherto neglected areas targeting increased connectivity and reduced 	<p>The Paragraph should be amended to align the strategies and flagship projects in relation to infrastructure to the roles of the National Government and County Governments under the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p> <p>The strategies and flagship projects relating to land planning should also be carried out in consultation with the NLC, as per Article 67(2)(h) of the Constitution.</p>	<p>term plans in relation to the various sectors addressed in the Policy.</p> <p>Amendment of the Paragraph to state that the strategies and flagship projects to improve infrastructure services and to maximise the economic and social impact of infrastructure development and management shall be carried out in consultation with the National Government and the County Governments.</p> <p>The Paragraph should also be amended to state that the strategies and flagship projects relating to land planning should be carried out in consultation with the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>transport and other infrastructure costs;</p> <p>v. Developing a national spatial plan to optimise the development and utilisation of infrastructure facilities and services; and</p> <p>vi. Modernising and expanding sea port facilities.</p> <p>The strategies are to be implemented through strategies selected flagship projects in transport, energy, ICT, construction, water and sanitation, and sound environmental management, including:</p> <p>i. The First National Spatial Plan;</p> <p>ii. A 50-year Integrated National Transport Master Plan;</p> <p>iii. Dredging and /deepening of Mombasa Port;</p> <p>iv. Nairobi metropolitan region bus rapid transit/System;</p> <p>v. Development of a new transport corridor to Southern Sudan and Ethiopia;</p> <p>vi. National road safety programme;</p>		

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>vii. Computerised information maintenance management systems programme; and</p> <p>viii. Weather Modification Programme.</p> <p>Some of the strategies and flagship projects include concurrent functions of the National and County Governments under the Fourth Schedule to the Constitution such as traffic, construction of roads, marine navigation and ferries and harbours, disaster management and land planning.</p> <p>The strategies and flagship projects relating to land planning do not incorporate the role of the NLC under Article 67(2)(h) of the Constitution of monitoring and having oversight responsibilities over land use planning throughout the country.</p>		
		<p>Paragraph 2.7 (Land Reforms) of the Policy states that to provide adequate support to the projects and programmes expected under Vision 2030, the following policies will be accorded priority:</p> <p>i. Sustainable land use;</p> <p>ii. Land reform;</p>	<p>The Paragraph should be amended to align the projects and programmes in relation to land reform to the roles of the National Government and the County Governments such as land planning as per Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p>	<p>Amendment of the Paragraph to state that the projects and programmes in relation to land reform shall be carried out in consultation with the National Government and the County Governments.</p> <p>The Paragraph should also be amended to state that the projects and</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>iii. Land and boundary disputes; and</p> <p>iv. Land information system.</p> <p>The recommended land reform policies include concurrent functions of the National and County Governments under Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution such as land planning.</p> <p>They also do not incorporate the role of the NLC under Article 67(2)(a), (f) and (h) of the Constitution in relation to management of public land on behalf of the National Government and County Governments, encouraging traditional dispute resolution in land conflicts and monitoring and having oversight responsibilities over land use planning throughout the country.</p>	<p>The projects and programmes in relation to land reform should also be carried out in consultation with the NLC as per Article 67(2) (a), (f) and (h) of the Constitution.</p>	<p>programmes in relation to land reform shall be carried out in consultation with the NLC.</p>
		<p>Paragraph 3.3 (Agriculture) states that to achieve the vision for the agricultural sector, it will be necessary to focus on key strategic thrusts, including:</p> <p>i. Transforming land use to ensure better utilisation of high and medium potential lands; and</p> <p>ii. Developing arid and semi-arid areas for both crops and livestock.</p>	<p>The Paragraph should be amended to align the strategies and flagship projects in relation to agriculture to the roles of the National and County Governments as per Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p> <p>The strategies and flagship projects in relation to agriculture should also be carried out in</p>	<p>Amendment of the Paragraph to state that the strategies and flagship projects to improve the agricultural sector shall be carried out in consultation with the National Government and the County Governments.</p> <p>The Paragraph should also be amended to state that the strategies and</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The flagship projects to be implemented in the agricultural sector also include:</p> <ul style="list-style-type: none"> i. Land registry; and ii. Land use master plan. <p>The recommended strategies and flagship projects for improving the agricultural sector include concurrent functions of the National and County Governments under Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution such as land planning.</p> <p>They also do not incorporate the role of the NLC under Article 67(2)(c) and (h) of the Constitution in relation to advising the National Government on a comprehensive programme for the registration of title in land throughout Kenya and monitoring and having oversight responsibilities over land use planning throughout the country.</p>	<p>consultation with the NLC as per Article 67(2)(c) and (h) of the Constitution.</p>	<p>flagship projects shall be carried out in consultation with the NLC.</p>
		<p>Paragraph 4.6 (Environmental Management) of the Policy recommends the following flagship projects in relation to environmental management:</p> <ul style="list-style-type: none"> i. Water catchment management; and ii. Land cover and land use mapping. 	<p>The Paragraph should be amended to align the flagship projects and initiatives in relation to environmental management with the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p>	<p>Amendment of the Paragraph to state that the flagship projects and initiatives in relation to environmental management shall be carried out in consultation with the National Government and the County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The following initiatives are also recommended to support implementation of the flagship projects:</p> <ul style="list-style-type: none"> i. Farmland and dryland tree-planting initiative; and ii. Disaster preparedness. <p>The recommended flagship projects and initiatives in relation to environmental management include concurrent functions of the National and County Governments under the Fourth Schedule to the Constitution such as land planning, disaster management and protection of the environment and natural resources.</p> <p>They also do not incorporate the role of the NLC under Article 67(2)(h) of the Constitution of monitoring and having oversight responsibilities over land use planning throughout the country.</p>	<p>The strategies and flagship projects should also be carried out in consultation with the NLC as per Article 67(2)(h) of the Constitution.</p>	<p>The Paragraph should also be amended to state that the flagship projects and initiatives in relation to environmental management shall be carried out in consultation with the NLC.</p>
11.	Urban Areas and Cities Act (National)	<p>The provisions of the Act are not in line with the Constitution and are also not comprehensive.</p> <p>The role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning throughout the</p>	<p>Generally, the Act needs to be amended to align it with the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p> <p>Additionally, the provisions of the Act need to be made more comprehensive.</p>	<p>Amendment of the Act to align it with the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>country has not been incorporated in the Act.</p> <p>Section 20 sets out the functions of a Board of a city or municipality as including:</p> <ul style="list-style-type: none"> i. Formulation and implementation of an integrated development plan; ii. Control of land use, land subdivision, land development and zoning by public and private sectors for any purpose; iii. Promotion and undertaking of infrastructural development and services within the city or municipality as the case may be delegated by the County Government; iv. development and management of schemes, including site development in collaboration with the relevant national and County agencies; <p>The functions set out in this Section conflict with some of the functions of the National Government as well as the NLC.</p> <p>Additionally, the Regulations under the Act have as yet not been published.</p>	<p>Section 20 should be amended to align it with Part 1(18), (21) and (22) of the Fourth Schedule to the Constitution.</p>	<p>The Section should be amended to state that the functions of a Board or of a city or municipality shall be carried out in consultation with the relevant National Government authorities.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Without the necessary clarity from the Regulations, the Section seemingly conflicts with the following functions of the National Government as set out in Part 1(18), (21) and (22) of the Fourth Schedule to the Constitution:</p> <ul style="list-style-type: none"> i. Land planning; ii. Transport; and iii. Protection of the environment. 		
		<p>Section 33(2) states that for efficient service delivery, Cities and Municipalities may jointly provide cross-city and cross-municipality services and may, in that regard jointly finance the services.</p> <p>The Section poses a possible conflict with Article 212 of the Constitution which states that a County Government may borrow only if the National Government guarantees the loan and with the approval of the County Government's assembly.</p>	<p>The Section should be amended to harmonize it with Article 212 of the Constitution.</p>	<p>The Section should be amended to state that for efficient service delivery, Cities and Municipalities may jointly provide cross-city and cross-municipality services and may, in that regard jointly finance the services, provided that in the case of borrowing of finances for purposes of the services by the city or municipality, Article 212 of the Constitution shall be complied with.</p> <p>This is to harmonize the financing provisions.</p>
		<p>Section 36 requires all Cities and Municipalities to operate within the framework of integrated development planning that shall, among other things, be the basis for:</p>	<p>The Section should be amended to harmonize the concurrent functions of the National Government and County Governments as set out in Part 1(18), (21) (22), (29) and (31) of the Fourth Schedule to the Constitution, especially in relation to:</p>	<p>The Section should be amended to state that all Cities and Municipalities shall operate within the framework of integrated development planning that shall, among other things, be the basis for the stated activities, in consultation</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<ul style="list-style-type: none"> i. the preparation of environmental management plans; ii. provision of physical and social infrastructure and transportation; iii. preparation of annual strategic plans for a city or municipality; iv. overall delivery of service including provision of water, electricity, health telecommunications and solid waste management; v. the preparation of a geographic information system for a city or municipality; vi. a framework for regulated urban agriculture; and vii. development control. <p>The Section conflicts with the following functions of the National Government as set out in Part 1(18), (21) (22), (29) and (31) of the Fourth Schedule to the Constitution:</p> <ul style="list-style-type: none"> i. Land planning; ii. Transport; iii. Agricultural policy; iv. Electricity; and v. Protection of the environment. 	<ul style="list-style-type: none"> i. Land planning; ii. Transport; iii. Agricultural policy; iv. Electricity; and v. Protection of the environment. 	<p>with the relevant National Government authorities.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The First Schedule classifies urban areas and Cities according to services such as:</p> <ul style="list-style-type: none"> i. Planning and Development Control; ii. Traffic Control and Parking; iii. Water and Sanitation; iv. Street Lighting; v. Public Transport; vi. Storm Drainage; vii. Electricity and Gas Reticulation; viii. Solid waste management; ix. Air pollution; x. Local Distributor Roads; xi. Airports and Airstrips; and xii. Marine Water front. <p>Some of the services listed in the First Schedule require harmonization with the functions of the National Government under Part 1 of the Fourth Schedule to the Constitution such as:</p> <ul style="list-style-type: none"> i. Land planning; ii. Traffic; iii. Transport; 	<p>The First Schedule should be amended to reflect the concurrent nature of some of the services provided by the County Governments:</p>	<p>The First Schedule should be amended to harmonize the concurrent functions of the National Government and County Governments in the Fourth Schedule to the Constitution such as:</p> <ul style="list-style-type: none"> i. Land planning; ii. Traffic; iii. Transport; iv. Health facilities; v. Sports; vi. Electricity and Gas Reticulation; and vii. Marine navigation.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<ul style="list-style-type: none"> iv. Health facilities; v. Sports; vi. Electricity and Gas Reticulation; and vii. Marine navigation. 		
12.	Urban Areas and Cities (Amendment) Bill, 2017 (National)	<p>The Bill proposes some amendments to the Urban Areas and Cities Act, 2011.</p> <p>Some of the proposed amendments include matters that involve the concurrent functions of the National and County Governments under the Fourth Schedule to the Constitution.</p> <p>The First Schedule classifies urban areas and Cities according to services such as:</p> <ul style="list-style-type: none"> i. Planning and Development Control; ii. Traffic Control and Parking; iii. Water and Sanitation; iv. Street Lighting; v. Public Transport; vi. Storm Drainage; vii. Electricity and Gas Reticulation; viii. Solid waste management; ix. Air pollution; x. Local Distributor Roads; 	<p>The Bill needs to be amended to align it with the Fourth Schedule to the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p>	<p>Amendment of the Bill to align it with the Constitution or to provide a clear link between the functions of the National Government with those of the County Governments.</p>
		<p>The First Schedule should be amended to harmonize the concurrent functions of the National Government and County Governments in the Fourth Schedule to the Constitution such as:</p> <ul style="list-style-type: none"> i. Land planning; ii. Traffic; iii. Transport; iv. Electricity and Gas Reticulation; and v. Marine navigation. 	<p>The First Schedule should be amended to reflect the concurrent nature of some of the services provided by the County Governments.</p>	<p>The First Schedule should be amended to harmonize the concurrent functions of the National Government and County Governments in the Fourth Schedule to the Constitution such as:</p> <ul style="list-style-type: none"> i. Land planning; ii. Traffic; iii. Transport; iv. Electricity and Gas Reticulation; and v. Marine navigation.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<ul style="list-style-type: none"> xi. Airports and Airstrips; and xii. Marine Water front. <p>Some of the services listed in the First Schedule require harmonization with the functions of the National Government under Part 1 of the Fourth Schedule to the Constitution such as:</p> <ul style="list-style-type: none"> i. Land planning; ii. Traffic; iii. Transport; iv. Health facilities; v. Sports; vi. Electricity and Gas Reticulation; and vii. Marine navigation. 		
		<p>The Act generally gives effect to Chapter Eleven of the Constitution on Devolved Government and provides for the powers, functions and responsibilities of County Governments to deliver services.</p> <p>The Sections conflict with the Constitution.</p>	<p>The Sections should be amended to comply with the Constitution.</p>	<p>The Act should be amended.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 37 sets out the roles of the County executive committee in urban area or city planning as including:</p> <ul style="list-style-type: none"> i. monitoring of the process of planning, formulation and adoption of the integrated development plan by a city or municipality within the County; ii. assisting a city or municipality with the planning, formulation, adoption and review of its integrated development plan; iii. facilitating the coordination and alignment of integrated development plans of different Cities or Municipalities within the County and with the plans, strategies and programmes of national and County Governments; and iv. Taking appropriate steps to resolve any disputes or differences in connection with the planning, formulation, adoption or review of an integrated development plan. <p>Some roles of the County executive committee as set out under Section 37 conflict with some roles of the National Government as set out in the Fourth</p>	<p>The Section should be amended to incorporate the roles of the National Government under the Fourth Schedule to the Constitution such as land planning and the role of the NLC in relation to monitoring and oversight responsibilities over land use planning as per Article 67(2)(h) of the Constitution.</p>	<p>The Section should be amended to state that the County executive committee shall consult the relevant National Government authorities in exercising its roles relating to planning.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Schedule to the Constitution such as land planning.</p> <p>The Section also conflicts with the role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning.</p>		
		<p>Section 111 provides for city and municipal plans which shall be the instrument for development facilitation and development control within a city or municipality.</p> <p>It states that a city or municipal plan shall provide for:</p> <ol style="list-style-type: none"> i. functions and principles of land use and building plans; ii. location of various types of infrastructure within the city or municipality; iii. development control in the city or municipality within the national housing and building code framework. <p>Some of the matters to be provided for in the city or municipality plan conflict with the roles of the National</p>	<p>The Section should be amended to incorporate the roles of the National Government under the Fourth Schedule to the Constitution such as land planning and the role of the NLC in relation to monitoring and oversight responsibilities over land use planning as per Article 67(2)(h) of the Constitution.</p>	<p>The Section should be amended to state that the National Government and the NLC shall be consulted in the preparation of city or municipal plans.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Government as set out in the Fourth Schedule to the Constitution such as land planning.</p> <p>The Section also conflicts with the role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning.</p>		
14.	<p>The Physical Planning Act, No. 6 of 1996 (National)</p>	<p>Under the Fourth Schedule of the Constitution, the role of the National Government has been limited to setting the general principles on land planning and co-ordinating of planning by counties. The substantive powers of urban planning have been delegated to the County Government. The National Government has been stripped of the coercive force to ensure compliance with plans developed by the National Government.</p> <p>The Schedule also assigns County planning and development to the County Government. The County Government has been empowered to develop County plans and regulate development in the counties. These provisions are a duplication of the powers of the Counties under the Constitution.</p>	<p>The entire piece of legislation needs to be amended to rationalize it with the new land laws and omit all references to all classification of land and officers responsible for exercising oversight over land in Kenya.</p> <p>Further, reference to “local authorities” and “the Commissioner of Lands” ought to be streamlined with the new institutional arrangements under the devolved system of governance and the institutions in relation to land in the Constitution.</p>	<p>The Act should be amended to harmonize it with the provisions of the Constitution, especially in relation to the distribution of functions between the National and County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Under the Constitution, only County Governments have powers to determine matters related to planning. The role of the National Government has been limited to setting general principles on land planning and coordinating planning by counties.</p> <p>The only plans incorporated under the Constitution are plans developed by the County Government or that of its devolved units where specific powers to plan have been assigned.</p> <p>With the designation of the role of planning on County Government, only the County Governments can exercise oversight powers over County planning and development.</p>		
		<p>Section 5 states the functions of the Director of Physical Planning to include:</p> <ul style="list-style-type: none"> (a) formulation of national, regional and local physical development policies, guidelines and strategies; (b) be responsible for the preparation of all regional and local physical development plans; (c) from time to time initiate, undertake or direct studies and research 	<p>The provisions of Section 5 of the Act conflict with the function of County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 5 should be amended to refer to planning functions of the County Executive Committee member responsible for planning in relation to County planning and separate functions of the National Director of Physical Planning in relation to National planning functions.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>into matters concerning physical planning;</p> <p>(d) advise the Commissioner of Lands on matters concerning alienation of land under the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288) respectively;</p> <p>(e) advise the Commissioner of Lands and local authorities on the most appropriate use of land including land management such as change of user, extension of user, extension of leases, subdivision of land and amalgamation of land; and</p> <p>(f) Require local authorities to ensure the proper execution of physical development control and preservation orders.</p>		
		<p>Sections 5 (a) and (b) refer to regional physical development policies.</p> <p>The Constitution refers to Counties instead of regions.</p>	<p>Sections 5 (a) and (b) should be amended to incorporate the devolved system of government under the Constitution.</p>	<p>Sections 5 (a) and (b) should be amended to refer to “County physical development plan” instead of “regional physical development plan”.</p>
		<p>Sections 5(d) refers to repealed Acts and the office of the Commissioner of Lands, which is not in the Constitution.</p>	<p>Sections 5(d) should be repealed.</p>	<p>Sections 5(d) should be repealed.</p>
		<p>Sections 5(e): conflicts with Article 67(2) of the Constitution which assigns the role of monitoring and oversight</p>	<p>Sections 5(e) should be amended to incorporate the role of the NLC in relation to monitoring and oversight responsibilities over</p>	<p>Section 5(d) should be amended to state that the NLC shall advise the National Government and the County</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		responsibilities over land use planning to the NLC. Section 5 (f) : refers to “local authorities”.	land use planning as per Article 67(2)(h) of the Constitution. The section should be amended to comply with the devolved system of government in the Constitution.	Governments on the most appropriate use of land. Section 5 (f) : should be amended to refer to “ County Governments ” instead of local authorities.
		Local authorities were replaced by County Governments in the Constitution. Section 8 establishes the National Physical Planning Liaison Committee, Nairobi Physical Planning Liaison Committee, District Physical Planning Liaison Committee and Municipal Physical Planning Liaison Committee respectively. There are no districts in the Constitution.	The section should be amended to comply with the devolved system of government in the Constitution.	The section should be amended to replace the “Nairobi Physical Planning Liaison Committee” and the “District Physical Planning Liaison Committee” with “ County Physical Planning Liaison Committees ” for the respective Counties.
		Section 16 assigns the role of preparation of a regional physical development plan to the Director of Physical Planning. Section 16 conflicts with Part 2(8) of the Fourth Schedule to the Constitution which assigns the role of County planning and development to the County Governments.	The section should be amended to incorporate the function of County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution .	Section 16 should be amended to refer to the “ County physical development plan ” instead of “regional physical development plan” and “ County Executive Committee member responsible for planning ” instead of the “Director of Physical Planning”.
		Section 20 : assigns the role of approval of regional physical development plans in relation to counties to the Minister in charge of Physical Planning.	The section should be amended to incorporate the role of County Assemblies in relation to the approval of County plans and policies to as per Article 185 of the Constitution.	Section 20 should be amended to refer to the “ County Assemblies ” instead of the “Minister in charge of Physical Planning”.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		Section 20: conflicts with Article 185 of the Constitution which assigns the role of approval of County plans and policies to the County Assemblies.		
		Section 24: assigns the role of preparation of local physical development plans in relation to Cities, Municipalities, towns and urban councils to the Director of Physical Planning. This relates to any Government land, trust land or private land within the area of authority of a city, municipal, town or urban council and any trading or marketing centre. It also relates to coordination of development of infrastructural facilities and control of land use and development. Section 24: conflicts with Part 2(8) of the Fourth Schedule to the Constitution which assigns the role of County planning and development to the County Governments.	Section 24 should be amended to incorporate the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.	Section 24 should be amended to assign the role of preparation of physical development plans in relation to Cities, Municipalities, towns and urban councils to the County Governments.
		Sections 29-31 assign the role of control of County development to the local authorities. Sections 29-31: conflict with the Fourth Schedule to the Constitution which assigns the role of County planning and development to the County Governments.	Sections 29-31 should be amended to incorporate the role of the County Governments in relation to County planning and development as per Part 2(8) of the Fourth Schedule to the Constitution.	Section 24 should be amended to assign the role of control of County development to the County Governments.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 32 sets out the procedure for approval of development applications.</p> <p>Section 32 conflicts with as per Part 2(8) of the Fourth Schedule to the Constitution which assigns the role of County planning and development to the County Governments.</p> <p>It also does not incorporate the oversight role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Section 32 should be amended to incorporate the role of the County Governments in relation to County planning and development and the oversight role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Section 32 should be amended to allocate the role of approval of National development applications to the National Government and to allocate the role of approvals of County development applications to the County Governments.</p> <p>The section should also be amended to provide for the authorization of the NLC of the development before approval of the National and County development applications.</p>
		<p>Section 41 provides for subdivision of private land within a local authority.</p> <p>Section 41 conflicts with Part 2(8) of the Fourth Schedule to the Constitution which assigns the role of County planning and development to the County Governments.</p> <p>It also does not incorporate the oversight role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Section 41 should be amended to comply with Part 2(8) of the Fourth Schedule to the Constitution which assigns the role of County planning and development to the County Governments.</p> <p>It should also be amended to incorporate the oversight role of the NLC under Article 67(2)(h) of the Constitution in relation to monitoring and oversight responsibilities over land use planning throughout the country.</p>	<p>Section 41(2) should be amended to refer to the “County Executive Committee member responsible for planning” instead of the “Director”.</p> <p>Section 41 should also be amended to include authorization of the NLC before approval of an application for sub-division of private land in a County.</p>

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		<p>The First Schedule to the Act provides for matters which may be dealt with in a regional physical development plan. These include:</p> <ul style="list-style-type: none"> i. housing; ii. transportation; and iii. electricity supply. <p>The First Schedule to the Act conflicts with some roles of the National Government and County Governments which require harmonization such as:</p> <ul style="list-style-type: none"> a. housing; b. transportation; and c. electricity supply. 	<p>The First Schedule to the Act should be amended to harmonize the concurrent roles of the National Government and County Governments.</p>	
15.	<p>The Physical Planning Bill, 2017 (National)</p>	<p>Sections 9 (d), 12 (c), 13, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 41 and 50 do not involve the County Governments.</p> <p>Land planning is a concurrent function under the Fourth Schedule to the Constitution and while the National Government takes the lead in setting out the general principles and coordination of planning, the involvement of the County Governments is a critical requirement in the exercise.</p>	<p>There is need to streamline the roles of the National Government in relation to land planning to the provisions of Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Amendment of the Bill.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 13 (b) assigns the role of approving County physical development plans to the County Executive Committee Member responsible for physical planning.</p> <p>This contravenes Article 185 of the Constitution which assigns the role of approval of County plans and policies to the County Assembly.</p>	<p>Section 13 (b) should be deleted.</p>	<p>Section 13 (b) should be deleted.</p>
		<p>Section 33 proposes the objects of a County physical development plan as including:</p> <ol style="list-style-type: none"> i. Provision of a basis for infrastructure and services delivery; ii. Guidance on the use and management of natural resources; iii. Enhancement of environmental protection and conservation; and iv. Improvement of transport and communication networks and linkages. <p>The objects of a County physical development plan proposed in Section 33 cover some functions of the National Government in the Fourth Schedule to the Constitution that require</p>	<p>Section 33 should be amended to incorporate the distribution of roles of the National Government and County Governments in relation to County physical development plans as per the Fourth Schedule to the Constitution.</p>	<p>Section 33 should include a sub-section stating that the objects of a County physical development plan shall be aligned with the distribution of roles of the National Government and County Governments in the Fourth Schedule to the Constitution.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>harmonization with similar County Government functions such as:</p> <ul style="list-style-type: none"> i. Protection of the environment and natural resources; and ii. Transport. 		
		<p>Section 41 sets out the purpose of a local physical development plan as including:</p> <ul style="list-style-type: none"> i. Zoning, urban renewal or redevelopment; ii. Guiding and coordinating the development of infrastructure; iii. Regulation of land use and land development; and iv. Providing a framework and guidelines on building and works development in the city, municipality, urban area, etc. <p>The purpose of a local physical development plan in Section 41 covers some functions of the National Government and County Governments in the Fourth Schedule to the Constitution that require harmonization such as:</p> <ul style="list-style-type: none"> i. Land planning; and ii. Transport. 	<p>Section 41 should be amended to take into consideration the distribution of roles of the National Government and County Governments in the preparation of local physical development plans in the Fourth Schedule to the Constitution.</p>	<p>Section 41 should be amended to include a sub-section stating that in the preparation of a local physical development plan, a County Government shall consider the distribution of roles of the National Government and County Governments in the Fourth Schedule to the Constitution.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 50 proposes giving of powers in relation to development to the Cabinet Secretary in charge of physical planning and the County Executive Committee Member responsible for physical planning (the “planning authorities”). These include:</p> <ol style="list-style-type: none"> i. Control of land use and development; ii. Control of subdivision; iii. Approval of development applications; iv. Ensuring the proper execution and implementation of approved physical development plans; and v. Reservation and maintenance of all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plans. <p>Section 50 covers some concurrent functions of the National Government and County Governments in the Fourth Schedule to the Constitution that require harmonization such as land planning.</p>	<p>Section 50 should be amended to harmonize the concurrent functions of the National Government and County Governments such as land planning in the Fourth Schedule to the Constitution.</p>	<p>The functions stipulated in the Section need to be harmonized with those set out in the Fourth Schedule to the Constitution.</p> <p>Additionally, a sub-section should be included in the Section to state that the planning authorities shall take into consideration the distribution of roles of the National Government and County Governments in the Fourth Schedule to the Constitution in the exercise of their powers.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
16.	The Sectional Properties Act	<p>The Act does not generally incorporate the devolved system of government.</p> <p>The following sections of the Act refer to “local authority” instead of “County Government”:</p> <ul style="list-style-type: none"> i. Section 3 ii. Section 9(3) iii. Section 11(1)(b) iv. Section 11(3) v. Section 12(1) vi. Section 20(1)(f) vii. Section 29(6) viii. Section 32(2)(b) ix. Section 33(1)(b) x. Section 39(1)(e) xi. Section 63 <p>Local authorities are not incorporated under the Constitution.</p>	<p>The sections should be amended to refer to the County Governments instead of local authorities, in conformity with the devolved system of government under the Constitution.</p>	<p>he following amendments:</p> <ul style="list-style-type: none"> i. Section 3: delete the definition of “local authority” and replace with: <ul style="list-style-type: none"> ““County Government” means a County Government established under Article 176(1) of the Constitution.” ii. Section 9(3) amend to state: <ul style="list-style-type: none"> “The Registrar shall, within twenty-one days from the day a sectional plan is registered, submit to the County Government of the area in which the parcel is located, a copy of the registered sectional plan.” iii. Section 11(1)(b) amend to state: <ul style="list-style-type: none"> “a certificate of the County Government stating that the proposed division of the structure as illustrated on the plan has been approved by the County Government.” iv. Section 11(3) amend to state: <ul style="list-style-type: none"> “If an application is made for a certificate under subsection (1)(b) the County Government—”

No	Name of policy/law	Issue	Rationale/concern	Recommendation
				<p>v. Section 12(1) amend to state: <i>“Any proprietor may with the approval of the County Government, sub-divide or consolidate his unit by registering a sectional plan relating to the unit intended to be so sub-divided or consolidated in the manner provided by this Act for the registration of sectional plans.”</i></p> <p>vi. Section 20(1)(f) amend to state: <i>“comply with any notice or order duly served on it by any competent County Government or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon;”</i></p> <p>vii. Section 29(6) amend to state: <i>“A County Government, a judgment creditor of the Corporation for an amount of not less than five thousand shillings or any owner or person having a registered interest in or over the units comprised in a sectional plan may apply to the tribunal for the appointment of a receiver and manager upon such terms as the tribunal may direct.”</i></p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
				<p>viii. Section 33(1)(b) amend to state: “as required by a County Government or other public authority, in respect of the unit or common property that is leased to that owner under section 42.”</p> <p>ix. Section 32(2)(b) amend to state: “to comply with notices or orders by any County Government or public authority requiring repairs to or work to be done in respect of the parcel.”</p> <p>x. Section 39(1)(e) amend to state: “all certificates, approvals and permits issued by a County Government, the National Government or an agent of the National Government which relate to any property for which the Corporation is responsible.”</p> <p>xi. Section 63 amend to state: “When a County Government, public authority or person authorized by either of them has a statutory right to enter on any part of a parcel, the authority or person is entitled to enter on any other part of the parcel to the extent necessary or expedient</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
				to enable it or him to exercise its or his statutory powers.”
	<p>Section 3 of the Act refers to the Registered Land Act (Cap. 300).</p> <p>The Act was repealed by the Land Registration Act.</p>	<p>Section 3 of the Act should be amended to refer to the Land Registration Act.</p>	<p>Section 3 of the Act should be amended to state:</p> <p>“Registrar” means a Registrar appointed under the Land Registration Act No. 3 of 2012.”</p>	
	<p>Section 3 and Section 71 of the Act refer to “Minister”.</p> <p>Ministers are not incorporated under the Constitution.</p>	<p>The sections should be amended to refer to “Cabinet Secretary” instead of “Minister”.</p>	<p>Section 3 of the Act should be amended to state:</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Land.”</p> <p>Section 71 of the Act should be amended to state:</p> <p>“The Cabinet Secretary may make regulations—”</p>	
	<p>Section 3 of the Act defines “title document” as a document indicating title to a unit which is registerable under the Registered Land Act.</p> <p>The Act was repealed by the Land Registration Act.</p>	<p>The section should be amended to refer to the Land Registration Act.</p>	<p>Section 3 of the Act should be amended to state:</p> <p>“title document” means a document indicating title to a unit which is registerable under the Land Registration Act No. 3 of 2012.”</p>	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 5(5) and 5(6) of the Act state:</p> <p>“(5) Notwithstanding any other written law, as soon as a sectional plan is registered under this Act the title to a unit comprised in the plan shall, with effect from the date of the registration of the sectional plan, be deemed to be issued under the Registered Land Act.</p> <p>(6) After a register for a unit is opened pursuant to subsection (1) the unit may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land held under the Registered Land Act and the provisions of that Act shall apply to those dealings in so far as those provisions do not conflict with this Act or regulations made thereunder.”</p>	<p>The sub-sections should be amended to refer to the Land Registration Act.</p>	<p>The sub-sections should be amended to state:</p> <p>“(5) Notwithstanding any other written law, as soon as a sectional plan is registered under this Act the title to a unit comprised in the plan shall, with effect from the date of the registration of the sectional plan, be deemed to be issued under the Land Registration Act No. 3 of 2012.</p> <p>(6) After a register for a unit is opened pursuant to subsection (1) the unit may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land held under the Land Registration Act No. 3 of 2012 and the provisions of that Act shall apply to those dealings in so far as those provisions do not conflict with this Act or regulations made thereunder.”</p>
	<p>Section 11(4) of the Land Planning Act (Cap. 303) and Town Planning Act (Cap. 134 of 1948).</p> <p>The Acts were repealed by the Physical Planning Act.</p>	<p>Section 11(4) of the Act refers to the Land Planning Act (Cap. 303) and Town Planning Act (Cap. 134 of 1948).</p> <p>The Acts were repealed by the Physical Planning Act.</p>	<p>The section should be amended to refer to the Physical Planning Act.</p>	<p>Section 11(4) of the Act should be amended to state:</p> <p>“The provisions of the Physical Planning Act relating to the sub-division of land do not apply to the division</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
17.	The Environmental Management and Co-ordination Act 1999 (National)	<p>Section 9(1) states that the National Environment Management Authority (NEMA) shall be the principal instrument of Government in the implementation of all policies relating to the environment.</p> <p>Section 9(1) conflicts with Part 2(10) of the Fourth Schedule to the Constitution which distributes the function of implementation of specific National Government policies on natural resources and environmental conservation to the County Governments.</p> <p>Section 9(2)(s) sets out the functions of NEMA as including performance of such other functions as the Government may assign to NEMA or as are incidental or conducive to the exercise by NEMA of any or all the functions provided under the Act.</p>	<p>Section 9(1) should be amended to incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as per Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>Section 9(2)(s) should be amended to incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>of a building under a sectional plan if—</p> <p>(a) the surface boundaries of the parcel as defined in this Act on which that building is located correspond to the boundaries of a parcel as defined in the Physical Planning Act; and</p> <p>(b) the building located on the parcel contains two or more units.”</p> <p>Section 9(1) should be amended to state that (NEMA) shall implement the policies relating to the environment in partnership with the County Governments.</p> <p>Section 9(2)(s) should be amended to state that NEMA shall, in partnership with the County Governments, perform such other functions as the National Government may assign to it or as are incidental or conducive to the exercise by NEMA of any or all of the functions</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 9(2)(s) does not incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>		<p>provided under the Act, in relation to the implementation of specific National Government policies on natural resources and environmental conservation.</p>
		<p>Section 12 gives NEMA the power to direct lead agencies to perform their duties under the Act.</p> <p>Section 12 does not incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Section 12 should be amended to incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as per Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Section 12 should be amended to state that NEMA shall have the power to direct lead agencies to perform their duties under the Act, other than duties relating to the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as stated in the Fourth Schedule to the Constitution, which shall be carried out in partnership with NEMA.</p>
		<p>Section 30 states that the functions of a County Environment Committee of the County shall include:</p> <ul style="list-style-type: none"> i. responsibility for the proper management of the environment within the County for which it is appointed; and ii. Development of a County strategic environmental action plan every five (5) years. 	<p>Section 30 should be amended to incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation.</p>	<p>Section 30 should be amended to state that the functions of a County Environment Committee of the County shall include:</p> <ul style="list-style-type: none"> i. responsibility for the proper management of the environment within the County for which it is appointed; and

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 30 does not incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>		<p>ii. development of a County strategic environmental action plan every five (5) years, which functions shall be performed in relation to the County Government function of implementation of specific National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>
		<p>Section 40 states that every County Environment Committee shall prepare a County Environment Action Plan in respect of the County for consideration and adoption by the County Assembly.</p> <p>Section 40 does not incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Section 40 should be amended to incorporate the function of County Governments in relation to implementation of specific National Government policies on natural resources and environmental conservation.</p>	<p>Section 40 should be amended to state that every County Environment Committee shall prepare a County Environment Action Plan in respect of the County for consideration and adoption by the County Assembly in relation to the County Government function of implementation of specific National Government policies on natural resources and environmental conservation as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>
18.	<p>The Valuation for Rating Act, Cap 266 (National)</p>	<p>Section 3, 4, 9, 10, 11 and 22 conflict with the Constitution.</p> <p>Section 3 empowers the local authority to cause a valuation to be made of every rateable property within the area of the local authority.</p>	<p>There is need to repeal the Statute in totality and align its provisions with the devolved system of governance and in that regard with the division of functions under the Fourth Schedule to the Constitution and Article 209(3) of the Constitution which states that a County may impose property rates.</p>	<p>Repeal of the Statute.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 4 provides for powers of local authorities to amend valuation roll.</p> <p>Sections 9, 10 and 11 provides for the procedure for preparation of the valuation roll by the local authority.</p> <p>Section 22 provides the powers of the local authority to alter valuation roll.</p> <p>Under the new Constitutional dispensation, local authorities have been phased out with the introduction of the devolved system of governance.</p> <p>Further, with the allocation of County planning on County Government, local authorities (defunct) have no Constitutional basis to rate properties in the County.</p> <p>The function given to local authorities under the Act have now been designated under the jurisdiction of the County Governments.</p>		
19.	The Land Value Index Laws (Amendment) Bill, 2018 (National)	<p>Section 6 proposes the introduction of Section 107A to the Land Act which will give the National Government the power to determine the land value index for valuation of freehold land and community land that is subject to compulsory acquisition.</p>	<p>Section 6 should be amended to harmonize the concurrent function of National Government and County Governments under Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution in relation to land planning.</p>	<p>Amendment of the section to include consultation of the NLC and the County Governments in determination of the land value index for valuation of freehold land and community land that is subject to compulsory acquisition.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
20.	The Housing Act (National)	<p>This is part of the land planning functions which require harmonization under the Fourth Schedule to the Constitution.</p> <p>The Act does not take into consideration the devolved system of government in the Constitution. It still refers to local authorities, whose mandate was taken over by the County Governments.</p> <p>The Act does not incorporate the role of the NLC in acquisition of land on behalf of the National Government and the County Governments as part of its mandate in Article 67(2)(a) of the Constitution of management of public land on behalf of the National and County Governments.</p> <p>It also does not incorporate the role of the County Governments in relation to housing as part of County planning and development as per Part 2(8) of the Fourth Schedule to Constitution.</p>	<p>The sections of the Act referring to “local authorities” should be amended to refer to “County Governments” to comply with the Constitution.</p> <p>The Act should also be amended to incorporate the role of the NLC as per Article 67(2)(a) of the Constitution and the role of the County Governments as per Part 2(8) of the Fourth Schedule to Constitution.</p>	<p>Amendment of the Act to address Constitutional matters relating to devolution and urban planning and development.</p>
		<p>Section 7 of the Act states that the National Housing Corporation (“the Corporation”) may, among other things, perform the following functions from the Housing Fund:</p> <p>i. lend or grant money to any local authority, for the purpose of enabling the authority to exercise</p>	<p>Section 7 of the Act should be amended to incorporate County Governments as per the devolved system of government under the Constitution.</p> <p>It should also be amended to incorporate the role of the NLC in relation to the management of public land on behalf of the National and</p>	<p>Section 7 should be amended to state that the National Housing Corporation may, among other things, perform the following functions from the Housing Fund, in consultation with the NLC and the relevant County Governments:</p> <p>i. lend or grant money to any County Government, for the purpose of</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>any of the powers conferred upon it by the Act;</p> <p>ii. construct dwellings, carry out approved schemes and lay out and provide services for approved schemes; and</p> <p>iii. acquire any land or building, or estate or interest therein, for any of the purposes of the Act.</p> <p>Section 7 refers to “local authorities”, which are not recognized in the devolved system of government in the Constitution.</p> <p>The section does not incorporate the role of the NLC in Article 67(2)(a) of the Constitution in relation to the management of public land on behalf of the National and County Governments.</p> <p>It also does not incorporate the function of the County Governments in relation to housing as part of County planning and development, as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>County Governments as per Article 67(2)(a) of the Constitution and the function of the County Governments in relation to housing as part of County planning and development, as stated in Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>enabling the County Government to exercise any of the powers conferred upon it by the Act;</p> <p>ii. construct dwellings, carry out approved schemes and lay out and provide services for approved schemes; and</p> <p>iii. acquire any land or building, or estate or interest therein, for any of the purposes of the Act.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
21.	<p>The Housing (Amendment) Bill, 2017 (National)</p>	<p>The Bill proposes amendments in relation to low cost housing.</p> <p>It does solve the constitutional matters relating to devolution and urban planning and development that need to be addressed in the Principal Act such as:</p> <ul style="list-style-type: none"> i. Amendment of the Act to incorporate the County Governments in place of local authorities as per the devolved system of government under the Constitution. ii. Amendment of the Act to incorporate the role of the NLC in the management of public land on behalf of the National and County Governments as per Article 67(2)(a) of the Constitution; and iii. Amendment of the Act to incorporate the function of the County Governments in relation to housing as part of County planning and development, as stated in Part 2(10) of the Fourth Schedule to the Constitution. 	<p>Revision of the Bill to address Constitutional matters in the Principal Act.</p>	<p>Revision of the Bill in relation to Constitutional matters of devolution and urban planning and development in the Principal Act such as:</p> <ul style="list-style-type: none"> i. Amendment of the Act to incorporate the County Governments in place of local authorities as per the devolved system of government under the Constitution. ii. Amendment of the Act to incorporate the role of the NLC in the management of public land on behalf of the National and County Governments as per Article 67(2)(a) of the Constitution; and iii. Amendment of the Act to incorporate the function of the County Governments in relation to housing as part of County planning and development, as stated in Part 2(10) of the Fourth Schedule to the Constitution.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
22.	The Land Control Act	<p>The Act does not take into consideration the devolved system of government in the Constitution. It still refers to “local authorities” and “provinces”, which were dispensed with in the Constitution.</p> <p>The Act does not incorporate the role of the NLC as per Article 67(2)(h) of the Constitution in relation to monitoring and having oversight responsibilities over land use planning throughout the country.</p> <p>It also does not incorporate the role of the County Governments in relation to housing as part of County planning and development under the Constitution as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Act is outdated and does not incorporate the current institutional framework for land control as envisaged in the Constitution, which now involves the NLC and the County Governments.</p>	<p>Repeal of the Act in its entirety.</p>
		<p>Section 8 of the Act sets out the procedure for application for consent in respect of a controlled transaction.</p> <p>The procedure in the section does not incorporate the role of the NLC in Article 67(2)(h) of the Constitution in relation to its function of monitoring and having oversight responsibilities over land use planning throughout the country.</p>		

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>It also does not incorporate the role of the County Governments in relation to housing as part of County planning and development in Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>Section 10 establishes provincial land control appeals boards.</p>		
		<p>There are no provinces under the Constitution.</p>		
		<p>Section 12 establishes the Central land control appeals board and states that the Commissioner of Lands shall be the secretary of the board.</p> <p>There is no office of the Commissioner of Lands under the Constitution.</p>		
		<p>Section 23 states that the President may, by notice in the Kenya Gazette, prohibit any controlled transaction or any class of controlled transaction.</p> <p>Section 24 states that the President may, by notice in the Kenya Gazette, make certain exemptions in relation to the Act.</p> <p>The President does not have any powers in relation to land control under the Constitution.</p>		

No	Name of policy/law	Issue	Rationale/concern	Recommendation
23.	<p>The Kenya Roads Act (National)</p>	<p>The First Schedule to the Act provides for the composition of the boards established under the Act.</p> <p>The Schedule refers to offices which are not in the Constitution such as the District Commissioner and the Provincial Commissioner.</p> <p>The Act does not take into consideration the devolved system of government in the Constitution. It still refers to local authorities, which were dispensed with in the Constitution.</p> <p>Generally, the Act does not incorporate the role of County Governments in relation to road transport as per Part 2(5) of the Fourth Schedule to the Constitution.</p> <p>Section 6 establishes the Kenya Rural Roads Authority (KeRRA).</p> <p>Section 7 gives KeRRA the responsibility of the management, development, rehabilitation and maintenance of rural roads.</p> <p>Rural roads fall within the jurisdiction of both the National Government and the County Governments. Therefore, the</p>	<p>Repeal of the Act and enactment of a new Act that addresses the Constitutional matters relating to devolution and road transport.</p>	<p>Repeal of the Act.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>mandate of KeRRA should be carried out in collaboration with the County Governments in line with their function of County transport in Part 2(5) of the Fourth Schedule to the Constitution.</p> <p>Section 9 establishes KURA.</p>		
		<p>Section 10 gives KURA the responsibility of the management, development, rehabilitation and maintenance of all public roads in the Cities and Municipalities in Kenya except where those roads are national roads.</p> <p>This conflicts with the Fourth Schedule to the Constitution which gives the mandate of County roads to the County Governments, because Cities and Municipalities are also within the jurisdiction of County Governments.</p> <p>Therefore, the establishment of KURA is a duplication of the role of the County Governments in relation to road transport.</p>		
		<p>Section 23 of the Act provides for acquisition of land by an Authority under the Act.</p> <p>It refers to the office of the Commissioner of Lands, which is not under the Constitution.</p>		

No	Name of policy/law	Issue	Rationale/concern	Recommendation
24.	The Kenya Roads Bill (National)	<p>It also does not incorporate the role of the NLC in Article 67(2)(a) of the Constitution in relation to management of public land on behalf of the national and County Governments.</p> <p>The Bill proposes provisions for the classification, management construction and maintenance of public roads, establishment of Kenya National Highways Authority (KeNHA) and Kenya National Secondary Roads Authority (KeNSRA) and their functions and powers.</p> <p>It adheres to the devolved system of government in the Constitution and the role of County Governments in relation to road transport as per Part 2(5) of the Fourth Schedule to the Constitution.</p> <p>Section 12 and Section 18 of the Bill propose the establishment of KeNHA and KeNSRA for the maintenance of primary and secondary National Trunk Roads respectively.</p> <p>Section 47 provides for the acquisition of land by the authorities under the Act in consultation with the NLC.</p> <p>Section 101 of the Bill proposes the establishment of establish a County Roads Agency by each County</p>	-	The Bill addresses the main challenges of the Principal Act.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
25.	The Energy Act (National)	<p>Government, which shall be responsible for the management, development and maintenance of County Roads under the County Executive in charge of roads.</p> <p>The Act does not incorporate the distribution of functions between the National Government and the County Governments as per the Fourth Schedule to the Constitution, especially in relation to electricity and gas reticulation and energy regulation.</p>	<p>The Sections should be amended to harmonize the functions between the National Government and the County Governments.</p>	<p>Amendment of the Act.</p>
		<p>Section 4 of the Act establishes the Energy Regulatory Commission (the “ERC”).</p> <p>Section 5 states that the objectives and functions of the ERC shall include:</p> <ul style="list-style-type: none"> i. generation, importation, exportation, transmission, distribution, supply and use of electrical energy; ii. importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products; and iii. production, distribution, supply and use of renewable energy. 	<p>Section 5 of the Act should be amended to harmonize the function of energy regulation between the National Government and the County Governments as per Part 1(31) and Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 5 of the Act should be amended to state that the ERC’s functions of energy regulation in counties shall be carried out in consultation with the relevant County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 5 contravenes Part 1(31) and Part 2(8) of the Fourth Schedule to the Constitution which distribute energy regulation as a concurrent function of the National Government and County Governments.</p> <p>Section 6 of the Act gives the ERC power to, among other things:</p> <ul style="list-style-type: none"> i. issue, renew, modify, suspend or revoke licenses and permits for all undertakings and activities in the energy sector; ii. set, review and adjust electric power tariffs and tariff structures and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment; and iii. approve electric power purchase and network service contracts for all persons engaging in electric power undertakings. <p>Section 6 of the Act gives the ERC powers that are in relation to energy regulation.</p> <p>According to Part 1(31) and Part 2(8) of the Fourth Schedule to the Constitution, energy regulation is a concurrent</p>	<p>Section 6 of the Act should be amended to incorporate the role of County Governments in relation to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 6 of the Act should be amended to state that the ERC's powers in relation to energy regulation in counties shall be carried out in consultation with the relevant County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>function of the National Government and County Governments.</p> <p>Section 27 of the Act states that a person who wishes to carry out the transmission, distribution and supply of electricity must apply for a license to the ERC.</p> <p>The issuing of a license by ERC for the transmission, distribution and supply of electricity conflicts with the function of the County Governments relating to electricity reticulation and energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 27 of the Act should be amended to incorporate the function of the County Governments relating to electricity reticulation and energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Section should be amended to state that the ERC shall issue licenses for the transmission, distribution and supply of electricity in consultation with the relevant County Governments.</p>
		<p>Section 28 of the Act sets out the procedure for application for an electricity licence or permit.</p> <p>The section does not provide for the involvement of County Governments in the issuance of electricity licenses and permits. This contravenes Part 1(31) and Part 2(8) of the Fourth Schedule to the Constitution which distributes energy regulation as a concurrent function of the National Government and County Governments.</p>	<p>Section 28 of the Act should be amended to incorporate the role of County Governments in relation to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 28 of the Act should be amended to state that the ERC's functions of energy regulation in relation to issuance of electricity licenses and permits in counties shall be carried out in consultation with the relevant County Governments.</p>
		<p>Section 33 of the Act states that a licensee or permit holder shall not</p>	<p>Section 33 of the Act should be amended to incorporate the function of the County</p>	<p>The Section should be amended to state that the licensee shall not</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>purchase or acquire any undertaking or associate himself with any public or local authority, company, person or body of persons supplying electrical energy under any licence, except with the authority of the ERC.</p> <p>The requirement for consent of the ERC conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Governments relating to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>purchase or acquire any undertaking or associate himself with any public or local authority, company, person or body of persons supplying electrical energy under any licence, except with the authority of the ERC,</p> <p>except with the consent of the ERC in consultation with the relevant County Government, which consent shall not be unreasonably withheld.</p>
		<p>Section 34 of the Act states that a licensee or permit holder shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon him by the license without the consent of the ERC.</p> <p>The requirement for consent of the ERC conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 34 of the Act should be amended to incorporate the function of the County Governments relating to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 34 of the Act should be amended to state that the licensee or permit holder shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon him by the license without the consent of the ERC in consultation with the relevant County Government.</p>
		<p>Section 43 of the Act states that all contracts for the sale of electrical energy, transmission or distribution services, between and among licensees, and between licensees and large retail consumers shall be submitted to the ERC for approval before execution.</p>	<p>Section 43 of the Act should be amended to incorporate the function of the County Governments relating to electricity reticulation and energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 43 of the Act should be amended to state that all contracts for the sale of electrical energy, transmission or distribution services, between and among licensees, and between licensees and large retail consumers shall be submitted to the</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The requirement for submission of all contracts for the sale of electrical energy, transmission or distribution services, between and among licensees, and between licensees and large retail consumers to the ERC, conflicts with the function of the County Governments relating to electricity reticulation and energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>		<p>ERC for approval in consultation with the relevant County Government before execution.</p>
		<p>Section 54 of the Act provides for compulsory acquisition of land for purposes of a licence.</p> <p>The section contravenes Article 67(2)(a) of the Constitution which states that the NLC shall carry out the function of management of public land on behalf of the National Government and the County Governments.</p>	<p>Section 54 of the Act should be amended to incorporate the role of the NLC in compulsory acquisition as per Article 67(2)(a) of the Constitution.</p>	<p>Section 54 of the Act should be amended to state that compulsory acquisition of land under the Act shall be carried out in consultation with the NLC.</p>
		<p>Section 66 of the Act establishes the Rural Electrification and Renewable Energy Corporation (“REREC”).</p> <p>Under Section 67, the functions of REREC include, among other things:</p> <ol style="list-style-type: none"> i. overseeing the implementation of the Rural Electrification Programme; and 	<p>Section 67 of the Act should be amended to incorporate the function of the County Governments relating to electricity reticulation and energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Section needs to be amended to ensure that REREC’s proposed mandate of electricity reticulation in rural areas remains that of the County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<ul style="list-style-type: none"> ii. Developing and updating the rural electrification master plan. <p>The functions of REREC conflict with the function of the County Governments relating to electricity reticulation and energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>		
26.	The Energy Bill, 2017 (National)	<p>Sections 10(a), 11, 43, 145, 151(1), 152(1), 165, 169, 173 (3), 174 (1), 191(1), 192 and Part B of the Fifth Schedule to the Bill conflict with the Constitution, especially in relation to the distribution of functions between the National Government and County Governments in the Part 1(31) and Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>Section 9 of the Bill proposes the establishment of the Energy Regulatory Commission (the “ERC”).</p> <p>Under Section 10 (a), the ERC shall carry out energy regulation functions which include:</p> <ul style="list-style-type: none"> i. generation, importation, exportation, transmission, distribution, supply and use of electrical energy; 	<p>The Sections should be amended to harmonize the functions between the National Government and County Governments.</p>	<p>Amendment of the Bill.</p>
			<p>Section 10(a) of the Bill should be amended to harmonize the function of energy regulation between the National Government and the County Governments as per Part 1(31) and Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 10(a) of the Bill should be amended to state that the ERC’s functions of energy regulation in counties shall be carried out in consultation with the relevant County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<ul style="list-style-type: none"> ii. importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil; iii. production, conversion, distribution, supply, marketing and use of renewable energy; and iv. Exploration, extraction, production, processing, transportation, storage exportation, importation and sale of coal bed methane gas and other energy forms. <p>Energy regulation is stated as a function of the National Government in Part 1(31) of the Fourth Schedule to the Constitution. However, it is also stated as a function of the County Governments as part of County planning and development in Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>Therefore, the function of energy regulation in counties by the ERC should be carried out in consultation with the relevant County Governments.</p>		

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 11 of the Bill gives the ERC power to, among other things:</p> <ul style="list-style-type: none"> i. issue, renew, modify, suspend or revoke licenses and permits for all undertakings and activities in the energy sector; ii. set, review and approve contracts, tariffs and charges for common user petroleum logistics facilities and petroleum products; iii. set, review and adjust electric power tariffs and tariff structures and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment; and iv. approve electric power purchase and network service contracts for all persons engaging in electric power undertakings. <p>Section 11 of the Bill gives the ERC powers that are in relation to energy regulation.</p> <p>Energy regulation is stated as a function of the National Government in Part 1(31) of the Fourth Schedule to the Constitution. However, it is also stated as a function of the County Governments</p>	<p>Section 11 of the Bill should be amended to incorporate the role of County Governments in relation to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 11 of the Bill should be amended to state that the ERC's functions of energy regulation in counties shall be carried out in consultation with the relevant County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>as part of County planning and development in Part 2(8) of the Fourth Schedule to the Constitution.</p>		
		<p>Section 42 of the Bill proposes the establishment of the Rural Electrification and Renewable Energy Corporation ('REREC').</p> <p>Under Section 43, the functions of REREC shall include, among other things:</p> <ol style="list-style-type: none"> i. overseeing the implementation of the Rural Electrification Programme; and ii. Developing and updating the rural electrification master plans in consultation with County Governments. <p>The functions of REREC conflict with the function of the County Governments relating to electricity reticulation and energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 42 of the Bill should be amended to incorporate the function of the County Governments relating to electricity reticulation and energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Section needs to be amended to ensure that REREC's proposed mandate of electricity reticulation in rural areas remains that of the County Governments.</p>
		<p>Section 145 of the Bill states that a person who wishes to carry out the transmission, distribution and retail supply of electricity must apply for a license to the ERC.</p>	<p>Section 145 of the Bill should be amended to incorporate the function of the County Governments relating to electricity reticulation and energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Section should be amended to state that the ERC shall issue licenses for the transmission, distribution and retail supply of electricity in consultation with the relevant County Governments.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The issuing of a license by ERC for the transmission, distribution and retail supply of electricity conflicts with the function of the County Governments relating to electricity reticulation and energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>		
		<p>Section 151(1) of the Bill states that a licensee shall not purchase or acquire any undertaking of any public authority, person or body of persons supplying electrical energy under any license, except with the consent of the ERC, which consent shall not be unreasonably withheld.</p> <p>The requirement for consent of the ERC by a licensee before purchasing or acquiring any undertaking of any public authority, person or body of persons supplying electrical energy conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 151(1) of the Bill should be amended to incorporate the function of the County Governments relating to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Section should be amended to state that the licensee shall not purchase or acquire any undertaking of any public authority, person or body of persons supplying electrical energy under any license, except with the consent of the ERC in consultation with the relevant County Government, which consent shall not be unreasonably withheld.</p>
		<p>Section 152(1) of the Bill states that a licensee shall not transfer or otherwise divest any rights, powers or obligations conferred or</p>	<p>Section 152(1) of the Bill should be amended to incorporate the function of the County Governments relating to energy regulation as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 152(1) of the Bill should be amended to state that the licensee shall not transfer or otherwise divest any rights, powers or obligations conferred or</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>imposed upon him by the license without the consent of the ERC.</p> <p>The requirement for consent of the ERC by a licensee before transferring or otherwise divesting any rights, powers or obligations conferred or imposed upon him by the license conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>		<p>imposed upon him by the license without the consent of the ERC in consultation with the relevant County Government.</p>
		<p>Section 165 and 169 of the Bill state that a transmission</p> <p>Licensee and a distribution Licensee shall, respectively, collect, analyze and maintain such data, information and statistics relating to his undertaking to enable him monitor and report to the ERC on the reliability and quality of supply as well as quality of service.</p> <p>The requirement for a Licensee to collect, analyze and maintain such data, information and statistics relating to his undertaking to enable him monitor and report to the ERC on the reliability and quality of supply as well as quality of service conflicts with the function of the</p>	<p>Section 165 and 169 of the Bill should be amended to incorporate the function of the County Governments relating to energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Sections should be amended to state that a</p> <p>Licensee shall collect, analyze and maintain such data, information and statistics relating to his undertaking to enable him monitor and report to the ERC and the relevant County Government on the reliability and quality of supply as well as quality of service.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p> <p>Section 173(3) of the Bill states that a person issued with a retail license shall discharge such duties, in relation to the supply and trade in electrical energy as may be specified by the ERC.</p> <p>The requirement for a person issued with a retail license to discharge such duties, in relation to the supply and trade in electrical energy as may be specified by the ERC conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 173(3) of the Bill should be amended to take into consideration the function of the County Governments relating to energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 173(3) of the Bill should be amended to state that a person issued with a retail license shall discharge such duties, in relation to the supply and trade in electrical energy as may be specified by the ERC and the relevant County Government.</p>
		<p>Section 174(1) of the Bill states that the ERC may issue a retail license to a licensee for the supply of electricity for a particular area or areas stated in the license.</p> <p>The power of the ERC to issue a retail license to a licensee for the supply of electricity conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 174(1) of the Bill should be amended to incorporate the function of the County Governments relating to energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>The Section should be amended to state that the ERC may issue a retail license to a licensee for the supply of electricity for a particular area or areas stated in the license in consultation with the relevant County Government.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 191(1) of the Bill states that all contracts for the sale of electrical energy as well as provision of transmission and distribution network services, between and among licensees, and between licensees and retailers and eligible consumers shall be submitted to the ERC for approval before execution.</p> <p>The requirement for submission of all contracts for the sale of electrical energy as well as provision of transmission and distribution network services, between and among licensees, and between licensees and retailers and eligible consumers to the ERC, conflicts with the function of the County Governments relating to electricity reticulation and energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 191(1) of the Bill should be amended to incorporate the function of the County Governments relating to electricity reticulation and energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 191(1) of the Bill should be amended to state that all contracts for the sale of electrical energy as well as provision of transmission and distribution network services, between and among licensees, and between licensees and retailers and eligible consumers shall be submitted to the ERC for approval in consultation with the relevant County Government before execution.</p>
		<p>Section 192 of the Bill states that every electricity supply agreement between a retailer and another licensee for the procurement of electrical energy by a retailer for resale to consumers shall be submitted to the ERC before execution.</p>	<p>Section 192 of the Bill should be amended to incorporate the function of the County Governments relating to energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Section 192 of the Bill should be amended to state that every electricity supply agreement between a retailer and another licensee for the procurement of electrical energy by a retailer for resale to consumers shall</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The requirement for submission of every electricity supply agreement between a retailer and another licensee for the procurement of electrical energy by a retailer for resale to consumers conflicts with the function of the County Governments relating to energy regulation in Part 2(8) of the Fourth Schedule to the Constitution.</p>		<p>be submitted to the ERC and the relevant County Governments before execution.</p>
		<p>Part B of the Fifth Schedule to the Bill distributes the functions of County Governments under the Bill. It does not include the regulation and licensing of electrical energy as a function of County Governments.</p> <p>The exclusion of the regulation and licensing of electrical energy as a function of County Governments in the Bill conflicts with Part 2(8) of the Fourth Schedule to the Constitution relating to the function of the County Governments relating to energy regulation.</p> <p>Article 186 (2) of the Constitution in relation to the distribution of the functions and powers of National Government and County Governments states that a function or power that is conferred on more than one level</p>	<p>Part B of the Fifth Schedule to the Bill should be amended to incorporate the function of the County Governments relating to energy regulation Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Part B of the Fifth Schedule to the Bill should be amended to state that the functions of County Governments under the Bill shall include the regulation and licensing of electrical energy comparable to the powers given to the County Governments in licensing of gas reticulation systems.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
27.	The Lake Basin Development Authority Act (National)	<p>of government is a function or power within the concurrent jurisdiction of each of those levels of government.</p> <p>The Act generally provides for the establishment of the Lake Basin Development Authority to plan and co-ordinate the implementation of development projects in the Lake Victoria catchment area.</p> <p>Section 3 establishes the Authority as a body corporate.</p> <p>Section 8 outlines the functions of the Authority. The Section gives the Authority powers to plan the development of the Area including initiation and supervision of development projects in the Area through the Government, initiating projects for the exploitation of the natural resources in the Area and undertake all the measures specified by the Authority to protect the water and soils of the area.</p> <p>The Sections conflict with the function of the County Governments relating to County planning and development and implementation of policies on natural</p>	<p>There is need for a total overhaul of this legislation considering the Constitutional prescriptions relating to the functions of the County Governments to undertake County planning and implementation of policies on natural resources, environmental conservation including water conservation as per Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Repeal of the Act in its entirety.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
28.	Kerio Valley Development Authority Act (National)	<p>resources, environmental conservation including water conservation as stated in Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>The Act generally provides for the establishment of Kerio Valley Development Authority to plan and co-ordinate the implementation of development projects in the Kerio and Turkwell catchment areas.</p> <p>Section 3 establishes the Authority as a body corporate.</p> <p>Section 10 outlines the functions of the Authority. The Authority is mandated to undertake inter alia planning for the development of the Area and initiate project activities identified for such planning through the Government generally, to co-ordinate the use of the natural resources especially water and ensure that the landowners in the Area undertake all the measures specified by the Authority to protect the water and soils of the Area.</p> <p>Under as per Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution, County planning and development and implementation of specific National Government policies on natural</p>	<p>There is need for a total overhaul of this piece of legislation as the functions assigned to the Authority have been assigned to the County Governments in Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Repeal of the Act in its entirety.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
29.	Tana & Athi Rivers Development Authority Act (National)	<p>resources and environmental conservation, including soil and water conservation are a preserve of the County Government.</p> <p>The Act generally provides for the establishment of the Tana & Athi Rivers Development Authority to advise on the institution and co-ordination of development projects in the area of the Tana River and Athi River Basins.</p> <p>Section 3 establishes the Tana & Athi Rivers Development Authority as a body corporate</p> <p>Section 8 outlines the functions of the Authority. Under this Section, the Authority is mandated to advise the Government generally and the scheduled Ministries in particular on all matters affecting the development of the Area including the apportionment of water resources, to carry out surveys of the Areas to assess alternative demands within the Area on the resources thereof including electric power generation and to establish schemes within the Area so that water, land and other resources are utilized to the best advantage.</p>	<p>Noting that the functions assigned to the Authority under the Act have been assigned to the County Government in the Constitution, it is recommended to amend this legislation to ensure harmony with Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution.</p>	<p>Amendment of the Act to ensure harmony with the Constitution in relation to the role of County Governments in County planning and development including electricity and gas reticulation and energy regulation and the implementation of government policies on protection and preservation of national resources.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
30.	Ewaso Ng'iro South Basin Development Authority Act (National)	<p>Under as per Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution, County planning and development including electricity and gas reticulation and energy regulation and the implementation of government policies on protection and preservation of national resources are a function of the County Governments.</p> <p>The Act generally provides for the establishment of the Ewaso Ng'iro South Basin Development Authority to plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro South River Basin and catchment areas.</p> <p>Section 3 establishes the Authority as a body corporate with perpetual succession.</p> <p>Section 8 outlines the functions of the Authority. The Act mandates the Authority to undertake inter alia planning for the development of the Area and initiating project activities identified from such planning in the Area through the Government generally, assessing alternative demands within the Area on the natural</p>	<p>A total overhaul of the legislation is necessary to bring it into compliance with Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution in relation to the role of County Governments in County planning and development and the implementation of policies for management and conservation of the County resources.</p>	<p>Repeal of the Act in its entirety.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>resources and initiating, operating or implementing to exploit those natural resources including agriculture (both irrigated and rain fed), forestry, or wildlife and tourism industries, electric power generation, mining and fishing and coordinate the use of natural resources, especially water, within the Area.</p> <p>It will be noteworthy that County planning and development and the implementation of policies for management and conservation of the County resources have been assigned to the County Governments in Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution.</p> <p>There is thus an overlap on the performance of these functions between the County Government on the one hand and the Authority on the other hand.</p>		
31.	Ewaso Ng'iro North Basin Development Authority Act (National)	<p>The Act generally provides for the establishment of the Ewaso Ng'iro North Basin Development Authority to plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro North River Basin and catchment areas</p>	<p>A total overhaul of the legislation is necessary to bring it into compliance with Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution in relation to the role of County Governments in County planning and development and the implementation of policies for management and conservation of the County resources.</p>	<p>Repeal of the Act in its entirety.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 3 establishes the Authority as a body corporate with perpetual succession.</p> <p>Section 8 outlines the functions of the Authority. Among the functions allocated to the Authority include the planning for the development of the Area and initiating project activities identified from such planning in the Area through the Government generally and co-ordinating schemes within the area such that human, water, animal, land and other resources are utilized to the best advantage.</p> <p>Under Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution, County planning and development and implementation of specific National Government policies on natural resources and environmental conservation, including soil and water conservation are a preserve of the County Government.</p>		
32.	Coast Development Authority Act (National)	<p>The Act generally: provides for the establishment of the Coast Development Authority to plan and co-ordinate the implementation of development projects in whole of the Coast Province and the exclusive economic zone.</p>	<p>A total overhaul of the legislation is necessary to bring it into compliance with Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution in relation to the role of County Governments in County planning and development and the implementation of</p>	<p>Repeal of the Act in its entirety.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Section 3 establishes the Authority as a body corporate with perpetual succession.</p> <p>Section 8 sets out the functions to be performed by the Authority. These include planning for the development of the Area and initiating project activities identified from such planning in the development and through the Government generally, initiating, operating, or implementing projects to exploit those natural resources including agriculture (both irrigated and rain fed), forestry, wildlife and tourism industries, electric power generation, mining, and fishing.</p> <p>Under Part 2(8) and Part 2(10) of the Fourth Schedule to the Constitution, County planning and development including electricity and gas reticulation and energy regulation and the implementation of government policies on protection and preservation of national resources are a function of the County Government.</p>	<p>policies for management and conservation of the County resources.</p>	

No	Name of policy/law	Issue	Rationale/concern	Recommendation
33.	The Makueni County Government, Draft County Spatial Plan 2017-2027 (County)	<p>The Plan does not adhere to the functions of the County Government as set out in the Fourth Schedule to the Constitution. It includes some matters which are under the jurisdiction of the National Government.</p> <p>It also does not incorporate the role of the NLC under Article 67(2)(c), (e) and (h) of the Constitution.</p> <p>Rural Development</p> <p>The strategies proposed for rural development include:</p> <ul style="list-style-type: none"> i. Formulation of land policies on land use planning; ii. Support to development of soil and water conservation structures; iii. Disaster management; iv. Survey and issuance of title deeds; and v. Development control. <p>These are part of the concurrent functions of National Government as per Part 1(21), (22) and (24) of the Fourth Schedule to the Constitution and the County Governments as per Part 2(8),</p>	<p>There is need for revision of the Plan to align it with the functions of the County Government as set out in the Fourth Schedule to the Constitution and the roles of the NLC as per Article 67 of the Constitution.</p>	<p>Revision of the Plan to align it with the functions of the County Government as set out in the Fourth Schedule to the Constitution and the roles of the NLC as per Article 67 of the Constitution.</p> <p>The Plan should be revised to state that the County Government shall undertake the proposed measures in consultation with the relevant National Government Authorities and the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>(10) and (12) of the Fourth Schedule to the Constitution.</p> <p>The strategies do not also incorporate the role of the NLC in Article 67(2)(c) and (h) of the Constitution in relation to advising the National Government on a comprehensive programme for the registration of title in land throughout Kenya and monitoring and having oversight responsibilities over land use planning throughout the country.</p>		
		<p>Urban Development</p> <p>The strategies proposed for rural development include:</p> <ol style="list-style-type: none"> i. Electricity regulation; ii. Issuance of title deeds; and iii. Establishment of an enforcement and development control unit. <p>These are part of the concurrent functions of National Government as per Part 1(21) and (31) of the Fourth Schedule to the Constitution and the County Governments as per Part 2(8) of the Fourth Schedule to the Constitution.</p>	<p>Revision of the Plan to harmonize the concurrent functions of the National Government as per Part 1(21) and (31) of the Fourth Schedule to the Constitution and the County Governments as per Part 2(8) of the Fourth Schedule to the Constitution and to incorporate the role of the NLC as per Article 67(2)(c) and (h) of the Constitution.</p>	<p>The Plan should be revised to state that the County Government shall undertake the proposed measures in consultation with the relevant National Government Authorities and the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The strategies do not also incorporate the role of the NLC in Article 67(2)(c) and (h) of the Constitution in relation to advising the National Government on a comprehensive programme for the registration of title in land throughout Kenya and monitoring and having oversight responsibilities over land use planning throughout the country.</p> <p>Paragraph 4.6.3.1 of the Plan proposes the repossession of all illegally acquired land as part of the strategies for infrastructure development.</p> <p>The Paragraph does not incorporate the role of the NLC in Article 67(2)(e) of the Constitution in relation to initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommending appropriate redress.</p>	<p>The Paragraph should be amended to incorporate the role of the NLC in Article 67(2)(e) of the Constitution in relation to initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommending appropriate redress.</p>	<p>The Paragraph should be amended to state that the County Government shall repossess all illegally acquired land in consultation with the NLC.</p>
34.	<p>Strategic Urban Development Plan for Homa Bay Municipality (2008-2030) (County)</p> <p>The Plan was developed before promulgation of the Constitution of Kenya, 2010. Therefore, it does not incorporate the devolved system of government, the distribution of</p>	<p>The Plan was developed by UN-HABITAT in collaboration with the Municipal Council of Homa Bay.</p> <p>The Plan was developed before promulgation of the Constitution of Kenya, 2010. Therefore, it does not incorporate the devolved system of government, the distribution of</p>	<p>There is need to revise the Plan to comply with the Constitution in relation to the roles of the National Government and County Governments.</p>	<p>Revision of the Plan.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>functions between the National Government and County Governments in the Fourth Schedule to the Constitution and the roles of government authorities such as the NLC.</p> <p>Housing</p> <p>The Plan proposes the following measures in relation to housing:</p> <ol style="list-style-type: none"> i. Servicing of residential areas with the basic infrastructure i.e. water, electricity, roads and sewage system; ii. Preparation of zoning plans for the town to bring order in the development of the town; iii. Preparation of zoning plans for the town to bring order in the development of the town; and iv. Acquisition of more land for housing schemes to cater for low-income earners. <p>The proposed measures include some concurrent functions of the National Government and County Governments as per Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution in relation to land planning and housing.</p>	<p>Revision of the Plan to harmonize the concurrent functions of the National Government and County Governments as per Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution and incorporate the role of the NLC as per Article 67(2)(a) of the Constitution in relation to management of public land on behalf of the National Government and the County Governments.</p>	<p>Revision of the Plan to state that in implementation of the measures relating to housing, the Homa Bay County Government shall consult the relevant National Government authorities, including the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The proposed measure of acquisition of land does not incorporate the role of the NLC in Article 67(2)(a) of the Constitution in relation to management of public land on behalf of the National Government and the County Governments.</p>		
		<p>Land</p> <p>The Plan proposes some of the following measures in relation to housing:</p> <ol style="list-style-type: none"> i. Development of a comprehensive municipal urban land policy to regulate the supply of land for urban development; and ii. Establishment of a Municipal Land Control Board to regulate land transactions and control the intensive and irrational subdivision of prime agricultural land. <p>The proposed measures include some concurrent functions of the National Government and County Governments as per Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution in relation to land planning and housing.</p> <p>The proposed measures do not also incorporate the role of the NLC in</p>	<p>Revision of the Plan to harmonize the concurrent functions of the National Government and County Governments as per Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution and incorporate the role of the NLC as per Article 67(2)(h) of the Constitution in relation to monitoring and having oversight responsibilities over land use planning throughout the country.</p> <p>Revision of the Plan to incorporate the devolved system of government under the Constitution.</p>	<p>Revision of the Plan to state that in implementation of the measures relating to housing, the Homa Bay County Government shall consult the relevant National Government authorities, including the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Article 67(2)(h) of the Constitution in relation to monitoring and having oversight responsibilities over land use planning throughout the country.</p> <p>The proposal for the establishment of a Municipal Land Control Board for purposes of control of development is not incorporated in the Constitution.</p>		
		<p>Social Facilities</p> <p>The Plan proposes the following measures in relation to social facilities:</p> <ul style="list-style-type: none"> i. Repossession of grabbed open spaces and undeveloped plots; and ii. Acquisition land for social facilities such as a show ground. <p>The proposed measures do not incorporate the role of the NLC in Article 67(2)(a) and (e) of the Constitution in relation to management of public land on behalf of the National Government and the County Governments and initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and</p>	<p>Revision of the Plan to incorporate the roles of the NLC in Article 67(2)(a) and (e) of the Constitution in relation to management of public land on behalf of the National Government and the County Governments and initiation of investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommendation of appropriate redress.</p>	<p>Revision of the Plan to state that in implementation of the measures relating to social facilities, the Homa Bay County Government shall consult the NLC.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
35.	The Nairobi City County Regularisation of Developments Act, 2015 (County)	<p>The Act generally: provides for the regularisation of unapproved developments.</p> <p>Section 4: provides for the application for regularisation of any unauthorized development, other than those stated under Section 7 to the Act, made in the County prior to the commencement of the Act by any person on:</p> <ol style="list-style-type: none"> allotted land belonging to the County Government; or private land. <p>Section 7 sets out the unauthorized developments which may not be regularized. They include:</p> <ol style="list-style-type: none"> Unauthorized developments on existing or proposed roads; unauthorized developments on forest land or river banks; and unauthorized development on public land or land otherwise reserved for public utility. <p>Section 15: establishes the regularisation advisory committee.</p>	The Act needs to be amended to incorporate the roles of other regulators and agencies such as the NLC and NEMA.	Amendment of the Act.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>The Act does not incorporate or factor in the role of other regulators and agencies such as the NLC in Article 67(2)(a) and (h) of the Constitution in relation to management of public land on behalf of the National Government and the County Governments and monitoring and having oversight responsibilities over land use planning throughout the country.</p> <p>It does not also incorporate the role of the National Government in relation to the protection of the environment as per Part 1(22) of the Fourth Schedule to the Constitution.</p>		
36.	The Nairobi City Wards Development Fund Act, 2014 (County)	<p>The Act generally provides for the establishment, administration and use of the Ward Development Fund.</p> <p>Section 4 establishes the Ward Development Fund.</p> <p>Section 5 establishes the County Wards Development Fund Management Committee.</p> <p>Section 7 states that the Fund is for specific projects submitted by the wards and include those falling within the</p>	There is need to review and revise the Act to ensure conformity with the Public Finance Management Act and the Constitution.	Amendment of the Act.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>functions of the County Government as contemplated under the Fourth Schedule to the Constitution and community-based projects.</p> <p>Section 32 establishes a Ward Development Fund Committee for every ward.</p> <p>There is need to review and revise the Act to ensure conformity with the provisions of the Public Finance Management Act and Chapter 12 of the Constitution on Public Finance.</p>		
37.	The Nairobi City County Community and Neighbourhood Associations Engagement Act, 2016 (County)	<p>The Act generally:</p> <p>gives statutory recognition to community and neighbourhood initiatives in complementing County Government service delivery; to enable structured co-operation between the County government, residents and businesses; and to generally regulate and facilitate the activities of the associations and to give further effect to Article 10 of the Constitution as regards the principle of participation of the people.</p> <p>The Act does not seem to have effectively provided for the involvement</p>	<p>There is need to amend the Act to incorporate the involvement of communities in governance at the local level as envisaged in the Fourth Schedule to the Constitution.</p>	<p>Amendment of the Act.</p>

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		of communities in governance at the local level as envisaged in the Fourth Schedule to the Constitution . The Bill does not expressly incorporate the role of the NLC in relation to monitoring and oversight of land use planning in Article 67(2)(h) of the Constitution.		
38.	The Kiambu County Survey and Mapping Bill, 2015 (County)	Section 29 of the Bill states that upon coming into force of the proposed Act, no new registration of land shall be undertaken unless such registration is in accordance to the amended survey map In respect to the land or holding being registered. Section 29 is unconstitutional. County Governments do not have the mandate to legislate matters relating to registration of land. This is a function of the National Government, in consultation with the NLC under Article 67(2)(c) of the Constitution.	The Bill should be amended to incorporate the role of the NLC in relation to monitoring and oversight of land use planning as per Article 67(2)(h) of the Constitution. Amendment of the Bill to delete the section due to its unconstitutionality.	Amendment of the Bill. Amendment of the Bill to delete the section.
39.	The Kiambu Spatial Planning Bill, 2015 (County)	The Bill does not expressly incorporate the role of the NLC in relation to monitoring and oversight of land use planning in Article 67(2)(h) of the Constitution.	The Bill should be amended to incorporate the role of the NLC in relation to monitoring and oversight of land use planning.	Amendment of the Bill.

No	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>Part A of the First Schedule to the Bill provides for the content of long term plans as including housing.</p> <p>Housing is a concurrent function of the National Government and County Governments in Part 1(21) and Part 2(8) of the Fourth Schedule to the Constitution. There is therefore need for harmonization of the functions.</p> <p>Communication is a function of the National Government according to Part 1(18) of the Fourth Schedule to the Constitution. Planning functions relating to communication should therefore include consultation of the relevant National Government Authorities.</p>	<p>Amendment of the Schedule to harmonize the concurrent functions between the National Government and County Governments.</p>	<p>Amendment of the Schedule to state that in considering the content of the long-term plans, the County Government shall consult the relevant National Government authorities, if necessary.</p>

ADMINISTRATIVE ORDERS					
No.	Name of Administrative Order	Issue	Rationale/concern	Recommendation	
38.	Executive Order No. 1 of 2016 (May 2016) (National)	<p>The Administrative Order is in relation to the organization of the Government of the Republic of Kenya, and specifically the Ministries in the National Government (the “Ministries”). It supersedes Executive Order No. 2 of 2013. It was issued by the Office of the President.</p> <p>Some of the functions of the Ministries as set out in the Executive Order involve concurrent functions of the National Government and the County Governments under the Fourth Schedule to the Constitution.</p>	<p>There is need for a clear link between the functions of the Ministries in the National Government with those of the County Governments to avoid duplication and contravention of the functions of the County Executives of the County Governments, which have the mandate of exercising the executive authority of the County under Article 176(1) of the Constitution.</p>	<p>The Executive Order should provide a clear link between the functions of the Ministries and similar functions of the County Governments.</p>	
		<p>The functions of the Ministry of Interior and Coordination of National Government include disaster and Emergency Response Coordination.</p> <p>Disaster management is a concurrent function of the National and County Governments under Part 1(24) and Part 2(12) of the Fourth Schedule to the Constitution.</p>	<p>There is need for a clear link between the function of the Ministry in relation to disaster management and the similar function in the County Governments.</p>	<p>The Executive Order should include consultation of the relevant County Executive Committees in matters relating to disaster management.</p>	

ADMINISTRATIVE ORDERS				
No.	Name of Administrative Order	Issue	Rationale/concern	Recommendation
		<p>The functions of the Ministry of Transport, Infrastructure, Housing and Urban Development include:</p> <ul style="list-style-type: none"> i. Development, Standardisation and Maintenance of Roads; ii. Development and Management of Affordable Housing; iii. Shelter and Slum Upgrading; and iv. Urban Planning and Development. <p>Some of the functions of the Ministry include concurrent functions of the National and County Governments under the Fourth Schedule to the Constitution such as housing, land planning and construction of roads.</p>	<p>There is need for a clear link between the functions of the Ministry in relation to:</p> <ul style="list-style-type: none"> i. Development, Standardisation and Maintenance of Roads; ii. Development and Management of Affordable Housing; iii. Shelter and Slum Upgrading; and iv. Urban Planning and Development, and the similar functions in the County Governments. 	<p>The Executive Order should include consultation of the relevant County Executive Committees in matters relating to:</p> <ul style="list-style-type: none"> i. Development, Standardisation and Maintenance of Roads; ii. Development and Management of Affordable Housing; iii. Shelter and Slum Upgrading; and iv. Urban Planning and Development.
		<p>The functions of the Ministry of Environment and Natural Resources include:</p> <ul style="list-style-type: none"> i. Protection and Conservation of the Natural Environment; and ii. Development of Forests, Re-forestation and Agro-forestry. 	<p>There is need for a clear link between the functions of the Ministry in relation to:</p> <ul style="list-style-type: none"> i. Protection and Conservation of the Natural Environment; and ii. Development of Forests, Re-forestation and Agro-forestry, and the similar functions in the County Governments. 	<p>The Executive Order should include consultation of the relevant County Executive Committees in matters relating to:</p> <ul style="list-style-type: none"> i. Protection and Conservation of the Natural Environment; and ii. Development of Forests, Re-forestation and Agro-forestry.

ADMINISTRATIVE ORDERS

No.	Name of Administrative Order	Issue	Rationale/concern	Recommendation
		<p>The above-mentioned functions of the Ministry are concurrent functions of the National and County Governments under Part 1(22) and Part 2(10) of the Fourth Schedule to the Constitution.</p>		
		<p>The functions of the Ministry of Water and Irrigation include:</p> <ul style="list-style-type: none"> i. Water and Sewerage Services Management Policy; and ii. Flood control. <p>The above-mentioned functions of the Ministry conflict with storm water management systems and water and sanitation services, which are functions of the County Governments under Part 2(11) of the Fourth Schedule to the Constitution.</p>	<p>There is need for a clear link between the functions of the Ministry in relation to:</p> <ul style="list-style-type: none"> i. Water and Sewerage Services Management Policy; and ii. Flood control, and the similar functions in the County Governments. 	<p>The Executive Order should include consultation of the relevant County Executive Committees in matters relating to:</p> <ul style="list-style-type: none"> i. Water and Sewerage Services Management Policy; and ii. Flood control.
		<p>The functions of the Ministry of Lands and Physical Planning include:</p> <ul style="list-style-type: none"> i. Physical Planning; ii. Survey and Mapping; iii. Land Adjudication; iv. Rural Settlement Planning; 	<p>There is need for a clear link between the functions of the Ministry in relation to:</p> <ul style="list-style-type: none"> i. Water and Sewerage Services Management Policy; and ii. Flood control, and the land planning function of the County Governments. 	<p>The Executive Order should include consultation of the relevant County Executive Committees in matters relating to:</p> <ul style="list-style-type: none"> i. Water and Sewerage Services Management Policy; and ii. Flood control.

ADMINISTRATIVE ORDERS				
No.	Name of Administrative Order	Issue	Rationale/concern	Recommendation
		<p>v. Land Reclamation; and</p> <p>vi. National Spatial Structure.</p> <p>The above-mentioned functions of the Ministry include the concurrent function of the National Government and County Governments of land planning under Part 1(21) and Part 2(8) the Fourth Schedule to the Constitution.</p>		
		<p>The functions of the Ministry of Energy and Petroleum include:</p> <p>i. Rural Electrification Programme; and</p> <p>ii. Energy Regulation, Security and Conservation.</p> <p>The above-mentioned functions of the Ministry include concurrent functions of the National Government and County Governments of under Part 1(31) and Part 2(8) the Fourth Schedule to the Constitution in relation to electricity and energy regulation.</p>	<p>There is need for a clear link between the functions of the Ministry in relation to:</p> <p>i. Rural Electrification Programme; and</p> <p>ii. Energy Regulation, Security and Conservation, and the function of the County Governments in relation to electricity and energy regulation.</p>	<p>The Executive Order should include consultation of the relevant County Executive Committees in matters relating to:</p> <p>i. Rural Electrification Programme; and</p> <p>ii. Energy Regulation, Security and Conservation.</p>

INTERNATIONAL POLICY

No.	Name of policy/law	Issue	Rationale/concern	Recommendation
39.	New Urban Agenda (2016) (International)	<p>The Policy was proposed for adoption at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) from 17th to 20th October 2016 in Quito.</p> <p>The main purpose is sustainable urban development through the involvement of National Governments and local governments, among other agencies.</p> <p>The Policy focuses on matters such as:</p> <ol style="list-style-type: none"> i. Proper human settlement and affordable housing; ii. Adequate access to social infrastructure; iii. Security of land tenure; iv. Development of urban spatial frameworks; v. Renewable energy; vi. Transport Infrastructure; vii. Water conservation; and viii. Environment management and conservation. 	-	<p>The Policy covers areas for consideration in the formulation of laws and policies on urban planning and development in Kenya such as the promotion of green Cities.</p> <p>However, most of the matters in the Policy have been addressed in laws and policies on urban planning and development in Kenya.</p>

INTERNATIONAL POLICY				
No.	Name of policy/law	Issue	Rationale/concern	Recommendation
		<p>It proposes measures such as:</p> <ol style="list-style-type: none"> i. Support of national and local governments in urban planning and development; ii. Support of implementation of development plans and policies; iii. Integration of disaster risk reduction; iv. Promotion of compliance with legal requirements; v. Promotion of housing policies; vi. Allocation of financial resources; and vii. Investment in infrastructure. 		

3. Main conclusions and recommendations

- » The National Land Policy (2009) should be reviewed to provide for the role of the National Land Commission and county government in urban land use planning and policy
- » The National Urban Development Policy 2016 should be reviewed to incorporate provisions of Article 67 of the Constitution (the role of the National Land Commission). The policy should also have the input of the county governments
- » The National Housing Policy should be reviewed to include devolution arrangements and specifically recognise the role of counties in substantive areas of policy implementation. Specific areas include: slums and informal settlements, rural housing, land use planning and management, estate management and maintenance, etc.
- » Similarly, the National Slum Upgrading and Prevention Policy should include the role of counties in ensuring proper human settlements and housing
- » The National Spatial Plan (2015 – 2045) should be revised to incorporate constitutional arrangements regarding urban planning and development, especially as they relate to county governments and the role of the National Land Commission.
- » The Urban Areas and Cities Act should be reviewed to provide more clearly on the roles and limits of National Government, county government entities, and the National Land Commission on issues of urban planning and development.
- » The Urban Areas and Cities Act should provide for and facilitate, in a clearer manner, inter-county planning and financial services
- » The Physical Planning Act (PPA) of 1996 should be overhauled to take into account the existing governance arrangements and post-2010 regimes for physical planning





Council of Governors



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