

5th December, 2011

LAND BILL, 2011

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THE LAND BILL, 2011

A BILL for

AN ACT of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY PROVISIONS

Short title. **1.** This Act may be cited as the Land Act, 2011.

Interpretation. **2.** In this Act unless the context otherwise requires—

“actual notice” means the notice which a person has personally of a matter or action or document or the rights and interests of another person;

“adjoining” in relation to parcels of public land, includes only separated by—

(a) roads;

(b) railways;

(c) watercourses or other natural features of such a character as to be insufficient to prevent the passage of stock; or

(d) reserves or unallocated public land;

“assignee” means a person to whom an assignment is made;

“building” means any structure or erection of any kind whatsoever whether permanent or temporary, whether movable or immovable and whether completed or uncompleted;

"Cabinet Secretary" means the Cabinet Secretary in the State department responsible for land matters;

“Certificate of Lease” has the meaning assigned to it in the Land Registration Act;

“Certificate of Title” has the meaning assigned to it in the Land Registration Act;

"Commission" means the National Land Commission established by Article 67 of the Constitution;

"Community land" has the meaning assigned to it in Article 63 of the Constitution;

“compulsory acquisition” means the power of the State to deprive or acquire any title or other interest in land for a public purpose subject to prompt payment of compensation;

“corruption” has the meaning assigned to it under the Anti-Corruption and Economic Crimes Act;

“Court” means the Environment and Land Court;

“dealing” includes disposition and transmission;

“deliver” includes to transmit by post, hand, email, fax or other prescribed medium;

“development” means the carrying out of any building operation, engineering operation, farming activities or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land;

“disposition” means any sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the disclaimer or the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other act by an owner of a land or under a lease whereby owner’s rights over that land or lease are affected and an agreement to undertake any of the dispositions so defined;

“dwelling house” means any house or part of a house or room used as a separate dwelling in any building and includes any garden or other premises within the

cartilage of and used as a part of the dwelling house as so defined;

“effective date” means the commencement date of this Act;

“guardian” means a person responsible (whether under African customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“instrument” means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this or any other enactment relating to land and, except where otherwise provided, any variation of an instrument;

“interest” means a right in or over a land;

“land” has the meaning assigned to it in Article 260 of the Constitution;

“land administration” means the process of registration and dissemination of information in relation to land transactions;

“land management” means the setting about of goals and methods that may be chosen to improve land use and the ways of influencing them in the desired direction;

“lease” means a lease or sublease, whether registered or unregistered of land and includes a short-term lease and agreement to lease;

“lessee” means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

“lessor” means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

“license” means a permission given by the Commission which allows the person to whom the license is given to occupy, or use, or do some act in relation to the land comprised in the land or the lease which would otherwise be a trespass but does not include an easement;

“licensee” means the person occupying land under and in accordance with the

terms of a license;

"partition" means the separation by formal legal instrument of the share in land or lease held by owners in common so that each such owner takes shares free of the rights of the others;

"peri-urban area" means an area which is within a radius of ten kilometers outside the boundaries of an urban or semi-built up area or within any large radius which may be prescribed in respect of any particular urban area by the Cabinet Secretary";

“private land” means all private land as defined by Article 64 of the Constitution;

“proprietor” means—

(a) in relation to land or a lease, the person named in the register as the proprietor thereof; and

(b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

“public land” means all public land as defined by Article 62 of the Constitution;

"public purposes" means the purposes of conservation of the environment, construction of roads, railway lines, dams, water reservoirs, bridges, sea ports, airports, cities, public institutions, security installations, public buildings, or such other prescribed facility.

"register of public land" means a register maintained under the Land Registration Act for the recording of rights and interests in and dispositions of public land;

"restrictive agreement" means an agreement by one owner of land under a land restricting the building on, or the use, or other enjoyment of land for the benefit of the owner under a land or neighbouring land and includes a restrictive covenant;

"Rules Committee" has the meaning ascribed to it by the Civil Procedure Act;

“squatter” means a person who occupies land that legally belongs to another

person without that persons consent;

“state” has the meaning assigned to it in the Constitution;

“state organ” has the meaning assigned to it in the Constitution;

"transfer" means the passing of land, a lease or a charge from one party to another by an act of the parties and not by operation of the law and includes the instrument by which such passing is effected;

"transferee" means a person who receives the land, lease or charge passed by an act of transfer;

"transferor" means the person who passes the land, lease or charge by an act of transfer;

“temporary purpose” means the compulsory acquisition of land for a period not exceeding five years or solely as a means of access to other land;

“trustee” includes personal representative;

“valuable consideration” includes marriage, but does not include a nominal consideration; and

"unexhausted improvement" means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an owner or any person acting on the owner’s behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature.

Application.

3. (1) This Act shall apply to—

(a) all land declared as public land under Article 62 of the Constitution;

(b) all land declared as private land under Article 64 of the Constitution;

and

- (c) such parts of community land as the Cabinet Secretary shall specify.

- (2) The guiding principles of land administration and management in this section bind all state organs, state officers, public officers and all persons whenever any of them—
 - (a) enacts, applies or interprets any provision of this Act; and
 - (b) makes or implements public policy decisions.

- (3) The guiding principles of land administration and management include—
 - (a) the principle of optimal land use among users such as human settlement uses, industry and commerce, infrastructure, agriculture, forestry and mining, the protection of right to access and wise use of water bodies in the long term interest of the people of Kenya;
 - (b) the principle of participation, accountability and democratic decision making within communities, the public and the Government;
 - (c) the principle of technical and financial sustainability;
 - (d) the principle of sustainable development; and
 - (e) applying alternative dispute resolution mechanisms in land dispute handling and management.

PART II— MANAGEMENT OF PUBLIC LAND

General Provisions

- 4. Title to land may be acquired through—
 - (a) allocation;

Methods of
acquisition of
title to land

- (b) land adjudication process;
- (c) compulsory acquisition;
- (d) prescription;
- (e) settlement programs;
- (f) transmissions;
- (g) a manner prescribed in an Act of Parliament; or
- (h) long term leases created either under the Sectional Properties Act or out of private land.

Public land.

- 5.** (1) In the discharge of their functions and exercise of their powers under this Act, the Cabinet Secretary, the Commission, and any other state officer or public office or officer shall be guided by—
- (a) the national values and principles of governance set out in Article 10 of the Constitution; and
 - (b) the principles of land policy contained in Article 60 of the Constitution.
- (2) Subject to this Act, and the National Land Commission Act, the Commission shall, in the name and on behalf of the national or county governments perform the following functions—
- (a) exercise powers and perform functions in relation to public land in accordance with the Constitution and this Act;
 - (b) protect, conserve and provide access to all public land;
 - (c) manage public land; and
 - (d) establish mechanisms for the assessment of land resources for fiscal management and revenue collection.
- (3) In the discharge of functions and exercise of powers in relation to public land under this Act, the Commission may require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or

reservations as are specified in the relevant order or other instrument.

General
functions and
powers of
the Cabinet
Secretary in
relation to
land.

- 6.** (1) The Cabinet Secretary, shall exercise the following functions, and any other functions prescribed by an Act of Parliament —
- (a) mobilization of resources;
 - (b) facilitating the implementation of the land policy reforms;
 - (c) coordinating the management of the National Spatial Data infrastructure;
 - (d) establishing the Land Bank;
 - (e) coordinating and overseeing statutory bodies established to regulate land use planners, surveyors, valuers and estate agents, and any other body dealing with land issues;
 - (f) ascertaining and registering land rights;
 - (g) prescribing the minimum and maximum land holding acreages in respect of private land;
 - (h) regulating the manner in which any land may be converted from one category to another;
 - (i) regulating the use and development of land;
 - (j) regulating benefit sharing and management of land based resources;
 - (k) formulating general principles of land planning and co-ordinating by the counties;
 - (l) facilitating efficient transactions in land; and
 - (m) developing and maintain an efficient and accurate land information system.
- (2) In the discharge of the functions under subsection (1), the Cabinet Secretary

shall exercise all powers generally necessary for the execution of the functions under this Act, and any other written law.

- (3) Without prejudice to the generality of subsection (2), the Cabinet Secretary shall have the power to—
- (a) formulate land policy as recommended by the Commission;
 - (b) powers of compulsory acquisition; and
 - (c) development control.

Management
of public land.

7. In managing public land on behalf of the national and county governments, the Commission shall—
- (a) identify, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey; and
 - (b) share data with stakeholders in order to discharge their respective functions and powers under this Act;

Evaluation of
public land.

8. The Commission shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning taking into account physical, social and economic information.

Guidelines on
the
management
of public land.

9. (1) The Commission shall prescribe guidelines to be adhered to by all public agencies, statutory bodies and state corporations in actual occupation or use of public lands.
- (2) The guidelines prescribed under subsection (1) shall indicate management priorities and operational principles for managing public land resources for identified uses.
- (3) The guidelines prescribed under subsection (1) shall be available for the public

to make observations and should be modified based on valid representations in accordance with the principles of participation of the people, good governance, transparency and accountability.

Conservation
of public
Land.

- 10.** (1) The Commission shall take appropriate action to maintain those public lands that have endangered endemic species of flora and fauna, critical habitats and protected areas.
- (2) The Commission shall identify areas under severe pressure falling within public lands, demarcate those areas and act to prevent environmental degradation of them.

Allocation of
public Land.

- 11.** (1) The Commission may allocate public land by way of—
- (a) auction to the highest bidder for housing, agriculture, commerce, industry, tourism and recreation or any other purpose at prevailing market value;
 - (b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;
 - (c) public notice of tenders as it may prescribe;
 - (d) public drawing of lots as may be prescribed;
 - (e) public request for proposals as may be prescribed; or
 - (f) public exchanges of equal value as may be prescribed.
- (2) The Commission shall satisfy itself that any the public lands identified for allocation do not fall into any of the following categories—
- (a) public lands subject to erosion, floods, earth slips or water logging;
 - (b) public lands that fall within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;

- (c) public lands along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas and the territorial sea as may be prescribed;
 - (d) public land reserved for security, education, research and other strategic public uses as may be prescribed; and
 - (e) natural features of exceptional value falling within public lands;
- (3) For avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes in accordance with national development goals.
- (4) The Commission shall set aside land for investment purposes under subsection (3) which shall be identified, gazetted and allocated to investors through leasehold interests not exceeding 99 years.
- (5) For the purposes of this Act, a body corporate whose majority shareholders or owners are non-citizens shall be deemed to be a non-citizen.
- (6) At the expiry, termination or extinction of a lease granted to a non-citizen or a foreign company, reversion of interests or rights in and over the land shall vest in the national or county government as the case may be.
- (7) Public land shall not be allocated unless it is planned, surveyed and guidelines for its development prepared in accordance with section 14 of this Act.
- (8) Public land allocated under this section shall not be sold, disposed off, sub-leased, or sub-divided without the consent of the Commission.
- (9) In a disposition of public land under this section, the Commission may impose the terms, covenants, stipulations and reservations the Commission considers advisable, and without limiting those powers, the Commission may impose some or all of the following terms—
- (a) the applicant shall personally occupy and reside on the land for a period

- set by the Commission;
- (b) the applicant shall do such work and spend such money for permanent improvement of the public land within the period the Commission requires; or
 - (c) the consideration that must be paid for a disposition of public land.
- (10) The Commission shall make regulations on the details of the allocation criteria and for connected matters.

Reserved Public Land

Commission
may reserve
public land.

- 12.** (1) The Commission by order, may reserve public land located within—
- (a) a forest;
 - (b) a body of water, or under the surface;
 - (c) marine waters in the territorial sea and exclusive economic zone; and
 - (d) any other natural resources completely contained on or under the surface,
- for one or more purposes in the public interest.
- (2) Within two years of the coming into force of this Act, the Commission shall undertake an inventory of all land based natural resources.

Placing of
care, control
and
management
of reserved
public land.

- 13.** (1) The Commission by order, may—
- (a) place the care, control and management of any reserved land with a statutory body, public corporation or a public agency ('a management body') for the same purpose as that for which the relevant public land is reserved under section 12 and for purposes ancillary or beneficial to that purpose; and
 - (b) subject that care, control and management to such conditions as the Commission specifies.

- (2) The Commission by order, may vary any condition to which the care, control and management of a reserve is subject.
- (3) The Commission, by order may—
 - (a) confer on a management body power to grant a lease or sublease or licence over the whole or any part of the public land within the reserve in question for the purposes referred to in subsection (1); and
 - (b) approve a charge of any such lease.
- (4) An order made under this section does not create any interest in reserved public land in favour of the management body of that reserve.
- (5) If public land reserved under this Act for the purpose of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sublessee may restrict public access to the area leased unless the terms of the management order or the lease or sublease provides otherwise.
- (6) A management body with whom the care, control and management of a reserve is placed by order under subsection (1) has the capacity, functions and powers to hold and deal with the reserve in a manner consistent with—
 - (a) the order; or
 - (b) any order conferring power on that person under subsection (3) (a) and this Act to the extent that the person does not already have that capacity or those functions and powers.
- (7) Subsection (6) does not authorise a management body to perform a function or exercise a power if another enactment expressly prevents the body from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.

Development
plans.

- 14.** (1) A management body shall submit to the Commission for approval a plan for the development, management and use of reserved public land for the purpose of that managed reserve.
- (2) The Commission may request a management body to submit to the Commission a plan for the development, management and use of the public land in the managed reserve of the management body for the purpose of that managed reserve, in an approved form, within such period as is specified in that request.
- (3) Before submitting a plan to the Commission under subsection (1) or in response to a request under subsection (2) a management body shall—
- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve for the purpose of that managed reserve; and
 - (b) incorporate in the plan a statement that it has considered those issues in drawing up the plan.
- (4) If a management body submits a plan to the Commission under subsection (1) or in response to a request under subsection (2), and the Commission approves that plan and notifies the management body of that fact, the management body may develop, manage and use the public land concerned in accordance with the plan as approved or subsequently varied as the case may be.

Revocation of
management
orders.

- 15.** (1) If a management body does not comply with guidelines or orders issued by the Commission or does not submit a management plan in compliance with a request made under section 14 (2), the Commission, by order, may revoke that management order.
- (2) If the Commission considers that it is in the public interest to revoke a management order, the Commission by order, may revoke the management order.

Conservation
of land based
natural

- 16.** (1) The Commission shall make rules and regulations for the sustainable

resources.

conservation of land based natural resources.

- (2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain—
- (a) measures to protect critical ecosystems and habitats;
 - (b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;
 - (c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;
 - (d) procedures for the registration of natural resources in an appropriate register; and
 - (e) procedures on the involvement of stakeholders in the management and utilization of land-based natural resources.

PART III— ADMINISTRATION OF PUBLIC LAND

Leases, Licenses And Agreements For Public Land

License for temporary purposes specified in the lease.

- 17.** (1) The Commission may grant a person a license to occupy unalienated public land for temporary purposes as it may be prescribe.
- (2) A license under this section shall continue for—
- (a) one year, and thenceforward until the expiration of any three months notice to quit; or
 - (b) the period, if any, and any extension subject to notice to quit, as expressly set out in the licence.
- (3) Despite anything in subsection (2), or a license, the Commission may serve a notice to quit upon the licensee at any time after the expiration of nine months from the date of the license.

- (4) The rent payable under a license under this section, the period and the agreements and conditions of the license, shall be prescribed by the Commission.
- (5) With the consent of the Commission, the licensee may transfer the benefit of a license under this section, and the transfer and the consent thereto shall be endorsed on the license.
- Removal of building under temporary license. **18.** At any time before the license expires, the occupant of any public land under a license granted under section 17 may remove any structure or other building erected by the occupant.
- Penalty for unpaid rent, etc. **19.** The Commission may declare a license granted under section 17 to be forfeited if—
- (a) the rent payable under the license is unpaid for one month after it became due;
- (b) any tax or taxes imposed upon the land, or upon a structure or building erected on the land, or upon the licensee, remains unpaid for two months after becoming due; or
- (c) the occupant of the land fails to keep the land in a reasonably clean condition,.
- General Conditions Relating to Leases, Licenses and Agreements for Public Land*
- Implied covenants and conditions. **20.** (1) In every grant or lease relating to public land, unless the grant or lease expressly provides otherwise, there is an implied covenant by the grantor or lessor—
- (a) that the grantor or lessor has full power to grant the land or lease; and
- (b) that the grantee or lessee, paying the rent and fulfilling the conditions of

the grant or lease, shall quietly hold and enjoy the premises without interruption by the grantor or lessor or any person claiming under the grantor or lessor, except so far as the laws for the time being in force may permit.

(2) A grant of public land shall be made in the name of the Commission and shall be sealed.

Implied
covenant and
conditions by
lessee or
licensee.

21. In every grant, lease or license for public land under this Act there shall, be implied covenants and conditions by the grantee, lessee or licensee that the grantee, lessee or licensee will—

(a) pay rent and royalties thereby reserved at the time and in the manner therein provided; and

(b) pay all taxes, rates, charges, duties, assessments or outgoings of whatever description that may be imposed, charged or assessed upon the land or the buildings thereon, or upon the lessor or grantor or lessee or licensee in respect thereof.

Buildings on
leased public
lands.

22. (1) Unless expressly stated to the contrary in a lease or license for public land under this Act, all buildings on public lands leased or occupied under a license, whether erected by the lessee or licensee or not—

(a) in the case of a lease for a term exceeding thirty years, shall pass to the Government without payment of compensation, on the determination of the lease or license; or

(b) in the case of a lease for a term not exceeding thirty years, may be removed by the lessee within three months of the termination (otherwise than by forfeiture) of the lease unless the Commission elects to purchase those buildings.

(2) If the Commission elects to purchase any buildings, as contemplated in

subsection (1) (b), any disagreement as to the purchase price of the buildings, shall be resolved by arbitration.

- Covenants and conditions binding on persons claiming under grant, lease or license. **23.** Every covenant or condition, whether expressed or implied, in a grant, lease or license under this Act which is binding on a grantee, lessee or licensee shall, unless otherwise expressly provided in the grant, lease or license, be binding upon all persons claiming an interest in the land that is the subject of the grant, lease or license, and whose title is derived through or under the grantee, lessee or licensee.
- Obligations of children. **24.** A child shall be capable of holding title to land either through a lease or a license through a trustee and a child who becomes a lessee or licensee under this Act shall be in the same position as an adult with regard to the child's liability and obligations under or in respect of the lease or license.
- Rents and other payments. **25.** (1) The rent royalties and payments reserved under any lease or license shall be a debt owed to the Commission, and shall be paid by the lessee or license at the office of the Commission or at such other place as the Commission may prescribe.
(2) The annual rent reserved under any lease or license shall be payable in advance on the 1st day of January in each year of the term.
- Unpaid Rents and other payments. **26.** (1) If any Funds due in respect of any rent, principal installment, royalty or other payment (in this section referred to as "the principal debt") under any agreement lease or license under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part thereof, or at such other rate as may from time to time be specified by the Commission in the Gazette, shall be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.

- (2) Any payment made under subsection (1) shall first be attributed to the payment of outstanding interest and thereafter only when such interest has been paid in full shall any payment be attributed to the reduction of the principal debt.
- (3) If any interest becomes payable under subsection (1) the Commission shall serve on the debtor a notice demanding payment of that interest in addition to the other money then due.
- (4) Notwithstanding the foregoing provisions of this section, the Commission may remit the whole or part of any late payment of interest provided for by this section, if the debtor has provided the Commission a good and sufficient reason for the late payment.

Commission may sue for rent, etc., in arrears.

- 27.** Without prejudice to the Commission's right to recover a debt in any other way, the Commission may sue in Court for any rent, principal, installment, royalty or other payment, payable under any agreement, lease or license under this Act, that is in arrears, or for any penalty payable under section 26.

Forfeiture of lease if rent unpaid or for breach of covenant.

- 28.** (1) If any part of the rent or royalties reserved in a lease under this Act is unpaid for thirty days after becoming due, or if the lessee breaches any express or implied covenant, the Commission may—
- (a) serve a notice upon the lessee, specifying the rent or royalties in arrear or the covenant of which a breach has been committed; and
- (b) commence an action in Court for the recovery of the premises at any time at least one month after serving the notice contemplated in paragraph (a).
- (2) In an action commenced under subsection (1) (b) on proof of the facts, the Court shall declare the lease forfeited, subject to relief upon such terms as may appear just.
- (3) If the Court has declared a lease to be forfeited under subsection (2), the Commission may re-enter upon the land.

(4) In exercising the power of granting relief against forfeiture under this subsection (1) the Court shall be guided by the principles of the doctrines of equity.

Forfeiture of
license.

- 29.** (1) Except where other provision is made in this Act, if the rent or any part thereof payable under a license issued under this Act is at any time unpaid for a space of thirty days after the same has become due, or if the licensee fails to comply with, or commits any breach of, the conditions, whether express or implied, of the license, the Commission may cause an application to be made in Court to declare the license forfeited.
- (2) Upon receipt of an application under subsection (1), together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed, the Court shall cause to be served upon the licensee a copy of the statement, together with a notice of the date, not being less than fourteen days from the date of the notice, when the application will be heard.
- (3) If upon the date fixed for the hearing of the application or to which the hearing is adjourned it is prove to the satisfaction of the court that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the license, it shall, subject to such relief against forfeiture for non-payment of rent as may seem just, declare the license forfeited.

Debt to
Commission
not
extinguished
by forfeiture.

- 30.** Forfeiture shall not operate to extinguish any debt to the Commission in respect of any rent, royalty or other payment to be made by a lessee or licensee under a lease or license forfeited.

Subdivision
etc., of public
land subject to
continuing
interests etc.

- 31.** (1) If the Commission proposes to survey or resurvey the internal or external boundaries of any leased public land, or to subdivide that landthe subject of any interests or caveats, the Commission may, with or without the consent of the holders of the interests, or of the relevant caveators, by order incorporating a

plan of survey or revised plan of survey prepared by a statutory body responsible for survey, make such adjustments to those boundaries as—

- (a) the Commission considers necessary; and
- (b) accord with any proposed plan of subdivision approved under the Physical Planning Act.

without any obligation to make or pay compensation.

- (2) On the approval by the Commission of a plan of survey or revised plan of survey referred to in subsection (1) and the registration of the order with reference to that plan of survey or revised plan of survey, the internal or external boundaries (or both) of the relevant public land are adjusted accordingly—
 - (a) despite the existence of any interests registered or caveats lodged in respect of that public land; and
 - (b) with or without the consent of the holders of those interests or of the relevant caveators.
- (3) The Commission shall ensure that an adjustment made under subsection (2) is made in conformity with sound planning and land management principles so as to cause as little detriment as possible to any interest or caveat affected by that adjustment.
- (4) On the adjustment under subsection (2) of the internal or external boundaries of leased public land subject to interests or caveats, the interests or caveats apply to the relevant locations or lots within those boundaries and not to the public land referred to in the instruments which created those interests or caveats.

Acceptance of
purchase
money or rent
not to operate
as waiver of
forfeiture. **32.**

The acceptance by or on behalf of the Commission of any purchase money or any rent or other payment under any lease or license shall not be held to operate as a waiver by the Commission of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale, lease or

- Acceptance of purchase money or rent not to operate as waiver of forfeiture. **32.** The acceptance by or on behalf of the Commission of any purchase money or any rent or other payment under any lease or license shall not be held to operate as a waiver by the Commission of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale, lease or license of or respecting public land, whether the sale, lease or license is under this Act or under any other Act relating to the disposal of public land.

Transfers

- Transfer. **33.**
- (1) In this Part, “transfer” includes a conveyance, an assignment, a transfer of land, a transfer of lease or other instrument used in the disposition of an interest in land by way of transfer.
 - (2) A proprietor may transfer land, lease or charge to any person (including self), with or without consideration, by an instrument in the prescribed form.
 - (3) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.
 - (4) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

- Transfer to take effect immediately. **34.** A transfer shall not be expressed to take effect on the happening of any event or on the fulfillment of any condition or at any future time.

- Transfer of part. **35.** (1) A portion of the land included in a register shall not be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

Transfer of
leases.

36. On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

(a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and

(b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

Effect of
transfer on
agreement in
leases.

37. (1) A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease subject to subsection (2).

(2) Nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in a lease that occurred before the transfer.

Transfer
subject to
charge.

38. In every transfer of land or a lease subject to a charge, there shall be an implied agreement by the transferee with the transferor to pay the interest secured by the charge.

Transfer
subject to
lease.

39. A transfer of land that is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

(a) affects the validity of any payment of rent made by the lessee to the transferor; or

Transfer
subject to
lease.

39. A transfer of land that is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

(a) affects the validity of any payment of rent made by the lessee to the transferor; or

(b) renders the lessee liable, for failure to pay rent to the transferee, for any breach of agreement to pay rent, before notice of the transfer is given to the lessee by the transferee.

Contracts Over Land

Regaining
possession of
land after
concluding
contract of
sale of land.

40. (1) No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party;

(2) Subsection (1) shall not apply to a contract made in the course of a public auction nor shall anything in that subsection affect the creation or operation of a resulting, implied or a constructive trust.

Procedure for
regaining
possession

41. If, under a contract for the sale of land, the purchaser has entered into possession of the land, the vendor may exercise any contractual right to rescind the contract by reason of a breach of the contract by the purchaser only by—

Damages for
breach of
contract

42. (1) Nothing in section 40 prevents a vendor from claiming damages for the breach of a contract for a sale, or for breach of any other duty to the vendor which the purchaser may be under independently of the contract, or affects the amount of damages that the vendor may claim.

(2) Any term express or implied in a contract or other instrument that conflicts with this section shall be inoperative

Procedure for
obtaining
order for
possession.

43. (1) A vendor who proposes to seek to regain possession of private land under section 40, shall serve a notice on the purchaser which shall inform the purchaser—

- (a) of the nature and extent of the breach complained of by the vendor;
- (b) whether the vendor considers that the breach is capable of being remedied by the payment of a stated amount of money owing under the contract;
- (c) whether the vendor considers that the breach is capable of being remedied by the purchaser doing or desisting from doing anything or paying reasonable compensation or both, and of the thing that the purchaser must do or desist from doing or the amount of compensation that must be paid or both to remedy the breach and the time, being not less than thirty days within which the actions referred to in this paragraph must be completed;
- (d) of the period within which the purchaser must remedy the breach, if the vendor considers that the breach is capable of being remedied,;
- (e) of the consequence that if the purchaser fails to remedy the breach or if the vendor does not consider that the breach can be remedied, the vendor may seek an order from the court to possess the land and rescind the contract;
- (f) of the right of the purchaser, within not more than fifteen days to—
 - (i) apply to court for relief against the rescission of the contract;
 - (ii) tender an amount by way compensation different to that proposed by the vendor in the notice;

- (iii) propose alternative remedies to those set out in the notice;
- (iv) propose an alternative time for the completion of the actions referred to in paragraph (c).

(2) The fact that the notice served under subsection (1) does not comply in every particular with the provisions of subsection (1) shall not—

- (a) render it invalid so long as the purport of the notice is clear; or
- (b) absolve the purchaser from the consequences of not responding to the notice.

Relief against rescission of contract for the sale of land.

- 44.** (1) If the vendor, after serving on the purchaser a notice under section 43, applies to the court for an order for possession of the land or if the vendor has peaceably entered on to the land in order to regain possession under section 40, the purchaser may apply to the court for relief against the rescission of the contract either—
- (a) in the proceedings for an order for possession; or
 - (b) in a proceeding brought by the purchaser.
- (2) If the vendor has peaceably entered on to the land the purchaser must apply for relief within ninety days after the entry on to the land.
- (3) The court may grant such relief on any terms which it thinks fit, including relief for breach of any term or condition of the contract that is not capable of being remedied.
- (4) An application for relief under this section is not in itself to be taken as an admission by the purchaser that—
- (a) there has been a breach of the contract by the purchaser;
 - (b) by reason of the breach, the vendor has the right to rescind the contract;
 - (c) a notice has been duly and properly served on the purchaser; or

(d) the time for remedying a breach or for paying an amount by way of compensation has expired, and the court may grant relief without determining any of those matters.

(5) Any term, express or implied, in a contract or other instrument to which this section applies that conflicts with or purports to set aside or negates this section shall be inoperative.

Purchaser of right to land may seek relief against performance of contract to assign.

45. (1) If a court will not or would not, in the exercise of its discretion, order the specific performance by a purchaser of a contract to sell land but the purchaser is not entitled to rescind or repudiate the contract, the purchaser may apply to the court for relief under this section.

(2) On any application made under subsection (1) the court may make an order—

(a) rescinding the contract;

(b) requiring the vendor to refund any deposit and other money paid to the vendor by the purchaser;

(c) declaring that the purchaser has a lien on the land to which the contract relates to secure payment by the vendor of any amounts ordered to be refunded to the purchaser under paragraph (b).

(3) The grant of relief under this section does not deprive the vendor of any right to claim damages from the purchaser for failure to perform the contract and in awarding damages; the court shall take account of any relief granted under this section.

(4) Any term, express or implied in a contract or other instrument to which this section applies that conflicts with or purports to set aside or negates this section shall be inoperative.

Leases
General Provisions

- Application of this part. **46.** (1) Unless otherwise provided for in an instrument of lease, the provisions of this Part shall apply to all leases, other than leases governed by customary law, made or coming into effect after the coming into operation of this Part of this Act.
- (2) The parties to a lease made or coming into effect before the commencement of this Part may agree in writing to adopt or incorporate any of the provisions of this Part into that lease and any provisions so adopted or incorporated shall, unless the agreement otherwise provides, become a part of the lease and shall be enforceable in every respect as such with effect from the date of the agreement.
- (3) In this Part, unless the context expressly or by implication renders it unfeasible, references to a lease include a sub-lease.
- Power to lease land. **47.** Subject to the provisions of this Act, the owner of private land may—
- (a) lease that land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee; and
- (b) subject the lease to any conditions that may be required by this Act or any other law or that the lessor may impose.
- Periodic leases. **48.** (1) If in any lease—
- (a) the term of the lease is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;
- (b) the term is from week to week, month to month, year to year or any other periodic basis, it shall be treated as a term for a period

Periodic leases.

- 48.** (1) If in any lease—
- (a) the term of the lease is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;
 - (b) the term is from week to week, month to month, year to year or any other periodic basis, it shall be treated as a term for a period equal to its minimum possible duration;
 - (c) the lessee remains in possession of land with the consent of the lessor after the term of the lease has expired, then—
 - (i) unless the lessor and lessee have agreed, expressly or by implication, that the continuing possession shall be for some other period, the lease shall be deemed to be a periodic one; and
 - (ii) all the terms and conditions of the lease that are consistent with the provisions of sub-paragraph (i) continue in force until the lease is terminated in accordance with this section.
- (2) If the owner of land permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.
- (3) The periodic tenancy contemplated in subsection (1) (a) shall be the period by reference to which the rent is payable.
- (4) A periodic tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

Short-term leases.

- 49.** (1) A short term lease is a lease—

Lease terminating on the occurrence of a future event.

50. A lease that comes into operation after the date on which this Act comes into operation and that provides for its termination or permits notice of its termination to be given on the occurrence of a future event is not invalid by reason only of that fact if the event is sufficiently defined in the lease so as to be identified when it occurs.

Lessee remaining in possession after termination of lease without the consent of lessor.

51. (1) If a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land.

(2) A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, is not, by reason only of that fact, to be taken as having consented to the lessee remaining in possession of the land, or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease, but if the lessor continues for two months to accept rent from a tenant who remains in possession after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.

Future leases.

52. (1) For the avoidance of doubt, a lease of a land may be made for a term to begin on a future date, not being later than twenty-one years after the date on which the lease is executed.

(2) A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered.

Lessor's consent to dealing with leases.

53. If a lease contains an express or implied condition, by the lessee not to transfer, sub-let, charge or or part with the possession of the leased land or any part of it without the written consent of the lessor, no dealing with the lease shall be registered until the consent of the lessor has been

produced to, and authenticated to the satisfaction of the Registrar.

Notice by co-owners.

- 54.** If a lease is entered into by—
- (a) two or more lessors as co-owners; or
 - (b) two or more lessees as co-owners,

and the lease is terminable by notice, the notice must be given by and to all the co-owners, unless all the parties to the lease have agreed otherwise, expressly or by implication.

Sublease for a term that is the same as or longer than the term of the head lease.

- 55.** (1) This section applies to a sub-lease coming into operation after the date of the commencement of this Act under which a lessee enters or purports to enter into a sublease for a term that will expire at the same time as or not later than, the expiry of the term of the head lease.
- (2) A sublease to which this section applies does not operate as an assignment of the head lease to the sub-leases, unless a contrary intention appears from the sub-lease or from the circumstances surrounding the granting of the sublease.
- (3) If the term of the sublease to which this section applies will expire after the expiry of the term of the head-lease, then—
- (a) the term of the sublease is reduced, so as to expire one day earlier than the term of the head lease, but without prejudice to any remedies that the sublessees may have in respect of that reduction; or if the term of the headlease is extended or renewed beyond the term for which the sublease was created, the sublease shall expire at the end of that original; or
 - (b) if the term of the head lease is extended or the head lease is renewed, the term of the sublease is extended so as to expire—

- (i) one day earlier than the extended term of the head lease or the term of the head lease as renewed; or
- (ii) one day earlier than the time at which the head lease is expressed to expire,

whichever time is the earlier.

- (4) The parties to a lease and sublease to which this section refers may renegotiate any terms or conditions of the sublease but no renegotiated terms or conditions shall be more onerous to or impose more obligations on the sublessees than the original terms and conditions.

Surrender to enable a new head lease to be entered into not to affect the sublease.

- 56.** (1) The surrender of a lease for the purpose of enabling a new lease to the same lessee to be entered into does not require the surrender of any sublease in respect of the surrendered lease, if, on or before the date on which the term of the new head lease will expire—
- (a) the term of the sublease will expire; or
 - (b) in the case of a sublease that is a periodic tenancy, the sublease may be terminated by the giving of the specified period of notice of termination and the expiry of that period.
- (2) A sublease preserved under subsection (1)—
- (a) continues in force as though it had been entered into in respect of the new head lease; and
 - (b) all rights and obligations under the sublease, including those which relate to any period before the surrender of the head lease, continue to be enforceable, except to the extent that any such obligation is, by reason of the fact that a new head lease has been entered into, more onerous than it would have been had the original head lease not been surrendered.
- (3) A sublease entered into in respect of a surrendered lease includes for

purposes of this section any sublease entered into by a person deriving title through the lessee under the surrendered lease.

Covenants implied in a lease on part of the lessor.

- 57.** (1) In every lease, there shall be implied covenants by the lessor with the lessee, binding the lessor—
- (a) that, so long as the lessee pays the rent and observes and performs covenants and conditions contained or implied in the lease to be observed and performed on the lessee's part, the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through the lessor;
 - (b) not to use or permit any adjoining or neighbouring land that the lessor owns or leases in any way that would render the leased land or any buildings on the leased land unfit or materially less fit for any purpose for which they may be used, consistent with the terms and conditions of the lease,
 - (c) if only part of a building is leased, to keep the roof, all external and main walls and main drains, and the common parts and common installations and facilities, including common passages and walkways in a proper state of repair;
 - (d) if any dwelling house, flat, or room is leased, that house, flat or room is fit for human habitation at the commencement of the tenancy and will be kept fit for human habitation during the lease;
 - (e) that if, the leased premises or any part of them are destroyed or damaged at any time—
 - (i) by fire, flood or explosion or other accident not attributable to the negligence of the lessee, or lessee's

invitees or employees;

- (ii) by civil commotion; or
- (iii) by lightning, storm, earthquake, volcanic activity or other natural disaster,

so as to make the leased premises or any part of it wholly or partially unfit for occupation or use, the rent and any contribution payable by the lessee to the outgoings on the premises or a just proportion of that rent of contribution according to the nature and extend of the damage sustained shall be suspended and cease to be payable until the leased premises have been again rendered fit for occupation and use; but that if the leased premises have not been so rendered fit for occupation and use within six months after their destruction or damage, the lessee shall have the option to terminate the lease after giving one month's notice to do so;

- (f) if it is an express or implied term of the lease that the leased land or a building on it may be used for any one specific purpose or purposes, the lessee may terminate the lease, on giving one month's notice to the lessor, if the land or building cannot be, or can no longer lawfully be, used for any of those purposes;

to pay all rates, taxes, dues and other outgoings that are payable in respect of the leased land except to the extent otherwise specified in the lease.

- (2) There shall be implied in every lease covenants by the lessee empowering the lessor—

- (a) either personally or by agents, to enter, , the leased land or buildings at any reasonable time for the purpose of inspecting the condition and repair of the premises, or for carrying out repairs and making good any defects that it is the lessor's obligation so to do; but in the exercise of that power, the lessor

will not unreasonably interfere with the occupation and use of the land and buildings by the lessee ;

- (b) to terminate the lease by serving a notice of intention to terminate the lease on the lessee where—
 - (i) any rent is unpaid for one month after the due date for payment whether or not a demand in writing for payment has been made by the lessor or an agent of the lessor;
 - (ii) the lessee has failed for a period of one month to observe or perform any condition, covenant or other term, the observation or performance of which has been assumed by the lessee expressly or impliedly in the lease.

Conditions implied on leases on part of the lessee.

58.

(1) There shall be implied in every lease, other than a short term lease, covenants by the lessee with the lessor binding the lessee—

- (a) to pay the rent reserved by the lease at the times and in the manner specified in the lease;
- (b) to use any land in a sustainable manner and in accordance with any conditions imposed on that use of that land by the lease, or with any written law or with any provisions in a grant of a public land out of which that lease has been created and, in particular, not to cut down, injure or destroy any living tree on the land unless the purpose for which the land has been leased cannot be carried out without so doing;
- (c) to yield up the land and buildings in the same condition as they were when the term of the lease began, except that the lessee is not bound to repair damage or restore the land and buildings to the same conditions they were at the beginning of the lease if the damage or deterioration of the condition is caused by—

- (i) reasonable wear and tear;
 - (ii) fire, flood or explosion or other accident not attributable to the negligence of the lessee, or the lessee's invitees or employees;
 - (iii) civil commotion;
 - (iv) lightning, storm, earthquake, volcanic activity or other natural disaster;
- (d) to keep all boundary marks in repair;
- (e) to keep all buildings comprised in the lease in a reasonable state of repair, regard being had to the condition of the building and the materials of which it is composed at the beginning of the lease, subject to the lessor's obligations set out in section 57 (1) (d) and except where part only of a building is leased;
- (f) subject to the lessor's obligations set out in section 57 (1) (c) and (d), if only part of a building is leased, to keep the leased part of the building in a reasonable state of repair, regard being had to the condition of the building and the materials of which it is composed at the beginning of the lease;
- (g) to permit the lessor or the lessor's agent or employees to enter on the leased land or buildings at any convenient time, after reasonable notice, to examine the condition of the land and buildings, or to undertake any repairs or make good any defects for which the lessor is responsible;
- (h) to repair or make good any defect or breach of covenant for which the lessee is responsible and of which notice has been given by the lessor to the lessee within any period specified in

Conditions implied on leases on part of the lessee.

- 58.** (1) There shall be implied in every lease, other than a short term lease, covenants by the lessee with the lessor binding the lessee—
- (a) to pay the rent reserved by the lease at the times and in the manner specified in the lease;
 - (b) to use any land in a sustainable manner and in accordance with any conditions imposed on that use of that land by the lease, or with any written law or with any provisions in a grant of a public land out of which that lease has been created and, in particular, not to cut down, injure or destroy any living tree on the land unless the purpose for which the land has been leased cannot be carried out without so doing;
 - (c) to yield up the land and buildings in the same condition as they were when the term of the lease began, except that the lessee is not bound to repair damage or restore the land and buildings to the same conditions they were at the beginning of the lease if the damage or deterioration of the condition is caused by—
 - (i) reasonable wear and tear;
 - (ii) fire, flood or explosion or other accident not attributable to the negligence of the lessee, or the lessee's invitees or employees;
 - (iii) civil commotion;
 - (iv) lightning, storm, earthquake, volcanic activity or other natural disaster;
 - (d) to keep all boundary marks in repair;
 - (e) to keep all buildings comprised in the lease in a reasonable state

Consent by lessor to application by lessee under lease.

- 61.** (1) On and after the enactment of this Act, a covenant by the lessee not to take an action without the consent of the lessor shall be construed as requiring the lessor not unreasonably to withhold consent to the taking of that action by lessee.
- (2) If a lessee applies to the lessor for consent to take one or more of the following action, that is to say—
- (a) transfer or assign the lease;
 - (b) enter into a sublease;
 - (c) part with possession of the leased land or buildings;
 - (d) change the use of the land or buildings from a use which is permitted under the lease;
 - (e) extend, improve, add on to or in any other way develop any building beyond what is permitted in the lease;
 - (f) create a charge over the lease;
 - (g) take any of the actions referred to in subparagraphs (a), (b), (c), (d), (e); or
 - (h) in relation to any part of the leased land or buildings, or for any part of the term of the lease,
- the lessor must inform the lessee in writing within a reasonable time after receiving the application whether the lessor is giving or refusing consent.
- (3) Without limiting the generality of the lessor's obligation under subsection (1), consent is unreasonably withheld if the lessor as a condition of or in relation to the giving of consent—
- (a) requires the lessee to pay any money by way of additional rent, or a premium or a fine or other consideration for the consent, other than the payment of the lessor's reasonable expenses incurred in connection with the giving of consent;

- (b) imposes on the lessee any unreasonable condition or precondition;
- (c) the lessee has requested consent to transfer or assign the lease or enter into a sublease, and the lessor objects to the gender or nationality or other personal characteristic of the transferee, assignee or sub-lessee in circumstances that a reasonable person would consider that those factors are irrelevant to the granting of such consent.
- (4) If the lessor who refuses consent or gives consent subject to a condition or pre-condition and the lessee so requests in writing, the lessor must promptly inform the lessee in writing of the reasons for the refusal or for the imposition of the condition or pre-condition, as the case maybe.
- (5) If the lessee or any person, to whom this section applies at the request of the lessee, has paid any money or suffered any loss in connection with subsection (3), that person may recover that money and seek damages for that loss from the lessor.
- (6) This section does not prevent the inclusion in a lease of a covenant binding the lessee absolutely not to take any action of the kind referred to in subsection (2).

Merger of lessor's
interest not to affect
remedies.

- 62.** If a sublessor surrenders the head lease to or merges the head lease with the land out of which it was created, the owner of the land shall have all the same remedies against the sublessee for non-performance or non-observation of the covenants and conditions expressed or implied in the sublease and all the same rights to give notice of the termination of the sublessee to the subleases as the sublessor had before the surrendered or merged the head lease.

Transfers and Assignments of Leases

Burden and benefit of covenants to run with the reversion.

- 63.** (1) If the interest held by the lessor under a lease (the reversion) ceases to be so held by the lessor (whether by transfer, assignment, grant, operation of law or otherwise), then, unless a contrary intention appears from the lease, expressly or impliedly, or from some other circumstance—
- (a) the obligations imposed on the lessor by covenant of the lease run with the reversion and may be enforced by the person who is from time to time entitled to the reversion;
 - (b) the rights to the benefits of every covenant imposed on the lessee, that refers to the subject matter of the lease, may be exercised and enforced by the person who is from time to time entitled to the reversion against the person who is from time to time entitled to the lease.
- (2) A person who becomes entitled to exercise a right to which subsection (1) (b) refers may exercise that right even if it first became exercisable or accrued before the time at which that person became so entitled unless before that time, the right was waived or the lessee was released from the obligation to which the right relates.
- (3) If, in respect of a lease—
- (a) there has been a division of the reversion into different parts so that different persons are lessors of the different parts; or
 - (b) the lease has terminated as to part only of the land comprised in the lease, the obligations referred to in subsection (1) (a) and the rights and remedies referred to in subsection (1) (b) shall be apportioned, and to the extent required by that

apportionment, remain attached to each part of that reversion or to that part of the land in respect of which the lease has not been terminated as the case may require and may be enforced by the person entitled to enforce those obligations under subsection (1) (a) and exercised by the person entitled to exercise those rights and remedies under subsection (1) (b).

Effect of payment by lessee to assignor of reversion.

- 64.** (1) If a lessor has transferred or assigned the reversion, any payment by the lessee of any part of the rent or of any other money due under the lease to the transferor or assignor discharges the lessee to the extent of that payment unless the lessee had actual notice of the transfer or assignment before making the payment.
- (2) For purposes of subsection (1), registration of a transfer of the reversion is not, in itself, actual notice to the lessee of the transfer, notwithstanding any other provision to the contrary in any other written law.

Transferor of assignor of lease released from liability to pay rent and observe covenants thereafter.

- 65.** (1) In respect of any lease or any transfer or assignment of a lease or part of it made or coming into effect on or after the date of the commencement of this Act—
- (a) the rule of the common law that a transferor or assignor of a lease remains liable on the personal covenant to the lessor for payment of rent and for all breaches of covenants, notwithstanding that the transferor or assignor is no longer in possession or occupation of the leased land, is abolished; and
- (b) the effect of a transfer or assignment of a lease is, as from that date, to discharge absolutely and without more the transferor or assignor from any obligation to pay rent or to observe any covenants in respect of the land as from the date of the transfer or assignment, whether the person to whom the lease has been transferred or assigned is in or goes

immediately into occupation or possession of the land so transferred or assigned.

- (2) As long as the transferor or assignor remains in occupation of the leased land notwithstanding the transfer or assignment, that person shall remain liable to pay rent and comply with all the covenants as if the person were still the lessee for as long as the person shall remain in occupation.
- (3) Subsection (1) shall not apply to absolve a transferor or assignor of a lease from any obligation to pay rent or remedy and breach of a covenant that accrued or arose during the term of the lease when that transferor or assignor was bound by all the covenants in that lease and the lessor may enforce all such obligations of that lease that have so accrued or arisen against that transferor or assignor notwithstanding that the lease has been transferred or assigned.
- (4) As from the date of the commencement of this Act—
 - (a) the rule of common law that a lessee remains liable to pay rent and comply with all the covenants notwithstanding that the lessee has, with the agreement of the lessor, vacated the leased land before the date for the termination of the lease, is abolished; and
 - (b) the provision set out in subsection (5) shall forthwith apply.
- (5) A lessee who, with the agreement of the lessor, vacates land before the termination of a lease shall remain liable to pay rent and observe all the covenants in the lease for one year from the date on which the lessee vacates the land or buildings, unless the lease provides expressly for a shorter period, but if the lessor leases that land or any buildings to another person before the end of the period of one year, the provisions of subsection (1) shall apply from the date of the executions of that lease.

- (6) Subsection (1) shall not apply to absolve a lessee to, whom subsection (5) applies, from any obligation to pay rent or remedy a breach of a covenant that accrued or arose during the term of the lease when that lessee was bound by all the covenants in that lease and the lessor may enforce all such obligations of that lease that have so accrued or arisen against that lessee notwithstanding that the lessee has vacated the land.
- (7) The provisions of subsections (1) and (5) apply in like manner to the transfer, or assignment of a lease of a part of the leased land and to the vacating of a part of the leased land as they apply to the transfer of assignment of the lease of all the land and the vacating of all the land comprised in the lease.
- (8) Any term expressed or implied in a lease or in a condition or covenant in a lease conflicting with this section is invalid.

Transferor or assignee as lessee.

- 66.** (1) A person who accepts a transfer or assignment of a lease becomes the lessee without any need for the person to—
- (a) acknowledge the lessor as such;
 - (b) take possession of the land or building that is the subject of the lease.
- (2) If there is a covenant in the lease that the lessee will not, or will not without the consent of the lessor transfer or assign the lease, a transfer or assignment has effect whether or not the lessor has consented to that transfer or assignment and whether or not that transfer or assignment is in breach of the covenant but this subsection does not prevent the lessor from seeking any remedy for any such breach.
- (3) A person to whom this section applies who becomes a lessee—
- (a) is bound to pay to the lessor the rent payable under the lease;

- (b) is bound to observe and perform all the covenants on the part of the lessee expressed or implied in the lease; and
- (c) may enforce all covenants made by and binding on the lessor expressed or implied in the lease.

Remedies and Relief

Application of determination of lease by re-entry or forfeiture.

- 67.** (1) The power of a lessor to determine a lease by re-entry or forfeiture is abolished.
- (2) On and after the commencement of this Act, a lessor may terminate a lease for non-payment of rent or for breach of any covenant only in accordance with the provisions of this Sub-Part, notwithstanding any provision in any lease to the contrary.
- (3) Any term expressed or implied in a lease or in any condition or covenant in a lease is invalid to the extent that it purports to avoid, or has the purpose or effect of avoiding the need to comply with any section in this Sub-Part.

Abolition of distress for rent.

- 68.** (1) On and after the commencement of this Act, a person shall not distrain for—
- (a) arrears of rent or other payments due under a lease or any agreement collateral to a lease; or
- (b) payments due in respect of the breach of any covenant or condition contained in a lease or in any agreement collateral to a lease.
- (2) This section does not affect the right of a lessor to seek a summary judgment against a lessee for non-payment of rent due under the lease or the manner in which a person may enforce a judgment debt.

Termination of lease for non-payment of rent or for breach of covenant.

- 69.** (1) A lessor may exercise any right to terminate a lease for failure to pay rent due under the lease or for breach of any covenant or condition in the lease only by applying for and acting in accordance

with an order of the court for possession of the land or buildings comprised in the lease.

(2) The Rules Committee may, provide for the procedures to be followed in applying for and the granting of an order for possession and such rules may provide for the granting of a summary order of possession in circumstances where the court is satisfied that the lessee has no reasonable defence or excuse for the non-observance of any covenant or condition in the lease or for not complying with any notice from the lessor requiring the breach to be remedied.

Notice of intention to terminate a lease for breach of covenant

- 70.** (1) If the lessee is in arrears with the rent and has been in arrears for at least than thirty days, the lessor may serve on that lessee a notice of intention to terminate the lease.
- (2) A notice served on a lessee under this section shall adequately inform the recipient of all the following matters—
 - (a) the nature and extent of the breach complained of;
 - (b) the amount that must be paid to remedy the breach;
 - (c) the period, being not less than thirty days from the date of the service of the notice within which the breach must be remedied;
 - (d) the consequence that if the breach is not remedied the lessor will apply to the court for an order of termination; and
 - (e) the right of the lessee to apply to the court, or, for relief against the termination of the lease.

Notice of intention to terminate a lease for breach of covenant other than to pay rent.

- 71.** (1) If a lessee is in breach of a covenant or condition in the lease, the lessor may serve the lessee a notice of intention to terminate the lease on that lessee.
- (2) A notice served on a lessee under this section shall adequately inform the recipient of the following matters—

- (a) the nature and extend of the breach;
- (b) if the lessor considers that the breach is capable of being remedied—
 - (i) the action that the lessee must take or desist from taking to remedy the breach;
 - (ii) the amount (if any) of compensation that the lessee must pay to remedy the breach and to reimburse the lessor's reasonable expenses incurred in connection with the breach; and
 - (iii) the reasonable time, being not less than thirty days, within which the lessee must take or desist from taking the action specified in subparagraph (i);
- (c) the consequences that if the breach is not remedied within the time specified in subparagraph (iii) or the compensation is not paid, the lessor will apply to the court for an order of termination; and
- (d) the right of the lessee to apply to the court for relief against the order of termination.

Consequential provisions relating to notice under section 70 and 71.

- 72.** (1) When a lessor serves a notice on a lessee under section 70 or 71, or as soon as practicable after doing so, the lessor shall serve a copy of that notice on—
- (a) any sub-lessees;
 - (b) spouse of the lessee;
 - (c) chargee of the lessee or of sub-lessees; and
 - (d) the trustee in bankruptcy of the lessee, if the lessee is bankrupt.
- (2) The obligation of the lessor under subsection (1) only applies only to those persons mentioned in that subsection of whose names and addresses the lessor has actual notice.

- (3) The acceptance by the lessor of any rent after the service of a notice under section 70 or 71 does not operate as a waiver of the lessor's right to apply for an order of termination on the ground of breach of any covenant or condition in the lease, unless acceptance of the rent by the lessor causes the lessee reasonably to believe that the lessor no longer intends to apply for that order.
- (4) The Cabinet Secretary by regulation may, prescribe the form of the notices to be served under sections 70 and 71.

Application for relief.

- 73.** (1) An application for relief may be made to the court in a proceeding brought by —
- (a) the lessor for an order of termination of the lease; or
 - (b) any of the persons referred to in subsection (2) before the lessor commences a proceeding contemplated in paragraph (a).
- (2) An application for relief against an order of termination of a lease may be made by—
- (a) the lessee;
 - (b) one or more persons who are entitled to the lease as co-owners;
 - (c) a sub lessee;
 - (d) a chargee for the lessee of a sub lease;
 - (e) the trustee in bankruptcy of the lessee.
- (3) If an application made in accordance with subsection (1) (b) is not made by all the co-owners, then, unless the court orders otherwise, it must be served on all the co-owners.
- (4) Any person with an interest in the leased land or buildings that are the subject of an application by the lessor for an order of termination who on reasonable grounds, claims to have been prejudiced by not being served with a notice to which section 70 and 71 apply may

apply to the court for an extension of time within which to make an application for relief and the court may grant that person an extension of the time on any conditions that it thinks fit.

- (5) An application for relief is not to be taken as an admission by the lessee or any other person applying for relief that—
- (a) there has been a breach of a covenant or condition of the lease by the lessee;
 - (b) the lessor has the right to terminate the lease by reason of such a breach;
 - (c) all notices that were required to be served by the lessor were properly served; or
 - (d) the period for remedying the breach specified in the notice served under section 71 was reasonable or had expired.
- (6) The court may grant relief without determining all or any of the matters specified under subsection (5).

Power of the court with respect to the order of termination or relief.

- 74.** (1) In considering whether to grant an order of termination or to grant relief against an order of termination, the court shall have regard to the following matters—
- (a) in respect of the lease of a dwelling house, the matters contained in section 25 of the Rent Restriction Act, applicable to dwelling houses;
 - (b) the gravity of the breach and in particular whether as a result of the breach any law has not been complied with;
 - (c) the reasonableness of the action required to be taken or desisted from by the lessee to remedy the breach and the time within which it has to be taken or desisted from as specified in the notice served by the lessor under this Act, and in particular with respect to the lease of any building, the age, condition and

- location of building;
 - (d) the reasonableness of the amount of compensation required to be paid and the manner of its payment by the lessee as specified in the notice served by the lessor under section 70;
 - (e) whether the lessor has committed any breaches of covenants or conditions that obligate the lessor under the lease and the extent to which those breaches have contributed to any breaches by the lessee;
 - (f) the degree of forbearance shown by the lessor in respect of other breaches of covenants and conditions by the lessee;
 - (g) the age, means and circumstances of the lessor;
 - (h) the age, means, and circumstances including the health and number of dependants of the lessee, and in particular whether—
 - (i) the lessee will be rendered landless or homeless by the grant of an order;
 - (ii) the lessee will have any alternative means of providing for self and dependants;
 - (iii) a spouse of the lessee will or is likely to suffer undue hardship if an order were made;
 - (i) whether there is any alternative remedy which can be applied in the circumstances;
 - (j) the interests of all other who are participating in the application for relief;
 - (k) any other matter which the court considers appropriate and reasonable in all the circumstances
- (2) A court may grant any relief against the operation of an order that the circumstances of the case require and without limiting the

generality of that power, may—

- (a) cancel, vary or postpone the order;
- (b) extend the period of time for compliance by the lessee with a notice served under section 70;
- (c) alter the amount of compensation required to be paid by the lessee by a notice served under section 70;
- (d) substitute a different remedy for the one specified by the lessor or a different time for taking or desisting from taking an action specified by the lessor in a notice served under section 71;
- (e) provide that any arrears of rent or other payments due under the lease be paid in such installments and at times determined by the court;
- (f) require the lessor or the lessee to remedy any breaches of any covenants or conditions that either or both of them are under an obligation to comply with;
- (g) order the lessor to enter into a lease with—
 - (i) a chargee or the lessee; or
 - (ii) a sub-lessee; for a period, not being longer than the period of the lease which is to be terminated, and on any terms and conditions which the court thinks fit;
- (h) confirm the notice notwithstanding that some procedural errors took place during the making of that notice if the court is satisfied that—
 - (i) the lessee or other person applying for relief was made fully aware of the substance of the notice; and
 - (ii) no substantial injustice will be done by confirming that

notice, and may grant that relief of any conditions as to expenses, damages, compensation or any other relevant matter which the court thinks fit.

(3) A court may grant relief against an order for termination notwithstanding that the lessee has breached an essential term of the lease and the breach is not capable of being remedied.

Remedies of lessor and lessee for breach of covenant.

75. (1) If a lessee is in breach of a covenant or condition of a lease, the lessor, instead of serving a notice of intention to terminate, may commence an action against the lessee—

- (a) for damages;
- (b) for a decree of specific performance;
- (c) for an injunction; or
- (d) to recover as a debt any arrears of rent,

but no action commenced before the service of a notice of intention to terminate shall be proceeded with or judgment given in respect of it until after the conclusion of any proceedings commenced in connection with an order of termination arising from the same breaches, including any appeal against any decision given in connection with that order of termination.

(2) If a lessor is in breach of a covenant or condition in a lease, the lessee may—

(a) commence an action against the lessor—

- (i) for damages;
- (ii) for a decree for specific performance; or
- (iii) for an injunction; or

(b) if the lessor has failed to comply with the covenants contained section 57 (1) (c) or (d)—

- (i) serve a notice on the lessor to undertake required repairs and maintenance within thirty days, failing which the lessee will undertake the repairs and maintenance;
 - (ii) if the lessor does not commence the repairs and maintenance as specified in the notice and does not seek an extension of time within which to undertake the repairs and maintenance specified in the notice referred to in subparagraph (i) in as economical and efficient a way as possible; and (iii) set off the cost of that work against the rent due under the lease; or
- (c) deduct from any rent due under the lease any sums that the lessor has required the lessee to pay as a condition either of obtaining the lease or of continuing as the lessee, contrary to the covenants and conditions in the lease or contrary to any written law; or
- (d) repudiate the lease and cease to pay any rent under it on the grounds that the lessor's conduct shows an intention to comply with the lease, and may pursue any two or more of these actions together as the case may require.

(3) Where the lessee commences an action for damages, the court may award damages for the inconvenience suffered by the lessee and any dependants living with the lessee for the lessor's failure to comply within the covenants and conditions under the lease and in addition may award an element of damages to the lessee by way of a penalty on the lessor.

Unlawful eviction.

- 76.** (1) A lessee who is evicted from the whole or a part of the leased land or buildings, contrary to the express or implied terms and conditions of a lease, is immediately relieved of all obligation to pay any rent or other monies due under the lease or perform any of the covenants

and conditions on the part of the lessee expressed or implied in the lease in respect of the land or buildings or part thereof from which the lessee has been so evicted.

(2) For purposes of this section, a lessee is to be taken as having been evicted from the whole or part of the leased land or buildings, if, on the commencement of the lease, the lessee is unable to obtain possession of the land or buildings or part thereof, as a result of any action or non-action of the lessor or any of the lessor's agents or employees, contrary to the express or implied terms of the lease.

Charges

General Provisions

Application of Part to charges.

- 77.** (1) This Part applies to all charges of land including any charge made before the coming into effect of this Act and in effect at that time, any other charges of land which are specifically referred to in any section in this Part.
- (2) References in this Part to "the charged land" shall be taken to mean and include a charged land, a charged lease and sublease and a second or subsequent charge.

Power to create charge.

- 78.** (1) An owner of private land or a lessee, by an instrument in the prescribed form, may charge the interest in the land or a part thereof for any purpose including but not limited to securing the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition.
- (2) The power conferred by subsection (1) shall include the power to

create second and subsequent charges.

- (3) A charge of a matrimonial home, including a customary charge of a matrimonial home shall be valid only if any document or form used in applying for such a charge, or used to grant the charge, is signed by the borrower and any spouse of the borrower living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons.
- (4) The power conferred by this section shall be exercisable subject to—
 - (a) any prohibition or limitation imposed by this Act or any written law; and
 - (b) any restriction contained in an instrument creating or affecting the interest in land that is to be the subject of a charge.
- (5) A charge shall take effect only when it is registered in a prescribed register and a lender shall not be entitled to exercise any of the remedies under that charge unless it is so registered.
- (6) Nothing in this section shall operate to prevent a borrower from offering and a lender from accepting—
 - (a) a written and witnessed undertaking, the clear intention of which is to charge the borrower's land with the repayment of money or money's worth obtained from the lender; or
 - (b) a deposit of any of the following—
 - (i) a certificate of title to private land;
 - (ii) a certificate of a customary land;
 - (iii) a document of a lease;
 - (iv) other document which may be agreed upon to evidence a right to an interest in land, or to secure any payments

which are referred to in subsection (1) .

(7) An arrangement contemplated in subsection (6)(a) may be referred to as an "informal charge" and a deposit of documents contemplated in subsection (6) (b) shall be known and referred to as a "lien by deposit of documents."

Charge of land to take effect as security only.

- 79.** (1) Upon the commencement of this Act, a charge shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the borrower to the lender but the lender shall have, subject to the provisions of this Part, all the powers and remedies in case of default by the borrower and be subject to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption.
- (2) In the case of the charge of a lease, the lender shall not be liable to the lessor for rent or in respect of the covenants and conditions contained or implied in the lease to any greater extent than would have been the case if the charge had been by way of a sublease.

Priority.

- 80.** (1) Charges shall rank according to the order in which they are registered.
- (2) Informal charges shall rank according to the order in which they are made provided that a registered informal charge shall take priority over any unregistered informal charge.
- (3) For purposes only of determining the priority of charges, a customary charge shall be deemed to be an informal charge, and registration of a customary charge in a register of village land shall have the same effect as regards the priority of such a charge as if it were registered.
- (4) If two informal charges are made on the same day or are registered on the same day, the charge which was first in time to be made or

registered shall have priority.

- (5) If a lender, subsequent in time to a prior lender under a charge, lends money or money's worth on the security of a charge to a borrower as a consequence of or through the fraud, dishonesty or misrepresentation of the prior lender, either in conjunction with or separately from the fraud, dishonesty or misrepresentation of the borrower, that prior lender's right to repayment under the charge shall be postponed to the rights of the subsequent lender.
- (6) The rules of priority for informal charges shall apply as far as the circumstances shall permit liens by deposit of documents.

Tacking.

- 81.** (1) Subject to the provisions of this Act, a lender may, make provision in the charge instrument to give further advances or to give credit to the borrower on a current or continuing account.
- (2) A further advance referred to in subsection (1) shall not rank in priority to any subsequent charge unless—
 - (a) the provision for further advances is noted in the register in which the charge is registered; or
 - (b) the subsequent lender has consented in writing to the priority of the further advance.
- (3) Except as provided for in this section there is no right to tack.
- (4) Where a charge provides for the payment for a principal sum by way of installments, the payment of those installments shall not be taken to be a further advance.

Consolidation.

- 82.** (1) Unless there is an express provision to the contrary clearly set out in the charge instrument, a borrower who has more than one charge with a single lender on several securities may discharge any of the charges without having to redeem all charges.

- (2) A lender who has made provision in accordance with subsection (1) for the consolidation of charges shall record that right in the register or registers against all the charges so consolidated that are registered.
- (3) Notwithstanding subsection (1), no right to consolidate shall be exercisable to the prejudice of any person acquiring any land or lease or other interest in land entitling that person to the occupation and use of that land prior to the recording of that right to consolidate in the prescribed register.
- (4) Consolidation shall not be permitted in respect of a small charge and any attempt to provide for or exercise any powers of consolidation in a small charge shall be void.
- (5) Upon commencement of this Act, the rules of equity applicable to consolidation shall not apply to charges.

Variation of a charge.

- 83.** (1) The rate of interest payable under a charge may be reduced or increased by a notice served on the borrower by the lender, which shall—
- (a) give the borrower a written notice of not less than thirty days of the reduction or increase in the rate of interest; and
 - (b) state clearly and in a manner that can be readily understood, the new rate of interest to be paid in respect of the charge.
- (2) The amount secured by a charge may be reduced or increased by a memorandum which shall—
- (a) complies with subsection (5); and
 - (b) be signed—
 - (i) in the case of a memorandum of reduction by the lender; or
 - (ii) in the case of a memorandum of increase, by the current

borrower; and

- (c) state that the principal Funds intended to be secured by the charge are reduced or increased as the case may be, to the amount or in the manner specified in the memorandum.
- (3) The term or currency of a charge may be shortened, extended or renewed by a memorandum which shall—
- (a) comply with subsection (5); and
 - (b) be signed by the current borrower and by the lender; and
 - (c) state that the term or currency of the charge is shortened, extended or renewed, as the case may be, to the date or in the manner specified in the memorandum.
- (4) The covenants, conditions and powers expressed or implied in a charge are varied in the manner specified in the memorandum.
- (5) A memorandum for the purposes of subsections (2), (3) and (4)—
- (a) must be endorsed on or annexed to the charge instrument; and
 - (b) when so endorsed or annexed to the charge instrument, operates to vary the charge in accordance with the terms of the memorandum.

Discharge of Charges

Right to Discharge

- 84.** (1) Subject to the provisions of this section, on payment of all money secured by a charge and the performance of all other conditions and obligations under the charge, the borrower shall be entitled to discharge the charge at any time before the charged land has been sold by the lender or a receiver under a power of sale and any

agreement or provision in the charge instrument or otherwise shall be void to the extent that it—

- (a) purports to deprive the borrower of this right;
- (b) seeks to fetter the exercise for this right; or
- (c) stipulates for a collateral advantage that is unfair and unconscionable or inconsistent with the right to discharge.

(2) In a charge instrument, the lender may provide that a borrower who wishes to exercise the right to discharge the charge at any time before the expiry of the term of the charge—

- (a) shall give one month's notice of the intention to discharge; or
- (b) shall pay not more than one month's interest at the rate at which interest is payable on the principal sum secured by the charge or at any lesser rate which may be agreed, as well as paying all other money secured by the charge.

(3) A discharge of the whole or a part of a charge shall be as prescribed under this Act or any other law.

For the avoidance of doubt, a discharge includes a re-conveyance and a re-assignment of mortgage or any other instrument used in extinguishing of interests in land conferred by charges or mortgages.

Transfer of charge

- 85.** (1) At any time, other than a time when the lender is in possession of the charged land, the current borrower or any person mentioned in subsection (2) may, in writing, request the lender to transfer the charge to a person named in the request.
- (2) Subject to the consent of the borrower which consent shall not be unreasonably withheld the persons who may make the written request under subsection (1) are—
- (a) any person who has an interest in the land, lease or charge that

has been charged;

(b) any surety for the payment of the amount secured by the charge; and

(c) any creditor of the borrower who has obtained a decree for sale of the charged land, lease or charge.

(3) The lender, on receiving a written request made under subsection (1) and on payment by the person or persons making the request of all money that would have been payable if discharge of the charge had been made under section 84, and the performance of all other obligations secured by the charge, shall transfer the charge to the person named in the written request.

Lender's consent to transfer.

86. If a charge contains a condition, express or implied that the borrower will not, without the consent of the lender transfer, assign, lease or, in the case of a lease, sublease the land, no transfer, assignment, lease or sublease shall be registered until a written consent of the lender has been produced to the Registrar.

Covenants, Conditions and Powers Implied in Charges

Implied covenant by the borrower.

87. (1) There shall be implied in every charge covenants by the borrower with the lender binding the borrower—

(a) to pay the principal money on the day appointed in the charge agreement, and, so long as any of the principal money or any part thereof remains unpaid, to pay interest on the money thereon or on so much of the money that for the time being remains unpaid at the rate and on the days and in the manner specified in charge agreement;

(b) to pay all rates, charges, rent, taxes and other outgoings that are at

all times payable in respect of the charged land;

- (c) to repair and keep in repair all buildings and other improvements upon the charged land or to permit the lender or lender's agent to enter the land and examine the state and condition of such buildings and improvements at any reasonable times until the charge is discharged and after reasonable notice to the borrower,;
- (d) to ensure by insurance or any other means that may be prescribed or which are appropriate, that resources will be available to make good any loss or damage caused by fire to any building on the land, and where insurance is taken out, it is done so in the joint names of the borrower and lender with insurers approved by the lender and to the full value of all the buildings;
- (e) in the case of a charge of land used for agricultural purposes, to use the land in a sustainable manner in accordance with the principles of good husbandry and any conditions subject to which the land or lease under which the land is held, to comply with all written laws and lawful orders applicable to that use of the land;
- (f) not to lease or sublease the charged land or any part of it for any period longer than a year without the previous consent in writing of the lender, which consent shall not be unreasonably withheld;
- (g) not to transfer or assign the land or lease or part of it without the previous consent in writing of the lender which consent shall not be unreasonably withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge, to pay, perform and observe the rent, covenants and conditions contained in or implied by and in the lease contained and implied and on the part of the lessee to be paid, performed and observed and to keep the lender indemnified against all proceedings, expenses and claims on account of non-payment any

part of of the rent or part of it or the breach or non-observance of any covenants and conditions referred to above, and, if the lessee has an enforceable right to renew the lease, to renew it;

- (i) if the charge is a second or subsequent charge, that he borrower will pay the interest from time to time accruing on each prior charge when it becomes due and will at the proper time repay the principal money or part of it due on each prior charge at the proper time;
 - (j) if the borrower fails to comply with any of the covenants implied by paragraphs (b), (c), (d), (e) and (h) of this subsection, that the lender may spend any money which is reasonably necessary to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the charge.
- (2) Reference to the obligation of the borrower in subsection (1) (b) to keep all buildings upon the charged land in repair shall be taken to be an obligation to keep such buildings in a reasonable state of repair as set out in section 60.
- (3) The provisions of section 61 shall apply to an application by a borrower to a lender for consent under paragraphs (f) and (g) of subsection (1).

Foreclosure
abolished.

- 88.**
- (1) Any rule of law, written or unwritten, entitling a chargee (lender) to foreclose the equity of redemption in charge land is abolished.
 - (2) Upon commencement of this Act, a lender shall not be entitled to enter into possession of the charged land or a charged lease or to receive the rents and profits of that land or lease by reason only that default has been made in the payment of the principal sum or of any interest or other periodic payment or of any part thereof or in the performance or observance of any agreement expressed or implied in

the charge, other than in accordance with the provisions of this Sub-Part.

Remedies of
the Lender.

89.

- (1) If a borrower is in default of any obligation to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied in any charge, and continues in default for one month, the lender may serve on the borrower a notice in writing to pay the money owing or to perform and observe the agreement as the case may be.
- (2) The notice required by subsection (1) shall adequately inform the recipient of the following matters—
 - (a) the nature and extent of the default by the borrower;
 - (b) if the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed;
 - (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the borrower must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified;
 - (d) the consequence that if the default is not rectified within the time specified in the notice, the lender will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this sub-part; and
 - (e) the right of the borrower in respect of certain remedies to apply to the court for relief against those remedies.
- (3) If the borrower does not comply within two months after the date of

service of the notice under, subsection (1), the lender may—

- (a) sue the borrower for any money due and owing under the charge;
- (b) appoint a receiver of the income of the charged land;
- (c) lease the charged land, or if the charge is of a lease, sublease the land;
- (d) enter into possession of the charged land; or
- (e) sell the charged land;

(4) If the charge is a charge of land held for customary land, the lender may—

- (a) appoint a receiver of the income of the charged land;
- (b) apply to the court for an order to—
 - (i) lease the charged land or if the charge is of a lease, sublease the land or enter into possession of the charged land;
 - (ii) sell the charged land to any person or group of persons referred to in Community Land Act.

(5) The Cabinet Secretary, in consultation with the Commission shall prescribe the form and content of a notice to be served under this section.

Lender's
action for
money secured
by charge.

90.

- (1) The lender may sue for the money secured by the charge only if—
- (a) the borrower is personally bound to repay the money;
 - (b) by any cause other than the wrongful act of the borrower or lender, the security is rendered insufficient and the lender has given the borrower a reasonable opportunity to provide further security sufficient and the borrower has failed to provide that additional security; or

(c) the lender is deprived of the whole or part of the security through or in consequence of, a wrongful act or default of the borrower.

(2) No action shall be commenced until the time for complying with a notice served under section 89 has expired.

(3) The court may order a postponement of any proceedings brought under this section until the lender has exhausted all other remedies against the charged land, unless the lender agrees to discharge the charge.

Appointment,
powers,
remuneration
and duties' of
the receiver.

91.

(1) It shall be an implied condition in every charge that the lender shall have the power to appoint a receiver of the income of the charged land.

(2) Before appointing a receiver under this section, the lender shall serve a notice in the prescribed form on the borrower and shall not proceed with the appointment until thirty days have elapsed from the date of the service of that notice.

(3) The appointment of a receiver shall be in writing signed by the lender.

(4) A receiver may be removed at any time and a new receiver appointed by writing signed by the lender.

(5) A receiver appointed under this section shall be deemed to be the agent of the borrower for the purposes for which the receiver is appointed, and the borrower shall, unless the charge instrument provides otherwise, be solely responsible for the acts and defaults of the receiver.

(6) If a court approves the appointment of a receiver under a small charge, it may order that the lender be jointly responsible with the borrower for the acts and defaults of the receiver.

(7) The receiver shall have the power to demand and recover all the income of which the receiver is appointed, by action or otherwise, in

the name of the borrower, and to give effectual receipts for the same.

- (8) The receiver shall be entitled to retain out of any money received by all costs, charges and expenses incurred by receiver and, for a commission at the rate specified in the appointment, but not exceeding five per centum of the gross amount of all money, received, , or, if no rate is so specified at the rate of five per centum or any other rate as the borrower and lender may agree or if the appointment of a receiver comes before the court, which the court thinks fit.
- (9) The receiver shall apply all money received in the following order of priority—
 - (a) first, in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the charged property;
 - (b) second, in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge of which the receiver is appointed;
 - (c) third, in payment of the receivers commission and expenses;
 - (d) fourth, in payment of all reasonable expenses incurred in the doing of anything that a receiver is required or entitled to do in respect of the charged land, including but not limited to—
 - (i) the payment of any premiums on any insurance policy properly payable under the charge instrument; and
 - (ii) the costs of undertaking necessary and proper repairs to any buildings comprised in the charged land as directed in writing by the lender,
 - (e) fifth, in the repayment of any money paid or advanced by the lender to meet the reasonable expenses referred to in paragraphs (a), (b), (c) and (d) together with any interest on any amount so paid or advanced at the rate at which interest is payable on the

principal sum secured by the charge;

(f) sixth, in payment of the interest accruing due in respect of any principal sum secured by the charge;

(g) seventh, in and towards the discharge of the principal sum secured by the charge,

and shall pay the residue, if any, to the borrower or other person entitled to the charged land.

Lender's
power of
leasing.

92. (1) Unless the charge instrument expressly provides to the contrary, a lender who has appointed a receiver under section 91, shall, unless the charge instrument expressly provides to the contrary, have power, subject to the provisions of this Act and any other laws applicable to the leases of land—

(a) to grant leases in respect of the charged land or any part thereof; and

(b) to accept a surrender of any lease so granted and of any lease granted by the borrower,

and, for that purpose may, execute, in place of the borrower any instrument required to execute that lease or surrender in place of the borrower.

(2) Before granting a lease under this section, a lender shall serve a notice on the borrower in the prescribed form and shall not proceed with the granting or execution of that lease until thirty days have elapsed from the service of that notice.

(3) Every lease granted by the lender shall—

(a) be made to take effect in possession not later than six months after its date;

(b) reserve the best rent that can reasonably be obtained in the

circumstances;

(c) be for a term not exceeding fifteen years or the length of the term of the charge whichever is the shorter subject to the provisions of subsection (5) (a);

(d) contain any reasonable terms and conditions, having regard to the interests of the borrower and of any other persons having an interest in the charged land; and

(e) contain a declaration that the lender has appointed a receiver, with the date of the appointment.

(4) A lease created by a lender under this section shall not be binding on any person holding, and shall not take priority over, any charge that has priority to the charge of the lender who has granted the lease.

(5) If money has been advanced on the security of a customary charge, a lease created out of that charged land shall—

(a) be for a term not exceeding two years; and

(b) in the case of—

(i) land used for agricultural purposes, ensure that the borrower is left in possession of sufficient land and buildings to provide for to the borrower and dependants;

(ii) a dwelling house, ensure that the borrower is left sufficient space in that dwelling house or is provided with alternative accommodation to enable the borrower to provide basic shelter for the borrower and dependants living with the borrower..

Power of the lender to take possession of the charged land.

93.

(1) At any time after the end of the period specified in the section 89 (2) (b) and (c) , a lender may serve on the borrower a notice of intention to enter in the prescribed form that the lender will enter into possession of the whole or a part of the charged land at a date not at

least one month after the date of the service of the notice.

- (2) A lender may exercise the power of entry peaceably and without committing any forcible entry;
 - (a) entering into and taking physical possession of the land or a part of it peaceably and without committing any forcible entry;
 - (b) asserting management or control over the land by serving a notice in the prescribed form requiring any lessee of the borrower or any other owner of the land to pay to the lender any rent or profits that would otherwise be payable to the borrower.
- (3) The lender shall be regarded as being in possession on the date—
 - (a) on which the lender enters into possession in accordance with of subsection (2) (a); or
 - (b) on which the lender first receives any rent or profit from the land
- (4) A lender who has entered into possession may refrain in possession, without prejudice to the right to withdraw from possession, so long as the charged land continues to be subject to any liability under the charge.
- (5) A lender in possession shall be bound by all those covenants set out in of section 87 (1) (a) to (e), (h), (i) and (j) as if that lender were the borrower referred to in that subsection.
- (6) A lender in possession of any charged land—
 - (a) by occupation, shall be entitled to manage the land and take all its profits, but shall be liable to the borrower for any act by which the value of the land, or any buildings on, or other permanent improvements to the land are impaired or the borrower otherwise suffers loss;
 - (b) whether by occupation or by receipt of rents and profits shall be accountable to the borrower not only for the sums actually

received, but also for any additional sums that the lender might reasonably have been expected to receive by the careful and business like exercise of the lender's powers;

(c) may renew a lease granted by the borrower on the same terms as the original lease but may not otherwise grant any lease out of the charged land.

(7) A lender in possession shall apply all money to the same payments and in the same order as apply to a receiver as set out in section 91 (9), except that a lender in possession shall not be entitled to receive any payments under paragraph (c) of that subsection.

(8) Any person on whom a notice under subsections (1) or (2) has been served shall forthwith comply and continue to comply with that notice until either—

(a) a notice of withdrawal in the prescribed form is served on that person by the lender in possession; or

(b) the lender in possession withdraws from that possession; or

(c) a court orders the lender in possession to withdraw from possession.

Withdrawal of
lender from
possession. **94.**

(1) A lender may, not sooner than one month after the service of a notice of withdrawal, serve in the prescribed form on the borrower and on all persons served with a notice under section 93 (1) and (2), withdraw from possession of the charged land.

(2) A lender shall withdraw from possession of the charged land if—

(a) a court makes an order directing the lender to withdraw;

(b) the lender appoints a receiver under section 91;

(c) the default which was the cause of the entry into possession has been rectified through the possession of the lender;

- (d) the lender has exercised the power of sale under section 95; or
- (e) the borrower has discharged all liabilities under the charge.

(3) A lender in possession shall be taken to have withdrawn from possession of all or a part of the charged land in any case provided for—

- (a) by subsection (2) (a), when the order of the court is made;
- (b) by subsection (2) (b), when the receiver has been appointed in accordance with section 91;
- (c) by (2) (c), when the lender has either—
 - (i) ceased to occupy the charged land; or
 - (ii) is not in occupation, served a notice of withdraw on all persons served with a notice under section 95 (1) and (2) or section 96;
- (d) by subsection (2) (d), when the purchaser of the charged land enters into occupation of that land;
- (e) by subsection (2) (e), when the borrower serves notice of cancellation of possession in the prescribed form.

(4) A lender who has withdrawn from possession of charged land may not again enter into possession of that land, otherwise than by complying with the provisions of sections 101 and 104 if the borrower is in a fresh default under the charge.

Lender's
power of sale.

- 95.**
- (1) Where a borrower is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the borrower under section 89 (1), a lender may exercise the power to sell the charged land.
 - (2) Before exercising the power to sell the charged land, the lender shall

serve on the borrower a notice to sell in the prescribed form on the borrower and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

- (3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—
- (a) the Commission, if the charged land is public land;
 - (b) the Community Land Committee of the village where the charged land is located, if that land is held for a customary land or is held under customary tenure;
 - (c) the holder of the land out which the lease has been granted, if the charged land is a lease;
 - (d) any spouse of the borrower;
 - (e) any lessee and sublessee of the charged land or of any buildings on the charged land;
 - (f) any person who is a co-owner with the borrower;
 - (g) any other lender of money secured by a charge on the charged land of whom the lender proposing to exercise the power of sale has actual notice;
 - (h) any guarantor of the money advanced under the charge;
 - (i) any other person with a right to enter on and use the land or the natural resources in, on, or under the charged land; and
 - (j) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land.

Duty of lender
exercising
power of sale.

96.

- (1) A lender who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes

a duty of care to the borrower, any guarantor of the whole or any part of the sums advanced to the borrower, any lender under a subsequent charge including a customary charge or under a lien to obtain the best price reasonably obtainable at the time of sale.

- (2) If the price at which the charged land is sold is twenty-five per centum or more below the average price at which comparable interests in land of the same character and quality are being sold in the open market—
 - (a) there shall be a rebuttable presumption that the lender is in breach of the duty imposed by subsection (1); and
 - (b) the borrower whose charged land is being sold for that price may apply to a court for an order that the sale be declared void, but the fact that a plot of charged land is sold by the lender at an undervalue being less than twenty-five per centum below the market price shall not be taken to mean that the lender has complied with the duty imposed by subsection (1).
- (3) It shall not be a defence to a proceeding against a lender for breach of the duty imposed by subsection (1) that the lender was acting as agent of or under a power of attorney from the borrower or any former borrower.
- (4) A lender shall not be entitled to any compensation or indemnity from the borrower, any former borrower or any guarantor in respect of any liability arising from a breach of the duty imposed by subsection (1).
- (5) The sale by a prescribed lender of any community land occupied by a person shall conform to the provisions of the Community Land Act save that such a sale shall not require any approval from a Community Land Committee.
- (6) Any attempt by a lender to exclude all or any of the provisions of this section in any charge instrument or any agreement collateral to a

charge or in any other way shall be void.

Powers
incidental to
the power of
sale.

- 97.** (1) If a lender or a receiver becomes entitled to exercise the power of sale, that sale may be—
- (a) of the whole part of the charged land;
 - (b) subject to or free of any charge or other encumbrance charge having priority to the lender's charge
 - (c) by way of subdivision or otherwise;
 - (d) by private contract or public auction;
 - (e) with or without reserve;
 - (f) for a purchase price payable in one sum or by installments; or
 - (g) subject to any other conditions that the lender shall think fit, having due regard to the duty imposed by section 96 (1).
- (2) If a sale is to proceed by public auction, it shall be the duty of the lender to ensure that the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the charged land and that the provisions relating to auctions and tenders for land are, as near as may be, followed in respect of that sale.
- (3) A sale of the charged land by a lender in exercise of the power of sale shall be made in the prescribed form and the Registrar shall accept it as sufficient evidence that the power has been duly exercised.
- (4) Upon registration of the land or lease or other interest in land sold and transferred by the lender the interest of the borrower as described therein shall pass to and vest in the purchaser free of all liability on account of the charge, or on account of any other charge or encumbrance to which the charge has priority, other than a lease or

easement to which the lender had consented in writing.

Protection of
purchaser.

98.

(1) This section applies to—

- (a) a person who purchases charged land from the lender or receiver, excluding where the lender is the purchaser; or
- (b) a person claiming the charged land through the person who purchases charged land from the lender or receiver, including a person claiming through the lender if the lender and the person so claiming obtained the charged land in good faith and for value.

(2) A person to whom this section applies—

- (a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the charged land;
- (b) is not obliged to see to the application of the purchase price;
- (c) is not obliged to inquire whether there has been a default by the borrower or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before the completion of the sale, the person has actual notice that there has not been a default by the borrower, or that a notice has not been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the lender, of which that person has actual or constructive notice.

(4) A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person

exercising that power.

Sale by lender
to self.

99.

- (1) Other than in the circumstances provided to for in subsection (3), a lender exercising the power of sale may sell to the lender, but may do so only with leave of the court.
- (2) A court shall not grant leave unless the lender satisfies the court that a sale of the charged land to the lender is the most advantageous way of selling the land so as to comply with the duty imposed on the lender by section 96 (1).
- (3) If the charged land is to be sold by public auction, the lender may bid for and purchase the charged land at that public auction so long as the price bid for the charged land by the lender is the greater of—
 - (a) the highest price bid for that land at the auction; and
 - (b) an amount equal to or higher than the reserve price, if any, put upon the land before the auction, whichever amount is the greater.
- (4) If a lender who has sold charged land to the lender applies to the Registrar to be registered as the lawful owner of land under a land or lease, the Registrar may require that lender to provide any evidence that the Registrar may specify showing that the provisions of this section have been complied with and the Registrar shall not be obliged to register any such land or lease until the lender has so satisfied the Registrar.

Application of
proceeds of
sale of charged
land.

100.

- The purchase money received by a lender who has exercised the power of sale shall be applied in the following order of priority—
- (a) first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the charged land;
 - (b) second, in discharge of any prior charge or other encumbrance

subject to which the sale was made;

- (c) third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;
- (d) fourth, in discharge of the sum advanced under the charge or so much of it as remains outstanding, interests, costs and all other money due under the charge, including any money advanced to a receiver in respect of the charged land under section 91; and
- (e) fifth, in payment of any subsequent charges in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the charge.

Right of
borrower to
discharge
charge on
payment of
any sum due
any time
before sale.

- 101.** (1) At any time before the charged land is sold, or withdrawn from sale, the borrower or any other person entitled to discharge the charge may discharge the charge in whole or in part by paying to the lender all money secured by the charge at the time of payment.
- (2) If payment is made under subsection (1), the lender shall deliver to the borrower—
- (a) a discharge of the charge in the prescribed form over the whole or that part of the charged land to which the payment relates; and
 - (b) all instruments and documents of title held by the lender in connection with the charged land.

Application
for relief by
borrower.

- 102.** (1) An application for relief against the exercise by the lender of any of the remedies referred to in section 101 (2) (a) and (b) may be made by—
- (a) the borrower;
 - (b) if two or more persons are joint borrowers, by one or more of them on their own behalf;

- (c) a spouse of the borrower;
 - (d) a lessee of the borrower; or
 - (e) the trustee in bankruptcy of the borrower.
- (2) If an application made in accordance subsection (1) (b) is not made by all the joint borrowers, then, unless the court orders otherwise, it must be served on all the joint borrowers.
- (3) An application for relief may be made at any time after the service of a notice under section 89 (2), section 90 (2), section 93 (1), section 94 (2), or during the exercise of any of the remedies contemplated in those sections.
- (4) An application for relief is not to be taken as an admission by the borrower or any other person applying for relief that—
- (a) there has been a breach of a covenant of the charge by the borrower;
 - (b) by reason of such a breach, the lender has the right to exercise the remedy in respect of which the application for relief has been made;
 - (c) all notices that were required to be served by the lender were properly served; or
 - (d) the period for remedying the breach specified in the notice served under section 89 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

Power of the court in respect of remedies and reliefs thereto.

103.

- (1) In considering whether to grant relief as applied for, a court—
- (a) shall, have regard to whether the remedy which the lender proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred if the charged land consists of

agricultural land or commercial premises, and the remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof;

(b) shall, where the charged land consists of or includes, a dwelling-house, and the remedy proposed is to appoint a receiver, or take possession or lease the dwelling house or a part of it, have regard to the effect that the appointment of a receiver or the taking of possession or leasing the whole or a part of the dwelling house would have on the occupation of the dwelling house by the borrower and dependants and if the effect would be to impose undue disturbance on those owners, whether it is satisfied that—

(i) the lender has made all reasonable efforts, including the use of other available remedies available, to induce the borrower to comply with the obligations under the charge; and

(ii) the borrower has persistently been in default of the obligations under the charge; and

(iii) if the sale is of land held for a customary land, the lender has had regard to the age, means, and circumstance including the health and number of dependants of the borrower, and in particular whether—

(aa) the borrower will be rendered landless or homeless;

(bb) the borrower will have any alternative means of providing for the borrower and dependants;

(iv) it is necessary to sell the charged land in order to enable the lender to recover the money owing under the charge;

(v) in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the charged land.

(2) A court may refuse to authorise an order or may grant any relief

against the operation of a remedy that the circumstances of the case require and without limiting the generality of those powers, may—

- (a) cancel, vary, suspend or postpone the order for any period which the court thinks reasonable;
 - (b) extend the period of time for compliance by the borrower with a notice served under section 89;
 - (c) substitute a different remedy or the one applied for or proposed by the lender or a different time for taking or desisting from taking any action specified by the lessor in a notice served under section 89;
 - (d) authorise or approve the remedy applied for or proposed by the lender, notwithstanding that some procedural errors took place during the making of any notices served in connection with that remedy if the court is satisfied that—
 - (i) the borrower or other person applying for relief was made fully aware of the action required to be taken under or in connection with the remedy; and
 - (ii) no injustice will be done by authorising or approving the remedy, and may authorise or approve that remedy on any conditions as to expenses, damages, compensation or any other relevant matter as the court thinks fit.
- (3) If under the terms of a charge, the borrower is entitled or is to be permitted to pay the principal sum secured by the charge by installments or otherwise to defer payment of it in whole or in part but provision is also made in the charge instrument or any collateral agreement for earlier payment of the whole sum in the event of any default by the borrower or of a demand by the lender or otherwise, then for purposes of this section the court may treat as due under the charge in respect of the principal sum secured and of interest on it only the amounts that the borrower would have expected to be required to

pay if there had been no such provision for earlier payment.

- (4) A court must refuse to authorise or approve a remedy if it appears to the court that—
- (a) the default in issue has been remedied;
 - (b) the threat to the security has been removed;
 - (c) the borrower has taken the steps that the borrower was required to take by the notice served under section 89; and
 - (d) the lender has taken or attempted to take some action against the borrower in contravention of section 89 (4).

Power of the court to re-open certain charges and revise terms.

104.

- (1) The Court may reopen—
- (a) a charge for a sum equal to or less than the amount that maybe lent on the security of a small charge; or
 - (b) a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.
- (2) The Court may reopen a charge to which subsection (1) refers if it appears to the Court—
- (a) that principles of fair dealing were contravened when the terms of the charge were agreed to;
 - (b) that the effect of the terms of the charge, at the time when the question of reopening it arises, is to give the lender rights substantially greater than or different from those necessary to ensure that the charged land provides adequate security for the principal sum advanced on the security of that land;
 - (c) that the charge requires payments to be made that are exorbitant or illegal, whether such payments are of interest or capital or both or otherwise and whether such payments are required to be made unconditionally or otherwise;

- (d) that the charge includes a term which postpones that right to discharge the charge or otherwise impedes the discharge of the charge which appears to contravene the provisions of section 87 (1);
- (e) that the charge imposes terms on the borrower that are significantly disadvantageous to the borrower compared to terms imposed on other borrowers in respect of similar charges and that these terms have been imposed solely or mainly because of the gender of the borrower.

Exercise of powers to reopen certain charges.

105.

- (1) The court may exercise the powers conferred on it by this Act either—
 - (a) on an application made to it for that purpose by either the borrower or the lender—
 - (i) to enforce the charge; or
 - (ii) to commence an action under section 89; or
 - (iii) to obtain an order authorising the exercise of a remedy in connection with a default by the borrower under a small charge; or
 - (b) on an application by the borrower for relief against the exercise by the lender of any remedy in connection with a default by the borrower under a charge; or
 - (c) by the Registrar in respect of—
 - (i) charges provided by one or more specific lenders where there is prima facie evidence of a pattern of unfair dealing and practices by that lender or those lenders; or
 - (ii) a lender, being a corporate body, that appears to exercise discrimination against borrowers on account of their gender, whether by granting charges on terms to which section 104 (2) (e) applies, or by refusing to grant charges to persons on

account of their gender except that a lender, being a corporate body that is implementing any programme, approved or assisted by the Government, designed to assist women to improve their economic and social position by providing them with advances secured by a charge of land shall not be taken to be acting in discriminatory manner if the advances under that programme are made only to women.

(2) In reopening the charge, the court may—

- (a) direct that the charge shall have effect subject to modifications that the court shall order;
- (b) require the lender to repay the whole or part of any sum paid under the charge or any related or collateral agreement by the borrower or any guarantor or other person who assumed an obligation under the charge whether it was paid to the lender or any other person;
- (c) require the lender to pay any compensation to the borrower which the court shall think fit; or
- (d) direct the lender, being a corporate body to cease acting in a discriminatory manner with respect to the granting of charges.

(3) In considering whether to exercise the powers conferred on it by this section, the court shall have regard to—

- (a) the age, gender, experience, understanding of commercial transaction, and health of the borrower at the time when the charge was created, if the borrower is an individual;
- (b) the financial standing and resources of the borrower relative to those of the lender at the time of the creation of the charge;

- (c) the degree to which, at the time of the creation of the charge, the borrower was under financial pressure and the nature of that pressure;
- (d) the interest rates prevailing at the time of the creation of the charge and during the continuation of the charge and the relationship of those interest rates to the interest rate applying from time to time in the charge;
- (e) the degree of risk accepted by the lender, having regard to the value of the charged land and the financial standing and other resources of the borrower;
- (f) the importance of not undermining the confidence of reputable lenders in the market for charges; and
- (g) any other factors that the court considers relevant.

PART V — COMPULSORY ACQUISITION OF INTERESTS IN LAND

Preliminary
notice

106.

- (1) Whenever the Cabinet Secretary is satisfied that it may be necessary to acquire some particular land under section 109, the Cabinet Secretary in consultation with the Commission may publish a notice to that effect in the Gazette, and shall deliver a copy of the notice to every person who appears to the Cabinet Secretary to be interested in the land.
- (2) All land to be compulsorily acquired shall be geo-referenced and authenticated by the statutory body responsible for survey.

Power of entry
for survey

107.

- (1) The Cabinet Secretary, in writing, may authorize any person, to enter upon any land specified in a notice published under section 105 and survey the land and to do all things that may be reasonably necessary to ascertain

whether the land is suitable for the intended purpose.

(2) An authorization under subsection (1) shall not empower a person to enter a building, or an enclosed court or garden attached to a dwelling house, unless that person—

(a) has first obtained the consent of the occupier; or

(b) has served on the occupier not less than seven days' written notice of the intention so to enter.

Payment for
damage
caused by
entry for
survey.

108. As soon as practicable after entry has been made under section 107, the Cabinet Secretary shall make good or pay full compensation for any damage resulting from the entry.

Notice of
acquisition
and effect of
acquisition on
plant and
machinery.

109. (1) Land may then be acquired compulsorily under this Part if the Cabinet Secretary certifies in writing that—

(a) the land is required for the purposes of a public body;

(b) the acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban area or city planning or the development or utilization of any property in any manner to promote the public benefit; and

(c) the necessity of acquiring the land is a reasonable justification for the causing of any hardship that may result to any person interested in the land.

(2) The Cabinet Secretary must not issue a certificate contemplated in subsection (1) until the proprietor of the land to be compulsorily acquired has been afforded an opportunity to interrogate and test the genuineness and objectivity of the compulsory acquisition within the prescribed time.

(3) If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Cabinet

Notice of
acquisition
and effect of
acquisition on
plant and
machinery.

- 109.** (1) Land may then be acquired compulsorily under this Part if the Cabinet Secretary certifies in writing that—
- (a) the land is required for the purposes of a public body;
 - (b) the acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban area or city planning or the development or utilization of any property in any manner to promote the public benefit; and
 - (c) the necessity of acquiring the land is a reasonable justification for the causing of any hardship that may result to any person interested in the land.
- (2) The Cabinet Secretary must not issue a certificate contemplated in subsection (1) until the proprietor of the land to be compulsorily acquired has been afforded an opportunity to interrogate and test the genuineness and objectivity of the compulsory acquisition within the prescribed time.
- (3) If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Cabinet Secretary shall offer the original owners or their successors in title pre-emptive rights to re-acquire the land.
- (2) The Cabinet Secretary shall then cause a notice that the Government intends to acquire the land to be published in the Gazette, and shall serve a copy of the notice on every person who appears to have an interest in the land.
- (3) If any plant or machinery are attached or permanently fastened to the land, the person interested in that plant or machinery may serve on the Cabinet Secretary a notice in writing that such person desires to sever and remove the plant and machinery, after receiving the notice of intention to acquire the land under subsection (2), and not later than fifteen days before the inquiry appointed under section 112 (1)

the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Cabinet Secretary of documents of title to the land.

(6) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

Award of
compensation

113. (1) Upon the conclusion of the inquiry, the Cabinet Secretary shall prepare a written award, in which the Cabinet Secretary shall make a separate award of compensation to each person whom the Cabinet Secretary has determined to have an interest in the land.

(2) Subject to Article 40 (2) of the Constitution and sections 121 and 130 of this Act, an award—

(a) shall be final and conclusive evidence of—

- (i) the area of the land to be acquired;
 - (ii) the value, in the opinion of the Cabinet Secretary, of the land;
 - (iii) the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry;
- and

(b) shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

(3) If an interest in land is held by two or more persons as tenants in common, the award shall state—

- (a) the amount of compensation awarded in respect of that interest; and
 - (b) the shares in which it is payable to those persons.
- (5) Every award shall be filed in the office of the Cabinet Secretary.

Notice of
award

114.

- (1) On making an award, the Cabinet Secretary shall serve on each person whom the Cabinet Secretary has determined to be interested in the land a notice of the award and offer of compensation.
- (2) Upon acquisition of land, the Cabinet Secretary may agree with the person who owned that land that instead of receiving an award, the person shall receive a grant of land, not exceeding in value the amount of compensation which the Cabinet Secretary considers would have been awarded, and upon the conclusion of the agreement that person shall be deemed to have conclusively been awarded and to have received all the compensation to which that person is entitled in respect of the interest in that land.
- (3) An agreement under subsection (1) shall be recorded in the award.

Grant of land
in lieu of
award

115.

- (1) After notice of an award has been served on all the persons determined to be interested in the land, the Cabinet Secretary shall, as soon as practicable, pay compensation in accordance with the award to the persons entitled thereunder, except in a case where—
 - (a) there is no person competent to receive payment; or
 - (b) the person entitled does not consent to receive the amount awarded; or

(c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which it is to be paid.

(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Cabinet Secretary may at any time pay the amount of the compensation into a special compensation account held by the Cabinet Secretary, notifying any persons interested accordingly.

Payment of
compensation

116. If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Cabinet Secretary may, by notice in writing served on that person, require that person to refund to the Cabinet Secretary the amount received, and the amount shall be a debt due from that person to the Cabinet Secretary.

Payment in
error

117. (1) If the amount of any compensation awarded is not paid or paid a special compensation account held by the Cabinet Secretary on or before the taking of possession of the land, the Cabinet Secretary shall pay interest on the amount awarded at the rate of six per cent per annum from the time of taking possession until the time of payment or payment into the special compensation account.

(2) If additional compensation is payable under section 120 there shall be added to the amount of the additional compensation interest thereon at the rate of six per cent per annum from the time when possession was taken or compensation was paid, whichever is the earlier.

Payment of
interest

118. If part only of the land comprised in documents of title has been acquired, the Cabinet Secretary shall, as soon as practicable, cause a final survey to

be made of all the land acquired.

Survey where
part only of
holding
acquired

119. Whenever the final survey provided for in section 119 discloses that the area of the land acquired is greater than the area of the land in respect of which the award has been made, compensation shall be paid for the excess area in accordance with this Act.

Additional
compensation
where area
found to be
greater

120.

- (1) After the award has been made, the Cabinet Secretary shall take possession of the land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the State.
- (2) In cases of urgency, the Cabinet Secretary may take possession of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Cabinet Secretary, notwithstanding that no award has been made, shall take possession of that land in the manner prescribed by subsection (1).
- (3) Upon taking possession of land under subsection (1) or subsection (2), the Cabinet Secretary shall also serve upon—
 - (a) the registered proprietor of the land; and
 - (b) the Registrar, a notice that possession of the land has been taken and that the land has vested in the State.
- (4) Upon taking possession and payment of full compensation, the land shall vest in the State absolutely free from encumbrances.

Formal taking
of possession
and vesting

121. (1) If the documents evidencing title to the land acquired have not been previously delivered, the Cabinet Secretary in writing shall require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

(2) On receipt of the documents of title, the Registrar shall—

(a) cancel the documents if the whole of the land comprised in the documents has been acquired;

(b) record upon the documents that so much of the land has been acquired under this Act if only part of the land comprised in the documents has been acquired, and thereafter return the documents to the person by whom they were delivered, and upon such receipts, or if the documents are not forthcoming, cause an entry to be made in the register recording the acquisition of the land under this Act.

Surrender of
documents of
title to Cabinet
Secretary

122.

(1) The powers of acquisition conferred by this Part shall not be exercised so as to acquire a part only of a permanent building in any case if—

(a) that part is reasonably required for the full and unimpaired use of that building; and

(b) a person interested in the building desires that the whole of the building shall be acquired.

(2) The referred to under subsection (1) (b) may, at any time before the Cabinet Secretary has made an award, withdraw or modify the person's statement by notice in writing served on the Cabinet Secretary.

(3) If a question arises whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Cabinet Secretary to the Court for determination.

Part only of
building not to
be acquired

123.

(1) If the Cabinet Secretary considers that a claim for compensation which a person interested in the land has made on account of the severing of the land to be acquired from that person's other land is unreasonable or excessive, the Cabinet Secretary in writing may, direct that the whole or any portion of the remaining land shall be acquired under this Act, at any

time before taking possession of the land.

(2) On the giving of a direction under subsection (1), the Cabinet Secretary shall without delay serve on the person interested a copy of the order without delay, and thereafter shall proceed to make an award.

Acquisition of
other land on
account of
severance

124.

(1) At any time before possession is taken of any land acquired under this Act, the Cabinet Secretary may, revoke a direction to acquire the land, and, shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land.

(2) The principles relating to the determination of compensation set out in the regulations shall apply, so far as they are relevant, to the determination of compensation payable under this section.

Withdrawal of
acquisition

125.

(1) If the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that—

(a) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property,

and so certifies in writing, possession of such land may be taken for that period under this Part.

(2) The Cabinet Secretary shall then serve on every person interested or who claims to be interested in the land to be taken possession of

Withdrawal of
acquisition

125.

- (1) If the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that—
- (a) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and
 - (b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property,
- and so certifies in writing, possession of such land may be taken for that period under this Part.

(2) The Cabinet Secretary shall then serve on every person interested or who claims to be interested in the land to be taken possession of under subsection (1), or on such of them as after reasonable inquiry are known to the Cabinet Secretary, a notice that the Cabinet Secretary is to take possession of the land for the period in question.

(3) At the end of seven days after service of notices has been completed under subsection (2), the Cabinet Secretary may take possession of the land by entering, personally or by agents, on the land and positing on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.

Power to
obtain
temporary
occupation of
land

126.

- (1) Where possession is taken of land under this Part, full compensation shall be paid promptly to all persons interested in the land.
- (2) As soon as practicable after entry on land has been made under

Restoration of
land

128. If the Cabinet Secretary after consultation with the Commission is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to other land, then—

- (a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- (b) the compensation to be paid under section 124 shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

Where land is needed for
access

- 129.** (1) The Cabinet Secretary may at any time, by application in the prescribed form, refer to the Environment and Land Court for its determination any question as to—
- (a) the construction, validity or effect of any instrument;
 - (b) the persons who are interested in the land concerned;
 - (c) the extent or nature of their interest;
 - (d) the persons to whom compensation is payable;
 - (e) the shares in which compensation is to be paid to tenants in common;
 - (f) the question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or
 - (g) the condition of any land at the expiration of the term for which it is occupied or used.

(2) Without prejudice to the powers of the Court under this Part, the costs of any reference to the Court under subsection (1) shall be paid by such person as the Court may direct or, failing a direction, by the Cabinet Secretary.

Reference to the
Environment and Land
Court by the Cabinet
Secretary

- 130.** (1) The right of access to the Environment and Land Court of an interested person shall be by way of appeal (exercisable as of right at the instance of the person interested) from the decision of the Tribunal.
- (2) There shall be established a Tribunal to be known as the Land Acquisition Compensation Tribunal which shall consist of the following members appointed by the Cabinet Secretary by notice in the Gazette —
- (a) an advocate of not less than ten years' standing, who shall be the chairperson;
 - (b) two registered valuers of not less than ten years' standing;
 - (c) the Chairperson of the Public Service Commission, or a representative appointed in writing;
 - (d) the Principal Secretary in the State department responsible for matters relating to lands, or a representative appointed in writing;
 - (e) the Attorney-General, or a representative appointed in writing;
 - (f) the Chairperson of an organization or association of professional societies appointed by the Cabinet Secretary;
 - (g) a female representative of an organization or association

dealing with the rights of women appointed by the Cabinet Secretary;

(h) a representative of a forum of organisation or organizations working for public benefit on land matters appointed by the Cabinet Secretary;

(i) a businessman of not less than thirteen years standing; and

(j) a farmer of not less than ten years standing.

(3) The composition of the Tribunal shall reflect gender and regional balance.

(4) A member of the Tribunal shall hold office for the period, not exceeding three years, specified in the instrument of appointment unless, prior to the expiration of that period—

(a) the member resigns by written notice addressed to the Cabinet Secretary; or

(b) the Cabinet Secretary being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of the office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes the appointment.

(5) The members of the Tribunal shall be paid such allowances or other remuneration as the Cabinet Secretary in consultation with the Treasury may authorize out of moneys provided by Parliament for the purposes of the Tribunal.

(6) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(7) There may be appointed such staff as are necessary to assist the Tribunal in the performance of its duties under this Act.

(8) A person interested who is dissatisfied with the award of the Cabinet Secretary may apply to the Tribunal in the prescribed manner for—

(a) the determination of interest or right in or over the land; or

(b) the amount of compensation awarded to the person under section 112 ; or

(c) the amount of compensation paid or offered to him under section 108, 111, 124, 126 or 127.

(9) The public body for whose purposes the land is acquired may apply to the Tribunal against—

(a) the amount of compensation awarded under section 113; or

(b) the amount of compensation paid or offered under section 108, 111, 124, 126 or 127.

(10) If, on an application to the Tribunal, the sum which in the opinion of the Tribunal ought to have been awarded as compensation is greater than the sum that the Cabinet Secretary did award as compensation, the Tribunal may direct that the Cabinet Secretary shall pay interest on the excess at such rate as may be prescribed which shall not be less than six per cent per annum from the date on which the Cabinet Secretary took possession of the land to the date of payment of the excess into the special compensation account held by the Cabinet Secretary or to the person entitled.

(11) A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal thereon may appeal to the

Environment and Land Court on any grounds of the application to the Tribunal and on any of the following grounds, namely—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the decision failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits.

(12) A party to an appeal under subsection (10) to the Environment and Land Court who is dissatisfied with its decision may, upon giving notice of appeal to the other party or parties to that appeal within fifteen days after the date on which a notice of that decision has been served upon a party, appeal to the Court of Appeal from the order made by it; but an appeal to the Court of Appeal under this subsection may be made on a question of law only.

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| Right of entry | <p>131. The Cabinet Secretary and any officer or person authorized under section 107 shall have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of this Act.</p> |
| Application for police assistance. | <p>132. If the Cabinet Secretary is opposed or impeded in taking possession of any land under this Act, the Cabinet Secretary may apply to a police officer for assistance in taking possession, and the police officer shall thereupon take any necessary steps to put the Cabinet Secretary in possession of the land.</p> |
| Penalty for obstruction | <p>133. A person who willfully hinders or obstructs the Cabinet Secretary or an officer or person mentioned in section 131 or section 132 in doing any of the acts authorized or required by this Act, or who willfully fills up, destroys, damages or displaces any trench, post or mark made or put on land under this Act, shall be guilty of an offence and liable</p> |

to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred thousand shillings, or to both.

Service of notices

- 134.** (1) A notice which may be given under this Part may be served on a person—
- (a) by delivering it to the person personally;
 - (b) by sending it by registered post to the person's last known address or the persons' last known address in Kenya;
 - (c) if the whereabouts of the person or the address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land;
 - (d) if the person is a body corporate, society or other association of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land; or
 - (e) by placing an advertisement in a newspaper with a national circulation.

Exemption from stamp duty

- 135.** No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay a fee for a copy thereof.

Bar to setting aside awards

- 136.** Except as otherwise provided in the Constitution, no proceeding shall

be brought in any court to set aside or question an award.

Rules

- 137.** The Cabinet Secretary may make rules generally for carrying out the purposes and provisions of this Part.

PART VI — LAND SETTLEMENT

Settlement Fund Trustees

- 138.** (1) There is hereby established a body of trustees, to be known as the Settlement Fund Trustees, which shall consist of the Cabinet Secretary responsible for land matters, the Cabinet Secretary responsible for agriculture, the Cabinet Secretary responsible for roads and public works, the Cabinet Secretary responsible for the environment and natural resources and the Cabinet Secretary responsible for finance.

(2) The Settlement Fund Trustees shall be a body corporate by that name, having perpetual succession and a common seal, and may in its corporate name sue and be sued, and, for and in connexion with the purposes of this Part, may purchase, hold, manage and dispose of movable and immovable property, and may enter into such contracts as it may deem necessary or expedient.

(3) Upon commencement of this Act, all land vested in the Central Land Board and the Central Agricultural Board shall be transferred and vest in the Settlement Fund Trustees.

(4) The seal of the Settlement Fund Trustees shall be authenticated by the signature of one of its members or of the officer administering the Fund.

(5) All documents, other than those required by law to be under seal, made by, and all decisions of, the Settlement Fund Trustees may be signified under the hand of one of the Trustees or of the officer

Settlement Fund Trustees

138.

(1) There is hereby established a body of trustees, to be known as the Settlement Fund Trustees, which shall consist of the Cabinet Secretary responsible for land matters, the Cabinet Secretary responsible for agriculture, the Cabinet Secretary responsible for roads and public works, the Cabinet Secretary responsible for the environment and natural resources and the Cabinet Secretary responsible for finance.

(2) The Settlement Fund Trustees shall be a body corporate by that name, having perpetual succession and a common seal, and may in its corporate name sue and be sued, and, for and in connexion with the purposes of this Part, may purchase, hold, manage and dispose of movable and immovable property, and may enter into such contracts as it may deem necessary or expedient.

(3) Upon commencement of this Act, all land vested in the Central Land Board and the Central Agricultural Board shall be transferred and vest in the Settlement Fund Trustees.

(4) The seal of the Settlement Fund Trustees shall be authenticated by the signature of one of its members or of the officer administering the Fund.

(5) All documents, other than those required by law to be under seal, made by, and all decisions of, the Settlement Fund Trustees may be signified under the hand of one of the Trustees or of the officer administering the Fund.

Land Settlement Fund

139.

(1) There is hereby established a Land Settlement Fund, which shall be vested in the Settlement Fund Trustees.

(2) There shall be paid into the Fund—

Expenditures from the
Fund

140. (1) The Settlement Fund Trustees may expend money out of the Land Settlement Fund on—

- (a) establishing permanent improvements in Settlement Schemes;
- (b) purchasing land suitable for settlement and farming purposes for allocation to settlers at a charge determined by the Trustees;
- (c) making advances, for the prescribed periods and subject to the prescribed conditions as may be prescribed, to settlers, co-operative societies or any other persons as may be approved by the Trustees, for the purpose of carrying out the provisions of this Part;
- (d) defraying any expenses incurred by the Government for any purpose in connexion with this Part;
- (e) repaying any money borrowed under this Part, and paying interest on it;
- (f) making any payment for any purpose approved in that behalf by the Trustees; or
- (g) paying compensation for State acquisition of land for public interest or for environmental conservation.

(2) The Trustees may grant relief from repayment of capital of, and payment of interest on advances and write off any debts as they may from time to time determine.

(3) The Trustees may dispose of any surplus assets that have been acquired in the exercise of any of the powers contained in this Part

and shall pay the proceeds of any such disposal into the Fund.

(4) The Trustees may establish within the Fund such reserves as may to them appear from time to time be necessary.

(5) The Trustees may raise or borrow, whether by way of charge, bank overdraft or otherwise, money for or in connexion with the exercise of their functions, powers and duties under this section.

Books of account

141. (1) The Cabinet Secretary shall keep such books of account and other books in relation thereto and to all their undertakings, funds, activities and property as the Settlement Fund Trustees deem necessary and shall within a period of four months after the end of their financial year, or within such longer period as the Trustees may approve, shall prepare, sign and transmit to the auditor—

(a) a balance sheet showing in detail the assets and liabilities of the Fund; and

(b) such other statements of account as the Trustees may require.

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor General.

(3) The officer administering the Fund shall produce and lay before the auditor all books and accounts of the Fund, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor shall be entitled to require such information and explanation as necessary for the performance of the auditors duties as auditor; and the expenses of and incidental to

Books of account

- 141.** (1) The Cabinet Secretary shall keep such books of account and other books in relation thereto and to all their undertakings, funds, activities and property as the Settlement Fund Trustees deem necessary and shall within a period of four months after the end of their financial year, or within such longer period as the Trustees may approve, shall prepare, sign and transmit to the auditor—
- (a) a balance sheet showing in detail the assets and liabilities of the Fund; and
 - (b) such other statements of account as the Trustees may require.
- (2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor General.
- (3) The officer administering the Fund shall produce and lay before the auditor all books and accounts of the Fund, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor shall be entitled to require such information and explanation as necessary for the performance of the auditors duties as auditor; and the expenses of and incidental to the audit shall be paid by the Fund.
- (4) Within seven months after the end of their financial year or within such longer period as The Trustees may approve they shall, lay before the National Assembly a report of the operations of the Trustees during that year, together with the yearly balance sheet and such other statements of accounts as they have required and the auditor's report thereon; and they shall cause them to be published.

- 143.** (1) Any money advanced from the Fund to settlers, together with interest thereon and all charges incidental thereto or to the repayment thereof, shall be secured by a charge as the Settlement Fund Trustees may direct, and if the Trustees so determine shall be secured on the land or on the chattels of the settler by notification of the advance made in the prescribed form and delivered to the Registrar of Titles, and—
- (a) on receipt of such a notification the Registrar of Titles shall without charge register it in the Register of Titles, and upon registration the money advanced shall become charged upon the land, subject to all prior registered charges; and
- (b) on receipt of such a notification the Registrar-General shall without charge register it as if it were an instrument within the meaning of the Chattels Transfer Act, and the notification shall thereupon take effect as if it were such an instrument and the provisions of that Act, as modified by the provisions of this section, shall apply.
- (2) Notwithstanding the provisions of section 10 of the Chattels Transfer Act, registration of a notification under sub-section (1) of this section shall remain in force until cancelled.
- (3) At any time the Trustees in writing may, consent to any particular chattels of a settler that are subject to a notification under this section being released from the security thereof, and thereupon those particular chattels shall be discharged absolutely from the security.
- (4) In this section and in any notification thereunder, "chattels" includes all chattels that the settler acquires or becomes entitled to after the execution of the notification.

Remedies for recovery

144. (1) If an advance has been made and secured upon any land under this Part, the Settlement Fund Trustees, or any person duly authorized by the Trustees in writing in that behalf, may exercise all such remedies for the recovery of the advance.

(2) If any sum of money, whether principal or interest, due in respect of any advance made by the Settlement Fund Trustees is unpaid, such advance not being secured upon any land under this Part, , that sum shall be a civil debt recoverable summarily.

(3) If any sum of money, whether principal or interest, due in respect of any advance made by the Settlement Fund Trustees and not secured upon any land under this Part, is unpaid for more than six months, whether or not action has been taken under subsection (2), the Settlement Fund Trustees, without recourse to any court, may terminate any interest (whether express or implied) in land in respect of which the advance was made and which is vested in or deemed to be vested in the person to whom the advance was made, and thereupon that interest shall vest in the Settlement Fund Trustees, who may thereupon take possession of the land in question..

No limitation of suits

145. Notwithstanding anything to the contrary contained in any law relating to limitation, no suit, application or proceeding by the Settlement Fund Trustees shall be rejected or dismissed on the ground only that the suit, application or proceeding is barred by limitation under any such law.

Exemption from stamp duty

146. (1) No duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by, or on behalf of, or in favour of, the Settlement Fund Trustees in cases where, but for this exemption, the

Exemption from stamp
duty

146. (1) No duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by, or on behalf of, or in favour of, the Settlement Fund Trustees in cases where, but for this exemption, the **Board** or the Trustees would be liable to pay such duty.

(2) No registration or other fee or charge whatsoever shall be payable by the Settlement Fund Trustees in respect of any grant, lease or transfer of property (otherwise than by way of charge or other security for an advance) to the Board or the Trustees, nor in respect of any search or inspection by or on behalf of the Board or the Trustees

Reversion of interest
in certain lands to
the Settlement Fund
trustees

147. Notwithstanding the provisions of any other written law, where a leasehold estate or interest in any land situated in the areas to which section 198 of the Constitution of Kenya established under the provisions of the Kenya Independence Order in Council, 1963, applied, vests in the Settlement Fund Trustees, being an estate or interest the immediate reversion to which is vested in the Government and in respect of which no other person or authority has a superior estate or interest, the reversion shall be extinguished and the leasehold estate or interest vested in or acquired by the Settlement Fund Trustees shall be converted into an estate in fee simple, but without prejudice to any estate, interest or right, by way of mortgage, charge or otherwise subject to which the Settlement Fund Trustees may have acquired the leasehold estate or interest.

Controlled Transactions

Interpretation of this part

- 148.** In this Part, unless the context otherwise requires—
- “agricultural land” means—
- (a) land that is not within—
 - (i) a city, municipality, urban area or a township; or
 - (ii) an area that was, on or at any time after the 1st July, 1952, a township under the Townships Ordinance (now repealed); or
 - (iii) an area that was, on or at any time after the 1st July, 1952, a trading centre under the Trading Centres Ordinance (now repealed); or
 - (iv) a market;

land in the Nairobi Area or in any municipality, township or urban centre that is declared by the Cabinet Secretary, by notice in the Gazette, to be agricultural land for the purposes of this Act, other than land which, by reason of any condition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non-agricultural purpose, but does not include any land that, by reason of any condition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non-agricultural purpose;

“board” means a land control board, a county land control appeals board or the Central Land Control Appeals Board;

“Central Land Control Appeals Board” means the board established by section 156;

“controlled transaction” means one of the transactions specified in section 151 (1) and not excluded by section 151 (3);

“co-operative society” means a society registered as a co-operative society under the Co-operative Societies Act;

“county” means a county established under the Constitution;

“land control area” means an area to which the Cabinet Secretary has applied this Act under section 149;

“land control board” means a board established under section 150;

“private company” means a private company within the meaning of section 30 of the Companies Act;

“county land control appeals board” means a board established under 155;

“share” means a share within the meaning of the Companies Act.

Application of this part

- 149.** (1) The Cabinet Secretary, by notice in the Gazette may, apply this Part to any area, if the Cabinet Secretary considers it expedient to do so.
- (2) The Cabinet Secretary, by notice in the Gazette may, divide a land control area into two or more divisions, if the Cabinet Secretary considers it expedient to do so.

District land boards

- 150.** (1) The Cabinet Secretary, by notice in the Gazette shall, establish a land control board in respect of every district.
- (2) The membership of a land control board shall be as provided in the Schedule prepared by the Cabinet Secretary.

Controlled transactions

- 151.** (1) Each of the following transactions—
- (a) the sale, transfer, lease, charge, exchange, partition or other disposal of or dealing with any agricultural land situated within a land control area;
- (b) the division of any agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 for the time being apply;
- (c) the issue, sale, transfer, charge or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area,

is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction

in accordance with this Act.

(2) A declaration of a trust of agricultural land situated within a land control area is a dealing in that land for the purposes of subsection (1).

(3) This section does not apply to—

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

Recovery of monies over
controlled transactions

152. If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid.

Application for consent in
controlled transactions

153. (1) Within six months after making an agreement for a controlled transaction, any party thereto shall apply in the prescribed form to the appropriate land control board for consent to controlled transaction ::

(2) Notwithstanding that the period of six months contemplated in subsection (1) may have expired, the Court may extend that period if it considers that there is sufficient reason so to do, with or without conditions.

(3) The land control board shall either give or refuse its consent to the controlled transaction and, subject to the right of appeal conferred under section 157, its decision shall be final and conclusive and shall not be questioned in any court.

(3) For the purposes of subsection (1), an application shall be deemed to be made when

it is delivered to the authority prescribed in the manner prescribed.

(4) An application under subsection (1) shall be valid notwithstanding that the agreement for the controlled transaction is reduced to writing, or drawn up in the form of a legal document, only after the application has been made.

Conditions for granting a consent

154. (1) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall—

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

Conditions for granting a consent

- 154.** (1) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall—
- (a) have regard to the effect that the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of standards of good husbandry within the land control area;
 - (b) act on the principle that consent ought generally to be refused if—
 - (i) the person to whom the land is to be disposed of—
 - (a) is unlikely to farm the land well or to develop it adequately; or
 - (b) is unlikely to be able to use the land profitably for the intended purpose owing to its nature; or
 - (c) already has a reasonably sufficient agricultural land; or
 - (ii) the person to whom the share is to be disposed of—
 - (a) already has reasonably sufficient shares in a private company or co- operative society owning agricultural land; or
 - (b) would, by acquiring the share, be likely to bring about the transfer of the control of the company or society from one person to another and the transfer would be likely to lower the standards of good husbandry on the land; or
 - (iii) the terms and conditions of the transaction (including the price to be paid) are markedly unfair or disadvantageous to one of the parties to the transaction; or
 - (iv) in the case of the division of land into two or more parcels, the division would be likely to reduce the productivity of the land.

Appeals

- 157.** (1) If a land control board refuses to grant consent in respect of a controlled transaction, the applicant may, appeal to the county land control appeals board for the county in which the land in question is situated within thirty days after the copy of the board's decision being delivered or posted under section 159 (6).
- (2) A county land control appeals board, in its absolute discretion shall, hear and determine all appeals made to it under subsection (1), and, subject to the right of appeal conferred by section 157, the decision of a county land control appeals board shall be final and conclusive and shall not be questioned in any court.
- (3) An appeal under this Act shall be in writing and shall state separately each of the grounds of the appeal.

Appeals to the Central land control appeals Board

- 158.** (1) Any person whose appeal has been dismissed by a county land control appeals board may, within thirty days after the copy of the board's decision being delivered or posted under section 159 (6), appeal to the Central Land Control Appeals Board.
- (2) The Central Land Control Appeals Board shall, in its absolute discretion, hear and determine all appeals made to it under subsection (1), and its decision shall **be final and conclusive and shall not be questioned** in any court

Conduct of business of the boards

- 159.** (1) If the chairperson of a board is absent from a meeting of the board, the members present at the meeting shall elect one of their number to preside at that meeting.
- (2) The quorum of a meeting of a land control board or a county land control appeals board shall be—
- (a) one-half of the members, if the total number of members of the board is an even number, or
- (b) one-half of the even number that is greater than the uneven number by one, if the total number is an uneven number.
- (3) The quorum of a meeting of the Central Land Control Appeals Board shall be three.

- (4) If there is an equality of votes on any matter before a board, the chairperson of the board or other member presiding shall have a casting vote as well as an original vote.
- (5) Every decision of a board shall be given in writing in the prescribed manner and shall be signed by or on behalf of the chairperson or other person presiding, and if consent is refused or an appeal is dismissed the reasons for the refusal or dismissal shall be stated in the decision.
- (6) A copy of the decision shall in every case be delivered or sent by post to the applicant and, in the case of an appeal, to the board whose decision is appealed against.

Requirements by the board

160. (1) If an application for consent or an appeal is before a board, the board may—

- (a) require the applicant or appellant or any person interested in or affected by the application to attend before it;
- (b) require the applicant or appellant to adduce evidence to its satisfaction as to the applicant's identity and as to the ownership of the land to which the application relates;
- (c) require any person to produce any document or other evidence relating to the land,

shall allow such reasonable time as it may think fit for a person to appear before it or produce a document or other evidence.

(2) A board may depute one or more of its members or appoint a representative to visit and report on any land to which the application or appeal relates.

(3) Any person who, without reasonable excuse, refuses or neglects to attend before a board or to produce, within the time allowed, any document or evidence, having been required to do so under subsection (1), shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.

Right of entry into land

161. Any member of a board, and any person authorized in writing by a board, may enter upon and inspect any land for the purpose of carrying out the functions of the board under this Act, at any reasonable time after giving at least fortyeight hours' notice, and after producing evidence of authority to any person reasonably requiring it..

Offences

162. (1) Any person who knowingly makes any false statement in an application or appeal under this Act, or who knowingly gives any false information to any person in connexion with the determination of an application or appeal under this Act, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) If a controlled transaction, or an agreement to be a party to a controlled transaction, is voided by section 151, and any person—

(a) pays or receives any money; or

(b) enters into or remains in possession of any land,

in such circumstances that give rise to a reasonable presumption that the person paid or received the money or enters into or remains in possession in furtherance of the avoided transaction or agreement or of the intentions of the parties to the avoided transaction or agreement, that person shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Powers of Cabinet Secretary
over controlled transactions

163. (1) The Cabinet Secretary/National Land Commission, by notice in the Gazette may, prohibit any controlled transaction or any class of controlled transaction.

(2) The Cabinet Secretary may, by notice in the Gazette, exempt—

(a) any land or share, or any class of land or share;

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

from all or any of the provisions of this Part, or from any prohibition made under section 163, on any conditions.

- (3) The Cabinet Secretary may make regulations for prescribing anything that may be prescribed under this Act, and generally for carrying into effect the purposes and provisions of this Act.
- (4) Without prejudice to the generality of subsection (3), regulations may prescribe—
 - (a) the forms to be used and the fees to be paid for things to be done under this Part;
 - (b) the procedure for the making of applications and appeals under this Part, and the particulars and material to be furnished;
 - (c) the convening of and procedure at meetings of boards;
 - (d) the allowances to be paid to members or representatives of boards (other than public officers).

PART VII—EASEMENTS AND ANALOGOUS RIGHTS

General

Terminology.

- 164.** (1) In this Part unless the context otherwise requires—
- (a) the land for the benefit of which any easement is created is referred to as the "dominant land" and the land of the person by whom an easement is created is referred to as "the servient land";
 - (b) an easement is, in relation to the dominant land referred to as "benefiting" that land and is, in relation to the servient land, referred to as "burdening that land";
- (2) Subject to the provisions of this Part, an easement shall be capable of existing only during the subsistence of the land or lease out of which they were created.

Application of this part.

- 165.** (1) This Part shall apply to all easements made or coming into force on or after the commencement of this Act.
- (2) Subsection (1) shall not, unless stated specifically otherwise, apply to easements, profits, restrictive agreements and all other like restrictions on the use of land having effect in customary law only.
- (3) In this Part, reference to "analogous rights" means an access order made under section 167.

Nature of easement.

- 166.** (1) Subject to any other written law applicable to the use of land, the rights capable of being created by an easement are—
- (a) any rights to do something over, under or upon the servient land; or
 - (b) any right that something should not be so done;
 - (c) any right to require the owner of servient land to do something over, under or upon that land;

- (d) any right to graze stock on the servient land.
- (2) The rights capable of being created by an easement do not include—
 - (a) any right to take and carry away anything from the servient land;
 - (b) any right to the exclusive possession of any land
- (3) Unless an easement has been created for specific period of time which will terminate at a fixed date in the future or on the happening of a specific event in the future or on the death of the grantor, the grantee or some other person named in the grant, an easement burdens the servient land and runs with the land for the same period of time as the land or lease held by the grantor who created that easement.
- (4) Subject to the provisions of this part an easement shall be capable of existing only during the subsistence of the land or lease out of which it was created.

Rights of Way

- 167.** (1) An owner of any land (the dominant land) may apply to a court on the prescribed form for an order, referred to as an "entry order" authorising entry on or over any neighboring land (the servient land) for the purpose of erecting, repairing, adding to, painting or demolishing the whole or any part of any structure on the dominant land or doing any other necessary or desirable thing on that land.
- (1) The applicant shall give not less than fourteen days notice in writing to—
 - (a) the owner of the servient land; and
 - (b) the local authority having jurisdiction in the area where the dominant and servient land are located, of the intention to apply for an entry order under this section.
 - (2) On an application under subsection (1), the court after hearing the applicant and the persons to whom notice was given under subsection (2), may make an entry order authorising the applicant to do all or any of the following—
 - (a) to enter on or over the servient land, either personally or through the applicant's employees, agents or contractors, for any purpose specified in the entry order;

- (b) to use for that purpose on or over the servient land and vehicles and other means of transport and any plant machinery, cranes or other equipment as are specified in the entry order;
 - (c) to store on the servient land such materials require for the purposes of the work and in any quantities that are specified in the entry order.
- (3) In determining whether to make an entry order under subsection (3), the court shall have regard to—
- (a) the nature and conduct of the negotiations if any, between the owners of the dominant and servient land with respect to any attempt by the owner of the dominant land to obtain an easement for the purpose for which the entry order is applied for from the owner of the servient land;
 - (b) the urgency, importance and desirability of the work for which the entry order is being applied for;
 - (c) the scope of the work and the length of the time for which the entry order is being applied for;
 - (d) whether the applicant has applied for or obtained all permissions, license and consents required from all relevant public authorities to execute the works;
 - (e) any other matters that shall appear to the court to be relevant.
- (4) An order made under subsection (3) may be made on any condition including—
- (a) the period of time during which the entry on or over the servient land is authorized;
 - (b) the hours of the day during which the work may be done;
 - (c) the preservation of the safety of persons or property on the servient land;
 - (d) the preservation, so far as is consistent with the work to be executed, of the natural features and condition of the servient land;
 - (e) the restoration of the servient land to its former state at the conclusion of the work;

- (f) the maintenance of adequate access to the servient land;
- (g) the provision of security or indemnity to secure—
 - (i) the performance of any conditions of the entry order; or
 - (ii) the making good of any damage caused by entry on or over the servient land, or work on or over the land; or
 - (iii) the reimbursement of the owner of the servient land for any costs, expenses or loss arising from the entry;
- (h) any other relevant matter.

(5) If, as a result of fire, civil commotion or natural disaster, a structure on the dominant land has become a threat to public safety or public health, so that there is an urgent need to effect repairs to or demolish that structure and such action may only be executed by entry on or over the servient land, the owner of the dominant land may enter the servient land and effect the repairs or demolition, after giving at least twenty-four hours notice in writing to the owner of the servient land, but the entry and execution of works shall not prevent the owner of the servient land from applying to court for an order requiring the owner of the dominant land to make good any damage caused by the entry and works and to reimburse the owner of the servient land for any costs, expenses or loss arising from the entry and works.

(6) In this section—

- (a) an owner of land shall be taken to include an owner under a land, a lessor and lessee; and
- (b) neighboring land means any land in respect of which an order is sought under this section, whether or not it adjoins the land occupied by the applicant for an entry order.

Access order.

168. (1) An owner of landlocked land may apply in the prescribed form to a court for an order, referred to as an "access order" granting reasonable access to that land.

- (2) A copy of the application shall be served on—
 - (a) the owners of each piece of land adjoining the landlocked land;
 - (b) any person claiming an interest in any such piece of land of whom the applicant has actual notice;
 - (c) the local authority having jurisdiction in the area where the landlocked land is located;
 - (d) any other person occupying or having an interest in land which in the opinion of the court may be affected by the granting of the application.
- (3) The court, after hearing the applicant and any person served with an application under subsection (2) may make an access order in respect of any other piece of land, the owner of which was served with a copy of the application under subsection (2), for the benefit of the landlocked land.
- (4) In considering whether to grant an access order, the court shall have regard to—
 - (a) the nature and quality of the access, if any, to the landlocked land when the applicant first occupied the land;
 - (b) the circumstances in which the land became landlocked;
 - (c) the nature and conduct of the negotiations, if any, between the owners of the landlocked land and any adjoining or other land with respect to any attempt by the owner of the landlocked land to obtain an easement from one or more owners of the adjoining or other land;
 - (d) the hardship that may be caused to the applicant by the refusal of the access order, in comparison to the hardship that may be caused to any other person the making of the order;
 - (e) the purposes for which access is or may be required; and
 - (f) any other matter that appears to the court to be relevant.
- (5) An access order may be made subject to any conditions including—

- (a) the period for which the access order is to be made;
- (b) the payment of reasonable compensation by the applicant to any other person;
- (c) the allocation of the costs of any work necessary to give effect to the order between the applicant and any other person;
- (d) the fencing of any land and the upkeep and maintenance of any such fence;
- (e) the upkeep and maintenance of any land over which the access order has been granted;
- (f) the execution of any instrument or the completion of any prescribed form or the doing of any other thing necessary to give effect to the order;
- (g) any conditions set out in section 167 (4) which in the opinion of the court are applicable to an access order; and
- (h) any other relevant matter.

(6) An access order made under this section shall be deemed to have all the characteristics and incidents of an easement and the land over which it has been granted shall be deemed to be the servient land and landlocked land shall be deemed to be the dominant land in respect of that easement.

Enjoyment of easement and analogous rights.

- 169.** (1) The benefit of an easement, and an analogous right granted under this part shall, during the term of its existence, be enjoyed by the owner of the dominant land and that owner's successors in title and by—
- (a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right permit, and part of it, and
 - (b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right permit, any part of it.
- (2) Any person referred to in paragraphs (a) and (b) of subsection (1) who is by this section entitled to the benefit of an easement or analogous right may take in the person's own name any proceedings necessary to enforce that easement or those

analogous rights.

Cancellation and
extinguishment of easements
and analogous rights.

- 170.** (1) Subject to subsection (3), any easement granted under this part or any analogous right created under this part may be cancelled by the person occupying the dominant land.
- (2) Any cancellation referred to in subsection (1) shall be effected by the prescribed form and the easement, or analogous right shall be extinguished on the date that form is recorded in the register.
- (3) On the application of any person occupying servient land, the Registrar may cancel any easement or an analogous right if the Registrar is satisfied that—
- (a) the period of time for which the easement or analogous right was intended to subsist had expired; or
- (b) the event upon which the easement or analogous right was intended to terminate has occurred.
- (4) The consent of any lessee or lender for the time being entitled to the benefit of any easement or analogous right shall be necessary for any cancellation of any such easements or rights and such consent shall be signified in the prescribed form.

Public Rights of Way

Power of the Commission to
create public rights of way.

- 171.** (1) Subject to and in accordance with sections 171 and 172, the Commission may, create a right of way which shall be known as public right of way.
- (2) A public right of way may be—
- (a) a right of way created for the benefit of the national or county government, a local authority, a public authority or any corporate body to enable all such institutions, organisations, authorities and bodies to carry out their functions, referred to in this Act as a way leave; or

(b) a right of way created for the benefit of the public, referred to in section 172 of this Act as a communal right of way.

- (3) A public right of way shall attach to and run with the servient land in respect of which it has been created and shall be binding on all owners from time to time of the servient land, any manner they are occupying the land, whether under a land or a derivative right thereof, or under customary law or as a successor in title to any such owner or as a trespasser.
- (4) A wayleave shall authorize persons in the employment to or who are acting as agents of or contractors for any of the organizations, authorities and bodies to enter on the servient land for the purpose of executing works, building and maintain installations and structures and insetting all such works, installations and structures on the servient land and to pass and re-pass along that way leave in connection with purposes of those organisations, authorities or bodies.
- (5) A communal right of way created for the benefit of the public shall entitle the public to pass and re-pass along that right of way and in areas designated for that purpose, to undertake recreational activities or other prescribed activity of the kind permitted in that designated area.

Application for wayleave.

- 172.**
- (1) Unless the Commission is proposing of its own motion to create a wayleave, an application from any State department, or the county government, or public authority or corporate body shall be made to the Commission.
 - (2) An application shall be made on the prescribed form and shall be accompanied by any prescribed information or other information that the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a wayleave until all prescribed or required information has been submitted to it.
 - (3) In order to enable a proposed wayleave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as if it were applying to create a wayleave

Application for wayleave.

- 172.** (1) Unless the Commission is proposing of its own motion to create a wayleave, an application from any State department, or the county government, or public authority or corporate body shall be made to the Commission.
- (2) An application shall be made on the prescribed form and shall be accompanied by any prescribed information or other information that the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a wayleave until all prescribed or required information has been submitted to it.
- (3) In order to enable a proposed wayleave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as if it were applying to create a wayleave and references to "the applicant" in this Sub-part in relation to an application to create a wayleave shall be taken to apply as well to the Commission.
- (4) The applicant shall serve a notice on—
- (a) all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights;
 - (b) The county government in whose area of jurisdiction land over which the proposed way leave is to be created is located;
 - (c) all persons in actual occupation of land in an urban and per-urban area over which the proposed way leave is to be created;
 - (d) any other interested person.
- (5) The Commission shall give publicity to the application along the route of the proposed wayleave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed wayleave is likely to be created.

Application for communal right of way.

- 173.** (1) A county government, an association, or any group of persons with an interest in the environment or land may apply to the Commission for the

Determination on creation of public right of way.

- 174.** (1) The Commission shall—
- (a) on receipt of all information prescribed or required under sections 171 and 172; and
 - (b) after at least ninety days from the date of the serving of notices under section 171 (3) or 172 (2), consider all the information so received and all representations and objections made by any person served with a notice under the aforesaid subsections and recommend to the Cabinet Secretary whether to—
 - (i) appoint a public inquiry to give further consideration to the representations and objections; or
 - (ii) refer the application to the County Government for its opinion on whether to approve the application; or
 - (iii) initiate and facilitate negotiations between those persons who have made representations on the application and the applicant with a view to reaching a consensus on that application.
- (2) If the Commission has proposed the creation of a public right of way of its own motion and representations have been made on that proposal which are concerned with the matters other than the compensation payable for the use of the land for that public right of way, the Commission shall recommend to the Cabinet Secretary only that the Cabinet Secretary exercise powers under subparagraphs (i) or (ii) of subsection (1).
- (3) The Cabinet Secretary shall determine whether to create or refuse to create a public right of way, after taking account, as the case may be, of—
- (a) the recommendations of the Commission; or
 - (b) the advice of the County government ;
 - (c) the outcome of any negotiations initiated under subparagraph (iii) of subsection (1),

-
- (4) The Cabinet Secretary by order may, create a public right of way under this section subject to any amendments, limitations and conditions, including conditions as to the costs of constructing and maintain a public right of way.
- (5) If an agreement has been reached between the parties to any negotiations initiated under subsection (1) (b) (iii) and if the Cabinet Secretary is minded to create a public right of way but not to accept any amendment, limitation or condition of that agreement, the Cabinet Secretary shall refer the matter back to the parties for their reconsideration and take no decision on the creation of that right of way until at least than thirty days have elapsed from the date of the referral of the matter back to the parties or the parties have resubmitted their agreement, with or without amendments, to the Cabinet Secretary whichever is the shorter period.
- (6) The order of the Cabinet Secretary to create a public right of way shall—
- (a) delineate the route of that public right of way;
 - (b) be published in the Gazette;
 - (c) be notified to a county government having jurisdiction along the route of the public right of way;
 - (d) be publicized in any manner which is calculated to bring it to the attention of people occupying and using land along the route of the public right of way; and
 - (e) come into force thirty days after it has been published in the Gazette.
- (7) Any person who makes any representation or objection to an application to create a public right of way, within six weeks after the order has been made, may appeal to the Court on a point of law against an order made by the Cabinet Secretary under this section, but apart from such an appeal, an order of the Cabinet Secretary shall not be questioned by way of judicial review or otherwise in any court.

Power of registrar with respect to public right of way.

- 175.** (1) If the Cabinet Secretary has made an order to create a public right of way the Commission shall cause all the necessary documents, plans, demarcations and surveys of the route of that public right of way to be delivered to the Registrar to enable the registrar to exercise the powers under this section.
- (2) On receipt of the information referred to in subsection (1), the Registrar after the expiry of the time allowed in section 174 (6) (e) to appeal against the order of the Cabinet Secretary shall, take any necessary, desirable or prescribed action which the Registrar may consider necessary and desirable or which may be prescribed—
- (a) to cause to be recorded, using such forms as may be prescribed, the route of the public right of way on any certificate of occupancy or other document of title held in any office of the land registry having reference to land over which the public right of way has been created; and
- (b) to cause to be delivered to the Registrar all certificates of occupancy having reference to land over which the public right of way has been created held by—
- (i) persons occupying such land under such right of occupying; or
- (ii) by any lender of money secured by a charge or lien who is holding that certificate of occupancy as part of the security for that loan, so as to amend that certificate of occupancy by recording the route of the public right of way on that certificate of occupancy.

Compensation in respect of public right of way.

- 176.** (1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a way leave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall be determined by a qualified valuer.
- (2) Reference to damage caused as a result of the creation of a way leave shall

include any preliminary work undertaken in connection with surveying or determining the route of that way leave, whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Cabinet Secretary.

- (3) The duty to pay compensation payable under this section shall lie with the State Department, county government, public authority or corporate body that applied for the public right of way and that duty shall be complied with promptly.
- (4) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken by the body under a duty to pay that compensation to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation through the dilatory or other unsatisfactory procedures of that public authority.

Powers of Court

Power of courts to enforce public rights of way.

- 177.** In determining any question or dispute concerning the existence or effect of a public right of way, a court may make an order on any condition, which it thinks fit on all or any of the following matters—
- (a) the existence of a public right of way;
 - (b) the enforceability a public right of way by or against any person;
 - (c) the extent of the use of the easement, analogous right or public right of way and whether that use exceeds what is reasonable or is permitted under the terms of the grant of the easement or the terms of the order creating the analogous right or public right of way;

- (d) the question whether any work is required to be done under the terms of an easement, analogous right or public right of way; and, if so, the nature and extent of the work required to be undertaken;
- (e) the reasonable and proper cost of any such work as is required to be undertaken;
- (f) the person or persons by whom the costs of any such work is to be borne and if the cost is to be shared between two or more persons, the shares to be borne by each such person;
- (g) the date by which and the manner in which any such work is to be undertaken;
- (h) the entry on to any land, whether or not it is land over which an easement, analogous right or public right of way has been created, for the purpose of doing the work and the use over or on that land of any vehicles, plant, machinery and installations for the purpose of carrying out that work;
- (i) any other matter arising in relation to question or dispute about an easement, analogous right or public right of way.

Power of courts to modify or extinguish easements or analogous rights.

- 178.** (1) This section applies to every easement, analogous right, restrictive covenant or agreement whenever and in any manner created including easements, profits, restrictive agreements and other similar rights created under customary law.
- (2) The Court by order, on the application of—
- (a) the Commission; or
- any person having an interest in land benefited or burdened by one or more of the rights or restrictions referred to in subsection (1), may make an order modifying or extinguishing in whole or in part the right or restriction in respect of which the application has been made on any of the grounds set out in subsection (3).
- (3) The grounds on which the court may make any order referred to in

subsection (2) are that—

- (a) by reason of any change since the creation of the right or restriction referred to in subsection (1) in—
 - (i) the nature or the extent of the use being made of the benefited to burdened land; or
 - (ii) the character of the neighborhood or of the benefited or burdened land; or
 - (iii) any other circumstance that the Court considers relevant, the aforesaid right or restriction ought to be modified or wholly or partly extinguished; or
- (b) the continuation of the right or restriction in its existing form impedes or would impede the reasonable use of the land for public or private purposes and does not secure to those persons entitled to the benefit of that right or restriction and practical benefits of substantial value or advantage to them; or
- (c) the development and use of land in accordance with—
 - (i) any development conditions contained in the certificate of title; or
 - (ii) any proposals for or restriction on development contained in any general planning scheme, detailed scheme, or general development order made or approved under and in accordance with the provisions of any development plan ; or
 - (iii) any land use plan made by the community under the law for the time being regulating community land;
 - (iv) the general pattern of the development and use of land in the area of the benefited and burdened land, makes it necessary and desirable that the aforesaid right or restriction be modified or wholly or partly extinguished; or

- (d) every person entitled to the benefit of the right or restriction—
 - (i) has agreed that the right or restriction should be modified or wholly or partly extinguished; or
 - (ii) may reasonably be considered by the person's acts or omissions to have abandoned or waived the right the aforesaid right or restriction; or
 - (e) the proposed modification or extinguishments in whole or in part will not substantially disadvantage any person entitled to the benefit of the right or restriction; or
 - (f) in so far as any person is disadvantaged by a proposed modification or extinguishment in whole or in part, the payment of compensation will be an adequate substitute for the modification or loss in whole or in part of that right or restriction.
- (4) An application under this section shall be served on—
- (a) the county government having jurisdiction in the area where the land the subject of the application is situate; and
 - (b) any other persons whom the Court may direct.
- (5) The Court may award any compensation to any persons referred to in paragraph (f) of subsection (3) as it considers just and reasonable and that compensation shall be payable by the person applying to the court for the modification or extinguishment in whole or in part of that right or restriction.
- (6) The Court may exercise any of the powers conferred upon a court by section 157 in order to arrive at a decision under and in accordance with this section.
- (7) If any proceedings are commenced in court under 129 to enforce an easement or analogous right or public right of way, the party against whom the proceedings have been taken may in those proceedings apply to the court for an order giving leave to apply to the court under this section and staying

those proceedings in the meantime, and the court may grant that application.

- (8) An order made under this section shall be binding on all persons entitled or thereafter becoming entitled to benefit from the right or restriction thereby modified or extinguished in whole or in part, whether those persons were parties to the proceedings or not or were served with a notice of the proceedings or not.
- (9) The Court shall cause to be delivered to the Registrar a copy of the order made under this section and in relation to that order the Registrar shall have all the powers conferred on by this Act in relation to an order creating a public right of way, modified in any way that the Registrar shall consider necessary to to record the modification or as the case may be the extinguishment in whole or in part of any right or restriction recorded on the certificate of occupancy or other document of title held by the land registry or by any person holding the land the subject of the application under a land.

PART VIII—MISCELLANEOUS

Jurisdiction of Environment and Land Court.

- 179.** The Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land under this Act.

Limitation of rights and fundamental freedoms.

- 180.** (1) The rights and fundamental freedoms specified under Articles 40, 47, 48 and 65 shall be limited for the following purposes and only to the extent specifically provided under this Act.
- (2) A right and fundamental freedom may be limited only for the purpose of ensuring that—
- (a) land required for public purposes is compulsorily acquired;
 - (b) certain administrative actions are taken expeditiously in public interest;
 - (c) litigation on land matters is finalized in reasonable time; and

(d) a person who is not a citizen of Kenya does not hold land otherwise than by a leasehold tenure, and in any case for a period not exceeding ninety nine years.

(3) A limitation of right and fundamental freedom shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

Substituted service.

- 181.** (1) If the Commission is satisfied that a notice effected and cannot be served personally or by post, either because the person to be served is evading service or for some other reason the Commission may order service to be effected by—
- (a) affixing a copy of the notice in a conspicuous place—
 - (i) on or as near as may be to the land where possible; and
 - (ii) if the land is community land, at the offices of the Community Land Committee or other public place within the village, or
 - (iii) if the land is public land, at the offices of the county government having jurisdiction in the area where the land is located or other public place in the area where the land is located; and
 - (b) publishing a copy in the Gazette and if it thinks fit, one or more newspapers circulating in Kenya.
- (2) A notice displayed or published under this section may be in English or Kiswahili or both.

Rights of entry.

- 182.** (1) Any person authorised in that behalf by the Commission shall have power, on the giving of not less than 48 hours notice, to enter and inspect at all reasonable times between the hours of 6.00 a.m. and 6.00 p.m. any public land, other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.

- (2) The notice required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the time at which the authorised person will enter the land.
- (3) Every person authorised to enter or inspect land under this section shall be furnished with a written authorization signed by the Commission and if so required by any person having an interest in or occupying the land to be entered and inspected, shall produce the same to that person.
- (4) If any person authorised under this section causes any damage to land or anything on the land during an entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been damage.

Land Compensation Fund.

183.

- (1) There shall be established a Land Compensation Fund, to be known as the Fund.
- (2) The Fund shall be managed by the Trustees whose composition shall be as is prescribed by regulations made under this Act.
- (3) The Trustees shall be a body corporate capable of suing and being sued, of making contracts and of acquiring, holding and disposing of property.
- (4) The objects and purposes of the fund is to provide compensation to any person who, as a result of the implementation of any of the provisions of this Act by the Government or any public or local authority, suffers any loss or deprivation or diminution of any rights or interests in land or any injurious affection in respect of any ownership of land.
- (5) The Cabinet Secretary by regulations may, prescribe other powers and functions of the Trust.

Fees.

184.

- (1) The Cabinet Secretary shall prescribe the rates of fees for all matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

- (2) Fees prescribed under this section shall be at a rate per centum rate of the value of the land the subject of the application or other matter in respect of which fees are required to be paid.
- (3) The Registrar shall refuse to make any entry on the register or register any document in respect of any grant of a land or any disposition of or arising in connection with a land in respect of which a fee has not been paid in whole or in part, unless the Registrar is satisfied on the basis of written evidence that the fee has been waived in whole or in part or that it has been agreed between the payer and payee that the fee may be paid in installments and there are no arrears in those installments.
- (4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute civil debt recoverable summarily.

Unlawful occupation of land.

185.

- (1) Any person who, without lawful authority or without any right or license, express or implied under customary or statutory land law so to do—
 - (a) occupies, or erects any building on any public land;
 - (b) clears, digs, ploughs, cultivates, or grazes animals over, any public land or part of it;
 - (c) cuts or removes any timber or other produce on or from any public land or part of it, shall be taken to be in unlawful occupation of that land.
- (2) If, with respect to public land the Commission is of the opinion that a person is in unlawful occupation of public land, the Commission may serve on that person a notice in the prescribed form or give to that person an oral communication, in a language calculated to be understood by that person requiring that person to show cause as to why the person should not be required to vacate that land within any time and subject to any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters which the justice of the case may require, which may be

specified in the notice or oral communication.

- (3) Any notice referred to in subsection (2) shall inform the person to whom it is addressed that if has a right to be heard in connection with showing cause as to why the person should not vacate the land to which the notice relates.
- (4) In determining whether to serve a notice or oral communication and the period of time to be specified in the notice by the end of which the person is required to vacate the land, the Commission shall take account of—
 - (a) whether the person has reasonable belief that the person is in lawful occupation of land;
 - (b) the use which the person is making of the land, including any crops being grown by that person and when they may reasonably be expected to be ready to be harvested;
 - (c) the length of time that person has been on that land and the person's age and general circumstances;
 - (d) whether that person is living with any dependants;
 - (e) whether that person or any dependants of that person are in employment near to that land;
 - (f) whether the occupation of the land took place peaceably or by force and whether the occupation is, as a consequence, depriving and person of the lawful occupation and use of that land which that person could take up immediately the land was vacated;
 - (g) whether the occupation of the land is preventing some necessary or desirable development or public works;
 - (h) the nature and environment if the land and where the land is land reserved for the primary use of wildlife, whether the occupation of the land is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use;
 - (i) whether in all the circumstance, it would be reasonable to pay any sum of

money to the person on account of being required to vacate the land;

(j) any other factors, which seem relevant include any matters that the person occupying the land brings to the attention of the Commission.

(5) A person served with a notice or oral communication under this section shall, within not more than sixty days, show cause to the Commission as to why the person should not vacate the land to which the notice relates.

(6) If a person does not show cause within sixty days as to why the land should not be vacated, and has no reasonable excuse for not so complying, the person shall be deemed to have accepted the notice and shall be under duty to comply with that notice.

(7) Where If after considering any representations made by the person attempting to show cause the Commission determines that the person has failed to show cause, , the Commission shall inform that person by notice or oral communication to vacate the land within the time specified in the notice served under subsection (2).

(8) A person who responded to the notice to show cause but who failed so to do in terms of subsection (5) may apply to the court for relief against the operation of that notice or oral communication, within thirty days of being notified of the failure has failed to show cause.

(9) An application for relief is not to be taken as an admission by the person applying for relief that—

(a) the person is in unlawful occupation of the land;

(b) by reason of that unlawful occupation, the Commission has the right to require the person to vacate the land in respect of which the application for relief has been made;

(c) all notices and oral communications which were required to be served by the Commission were properly served;

the period by which the land must be vacated specified in the notice or oral communication was reasonable or had expired.

(10) The court, taking into account all those matters set out in subsection (4), may grant relief to the person applying for the same on any terms and conditions that appear to the court to be just and reasonable and, without prejudice to the generality of this provision, the court may—

- (a) cancel the notice or oral communication and declare that the person is entitled to remain on the land;
- (b) postpone the operation of the notice or oral communication and grant the person a license to remain on the land until the notice or oral communication shall come into operation;
- (c) vary the operation of the notice or oral communication by granting the person an easement of grazing of any terms and conditions which the court shall think fit, if the person is a pastoralist;
- (d) vary any of the terms of the notice or oral communication or the period within which the person is required to vacate the land;
- (e) vary the amount of any payment to be paid, or where no payment has been offered, order that payment as the court shall think just be made to the person on vacating of the land.

(11) If the court has confirmed the notice or oral communication, with or without any variations, alterations or additions in the exercise of its powers under subsection (10), the notice or oral communication, the person on whom has been served shall be under a duty to comply with that notice or oral communication as confirmed by the court.

Obstruction of public rights of way.

186.

(1) If the Commission is satisfied that there has been any wrongful obstruction of or encroachment on any public right of way, it may make an order requiring the person responsible for that obstruction or encroachment to remove that obstruction or encroachment within the time specified in the

order, which shall be not less than fourteen days, and if that order is not complied with within the time specified, the Commission may take any steps which may be necessary for the purpose.

- (2) Any notice made by the Commission under subsection (1) shall be served on or otherwise communicated to the person alleged by the notice to be responsible for the obstruction or encroachment in such a manner as that person will understand that notice and what is required to be done under the notice.
- (3) A person served with a notice under subsection (1), may request the Commission to reconsider the notice within the time specified in the notice and on giving reasons,.
- (4) A person who does not take action under subsection (3) shall be taken to have accepted the notice and shall be under a duty to comply with it.
- (5) If the Commission has reconsidered the notice in response to a request made in accordance with subsection (3), and determines to confirm the notice, it shall inform the person who made the request for a reconsideration that it has confirmed the notice.
- (6) A person whose request for a reconsideration of the notice has resulted in the notice being confirmed may appeal to a court against that confirmed notice, but if the person does not so appeal within the time specified in the notice for compliance with the notice, the person shall be deemed to have accepted the notice and shall be under a duty to comply with it.
- (7) A court hearing an appeal under this section may—
 - (a) confirm the notice and order the person to desist from obstructing or encroaching on the public right of way; or
 - (b) suspend the operation of the notice for any period which the court shall determine; or
 - (c) quash the notice,

and may make any ancillary orders which the circumstances of the case may require.

Offences.

187. (1) Any person who—

(a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act, or

(b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;

(c) fraudulently procures—

(i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land; or

(ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in subparagraph (i);

(iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments or entries or endorsements;

(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Commission, the Registrar, or any authorized officer exercising powers under this Act or assists or joins in so doing, any material document, fact or matter,

commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both the fine and imprisonment

(2) Any person who unlawfully occupies public land commits an offence and

upon conviction is liable to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding ten thousand shillings for every day during which the offence shall have continued.

(3) Any person who wrongfully obstructs or encroaches on to a public right of way and who does not within the time specified in any notice served on the person under section 111 or where the person has appealed against the notice, within the time specified in the notice after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, on conviction to a fine not exceeding one million shillings and in the case of a continuing offence to an additional fine not exceeding one hundred thousand shilling for every day during which the offence continues.

(4) Any person who willfully—

- (a) delays; or
- (b) obstructs; or
- (c) hinders; or
- (d) intimidates; or
- (e) assaults,

any person authorized under this Act and inspect any land in the lawful exercise of the power in that behalf commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(5) Any person who, being an authorized officer under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, willfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land

or crops planted or buildings erected on the land commits an offence and upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(6) If a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which the person would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on such person, make any such order in relation to that interest in land so obtained, retained or regained by such person as appears to the court necessary to ensure that such person does not profit by the offence of which the person has been convicted and without prejudice to the generality of this provision, any such order may—

(a) direct the Commission to commence proceedings to—

(i) revoke the allocation ; or

(ii) terminate a lease;

(b) direct the Registrar to cancel any entry in any register which has been obtained by virtue or on account of the offence;

(c) require that person to make restitution to any person who has suffered loss by virtue or on account of the offence, including taking all necessary action to transfer to any such person any interest in land obtained, retained or regained by such offence from that person, and any such order may be made subject to any conditions which the court.

(7) The Registrar shall not be personally liable in respect of any act done while exercising any powers under this Act and within the scope of official capacity, if the Registrar did that act in the honest belief that the Registrar was entitled to do it.

authenticate or give any legal effect to any grant of public land, or any issue of a certificate of ownership of land, or any disposition, or any contract for any of the earlier mentioned transactions which was obtained or induced by corruption, on the part of any government official, county government official or employee of the Commission whether that government official, county government official or employee of the Commission was directly involved in that transaction or not, and, notwithstanding any rule of law in Kenya to the contrary such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having no legal effect.

- (2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either—
 - (a) any part to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and all final appeals arising from that conviction have been concluded; or
 - (b) any employee of the Commission or other public official is interdicted, or is retired in the public interest, from the post on the grounds that the person has been engaged in corrupt actions and that these actions involved that transaction; or
 - (c) a court of competent jurisdiction so determines.
- (3) Any person occupying land obtained as a consequence of participating in any of the transactions covered by subsections (1) and (2) shall be liable to forfeit that land to the government without any entitlement to any compensation that land to the government without any entitlement to any compensation.
- (4) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied

to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

Land sizes.

- 189.** (1) Within one year of the coming into force of this Act, the Cabinet Secretary shall commission a scientific study to determine the economic viability of minimum and maximum acreages in respect of private land for various land zones in the country.
- (2) The findings of the study shall be available for the public to make observations and should be modified based on valid representations in accordance with principles of participation of the people, good governance, transparency and accountability.
- (3) Within three months after the publication of the final report of the scientific study commissioned under subsection (1) the Cabinet Secretary shall table the report to Parliament for debate and adoption.
- (4) The Cabinet Secretary shall prescribe the rules and regulations on the minimum and maximum acreages in respect of private land solely based on the recommendations in the report.
- (5) The Registrar shall not accept for registration any instrument of dispositions that confers interest in land that has the effect of breaching the prescribed guidelines on minimum and maximum acreages in respect of private land.

General power to make Regulations.

- 190.** (1) The Commission or the Cabinet Secretary, where applicable, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and removing any difficulties occasioned by the coming into operation of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—
- (a) the forms to be used in connection with this Act;
- (b) the management of the Land Compensation Fund;

- (c) the use and management of public rights of way created under this Act;
 - (d) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;
 - (e) the manner of assessing value of an interest in land; or
 - (f) The minimum and maximum land holding acreages in respect of private land.
- (2) Without prejudice to the foregoing, the Cabinet Secretary shall have powers to make regulations—
- (a) to secure the land rights of the minority communities to individually or collectively access and use land and land based resources following an inventory of the existing minority communities to obtain a clear assessment of their status and land rights;
 - (b) to prevent and manage land based disasters and to provide for resettlement in the event of natural disasters;
 - (c) to establish, plan and manage refugee camps;
 - (d) to deal with issues that arise from internal displacement and provide for the resettlement of the internally displaced persons; and
 - (e) with respect to squatters—
 - (i) to establish appropriate mechanisms for their removal from unsuitable land and their resettlement;
 - (ii) to facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land;
 - (iii) to transfer unutilized land and land belonging to absentee land owners to squatters; and
 - (iv) to facilitate the regularization of existing squatter settlements found on public and community land for purposes of upgrading or development.

Repeals.

- 191.** (1) The written laws set out in the Schedule herein are hereby repealed.
- (2) All other law relating to land shall be construed with the alterations, adaptations, qualifications and exceptions necessary to give effect to this Act.

Savings and transitional provisions with respect to rights, actions, dispositions etc.

- 192.** (1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.
- (2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.
- (3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—
- (a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and
- (b) Subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.
- (4) If a lessor or lender had initiated any steps to forfeit a lease or to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the borrower issue an injunction to the lessor or, to the lender to stop the continuation of any such step.

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- (5) If a court has issued an injunction under subsection (4), the lessor or lender to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.
1. Indian Transfer of Property Act 1882
 2. Wayleaves Act, Cap 292

3. Trespass Act, Cap 294
4. Land Acquisition Act, Cap 295
5. Registered Land Act, Cap 300
6. Government Lands Act, Cap 280
7. Land Titles Act, Cap 282
8. Registration of Titles Act, Cap 281