

**REFORMING KENYA'S LAND SECTOR THROUGH LAND
BANKING: A COMPARATIVE LEGAL STUDY OF KENYA
AND SOUTH AFRICA**

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DECLARATION

I, **OGOLA JEMIMA ANYANGO**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:



Date: 28th March 2025

This dissertation has been submitted for examination with my approval as University Supervisor.



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Date: 28th March 2025

ABSTRACT

This research critically examines Kenya's land banking and investment frameworks and explores how South Africa's established land banking system could serve as a transferable model. The study analyzes legal instruments including Kenya's Constitution (2010), Land Act (2012), Land Registration Act (2012), Urban Areas and Cities Act (2011), Physical and Land Use Planning Act (2019), and the National Land Commission Act (2012), alongside policy frameworks such as the National Land Use Policy (2017), Recommended National Land Policy (2023), Kenya Investment Policy (2019) and Kenya Vision 2030.

The research employs a qualitative methodology through comparative legal analysis, documentary review, and case study examination to identify structural weaknesses in Kenya's institutional architecture. The findings reveal critical limitations in Kenya's framework, specifically the fragmentation of institutional mandates between the National Land Commission, Ministry of Lands and county governments, inadequate definitional clarity regarding land banking processes, and insufficient legal provisions for strategic land acquisition and management.

South Africa's Land Bank, established through dedicated legislation (Land Bank Act 1912, revised 1944 and subsequently 2002), offers valuable lessons through its specialized financing mechanisms, governance structures, and institutional oversight. The study identifies the Blended Finance Scheme and Proactive Land Acquisition Strategy as particularly successful interventions that could be adapted for the Kenyan context.

The research recommends enacting a dedicated Land Banking Act to establish a clear legal framework for land banking in Kenya. This Act would define land banking, designate the National Land Commission as the lead authority, create a Land Bank Committee and Registry, and establish a Land Banking Fund. It also proposes amending existing land laws to align with this framework. Implementation of these recommendations would create a more coherent, transparent, and effective land management system to support Kenya's development objectives while addressing historical inequities in land distribution.

LIST OF ABBREVIATIONS

AHP – Affordable Housing Project

CoK - Constitution of Kenya

DALRRD - Department of Agriculture, Land Reform, and Rural Development

DFI - Development Finance Institution

DLA - Department of Land Affairs

HDI - Historically Disadvantaged Individuals

KenInvest - Kenya Investment Authority

KIP - Kenya Investment Policy

LAPSSET - Lamu Port-South Sudan-Ethiopia Transport

MAFISA - Micro Agricultural Financial Institutions of South Africa

NLC - National Land Commission

NLUP - National Land Use Policy

PLAS - Proactive Land Acquisition Strategy

PLRO - Provincial Land Reform Offices

PPPs - Public-Private Partnerships

RNLP - Recommended National Land Policy

SLAs - Service Level Agreements

SPAs - Special Planning Areas



LIST OF CASES

First National Bank of SA Ltd v Land and Agricultural Bank of SA and others (2000),

Constitutional Court of South Africa.

National Land Commission v Attorney-General & 5 others (2015) KLR.

Ndoro & 191 others v National Land Commission & 3 others (2023) KLR.

LIST OF LEGAL INSTRUMENTS

Constitution of Kenya, 2010.

Constitution of South Africa, 1996.

Foreign Investment Protection Act, 2022.

Intergovernmental Relations Act, 2012.

Investment Promotion Act, 2004.

Land Act, 2012.

Land and Agricultural Development Bank Act, 2002.

Land Bank Act, 1944.

Land Registration Act, 2012.

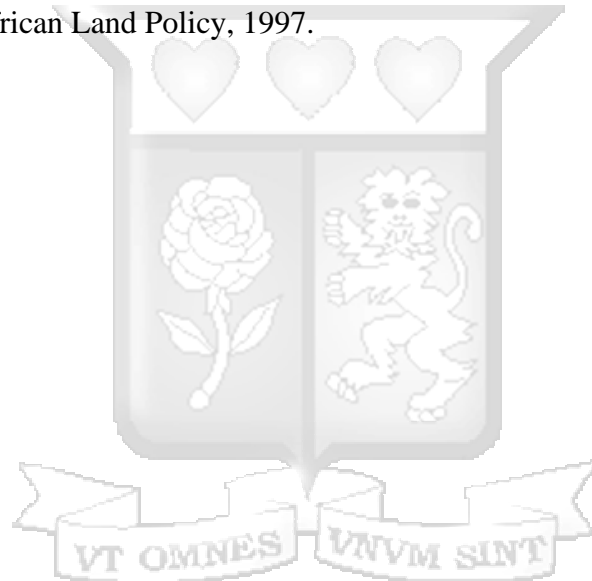
National Land Commission Act, 2012.

Physical and Land Use Planning Act, 2019.

Proactive Land Acquisition Strategy, 2006.

Urban Areas and Cities Act, 2011.

White Paper on South African Land Policy, 1997.



CHAPTER 1: RESEARCH PROPOSAL

1.1 INTRODUCTION

Kenya's land challenges stem from colonial policies such as the Crown Lands Ordinance of 1915, placing land under state control and marginalizing the indigenous population¹. This disrupted communal ownership² and favored elites, leading to persistent inequality and conflict³. Post-independence reforms, such as the Million Acre Scheme, often entrenched these disparities⁴, with over 70% of land transactions still governed by customary laws, fueling disputes⁵.

The Constitution of Kenya marked a watershed in the land policy by ensuring equitable access, addressing historical injustices, and promoting sustainable use, while establishing the National Land Commission (NLC) to manage public land and address historical injustices⁶. These reforms align with the 2009 National Land Policy's goals of social justice, economic growth, and environmental sustainability⁷.

The promulgation of the Constitution of Kenya in 2010 marked a watershed in the land policy of Kenya as it ensured progressive reforms that guarantee equitable access to land, besides stemming historical injustices that had been piled up over a long period⁸. Article 60 emphasizes sustainable and productive land use, fair distribution, transparency and gender equality in land ownership⁹.

¹Wayumba G, 'A Historical Review of Land Tenure Reforms in Kenya' *International Journal of Scientific Research and Engineering Studies*, vol. 2, no. 1, 2015, 47-

<http://repository.tukenya.ac.ke/bitstream/handle/123456789/1699/paper_9.pdf?isAllowed=y&sequence=1>.

² 'What is Land Banking in Kenya?' Nulands, 2023- <<https://nulands.co.ke/a-step-by-step-guide-to-land-banking-in-kenya/>>.

³Wayumba G, 'A Historical Review of Land Tenure Reforms in Kenya', 47-

<http://repository.tukenya.ac.ke/bitstream/handle/123456789/1699/paper_9.pdf?isAllowed=y&sequence=1>.

⁴Wayumba G, 'A Historical Review of Land Tenure Reforms in Kenya', 50.

<http://repository.tukenya.ac.ke/bitstream/handle/123456789/1699/paper_9.pdf?isAllowed=y&sequence=1>.

⁵ Veit P, 'History of Land Conflicts in Kenya', *Gates Open Research*, 2011, 6.

⁶ Article 67, *Constitution of Kenya* (2010).

⁷ Sessional Paper No. 3 of 2009

⁸ Oraro & Company Advocates 'Unresolved: An Assessment of the National Land Commission', 2019-

<<https://www.oraro.co.ke/unresolved-an-assessment-of-the-national-land-commission/>>.

⁹ Article 60, *Constitution of Kenya* (2010).

Rapid urbanization in Kenya, particularly in cities such as Nairobi where the population has grown from 1 million in 1990 to over 4 million today, has heightened demands for land¹⁰ leading to the mushrooming of informal settlements where 60% of Nairobi's population lacks security of tenure and access to services. Industrialization efforts, such as special economic zones, are among those factors that have driven the change of agricultural land into industrial lands in Kenya¹¹. Additionally, urban-driven land speculation in Kenya has exacerbated land shortage, raised prices and limited investment use, evidenced by only 0.08% of land being transferred for optimal utilization¹².

Globally, land banking, the practice of acquiring and holding land in anticipation of future development, has emerged as one of the key tools to solve this problem¹³ as it facilitates not only urban development and industrialization but also infrastructure projects and even environmental conservation¹⁴. In so doing, both governments and private entities ensure that prime land is available for big projects, fostering planned and sustainable development¹⁵.

At the county level, there is increasing recognition of the importance of land banking in driving local economic growth. Former Nairobi Governor Evans Kidero¹⁶ and former Machakos Governor

¹⁰ NASA Earth Observatory 'Nairobi Swells with Urban Growth', 2016 -

¹¹ NASA Earth Observatory 'Nairobi Swells with Urban Growth', 2016 -

¹² Ouna V, 'Land Governance in Urban Areas case of Nairobi City County', published, Technical University of Kenya, 12 - <https://land.igad.int/index.php/documents-1/countries/kenya/urbanization-3/831-land-governance-in-urban-areas-case-of-nairobi-city-county/file>.

¹³ Muchiri D, 'Land Banking: What Does It Involve and How Good an Investment Vehicle Is It?' Nation, 2022 - <https://nation.africa/kenya/business/land-banking-what-does-it-involve-and-how-good-an-investment-vehicle-is-it-3990914>.

¹⁴ Aswani N, 'Land Banking in Kenya: Investment Opportunity or Gamble?' BuyRentKenya, 2023 - www.buyrentkenya.com/discover/land-banking-in-kenya-investment-opportunity-or-gamble#High_Demand_for_Land_Leads_to_Value_Appreciation.

¹⁵ Muchiri D, 'Land Banking: What Does It Involve and How Good an Investment Vehicle Is It?' Nation, 2022 - <https://nation.africa/kenya/business/land-banking-what-does-it-involve-and-how-good-an-investment-vehicle-is-it-3990914>.

¹⁶ 'Kidero seeks to woo investors with free land', Business Daily, December 2020 - <https://www.businessdailyafrica.com/bd/economy/kidero-seeks-to-woo-investors-with-free-land-2031802>.

Alfred Mutua¹⁷ made public commitments to create land banks to attract investors. These initiatives reveal an emerging understanding that proactively acquiring land for long-term public needs such as infrastructure, health, education, housing, and recreation is crucial. Delays in doing so risk higher acquisition costs due to rising private land prices¹⁸.

The national government has also engaged in land banking through various agencies. The State Department for Land and Physical Planning plays a key role in maintaining land reserves to support national development projects. The LAPSET Corridor Program is a prominent example, where land has been set aside along key transport and energy routes to support future infrastructure expansion. In addition, the Kenya Kwanza administration has integrated land banking into its Affordable Housing Program (AHP) by allocating public land to private developers for the construction of affordable housing¹⁹, demonstrating the state's active involvement in land assembly for strategic development.

Additionally, for private investors, land banking offers a lucrative strategy for wealth accumulation, particularly in fast-developing areas such as Thika. Its improving infrastructure, strategic location, and rising demand make it ideal for speculative or planned long-term investments, underscoring land banking's multidimensional appeal in Kenya²⁰. Private developers, such as Centum Real Estate, have transformed banked land into planned developments, as seen in the Vipingo Development project²¹.

The government has also begun enforcing development timelines on banked land. At Konza Technopolis, Lands Cabinet Secretary Esther Wahome issued a directive requiring investors to

¹⁷ Thang'wa M, 'Attracting Investors Should Excite Any Government Official' Nation, 2020 - <<https://nation.africa/kenya/blogs-opinion/blogs/dot9/attracting-investors-should-excite-any-government-official-914024>>.

¹⁸ Musyoka S, 'Why Investing in Land in Kenya Is Better than Other Investments in 2025' Username Properties, 2025 - <www.usernameproperties.com/blog/why-investing-in-land-in-kenya-is-better-than-other-investments-in-2025/>.

¹⁹ Ochieng' E, 'Land Banking and Why It's Important' Centum Real Estate - <<https://centumre.co.ke/blog/land-banking-and-why-its-important/>>.

²⁰ 'Land Banking in Thika: A Strategic Investment for Long-Term Growth' Lesama Investment, 2024 - <<https://lesama.co.ke/uncategorized/land-banking-in-thika-a-strategic-investment-for-long-term-growth/>>.

²¹ Ochieng' E, 'Land Banking and Why It's Important' Centum Real Estate - <<https://centumre.co.ke/blog/land-banking-and-why-its-important/>>.

develop allocated land within 18 months or face repossession²². This demonstrates a shift toward regulatory enforcement to prevent land speculation and ensure that land banking supports timely and strategic urban development.

Despite the aforementioned ambitious development agenda, potential benefits of land banking and its nascent practice, both the Land Act, 2012²³, the Land Registration Act, 2012²⁴ and other land regulation laws remain silent on how land should be banked, controlled, or made available for either public or private development. This complicates the task of the government in reserving land for future²⁵ and leaves Kenya prone to speculative landholding - a factor that suppresses economic growth²⁶. As urbanization and industrial expansion drive up demand for land, a lack of clarity limits the country's ability to respond effectively to these challenges²⁷.

Moreover, there is no guidance for investors on the eligibility criteria to invest in land banking, the conditions of investments, and obligations for landholders under the Land Act 2012 and Land Registration Act 2012 or the Investment Promotion Act. This regulatory gap perpetuates uncertainty for would-be investors, which in effect dampens serious investment and denies land banking its potential as an economic growth tool that should work for the public good²⁸. It is also a missed opportunity to attract, promote and retain investment in Kenya.

To address this gap, this study will examine the legal frameworks that govern land banking in Kenya, alongside a comparative analysis of its successful application in South Africa. The current pressures on land resources, especially in urban areas, calls for land management policies that will lead to sustainable and equitable development.

²² 'Govt Gives Konza Investors 18 Months to Develop or Lose Land' KBC, 2025 - <www.kbc.co.ke/govt-gives-konza-investors-18-months-to-develop-or-lose-land/>.

²³ *Land Act*, 2012 (No. 6 of 2012)

²⁴ *Land Registration Act* (No. 3 of 2012).

²⁵ 'What is Land Banking in Kenya?' Nulands, 2023 - <<https://nulands.co.ke/a-step-by-step-guide-to-land-banking-in-kenya/>>.

²⁶ Njeru, J, & Ndung'u, M 'Speculative Landholding and Economic Growth in Kenya: A Critical Analysis' *Journal of African Economies*, vol. 28, no. 3, 2019, 355.

²⁷ Beltrão, G, 'Urban Planning and Land Management for Promoting Sustainable Development' Asian Development Bank, 2018 - <<https://www.adb.org/sites/default/files/project-documents/41609-012-tacr-01.pdf>>.

²⁸ Doshi M, 'The Land Laws of Kenya', Anjarwalla & Khanna, 2012, 4

1.3 PROBLEM STATEMENT

Land banking holds significant potential as a tool for facilitating economic development, including promoting industrialization, infrastructure development, affordable housing as well as environmental conservation. Despite its recognition in the policy frameworks and nascent practice, there are no legal provisions or regulations that address how land banks should be established, managed or regulated under the current legislation that govern the acquisition, use and management of land. This gap presents a challenge in the effective management of land banks, particularly when it comes to identifying land, regulating its usage and determining eligibility criteria for investors. The lack of regulation has resulted in missed investment opportunities, as large parcels of land remain underutilized, limiting access to land for broader economic development and infrastructure projects. By examining Kenya's existing framework compared to that of South Africa, this study aims to identify any potential legal and regulatory gaps that could be implemented in Kenya to regulate land banking.

1.4 RESEARCH OBJECTIVES

1. To review and critically assess the existing legal and policy frameworks concerning land banks in Kenya.
2. To examine South Africa's legal and regulatory framework and identify effective land banking strategies.
3. To propose actionable recommendations for Kenya in order to fill in the identified gaps.

1.5 RESEARCH QUESTIONS

1. What are the existing legal and policy frameworks governing land banking in Kenya?
2. What legal and policy mechanisms support South Africa's land banking framework, and what effective strategies can be identified for adaptation in Kenya?

3. What recommendations can be proposed to address the gaps in Kenya's land banking framework?

1.6 JUSTIFICATION OF THE STUDY

The research is important in filling the regulatory and policy gaps that exist in Kenya. By conducting a critical review of Kenya's existing land laws against best international practices, this study will give specific recommendations for the establishment of a full land banking framework. Its findings will enable the relevant land regulations such as the NLC, to shape effective policies that will ensure that the available land resources are adequately managed to meet basic national and individual needs on a sustainable, equitable, and growth-oriented approach for present and future generations.

1.7 HYPOTHESIS

The lack of specific legal provisions for land banking in Kenya's Land Act (2012) and Land Registration Act (2012) and other land legislation severely impedes the efficient implementation of land banking as a mechanism for managing land for future public and private development, which is useful for sustainable investment practices.

1.8 THEORETICAL FRAMEWORK

This paper will explore two theories, i.e the institutional theory and the economic development theory that will analyze the regulatory gaps and economic potential associated with land banking in Kenya.

1.8.1 INSTITUTIONAL THEORY

The institutional theory examines how institutions shape social behavior and influence economic outcomes. North (1990) describes institutions as rules and frameworks created by humans to shape

political, economic, and social interactions²⁹. This theory emphasizes the importance of legal frameworks and institutional structures that control land management in Kenya's land banking sector. Given the regulatory deficiencies in Kenya's land legislation, such as the Land Act (2012) and the Land Registration Act (2012), this theory offers a lens through which to examine how these loopholes impede successful land banking operations. The absence of precise definitions and explicit rules for land banking in these regulations generates confusion for investors, limiting their capacity to engage in land banking as a viable investment strategy³⁰.

The NLC and the Ministry of Lands often have overlapping responsibilities, particularly in areas such as land allocation, registration, and oversight³¹. While the NLC oversees public land³², it lacks direct jurisdiction over land titling, which is handled by the Ministry of Lands³³, resulting in confusion and inefficiency. Furthermore, county administrations, who oversee local land use planning, frequently have insufficient capacity and resources to manage land effectively, resulting in disjointed and inconsistent land use regulations across areas. These overlapping functions, and institutional failures, have contributed to bureaucratic inefficiency, slowing down land registration and delaying land use permits³⁴.

This research will look at the institutional frameworks that regulate land management and how existing organizations such as the National Land Commission (NLC) and county governments may be reorganized to better allow land banking. This theory suggests that restructuring these organizations to improve openness, accountability, and efficiency is critical to fill regulatory gaps which impede economic growth.

²⁹ Faundez, J 'Douglass North's Theory of Institutions: Lessons for Law and Development', *Hague J Rule Law*, 8, 2016, 385 -

< <https://doi.org/10.1007/s40803-016-0028-8>>.

³⁰ 'Unlocking the Potential of Land Banking in Kenya: A Comprehensive Guide - Denvers Group Ltd: Plots For Sale', Denvers Group Ltd, 2024 -

< www.denvers.co.ke/land-banking-in-kenya/>.

³¹ 'Institutional Framework Brief' *Kenya Land Alliance*,

https://kenyalandalliance.or.ke/login/publications/images/kla_institutional_framework_brief.pdf

³² Section 5, *National Land Commission Act*, (No.35 of 2012).

³³ Section 14, *Land Registration Act* (No. 3 of 2012)

³⁴ *National Land Commission v Attorney-General & 5 others; Kituo Cha Sheria & another (Amicus Curiae)*. Advisory Opinion Reference 2 of 2014, KESC 3 (KLR), 2015.

1.8.2 ECONOMIC DEVELOPMENT THEORY

The economic development theory focuses on strategies that promote economic growth and improve living standards. According to Todaro and Smith (2015), it involves efforts to boost a community's economic welfare and standard of living through job creation, income generation, and strategies that ensure sustained economic improvement³⁵. A well-structured land banking system can make the investment environment more predictable. Potential investors may be more willing to invest in development projects if uncertainties around land acquisition and usage rights are reduced. This investment can help create jobs and contribute to overall economic growth³⁶.

Land banking further prevents haphazard urban sprawl. Land banking can ensure that land is available for urban development when it is needed, lowering the costs of emergency land acquisitions in the future. For example, the Thika Superhighway project in Kenya demonstrated how early land banking may result in considerable increases in land value, stimulating commercial activity and more infrastructural investment³⁷.

By applying these two theories, this study will offer insight on the ability of effective land banking to boost industrialization, infrastructure development, and affordable housing, all critical components of Kenya's Vision 2030. Investors can help to develop residential, commercial, and industrial areas by purchasing unused land in anticipation of future expansion.

1.9 LITERATURE REVIEW

This paper reviews the current legal regimes, debates, and comparative studies on land banking highlighting its pivotal role in ensuring efficient land use and management. It reviews international

³⁵Todaro M, Smith, S 'Economic Development Pearson, 13, 2020, 2 - https://students.aiu.edu/submissions/profiles/resources/onlineBook/F5v9e6_Economic%20Development-2020.pdf.

³⁶ Huang Y, Xue D, Huang, G 'Economic Development, Informal Land-Use Practices and Institutional Change in Dongguan, China' *Sustainability* 2021, 13, 2249 - <https://doi.org/10.3390/su13042249>.

³⁷ 'Unlocking the Potential of Land Banking in Kenya', Denvers Group Ltd, 2024 - www.denvers.co.ke/land-banking-in-kenya/.

and local literature, examining definitions, applications, and challenges of land banking to address the regulatory loopholes that limit the establishment and operationalization of land banks in Kenya.

The definition of land banking is varied in both the legal and economic literature, a fact that speaks to its complex function in land development and management. Haq et al. (2023) cited the Dienst Landdelijk Gebied, DLG, which is an agency under the Ministry of Economic Affairs, Agriculture, and Innovation in the Netherlands, defines land banking as the structural acquisition and temporary management of land in rural areas by a neutral state agency with the purpose of redistributing and/or leasing said land in the public interest.³⁸

Similarly, Limbong defines land banking as a method of controlling the supply of land and stabilizing land prices. This system is characterised by acquiring underutilised or abandoned land for possible development into areas for public infrastructure or other economic uses. The method aims at ensuring that market liberalization does not hurt land values while ensuring land availability for essential services and development projects³⁹.

One of the primary theoretical approaches to land banking focuses on achieving economic efficiency and optimal utilization of resources. A. Damodaran et al. presents a model where land banks are intermediaries for an efficient way of land use by matching lease contracts between the landholders and other clients. It is an attempt to acknowledge the improvement in land productivity with corresponding equity consideration to landowners⁴⁰.

Legal frameworks bring certainty to the effectiveness of land banks. Firman Freaddy Busroh and Faisal Santiago describe in detail the role that comprehensive legal, regulatory, and institutional

³⁸ Saiful A, Septani, A, Samudra A 'Analysis of the Position of the Land Bank Agency as Regulator of Land Availability for Public Interest: Study of Law Number 11 of 2020 Concerning Job Creation' *The Social Perspective Journal*, 2(3). 2023, 161 - <https://jurnal.jkp-bali.com/tspj/article/view/564/169>.

³⁹ Alwinda E, Wafirah A, Roring P, Onthoni L, 'The Existence, Function, and Legal Position of the Land Bank According to the Provisions of the Laws and Regulations', vol. 6, *UNES Law Review*, 2013, 120 - <https://doi.org/10.31933/unesrev.v6i1>.

⁴⁰ Damodaran, A, Hemant K, and Sher M 'Land Bank Framework: A Tool for Agricultural Development in India' *Tejas - IIM Bangalore*, 2021 - <https://tejas.iimb.ac.in/articles/48.php>.

frameworks can play in guiding the operation of land banks, so as to maximize their contributions to urban development in addition to profitability. The authors have identified that policies must be oriented toward achieving equitable land distribution and sustainable urban planning⁴¹.

Land banking is often related to wider public policy objectives, especially in Western European contexts. Morten Hartvigsen et. al refer to the fact that land banks serve various policy goals, such as sustainable land use, rural development, and environmental protection. Their report identifies that countries like Denmark and Germany implement land banks as an active buyer and seller of agricultural land to increase market mobility and help reduce problems of fragmentation. This is consistent with public interests rather than simply market-driven motivations⁴².

Equally, some jurisdictions, like the United States, have increasingly recognized land banking to contribute to social equity, particularly in developing affordable housing. The Center for Community Progress outlines that land banks acquire properties through tax foreclosure processes for repurposing toward community needs, which include affordable housing and green space. This framework insisted on the need for enabling legislation that can allow local governments to establish efficient land banks with the aim of revitalizing distressed neighborhoods⁴³.

Land banking offers important insights into its uses and impacts in nations like South Africa and India, whose socioeconomic profiles are similar to Kenya's. Land banking in South Africa is governed by the Land Bank Act (2002), which gives the government the legal right to purchase land for public purposes. The National Department of Land Affairs has thus come up with frameworks indicating the requirements towards efficient expropriation procedures and an appropriate institutional setup that would be used to manage land banks. In a study by A Harrison

⁴¹ Busroh F, Faisal S 'The Establishment of Land Bank Institutions for Strengthening the National Development' *International Journal of Civil Engineering and Technology*, vol. 8, no. 11, Nov. 2017,723 - https://iaeme.com/MasterAdmin/Journal_uploads/IJCIET/VOLUME_8_ISSUE_11/IJCIET_08_11_074.pdf.

⁴² Hartvigsen M, Tomas V, Maxim G, 'European Good Practices on Land Banking and Its Application in Eastern Europe and Central Asia', FAO, 2021, 8 - https://fig.net/resources/proceedings/fig_proceedings/fig2021/papers/FAO_banking/Hartvigsen_etal_paper.pdf.

⁴³ 'Land Banks' Local Housing Solutions, Center for Community Progress - <https://localhousingsolutions.org/housing-policy-library/land-banks/>.

(2021), land banks have been established as institutional mechanisms that enable land acquisition, management, and development for housing and other public purposes⁴⁴.

Land banking has emerged as a means of support to smallholder farmers in India to improve agriculture productivity. A. Damodaran gives a discussion on how land banks can assist in transferring rights of a piece of land from the owner to the bank through lease arrangements for better utilization of agricultural lands. Government can buy large tracts of land to redistribute them among smaller farmers or to create public infrastructure⁴⁵.

There are many notable gaps in Kenya's land laws that undermine transparency and hinder effective land management. Robert Kaniu cites that the indefeasibility of title concept creates problems in that it supposes a title is evidence of the final proof of ownership once given, after which it becomes hard to handle anomalies in the acquisition of the same properties. This concept may lead to disputes in ownership and make it even more difficult to establish a land banking system that is reliable⁴⁶.

Acquisition, management, and running of a 'land banking' system have been complicated by the land registration system in Kenya, which is fragmented from the colonial regime to the current laws. This fragmentation makes it tough for an effective and centralized land banking system to run because of such non-uniformity and defeats the essence that keeps transactions smoothed out and ensures enforcement of property rights⁴⁷.

⁴⁴ Harrison, K 'International Land Banking Practices: Considerations for Gauteng Province' Gauteng Department of Housing and Urban LandMark, 2007, 10 - www.ukesa.info/download/17TjCavDbGA53OxdpSJBKyQZgk6RtIuX/Land_Banking_Paper_Harrison-1.pdf.

⁴⁵ Damodaran, A, Hemant K, Sher M, 'Land Bank Framework: A Tool for Agricultural Development in India' *Tejas - IIM Bangalore*, 2021 - <https://tejas.iimb.ac.in/articles/48.php>.

⁴⁶ Kaniu R, 'How Legal Loopholes Are Hurting Kenya's Property Sector', Standard Media, 2023 - www.standardmedia.co.ke/real-estate/article/2001476753/how-legal-loopholes-are-hurting-kenyas-property-sector.

⁴⁷ Kaniu R, 'How Legal Loopholes Are Hurting Kenya's Property Sector', Standard Media, 2023 - www.standardmedia.co.ke/real-estate/article/2001476753/how-legal-loopholes-are-hurting-kenyas-property-sector.

With a myriad of challenges that include inadequate resources and political interference, the NLC is crippled in the discharge of its duties with respect to the enforcement of the existing laws. According to Kaniu, the NLC has had limited opportunities to harmonize different land laws, which impacts negatively on its capacity to oversee a formal land banking system effectively⁴⁸. Legal ambiguities have led to the exploitation of the principle of indefeasibility of title allowing individuals to evade responsibility in illegal allocations and land grabbing. The Ndung'u Land Report reveals how those who are politically powerful have exploited these legal loopholes to acquire public land titles, thereby complicating the National land Commission's ability to oversee property ownership and use transparently.

However, the most significant issue is a lack of specific legislation on how a land bank would be established and operated in Kenya. For other countries, such as South Africa, where successful land banking systems have been established and put to good use, the legal framework has provided scope to establish those systems, detailing the extent of powers and responsibilities, acquisition procedures, and methods of managing the land banks⁴⁹. Lack of a similar comprehensive framework greatly limits the application of land banking as a tool for economic development and infrastructure planning in Kenya.

While the existing literature has provided useful building blocks toward the understanding of the mechanics of land banking, there is a noticeable absence of detailed case studies specifically on land banking implementations in the Kenyan context, hence limiting knowledge on how such a strategy might work to effectively respond to the peculiarities in land use across Kenya. Haq, Septani, and Samudra discuss the cases of the Netherlands, the United States, China, and Singapore⁵⁰. Hartvigsen focuses on Denmark and Germany⁵¹, while Firman Freaddy Busroh and

⁴⁸ Kaniu R, 'How Legal Loopholes Are Hurting Kenya's Property Sector', Standard Media, 2023 - www.standardmedia.co.ke/real-estate/article/2001476753/how-legal-loopholes-are-hurting-kenyas-property-sector.

⁴⁹ *Land Bank Act*, (No. 15 of 2002).

⁵⁰ Haq A., Septani D, Samudra A, 'Analysis of the Position of the Land Bank Agency as Regulator of Land Availability for Public Interest: Study of Law Number 11 of 2020 Concerning Job Creation' *The Social Perspective Journal*, 2(3). 2023 - <https://jurnal.jkp-bali.com/tspj/article/view/564/169>.

⁵¹ Hartvigsen M, Tomas V, Maxim G, 'European Good Practices on Land Banking and Its Application in Eastern Europe and Central Asia', FAO, 2021, 21–25 - https://fig.net/resources/proceedings/fig_proceedings/fig2021/papers/FAO_banking/Hartvigsen_etal_paper.pdf.

Faisal Santiago focus on Indonesia⁵². As informative as studies from countries such as South Africa and India are bound to be in giving lessons on the use of land banking for promoting equitable land distribution, industrial development, and urban planning, they may not particularly give insights into the specific legal, cultural, and economic factors that uniquely drive land use in Kenya.

This research is aimed at bridging these gaps through the proposal of a framework for regulating land banking in Kenya, taking into consideration the local legal environment, needs of the community, and economic goals.

1.10 METHODOLOGY

This study will employ a legal doctrinal research approach to examine Kenya's legal and institutional environment for land banking. It seeks to identify regulatory deficiencies in the Land Act (2012) and the Land Registration Act (2012) that impede efficient land banking processes. The study will evaluate the effectiveness of current legislation in enabling land banking for economic growth and land use planning by reviewing primary sources such as statutes, case law, and constitutional provisions. Secondary sources, such as scholarly publications and official reports, will provide a more comprehensive understanding of land banking's role in urbanization, infrastructure development, and sustainable land use.

The study will conduct a comparative legal examination of effective land banking initiatives in countries such as South Africa to help guide Kenya's legal reforms due to its historical land injustices that are parallel to Kenya. South Africa's experience with land reform through land banking is particularly relevant due to its use of targeted strategies aimed at correcting historical injustices while fostering economic development and promoting social equity⁵³. This will identify

⁵² Busroh F, Santiago F, 'The Establishment of Land Bank Institutions for Strengthening the National Development', International Journal of Civil Engineering and Technology (IJCIET), vol. 8, no. 11, 2017, 723 - <https://www.researchgate.net/publication/321888601_The_establishment_of_land_bank_institutions_for_strengthening_the_national_development>.

⁵³ Hall, R 'Land and Agrarian Reform in South Africa: A Status Report.' Programme for Land and Agrarian Studies. 2004, 4-6 - <<https://www.cabidigitallibrary.org/doi/pdf/10.5555/20163371355>>.

the best practices that are appropriate for Kenya's socio-economic setting. It will also evaluate the performance of institutional organizations such as the National Land Commission (NLC) and county governments, addressing issues such institutional fragmentation, inefficiency, and political influence. By integrating these sources and comparing them to worldwide models, the study intends to identify gaps and come up with recommendations for Kenya's sustainable land banking.

1.11 LIMITATIONS

Countries such as South Africa have specialized land reform plans addressing historical injustices (for example, post-apartheid land redistribution), but Kenya continues to struggle with land conflicts, corruption, and ineffective land management. Doctrinal research may fail to capture these nuances, resulting in a comparative legal analysis that ignores how such frameworks, while theoretically sound, may be politically or culturally difficult to apply in Kenya.

Comparative analysis in a doctrinal research approach will be constrained by a lack of empirical research, which is critical for understanding how legal frameworks work in practice. Local community leaders, real estate developers, and government officials who are directly involved in land transactions, for example, may provide critical insights into how existing laws are violated, how land banking affects local populations, and the difficulties they face with land administration. Doctrinal research alone does not provide me with this type of personal information, which is required for creating well-rounded and contextually relevant comparisons.

1.12 CHAPTER BREAKDOWN

Chapter one lays out the background of the study and the statement of the problem. It outlines the objectives of the research, research questions, justification of the study and the hypothesis. This indicates an overview of the study.

Chapter two will analyze the current legal and regulatory framework, including the Constitution, Land Act, and Land Registration Act to identify the gaps in the lack of land banking provisions.

Chapter three will explore South Africa as a relevant case study due to similar complex land tenure systems. By analyzing how this jurisdiction has tackled land banking the chapter aims to draw valuable insights and potential lessons for Kenya.

Chapter four concludes the research and makes recommendations for legal and social reforms to address land banking in Kenya.



CHAPTER 2: A CRITICAL ANALYSIS OF THE POLICY, LEGAL AND INSTITUTIONAL FRAMEWORKS THAT GOVERN LAND BANKING AND INVESTMENT IN KENYA

2.1 INTRODUCTION

This chapter critically examines the legal, policy, and institutional frameworks that underpin land use, acquisition, and registration. By scrutinizing foundational statutes, ranging from the Constitution and Land Act to the Land Registration and Investment Promotion Act, it exposes inherent regulatory gaps and fragmented mandates that challenge effective land banking.

Complementing the legal frameworks, the chapter also assesses policies such as the National Land Use Policy (2017), the Recommended National Land Policy (2023), Kenya Vision 2030, and the Kenya Investment Policy (2019) that seek to operationalize land banking. These policies are critically appraised for their capacity to integrate legal provisions with practical mechanisms for land acquisition, consolidation, and sustainable utilization.

By identifying gaps and assessing the synergy (or lack thereof) between these frameworks, the chapter seeks to establish a foundation for proposing reforms aimed at enhancing the potential of land banking as a tool for sustainable development and economic growth.

2.2 ANALYSIS OF EXISTING LEGAL FRAMEWORKS ON LAND MANAGEMENT AND INVESTMENTS

2.2.1 CONSTITUTION OF KENYA

The Constitution of Kenya, 2010, serves as the fundamental legal framework governing the country, establishing principles and values that shape national governance. Among its key tenets

is the recognition of land as a central element of national development, with an emphasis on equitable access, sustainable management, and transparent administration.

Chapter 5, particularly Article 60(1), mandates that land be managed in an equitable, efficient, and sustainable manner, ensuring fair access, secure ownership rights, and responsible stewardship of land resources⁵⁴. Furthermore, Article 62 empowers the state to manage public land, including unalienated government land, forests, and protected areas, creating the foundation for establishing land banks⁵⁵.

2.2.1.1 INSTITUTIONAL FRAMEWORK FOR LAND MANAGEMENT

The NLC, established under Article 67⁵⁶ and operationalized through the NLC Act, 2012, plays a central role in public land administration, with its specific functions discussed in detail later. However, land governance is not solely entrusted to the NLC. Article 186 and the Fourth Schedule devolves critical land management functions to county governments, empowering them to oversee land allocation, zoning, and regional planning in line with local priorities⁵⁷. This devolution aligns with Article 174's principle of community empowerment and participatory governance⁵⁸.

To harmonize the roles of national and county governments, the Intergovernmental Relations Act, 2012, establishes structured mechanisms for coordination⁵⁹, consultation⁶⁰, and dispute resolution⁶¹, fostering a more integrated and cooperative approach to land administration.

Recognizing the importance of having a well-organized and logical system of laws, Article 68 mandates Parliament to enact legislation regulating land use and development, reinforcing the principles of equity, efficiency, sustainability, and land rights security outlined in Article 60⁶².

⁵⁴ Article 60(1), *Constitution of Kenya* (2010).

⁵⁵ Article 62, *Constitution of Kenya* (2010).

⁵⁶ Article 67, *Constitution of Kenya* (2010).

⁵⁷ Paragraph 21, Part I, Fourth Schedule, *Constitution of Kenya* (2010).

⁵⁸ Article 174, *Constitution of Kenya* (2010).

⁵⁹ Section 3, *Intergovernmental Relations Act* (Act No.2 of 2012).

⁶⁰ Section 8, *Intergovernmental Relations Act* (Act No.2 of 2012).

⁶¹ Section 31, *Intergovernmental Relations Act* (Act No.2 of 2012).

⁶² Article 68, *Constitution of Kenya* (2010).

2.2.2 LAND ACT

The Land Act, 2012 gives effect to Article 68 of the Constitution by establishing a framework for land management and administration. It revises, consolidates, and rationalizes the existing land laws to ensure they align with the constitutional provisions and contemporary needs⁶³.

2.2.2.1 PROVISIONS THAT SUPPORT LAND BANKING

Section 15 grants the NLC the authority to reserve public land for long-term strategic purposes, including infrastructure development, industrialization, and environmental conservation⁶⁴ enabling the government to safeguard land for national development projects, ensuring that land resources are available for critical investments.

Additionally, Section 16 further enhances this mechanism by allowing the NLC to delegate land management responsibilities to public agencies⁶⁵, ensuring proper maintenance and protection from encroachment.

To ensure a structured approach to land use planning, Section 134 further authorizes the government to acquire land for settlement programs and hold land in reserve for social housing and urban expansion⁶⁶. This is complemented by the Land Settlement Fund which provides financial resources for acquiring and managing land⁶⁷.

These measures ensure that land is allocated strategically and efficiently to support economic and social development.

⁶³ Long Title, *Land Act* (Act No. 6 of 2012).

⁶⁴ Section 15, *Land Act* (Act No. 6 of 2012).

⁶⁵ Section 16, *Land Act* (Act No. 6 of 2012).

⁶⁶ Section 134, *Land Act* (Act No. 6 of 2012).

⁶⁷ Section 135, *Land Act* (Act No. 6 of 2012).

2.2.2.2 INSTITUTIONS ESTABLISHED FOR LAND MANAGEMENT

The NLC serves as the central body for land governance. It is responsible for maintaining a public land database⁶⁸, converting land categories⁶⁹, overseeing land use planning⁷⁰, and implementing conservation measures. Section 6 highlights how the Cabinet Secretary for Lands plays a complementary role by developing land policies, overseeing land reforms, and regulating land-related professionals such as surveyors, valuers, and planners⁷¹. This collaboration ensures that national land strategies are effectively implemented.

At the local level, county governments are tasked with managing public land, regulating land use through zoning and planning laws, and coordinating urban expansion⁷². Decentralizing land management to county governments enhances oversight and accountability, ensuring that land policies are tailored to regional development needs.

2.2.3 LAND REGISTRATION ACT

The Act seeks to revise, consolidate, and rationalize existing laws relating to the registration of titles to land as well as to give effect to principles of devolved government in land registration⁷³. This includes establishing a clear framework that simplifies the land registration process, enhancing legal certainty on land ownership and transactions of critical importance for the establishment of land banks.

2.2.3.1 PROVISIONS THAT SUPPORT LAND BANKING

Section 22 facilitates land assembly and consolidation by allowing proprietors to combine contiguous parcels under a single ownership⁷⁴. This would simplify the legal process for land banking, as large land parcels are often required for future development projects. Additionally,

⁶⁸ Section 8, *Land Act* (Act No. 6 of 2012).

⁶⁹ Section 9, *Land Act* (Act No. 6 of 2012).

⁷⁰ Section 8, *Land Act* (Act No. 6 of 2012).

⁷¹ Section 6, *Land Act* (Act No. 6 of 2012).

⁷² Section 10, *Land Act* (Act No. 6 of 2012).

⁷³ Long Title, *Land Registration Act* (Act No. 3 of 2012).

⁷⁴ Section 22, *Land Registration Act* (Act No. 3 of 2012).

Section 22(2) enables landowners to subdivide parcels into smaller units, ensuring that land banks can prepare for phased development or controlled land release⁷⁵.

Section 8(1) establishes a Community Land Register⁷⁶ which recognizes the role of community land in long-term development planning ensuring that land held by communities for agricultural, industrial, or conservation purposes is legally recognized and protected.

Moreover, Section 54 governs the registration of leases, including long-term leases⁷⁷, which allows investors and government entities to secure land for strategic purposes without necessarily purchasing it outright. This offers flexibility in land management while ensuring that land remains available for development.

2.2.3.2 INSTITUTIONS ESTABLISHED FOR LAND MANAGEMENT

Together with the NLC aforementioned, the Office of the Chief Land Registrar is created under Section 12 which is responsible for maintaining and updating land registers and cadastral maps. It oversees land transactions, including transfers, leases, and charges, ensuring compliance with land registration laws⁷⁸.

At the county level, Section 12(1) mandates the appointment of County Land Registrars to facilitate local land transactions, maintain county land records, and improve service accessibility⁷⁹.

The Survey of Kenya, established under Section 15, is tasked with cadastral mapping and boundary definition⁸⁰. This authority ensures that all registration units have accurate and updated cadastral maps, preventing land disputes and promoting systematic land administration. Additionally,

⁷⁵ Section 22(2), *Land Registration Act* (Act No. 3 of 2012).

⁷⁶ Section 8(1), *Land Registration Act* (Act No. 3 of 2012).

⁷⁷ Section 54, *Land Registration Act* (Act No. 3 of 2012).

⁷⁸ Section 12, *Land Registration Act* (Act No. 3 of 2012).

⁷⁹ Section 12(1), *Land Registration Act* (Act No. 3 of 2012).

⁸⁰ Section 15, *Land Registration Act* (Act No. 3 of 2012).

Sections 16 to 18 grant it the responsibility of defining and correcting boundary lines, further reinforcing sustainable land management⁸¹.

2.2.4 THE URBAN AREAS AND CITIES ACT, 2011

This Act was enacted to fulfill the constitutional mandate outlined in Article 184 of the CoK, i.e the need for structured and accountable urban governance⁸².

A key provision of the Act is the requirement for integrated development planning, as articulated in Part V, which mandates that urban development plans be aligned with broader county government strategies. This integration ensures that urban expansion is not only well-coordinated but also responsive to economic, social, and environmental priorities⁸³.

Furthermore, Sections 36 through 42 outline the objectives, preparation, and adoption processes of these integrated development plans⁸⁴, reinforcing the importance of strategic foresight in urban management.

2.2.4.1 PROVISIONS THAT ALIGN WITH LAND BANKING

Section 20(1)(d) grants city and municipal boards the authority to regulate land use, subdivision, and zoning within their respective jurisdictions⁸⁵ which ensures that land is preserved for future urban expansion and public investment rather than being subjected to uncontrolled private speculation.

In addition, Section 38 mandates that all cities and municipalities develop and implement an integrated urban development plan⁸⁶ that strategic, time-bound frameworks and projects to guide

⁸¹ Section 16-18, *Land Registration Act* (Act No. 3 of 2012).

⁸² Long Title, *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁸³ Part V, *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁸⁴ Section 36-42, *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁸⁵ Section 20(1)(d), *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁸⁶ Section 38, *Urban Areas and Cities Act* (Act No. 13 of 2011).

coordinated urban growth etc⁸⁷ ensuring that land is systematically allocated for long-term strategic purposes, reducing the prevalence of informal settlements and uncoordinated development.

Recognizing the critical role of collaboration in urban growth, Section 33(1) empowers urban boards to engage in public-private partnerships (PPPs) for land acquisition and service provision, facilitating resource mobilization and encouraging private sector investment in urban infrastructure⁸⁸. In addition to PPPs, Section 43(1) establishes financial mechanisms that enable municipal authorities to receive funding from county assemblies for land acquisition and urban expansion⁸⁹ ensuring that funding for land acquisition is not solely reliant on private investments. These financial provisions provide a stable legal framework for securing land in advance, ensuring that future development is planned and sustainable rather than reactionary

2.2.4.2 INSTITUTIONS ESTABLISHED FOR LAND MANAGEMENT

The authority granted under Section 20 allows city and municipal boards to regulate land use, subdivision, and zoning, ensuring that land is allocated for strategic purposes such as infrastructure, public amenities, and housing rather than being subjected to uncontrolled private speculation⁹⁰.

Additionally, their role in developing and implementing integrated development plans enables the proactive identification and designation of land for future public investment, such as transport corridors, industrial hubs, and green spaces, preventing haphazard urban sprawl⁹¹.

Moreover, Section 22 established Citizen Fora which allows for public participation in land management decisions⁹² discouraging irregular land allocations and speculative practices that often drive land prices up, making future acquisition costly for public projects.

⁸⁷ Third Schedule, *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁸⁸ Section 33(1), *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁸⁹ Section 43(1), *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁹⁰ Section 20, *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁹¹ Section 20, *Urban Areas and Cities Act* (Act No. 13 of 2011).

⁹² Section 22, *Urban Areas and Cities Act* (Act No. 13 of 2011).

2.2.5 THE PHYSICAL AND LAND USE PLANNING ACT, 2019

This Act provides for the regulation and management of land use and development at different levels of governance⁹³.

2.2.5.1 PROVISIONS SUPPORTING LAND BANKING

Section 52 grants county governments the authority to designate certain areas as Special Planning Areas (SPAs)⁹⁴ where unique conditions necessitate structured land use management. This designation allows county governments to reserve land for future public use, preventing haphazard development while structured plans for housing, infrastructure, and investment projects are formulated.

Development control, as outlined in Section 55, regulates land use and construction to ensure compliance with approved spatial plans and prevent disorderly development thus deterring speculative land hoarding. The objectives of development control include promoting orderly and sustainable land use, preventing environmental degradation, and ensuring that developments meet safety, infrastructure, and public service requirements⁹⁵. These objectives ensure that land earmarked for future public projects remains available for its intended purpose.

2.2.5.2 ROLES AND RELATIONSHIPS AMONG VARIOUS PLANNING AUTHORITIES

At the national level, the Cabinet Secretary is responsible for physical and land-use planning, formulating⁹⁶, and implementing national development plans⁹⁷. In a supporting role to this⁹⁸, the Director-General ensures that the stipulations of the planning policies and standards are adhered

⁹³ Long Title, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

⁹⁴ Section 52, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

⁹⁵ Section 55, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

⁹⁶ Section 10, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

⁹⁷ Section 21, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

⁹⁸ Section 11, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

to in carrying out the operational arm of physical planning⁹⁹. The Act also creates the National Physical and Land Use Planning Consultative Forum¹⁰⁰, which facilitates consultation, coordination, resource mobilization, and strategic advisory for effective physical and land use planning at national and inter-county levels¹⁰¹. In addition, the NLC oversees land use planning through monitoring, reporting, and ensuring compliance¹⁰².

At the county level, each County Executive Committee member is tasked with handling physical and land use planning to ensure adherence to national policies while also addressing local needs¹⁰³. In addition, the County Physical and Land Use Consultative Forum provides a platform for the participation of local stakeholders in planning discussions¹⁰⁴, creating a balance between national imperatives and local conditions. Each county appoints a County Director of Physical and Land Use Planning who oversees land use planning, policy implementation, and inter-county coordination¹⁰⁵ to ensure coherent, sustainable, and legally compliant land use planning at all levels. The Act also provides for the establishment of Inter-County Joint Planning Committees to address cross-boundary planning issues¹⁰⁶, thus improving regional cooperation.

2.2.6 THE NATIONAL LAND COMMISSION ACT

The NLC Act, 2012 establishes a comprehensive legal framework to enhance the governance of land resources in line with Article 60 of the Kenyan Constitution¹⁰⁷. By highlighting the operations, powers, and responsibilities of the National Land Commission (NLC), the Act ensures that public land is managed efficiently and sustainably, aligning land administration with constitutional principles of equity, transparency, and sustainable development¹⁰⁸.

⁹⁹ Section 13, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰⁰ Section 6, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰¹ Section 7, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰² Section 9, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰³ Section 17, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰⁴ Section 15, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰⁵ Section 20, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰⁶ Section 30, *Physical and Land Use Planning Act* (Act No. 13 of 2019).

¹⁰⁷ Long Title, *National Land Commission Act* (Act No. 5 of 2012).

¹⁰⁸ Article 10, *Constitution of Kenya* (2010).

2.2.6.1 ROLE OF NATIONAL LAND COMMISSION

Acting on behalf of both national and county governments, the NLC is mandated to oversee public land management¹⁰⁹, facilitate land title registration¹¹⁰, conduct research on land use¹¹¹, and provide advisory opinions on national land policy¹¹². These functions not only promote systematic land administration but also support evidence-based decision-making in land governance.

Additionally, the Commission is vested with authority to alienate public land with government approval¹¹³, oversee unregistered trust and community lands¹¹⁴, and develop a comprehensive land information management system¹¹⁵ ensuring that land is strategically secured, transparently allocated, and efficiently managed, supporting both national development goals and sustainable land use planning.

2.2.7 INVESTMENT PROMOTION ACT

The Investment Promotion Act (2004) establishes a comprehensive framework aimed at fostering a conducive environment for both local and foreign investment. By simplifying regulatory procedures, expediting approvals, and providing institutional support, the Act enhances Kenya's attractiveness as an investment destination. A central pillar of this framework is the Kenya Investment Authority (KenInvest), which plays a key role in investment facilitation, certification, and regulatory coordination.

The Foreign Investment Protection Act complements this by protecting foreign land investments¹¹⁶, issuing certificates for approved enterprises¹¹⁷, and revoking unused assets¹¹⁸ to ensure productive use, aligning with broader investment goals.

¹⁰⁹ Section 5(1)(a), *National Land Commission Act* (Act No. 5 of 2012).

¹¹⁰ Section 5(2)(b), *National Land Commission Act* (Act No. 5 of 2012).

¹¹¹ Section 5(1)(d), *National Land Commission Act* (Act No. 5 of 2012).

¹¹² Section 5(1)(c), *National Land Commission Act* (Act No. 5 of 2012).

¹¹³ Section 5(2)(a), *National Land Commission Act* (Act No. 5 of 2012).

¹¹⁴ Section 5(2)(e), *National Land Commission Act* (Act No. 5 of 2012).

¹¹⁵ Section 5(2)(d), *National Land Commission Act* (Act No. 5 of 2012).

¹¹⁶ Section 2, *Foreign Investment Protection Act* (Act No. 35 of 1964).

¹¹⁷ Section 3, *Foreign Investment Protection Act* (Act No. 35 of 1964).

¹¹⁸ Section 5, *Foreign Investment Protection Act* (Act No. 35 of 1964).

2.2.7.1 INVESTOR ELIGIBILITY CRITERIA AND LAND-USE OBLIGATIONS

The Act outlines specific criteria for investor eligibility and obligations related to land use investments, ensuring that such investments align with county spatial planning frameworks as mandated under Section 110 of the County Government Act.

To qualify for an investment certificate, foreign investors must commit at least \$100,000 or its equivalent in another currency¹¹⁹, while local investors must invest a minimum of 1 million Kenyan Shillings¹²⁰. This financial threshold aims to attract substantial investments that can contribute significantly to the economy.

Section 4(1)(d) of the Investment Promotion Act further requires that all investments and associated activities be lawful and beneficial to the Kenyan economy¹²¹. As per Section 4(2), KenInvest evaluates investment proposals based on their impact on job creation, technology transfer, tax revenue generation, and the use of local resources, aligning with both national development objectives¹²² and county spatial plans under Section 110 of the County Government Act¹²³.

Additionally, county spatial plans, which are reviewed every five years, serve as the strategic framework for land allocation, guiding where private and public investments should be located¹²⁴. Investors must ensure that their projects comply with designated land use patterns¹²⁵, adhere to environmental sustainability considerations¹²⁶, and support priority economic and infrastructure development areas¹²⁷.

¹¹⁹ Section 4(1)(b)), *Investment Promotion Act* (Act No.6 of 2004).

¹²⁰ Section 4(1)(c)), *Investment Promotion Act* (Act No.6 of 2004).

¹²¹ Section 4(1)(d)), *Investment Promotion Act* (Act No.6 of 2004).

¹²² Section 4(2), *Investment Promotion Act* (Act No.6 of 2004).

¹²³ Section 110, *County Government Act* (Act No. 17 of 2012).

¹²⁴ Section 110(2)(d)), *County Government Act* (Act No. 17 of 2012).

¹²⁵ Section 110(c)(i)), *County Government Act* (Act No. 17 of 2012).

¹²⁶ Section 110(2)(vi)), *County Government Act* (Act No. 17 of 2012).

¹²⁷ Section 110(2)(h)) *County Government Act* (Act No. 17 of 2012).

Finally, investors must obtain various licenses and approvals in accordance with key legislative frameworks, including the Physical Planning Act (1996), Land Act (2012), and Local Government Act¹²⁸ ensuring that land-based investments are legal, sustainable, and aligned with county and national development goals.

2.2.7.2 INSTITUTIONS ESTABLISHED IN RELATION TO LAND INVESTMENT

Kenya Investment Authority (KeInvest)

KeInvest is established as a corporate body responsible for promoting and facilitating investment in Kenya¹²⁹. To promote investment, Section 15(2)(a) empowers KenInvest to issue investment certificates¹³⁰, allowing investors to fast-track the acquisition of requisite permits and licenses. This provision is further reinforced by Section 12, which mandates expedited access to business licenses¹³¹, reducing bureaucratic delays that often hinder investment. Additionally, Section 13 facilitates the entry of expatriates by granting work permits, ensuring that businesses can attract specialized foreign expertise crucial for operational efficiency and growth¹³².

Section 15(2)(d) mandates KenInvest to facilitate and manage land designated for investment, ensuring systematic acquisition and allocation for industrial, commercial, and agribusiness purposes¹³³, discouraging speculative landholding. The Second Schedule requires approvals under the Physical Planning Act and Environmental Management and Coordination Act (EMCA)¹³⁴, ensuring compliance with zoning and sustainability standards to enhance land use efficiency.

KeInvest also contributes to investor support and policy advocacy, as stipulated under Sections 15(2)(b) and 15(2)(c). It actively promotes investment opportunities both domestically and internationally¹³⁵ while reviewing investment policies and recommending legislative and

¹²⁸ Second Schedule, Paragraph 6-8, *Investment Promotion Act* (Act No.6 of 2004).

¹²⁹ Section 14, *Investment Promotion Act* (Act No.6 of 2004).

¹³⁰ Section 15(2)(a), *Investment Promotion Act* (Act No.6 of 2004).

¹³¹ Section 12, *Investment Promotion Act* (Act No.6 of 2004).

¹³² Section 13, *Investment Promotion Act* (Act No.6 of 2004).

¹³³ Section 15(2)(d), *Investment Promotion Act* (Act No.6 of 2004).

¹³⁴ Second Schedule, Paragraph 14, *Investment Promotion Act* (Act No.6 of 2004).

¹³⁵ Section 15(2)(b), *Investment Promotion Act* (Act No.6 of 2004).

regulatory reforms¹³⁶. This function strengthens Kenya's investment climate and ensures that land-based investments align with national development goals.

Furthermore, KeInvest is instrumental in licensing and business setup assistance, as provided under Section 12¹³⁷. Investment certificate holders benefit from fast-tracked access to essential business licenses, reducing bureaucratic inefficiencies and ensuring that investors can secure land and commence operations swiftly.

Finally, KeInvest collaborates with the National Investment Council (NIC) in monitoring economic development and land-based investment trends. Under Section 27(2)(b), the NIC, with input from KeInvest, identifies regions requiring economic investment¹³⁸, ensuring that land banking efforts are strategically aligned with national economic priorities.

Investment Promotion and Facilitation Bill, 2024

The Investment Promotion and Facilitation Bill, 2024 expands the functions of KeInvest beyond those provided in the Investment Promotion Act, particularly in land administration, development control, and investor support. Under Clause 7(a), KenInvest is mandated to identify investment opportunities at both national and county levels, including land-based investment projects¹³⁹ ensuring that investors have access to strategic locations for development.

Given that county governments oversee land use planning and allocation, Clause 7(h) establishes a framework for collaboration between KenInvest and county authorities to facilitate investor access to land while ensuring compliance with local land management policies¹⁴⁰.

To streamline investment procedures, Clause 28(1) establishes a One-Stop Investment Center, a centralized facility designed to provide government services related to land acquisition and

¹³⁶ Section 15(2)(c), *Investment Promotion Act* (Act No.6 of 2004).

¹³⁷ Section 12, *Investment Promotion Act* (Act No.6 of 2004).

¹³⁸ Section 27(2)(b), *Investment Promotion Act* (Act No.6 of 2004).

¹³⁹ Clause 7(a), *Investment Promotion and Facilitation Bill, 2024*

¹⁴⁰ Clause 7(h), *Investment Promotion and Facilitation Bill, 2024*

investment approvals¹⁴¹. This initiative is expected to reduce bureaucratic delays and enhance the efficiency of land-based investments. Furthermore, Clause 28(2)(f)-(g) emphasizes the importance of development control and land use compliance, ensuring that all investment projects adhere to zoning regulations, land use policies, and environmental standards¹⁴². KenInvest is also responsible for monitoring and evaluating investment projects, as stipulated in Clause 7(n)(iv)¹⁴³, ensuring that land designated for investment is utilized efficiently and in line with national economic priorities.

Under Clause 11(a), KenInvest is authorized to acquire, manage, control, and administer assets, including land, for investment promotion allowing the institution to secure and allocate land for priority investment projects¹⁴⁴. Additionally, Clause 11(b) provides for Public-Private Partnerships (PPPs) in land-based investments, enabling KenInvest to engage in joint ventures and establish subsidiaries that could support land development projects¹⁴⁵.

National Investment Council (NIC)

Clause 26 of the Bill establishes the National Investment Council (NIC) as a key advisory body responsible for shaping Kenya's investment landscape¹⁴⁶. One of its critical functions, as stipulated under Clause 27(2)(b), is identifying land investment opportunities to align land banking efforts with broader economic growth objectives¹⁴⁷. Additionally, the NIC plays a pivotal role in advising on policy adjustments for land use, as per Section 27(2)(a)¹⁴⁸, ensuring that land investment policies promote efficiency and sustainable development. Moreover, under Clause 27(2)(c), the Council encourages public-private partnerships (PPPs) to facilitate large-scale land development projects¹⁴⁹, further integrating private sector expertise and resources into national land investment strategies.

¹⁴¹ Clause 28(1), Investment Promotion and Facilitation Bill, 2024

¹⁴² Clause 28(2)(f)-(g), Investment Promotion and Facilitation Bill, 2024

¹⁴³ Clause 7(n)(iv), Investment Promotion and Facilitation Bill, 2024

¹⁴⁴ Clause 11(a), Investment Promotion and Facilitation Bill, 2024

¹⁴⁵ Clause 11(b), Investment Promotion and Facilitation Bill, 2024

¹⁴⁶ Section 26, *Investment Promotion Act* (Act No.6 of 2004).

¹⁴⁷ Section 27(2)(b), *Investment Promotion Act* (Act No.6 of 2004).

¹⁴⁸ Section 27(2)(a), *Investment Promotion Act* (Act No.6 of 2004).

¹⁴⁹ Section 27(2)(c), *Investment Promotion Act* (Act No.6 of 2004).

By establishing these institutions and assigning them specific responsibilities, the Bill ensures that land is strategically reserved, managed, and utilized to support Kenya's long-term economic and infrastructural development.

2.3 ANALYSIS OF EXISTING POLICIES ON LAND BANKING AND INVESTMENTS

2.3.1 NATIONAL LAND USE POLICY, 2017

The National Land Use Policy (NLUP) 2017 was developed by the Ministry of Lands and Physical Planning¹⁵⁰ pursuant to Article 60(2) of the Constitution, which mandates the national government to develop and maintain national land policies in accordance with the principles set out in Article 60(1) of the Constitution¹⁵¹. It stems from the need to address long standing challenges in Kenya's land management and utilization¹⁵². Kenya lacked a unified land use policy post-independence, leading to haphazard land management and uncoordinated legal frameworks resulting in inefficiencies, conflicts, and unsustainable practices¹⁵³.

2.3.1.1 CHAPTERS ADDRESSING LAND BANKING

The NLUP significantly advanced the concept of land banking by institutionalizing it within a structured policy framework. Unlike the earlier National Land Policy, 2009, which introduced land banking¹⁵⁴ without a concrete implementation mechanism, the NLUP 2017 explicitly mandated the establishment of land banks for investment, development, redistribution, restitution, and

¹⁵⁰ Foreword, Sessional Paper No. 1 of 2017

¹⁵¹ Article 60(2), *Constitution of Kenya* (2010).

¹⁵² Chapter 1.1.3, Sessional Paper, No. 1 of 2017

¹⁵³ Chapter 1.1.2, Sessional Paper, No. 1 of 2017

¹⁵⁴ Chapter 3.3.3.5, Sessional Paper, No. 3 of 2009

resettlement¹⁵⁵. This provision ensures that land is proactively reserved for planned urban expansion, mitigating the risks of speculative hoarding and unregulated development.

Additionally, the NLUP 2017 introduced specific procurement mechanisms to facilitate land acquisition for banking. It provides for the purchase and donation of land and establishes a government buy-back mechanism to secure strategic land reserves¹⁵⁶. This structured approach enhances the government's ability to control land designated for public purposes, ensuring a legal and financial framework for systematic land acquisition and management.

Beyond urban development, the NLUP 2017 broadened the scope of land banking by incorporating it into industrial, commercial, agricultural, and infrastructure planning¹⁵⁷. This expansion ensures that land banking is not confined to urban housing and investment but is also leveraged for rural and industrial development.

2.3.1.2 INSTITUTIONAL ROLES REVISED BY THE NLUP, 2017

The NLC, the Ministry of Lands and Physical Planning, and county governments each play a critical role in the governance and implementation of land banking initiatives in Kenya. Their responsibilities have evolved over time, particularly with the introduction of the NLUP 2017, which expanded and clarified their mandates to strengthen land banking as a strategic tool for sustainable land management.

National Land Commission (NLC)

The NLC, established under Article 67 of the Constitution¹⁵⁸ and the National Land Commission Act (NLC) 2012, was initially tasked with managing public land, monitoring land use, and conducting research on land matters¹⁵⁹, functions relevant to land banking. However, Chapter 4.1.5 of the NLUP 2017 significantly expanded the NLC's mandate by assigning it monitoring and

¹⁵⁵ Chapter 3.7.xvi, Sessional Paper, No. 1 of 2017

¹⁵⁶ Chapter 3.7.xvii, Sessional Paper, No. 1 of 2017

¹⁵⁷ Chapter 3.23.xix, Sessional Paper, No. 1 of 2017

¹⁵⁸ Article 67, *Constitution of Kenya* (2010).

¹⁵⁹ Section 5, *National Land Commission Act* (Act No.5 of 2012).

oversight responsibilities, requiring it to track the performance of public, private, community, and individual landholders in implementing the NLUP¹⁶⁰.

Additionally, the NLC was tasked with conducting research on land availability and making strategic recommendations to relevant authorities¹⁶¹. This research function strengthens land banking by identifying and documenting land suitable for acquisition, supporting long-term development plans¹⁶².

Moreover, the Commission was designated as the lead advocacy agent to mobilize resources for policy implementation, including land banking activities¹⁶³. Securing funds enables the acquisition of land for banks through purchase or buy-back mechanisms¹⁶⁴, overcoming financial constraints that limited land banking under the NLP 2009.

Ministry Of Lands And Physical Planning

The Ministry of Lands and Physical Planning primarily focuses on land use planning and development control¹⁶⁵ under the Physical Planning Act. However, the 2017 NLUP significantly expanded its mandate, positioning it as the lead authority in coordinating land use planning across sectors. Section 4.1.4 consolidates its functions from other ministries, designates it as the primary advisor on physical planning, and enhances its capacity through increased funding and restructuring¹⁶⁶.

This expanded role directly strengthens land banking by ensuring systematic planning and mapping of land reserves¹⁶⁷, supporting land procurement efforts¹⁶⁸, and integrating land banking

¹⁶⁰Chapter 4.1.5, Sessional Paper, No. 1 of 2017

¹⁶¹Chapter 4.1.5. ii, Sessional Paper, No. 1 of 2017

¹⁶²Chapter 3.23.xix, Sessional Paper, No. 1 of 2017

¹⁶³Chapter 4.1.5. v, Sessional Paper, No. 1 of 2017

¹⁶⁴ Chapter 3.7.xvii Sessional Paper, No. 1 of 2017

¹⁶⁵ Section 10, *Physical And Land Use Planning Act* (Act No.13 of 2019).

¹⁶⁶ Chapter 4.1.4, Sessional Paper, No. 1 of 2017

¹⁶⁷ Chapter 3.9.i., Sessional Paper, No. 1 of 2017

¹⁶⁸ Chapter 3.7.xvii, Sessional Paper, No. 1 of 2017

into national strategies for housing, infrastructure, and agriculture¹⁶⁹. Increased financial and institutional support enables the Ministry to document and identify strategic land parcels for banking, while the development of standardized planning guidelines¹⁷⁰ ensures a uniform approach across county and national levels.

County Governments

County governments also play a crucial role in implementation at the local level. While Article 185 of the Constitution¹⁷¹ and Section 5 of the County Governments Act, 2012¹⁷² devolved land planning functions to counties, coordination with national-level agencies remained weak. To address this, the policy mandated the establishment of County Technical Implementation Committees, chaired by governors, to oversee land use planning and land banking initiatives¹⁷³. Additionally, counties receive technical support and resources to enhance their planning capacity¹⁷⁴.

These provisions enable counties to actively reserve land for housing, infrastructure, and other public purposes, ensuring that land banking initiatives align with local development priorities.

2.3.2 RECOMMENDED NATIONAL LAND POLICY (2023)

The NLC developed the Recommended National Land Policy (RNLP) 2023 pursuant to Article 67(2)(b) of the Constitution of Kenya, 2010, which mandates the commission to recommend a national land policy to the national government¹⁷⁵. The revision was necessary to update the National Land Policy (NLP) 2009, which was formulated before the 2010 Constitution and required alignment with constitutional principles, as well as the integration of new policies on land

¹⁶⁹ Chapter 3.23.xix, Sessional Paper, No. 1 of 2017

¹⁷⁰ Chapter 4.4, Sessional Paper, No. 1 of 2017

¹⁷¹ Article 185, *Constitution of Kenya* (2010)

¹⁷² Section 5, County Governments Act, 2012

¹⁷³ Chapter 4.1.3, Sessional Paper, No. 1 of 2017

¹⁷⁴ Chapter 4.6.5, Sessional Paper, No. 1 of 2017

¹⁷⁵ Article 67(2)(b), *Constitution of Kenya*, (2010).

use, environmental conservation, and climate change. As a "Recommended" draft, it reflects ongoing stakeholder engagement, with validation workshops and public input still shaping its final form¹⁷⁶.

2.3.2.1 CHAPTERS ADDRESSING LAND BANKING

Chapter 5.3.5 of the RNLP 2023 critically examines the unchecked and widespread conversion of agricultural land into urban use, highlighting the failure of physical and land use planning standards to evolve in response to emerging land use trends¹⁷⁷. This misalignment has led to haphazard development, environmental degradation, and conflicts over land use priorities.

To address these deficiencies, the policy identifies land banking as a critical intervention, particularly through the revision of the Planning Handbook to explicitly incorporate land banking as a formal land use category¹⁷⁸. This revision would not only ensure that land banking is officially recognized within Kenya's planning framework but would also establish clear guidelines, procedures, and criteria for identifying, acquiring, and managing banked land.

This explicit recognition provides a foundational basis for the implicit land banking concepts that will be examined in the subsequent discussion. Chapter 9.3.2 mandates the Ministry of Agriculture, in collaboration with county governments, to identify and gazette suitable areas as agricultural reserves to enhance food security. This initiative includes banning subdivision, regulating development, and implementing Purchase Development Rights (PDR) and Transfer Development Rights (TDR) programs¹⁷⁹. These measures mirror land banking principles by preventing land fragmentation and ensuring that agricultural land is preserved for strategic use, effectively controlling its future development.

Similarly, Chapter 4.3 addresses the management of public land, emphasizing the need for a clear legal framework and tenure regularization. The policy further proposes the allocation of public

¹⁷⁶ Chapter 1.8, Recommended National Land Policy, 2023

¹⁷⁷ Chapter 5.3.5, Recommended National Land Policy, 2023

¹⁷⁸ Chapter 5.3.5, Recommended National Land Policy, 2023

¹⁷⁹ Chapter 9.3.2, Recommended National Land Policy, 2023

land to settle landless Kenyans¹⁸⁰, which effectively establishes a strategic holding and redistribution mechanism akin to land banking.

Furthermore, Chapter 9.3.6 proposes the development of a regulatory framework for reclamation, rehabilitation, restoration, and the use of reclaimed land¹⁸¹. This proactive approach aligns with land banking principles by ensuring that land is systematically restored and reserved for future agricultural use.

By embedding land banking principles within multiple aspects of land policy, the RNLP 2023 moves beyond conceptual recognition and integrates land banking into practical frameworks for agricultural sustainability, public land management, environmental conservation, and land reclamation.

2.3.2.2 INSTITUTIONAL ROLES IN ADVANCING LAND BANKING UNDER THE RNLP, 2023

National Land Commission (NLC)

Chapter 11.2 recommends clarifying the NLC's authority over public land to eliminate overlaps with the Ministry of Lands¹⁸² supporting Chapter 5.3.5's goal of reserving strategic land. In addition to defining its authority, it enhances the NLC's financial autonomy through tax collection powers and a dedicated Commission Fund¹⁸³, addressing funding gaps in land banking. Furthermore, it strengthens the NLC's role in policy formulation, redress of historical injustices, and land registration, supported by a digital platform for transparent, efficient land data management¹⁸⁴ aligning with the broader policy objective of preserving land for future use.

¹⁸⁰ Chapter 4.3, Recommended National Land Policy, 2023

¹⁸¹ Chapter 9.3.6, Recommended National Land Policy, 2023

¹⁸² Chapter 11.2, Recommended National Land Policy, 2023

¹⁸³ Chapter 11.2, Recommended National Land Policy, 2023

¹⁸⁴ Chapter 11.2, Recommended National Land Policy, 2023

Ministry In Charge Of Lands

Chapter 11.3 repositions the Ministry as a policy leader, reducing overlap with the NLC¹⁸⁵ and aligning land banking with Chapter 5.3.5's goal of protecting prime land. It promotes digitization for efficient land data management¹⁸⁶ and establishes a National Land Reform Transformation Unit to coordinate policy implementation and support long-term planning¹⁸⁷ ensuring effective policy execution within a unified land management framework.

County Government

Chapter 11.4 enhances county governments' role in land banking by resolving jurisdictional ambiguities and fully transferring devolved land functions¹⁸⁸ enabling proactive land reservation aligned with Chapter 5.3.5. It emphasizes fast-tracking community land registration¹⁸⁹ to secure tenure and protect strategic land uses, while digital platforms improve data accuracy, transparency, and efficiency in county-level land monitoring and allocation¹⁹⁰.

National Land Policy Implementation Unit (NLPIU)

Chapter 11.8.1 mandates the creation of the NLPIU as a statutory body to operationalize land policy through legislation¹⁹¹, directly enforcing Chapter 5.3.5's directive to reserve prime land for strategic use. Institutionalizing the NLPIU ensures a coordinated and structured approach to land banking. To promote inter-agency collaboration, the policy advocates for inclusive representation from key stakeholders, such as the Ministry of Lands, county governments, the NLC, the Ministry of Finance, and non-state actors¹⁹², enhancing unified decision-making in land acquisition and management.

¹⁸⁵ Chapter 11.3, Recommended National Land Policy, 2023

¹⁸⁶ Chapter 11.3, Recommended National Land Policy, 2023

¹⁸⁷ Chapter 11.3, Recommended National Land Policy, 2023

¹⁸⁸ Chapter 11.4, Recommended National Land Policy, 2023

¹⁸⁹ Chapter 11.4, Recommended National Land Policy, 2023

¹⁹⁰ Chapter 11.4, Recommended National Land Policy, 2023

¹⁹¹ Chapter 11.8.1, Recommended National Land Policy, 2023

¹⁹² Chapter 11.8.1, Recommended National Land Policy, 2023

For land banking to function effectively, Chapter 11.8.3 mandates the allocation of sufficient personnel and resources to the NLPIU¹⁹³, ensuring that it has the financial independence needed to acquire and maintain banked land. Furthermore, the policy links the NLPIU's financial sustainability to the proposed Land Fund in Chapter 12.1¹⁹⁴, which provides an additional fiscal mechanism to support ongoing land banking efforts.

Beyond implementation, the RNLP 2023 recognizes that legal gaps must be addressed to institutionalize land banking comprehensively. Chapter 11.8.4 empowers the NLPIU to propose legislative reforms, such as enacting specific land banking regulations or incentives¹⁹⁵, ensuring Section 5.3.5's preservation goals are enforceable.

Finally, Chapter 11.8.6 mandates the continued operation of the NLPIU post-implementation¹⁹⁶, allowing for regular policy reviews and adjustments to maintain the integrity of land reserves. This provision aligns with Chapter 5.3.5's intergenerational focus, ensuring that land banking remains a structured and sustainable practice capable of adapting to evolving land management needs.

2.3.3 KENYA VISION 2030

Kenya Vision 2030, developed by the Office of the Prime Minister and the Ministry of State for Planning, National Development, and Vision 2030, envisioned to transform the country into a globally competitive, newly industrialized, and middle-income nation by 2030¹⁹⁷.

2.3.3.1 HOW KENYA VISION 2030 SUPPORTS LAND BANKING

The establishment of a National Spatial Plan (NSP), as outlined in Chapter 2.1, serves as a fundamental mechanism for advancing land banking by providing a structured, long-term

¹⁹³ Chapter 11.8.3, Recommended National Land Policy, 2023

¹⁹⁴ Chapter 12.1, Recommended National Land Policy, 2023

¹⁹⁵ Chapter 11.8.4, Recommended National Land Policy, 2023

¹⁹⁶ Chapter 11.8.6, Recommended National Land Policy, 2023

¹⁹⁷ Executive Summary, Sessional paper No. 10 of 2012

framework for national development over a 50-year period. By addressing settlement patterns, transport infrastructure, environmental conservation, and economic growth, the NSP facilitates strategic land allocation to support flagship projects and national objectives¹⁹⁸.

Notably, projects such as the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) exemplify this principle by unlocking underutilized land and converting it into productive assets for agriculture, commerce, and industrial development¹⁹⁹. This approach ensures that land is proactively secured and prepared for transformative projects, preventing speculative hoarding while enabling urbanization, infrastructure expansion, and investment.

Chapter 3's economic pillar prioritizes the optimization of high-potential agricultural and industrial land through structured land use policies²⁰⁰ guaranteeing the availability of land for essential economic and industrial projects. This approach facilitates the systematic acquisition, allocation, and strategic utilization of land to support national development while ensuring fair access and sustainable management.

2.3.4 KENYA INVESTMENT POLICY, 2019

The Kenya Investment Policy (KIP), 2019, developed by the Ministry of Industry, Trade and Cooperatives, State Department for Industrialization, seeks to establish a comprehensive and harmonized framework to attract, facilitate, retain, and monitor private investment with the overarching goal of promoting sustainable and inclusive growth. It aligns with Kenya's Vision 2030 and the United Nations Sustainable Development Goals (UNSDGs) by ensuring that both domestic and foreign investments contribute to national development priorities.

¹⁹⁸ Chapter 2.1, Sessional paper No. 10 of 2012

¹⁹⁹ Chapter 2.1, Sessional paper No. 10 of 2012

²⁰⁰ Chapter 3, Sessional Paper No. 3 of 2012

2.3.4.1 CHAPTERS ADDRESSING LAND BANKING

Chapter 3.3.6 identifies land banking as a critical mechanism for overcoming investment barriers, particularly land accessibility and community resistance. By mandating the establishment of land banks at both national and county levels, the policy ensures a structured and predictable supply of investment-ready land, reducing uncertainty for investors²⁰¹. This is reinforced through structured community engagement mechanisms that promote fair compensation and inclusive participation, enhancing social acceptability. To further support investment, the policy advocates for infrastructure provision within land banks, such as roads, electricity, and water, to enhance site viability.²⁰²

Chapter 5.3.6 further proposes that county governments allocate budgets and establish savings schemes for land acquisition and preparation, institutionalizing land banking as a long-term investment strategy and ensuring readily accessible land reserves for investors without speculative delays²⁰³. Chapter 6.2.3 advances this by mandating counties to proactively manage land for investment, designating plots for industrial and commercial use. These lands must be mapped, registered, and marketed as investment-ready, with clear, transparent guidelines for leasing or selling, aligned with long-term economic strategies for sustained growth²⁰⁴.

Given that land management and investment promotion involve both national and county governments, Chapter 6.3.3 emphasizes coordinated land banking, urging national and county governments to collaborate, share best practices, standardize land allocation, and pool resources for sustainable economic growth through strategic land management²⁰⁵.

2.3.4.2 INSTITUTIONAL SUPPORT FOR LAND BANKING

Chapter 6.2.1 envisions the National Investment Council (NIC) (established under Section 26.1 of the Investment Promotion Act (2004)) as an institution providing high-level oversight and strategic

²⁰¹ Chapter 3.3.6, Kenya Investment Policy, 2019

²⁰² Chapter 3.3.6, Kenya Investment Policy, 2019

²⁰³ Chapter 5.3.6, Kenya Investment Policy, 2019

²⁰⁴ Chapter 6.2.3, Kenya Investment Policy, 2019

²⁰⁵ Chapter 6.3.3, Kenya Investment Policy, 2019

guidance, with newly proposed responsibilities including formulating Kenya’s overall investment strategy, approving bilateral and multilateral investment treaties, and developing land banking strategies to align with national priorities²⁰⁶.

Additionally, the policy proposes that the NIC evaluate the impact of investments, ensuring that land banking contributes effectively to high-quality projects that drive national development. These roles, slated for formalization in 2019 through legislative harmonization²⁰⁷, represent a shift from its dormant status to a proactive coordinating entity²⁰⁸.

Chapter 6.2.2 further proposes that KenInvest, established under the Investment Promotion Act (2004), evolves into a central facilitation agency with enhanced roles, including assisting counties in profiling investment opportunities tied to land banks, operating One-Stop Shops (OSS) to streamline investor entry processes, and providing aftercare services to ensure investor satisfaction and retention²⁰⁹. These proposed functions aim to indirectly optimize and utilize land banks by coordinating land identification and access with counties, as outlined in the policy’s land banking framework²¹⁰, marking a significant broadening of its existing scope to make land banks more effective for investment purposes.²¹¹

At the county level, County Investment Units (CIUs), which lacked a pre-existing statutory basis, are newly proposed for creation within the devolved governance framework of Article 189 of the Constitution. Chapter 6.2.3 suggests that counties establish CIUs to promote localized investment goals, including the management of land banks. Their proposed responsibilities include acquiring and maintaining land banks through forced savings schemes²¹² and engaging communities to minimize resistance during land acquisition processes. This localized approach, envisioned by the

²⁰⁶ Chapter 6.2.1, Kenya Investment Policy, 2019

²⁰⁷ Chapter 7.2.7, Kenya Investment Policy, 2019

²⁰⁸ Chapter 6.2.1, Kenya Investment Policy, 2019

²⁰⁹ Chapter 6.2.2, Kenya Investment Policy, 2019

²¹⁰ Chapter 7.2.4, Kenya Investment Policy, 2019

²¹¹ Chapter 6.2.2, Kenya Investment Policy, 2019

²¹² Chapter 7.2.4, Kenya Investment Policy, 2019

policy, ensures that land banking aligns with county-specific development priorities while fostering community support for investment initiatives²¹³.

2.4 POLICY AND LEGAL FRAMEWORK LIMITATIONS

2.4.1 LACK OF A UNIFORM AND COMPREHENSIVE DEFINITION OF LAND BANKING

A well-defined concept is crucial for formulating detailed regulations and procedures for the establishment, management, and allocation of land within these banks. While the policies mention land banking, they do not provide a definition for “land banking”. The Land Act mentions the “procedure and manner of setting aside land for investments,”²¹⁴ which is related but not a definition of land banking itself. Without a standardized definition, different counties, agencies, or authorities may interpret and implement land banking in divergent ways. This can result in fragmented approaches, with some entities prioritizing public interest and others favoring private investment, leading to misaligned objectives and outcomes²¹⁵.

2.4.2 LACK OF SPECIFIC LEGAL PROVISIONS FOR DIFFERENT CATEGORIES OF LAND BANKS

The NLUP 2017 mentions land banking for various purposes (industrial, commercial, agricultural, etc.)²¹⁶. However, the policy does not propose a differentiated legal framework or provide for specific legal considerations for establishing and managing these different types of land banks based on their intended use. The lack of clarity on how land banks cater to different purposes may

²¹³ Chapter 6.2.3, Kenya Investment Policy, 2019

²¹⁴ Section 12, *Land Act* (Act No. 6 of 2012).

²¹⁵ Santosa A, Wijaya I, Sundariwati N, Martha M ‘The Concept of Land Bank Agency: Between Public or Business Functions?’ *Varia Justicia*, 18, 2023, 158 - <https://doi.org/10.31603/variajusticia.v18i2.6619>.

²¹⁶ Chapter 3.23, Sessional Paper, No. 1 of 2017

reduce investor confidence, as businesses seeking specific land types (e.g., commercial hubs) find the system unresponsive to their needs²¹⁷.

2.4.3 LACK OF SPECIFICITY IN DEFINING TERMS AND PROCESSES

While the Land Act grants the NLC the authority to reserve land²¹⁸, it does not define what constitutes “strategic” land, the process for identifying it, or the criteria for allocation leaving processes disjointed. The Physical and Land Use Planning Act²¹⁹ provides for the designation of Special Planning Areas (SPAs) but also fails to define what SPAs leaving the NLC to make subjective determinations without standardized guidelines.

Likewise, while the Land Registration Act facilitates land assembly²²⁰, it does not integrate this function into a structured land banking process by not establishing a dedicated land bank register with specific processes for recording and managing banked land leaving no systematic record-keeping mechanism for land banking resulting in ad-hoc land acquisition practices, with 40% of land records still undigitized²²¹.

While the policies advance the concept of land banking to an extent, they exhibit significant gaps in specificity, failing to fully resolve the procedural ambiguities in the laws.

Chapter 3.7 of the NLUP 2017 mandates the establishment of land banks for investment, development, and other public purposes²²². It also introduces procurement mechanisms, such as government buy-back options²²³, to secure strategic land reserves, aiming to systematize acquisition and management processes left vague in the Land Act. However, it does not provide step-by-step procedures for implementation. For instance, it fails to specify how the buy-back

²¹⁷ Chapter 3.3.6, Kenya Investment Policy, 2019

²¹⁸ Section 15, *Land Act* (Act No. 6 of 2012).

²¹⁹ Section 52, *Physical And Land Use Planning Act* (Act No.13 of 2019).

²²⁰ Section 22, *Land Registration Act* (Act No. 3 of 2012).

²²¹ Kenya’s Land Crisis: Why Our Land Is Under Threat And What Must Be Done To Fix It’, Soko Directory, November 2024 -

<https://sokodirectory.com/2024/11/kenyas-land-crisis-why-our-land-is-under-threat-and-what-must-be-done-to-fix-it/>.

²²² Chapter 3.7.xvi, Sessional Paper, No. 1 of 2017

²²³ Chapter 3.7 xvii, Sessional Paper, No. 1 of 2017

process is initiated, who qualifies to sell land, or how reserved land is prioritized for allocation, leaving operationalization unclear and reliant on ad hoc decisions.

Similarly, Chapter 5.3.5 of the RNLP 2023 proposes revising the Planning Handbook to include land banking guidelines²²⁴, but this remains aspirational as it is a draft, leaving current frameworks unresolved perpetuating the vagueness in the laws.

The KIP 2019 offers a stronger example of consolidation by mandating land banks at both national and county levels²²⁵ and outlining distinct roles for the NIC²²⁶, KenInvest²²⁷, and county governments²²⁸. Unlike the NLUP and RNLP, it builds on the Investment Promotion Act 2004 and directly informs the Investment Promotion and Facilitation Bill 2024, which expands KenInvest's role in land facilitation²²⁹. However, it fails to provide operational guidelines regarding land identification criteria, acquisition procedures, and infrastructure development standards within investment zones. Without these foundational elements, stakeholders lack procedural clarity, making it difficult to implement land banking systematically and transparently.

2.4.4 GAPS IN INSTITUTIONAL COORDINATION AND CLARITY OF ROLES

While the policies mention various institutions involved in land management (e.g., NLC, Ministry of Lands, county governments, KenInvest, NIC), the specific roles and responsibilities of these entities in the operationalization of land banking are not clearly demarcated and coordinated. For instance, while the KIP 2019 proposes an expanded role for the NIC²³⁰ and KenInvest²³¹ in relation to land banks, the mechanisms for their collaboration with the NLC and county governments in identifying and managing banked land require further clarification.

²²⁴ Chapter 5.3.5, Recommended National Land Policy, 2023

²²⁵ Chapter 6.3.3, Kenya Investment Policy, 2019

²²⁶ Chapter 6.2.1, Kenya Investment Policy, 2019

²²⁷ Chapter 6.2.2, Kenya Investment Policy, 2019

²²⁸ Chapter 6.2.3, Kenya Investment Policy, 2019

²²⁹ Clauses 7(a) and 11(a), Investment Promotion and Facilitation Bill, 2024

²³⁰ Chapter 6.2.1, Kenya Investment Policy, 2019

²³¹ Chapter 6.2.2, Kenya Investment Policy, 2019

The NLUP 2017 seeks to guide land governance, including land banking, by positioning the NLC as a central player²³². It emphasizes the NLC's authority in reserving land for strategic purposes, aiming to streamline land management. However, it falls short of specifying how the NLC should coordinate with county governments or agencies like KenInvest for investment-related land management leaving coordination mechanisms vague.

The RNLP 2023 recommends eliminating jurisdictional overlaps between the NLC and the Ministry of Lands²³³, which could indirectly benefit land banking, but it doesn't provide specific joint frameworks for land banking initiatives.

Kenya Vision 2030 envisions the development of a National Spatial Plan as a strategic framework for guiding land use and sustainable development²³⁴, however, it fails to designate a single entity responsible for overseeing NSP implementation, creating ambiguity that undermines the effectiveness of land banking, a concept reliant on coordinated spatial planning and authoritative oversight. While the Vision Delivery Secretariat (VDS) under the Office of the President is tasked with coordinating Vision 2030 projects²³⁵, no clear mandate exists for managing NSP execution, leading to potential fragmentation across multiple ministries. This lack of clarity threatens land banking's ability to align with national development goals, such as producing 200,000 housing units annually²³⁶ or developing irrigable land in arid regions²³⁷. Without a unified authority, decision-making on land allocation e.g whether for resort cities, low-income housing, or infrastructure, risks inefficiencies and delays.

2.4.5 LACK OF DEDICATE FINANCIAL MECHANISMS AND RESOURCE ALLOCATION

While the NLUP 2017 mentions resource mobilization for policy implementation²³⁸ and the KIP 2019 suggests that county governments allocate budgetary resources and implement forced savings

²³² Chapter 3.7.xvi, Sessional Paper, No. 1 of 2017

²³³ Chapter 11.2, Recommended National Land Policy, 2023

²³⁴ Chapter 2.1, Sessional paper No. 10 of 2012

²³⁵ Chapter 6, Sessional paper No. 10 of 2012

²³⁶ Figure 4.8.5, Sessional paper No. 10 of 2012

²³⁷ Figure 3.3.18, Sessional paper No. 10 of 2012

²³⁸ Chapter 4.1.1, Sessional Paper, No. 1 of 2017

schemes for land acquisition²³⁹, there is a lack of clearly defined and dedicated financial mechanisms or funds specifically for the acquisition, management, and maintenance of land banks at the national level. The RNLP 2023 proposes a Commission Fund for the NLC²⁴⁰ and links NLPIU's sustainability to a proposed Land Fund²⁴¹, suggesting an intent to address this gap, but these are still proposals. Notably, there is also no legal provision detailing how counties might implement a "forced savings scheme" for land acquisition, as proposed under the KIP. This leaves counties without a clear mechanism to build land reserves, limiting their ability to support investment projects. This has led to overreliance on private land markets, exacerbating price inflation (e.g., Nairobi's 300% land price surge over a decade)²⁴².

2.4.6 WEAK INTEGRATION OF LAND BANKING WITH SPATIAL PLANNING

Although the Urban Areas and Cities Act²⁴³ and the Physical and Land Use Planning Act²⁴⁴ emphasize integrated development planning and land use regulation, the policies do not link the establishment and management of land banks with comprehensive spatial planning frameworks at national and county levels. The RNLP 2023 emphasizes revising the Planning Handbook to include land banking²⁴⁵, which is a step towards this integration, but further details on how land banks will be incorporated into spatial plans are needed. Land banks may be established in areas misaligned with spatial plans, such as industrial zones in ecologically sensitive areas, wasting resources.

2.5 CASE STUDY

The *Ndoro & 191 others v National Land Commission*²⁴⁶ case exemplifies the consequences of Kenya's failure to integrate an effective land banking system. One of the key issues in the case

²³⁹ Chapter 7.2, Kenya Investment Policy, 2019

²⁴⁰ Chapter 11.2, Recommended National Land Policy, 2023

²⁴¹ Chapter 12, Recommended National Land Policy, 2023

²⁴² 'Kenya's Land Crisis', Soko Directory, November 2024 -

<https://sokodirectory.com/2024/11/kenyas-land-crisis-why-our-land-is-under-threat-and-what-must-be-done-to-fix-it/>.

²⁴³ Section 38, Urban Areas and Cities Act, 2011

²⁴⁴ Section 3, Physical And Land Use Planning Act, 2019

²⁴⁵ Chapter 5.3.5, Recommended National Land Policy, 2023

²⁴⁶ *Ndoro & 191 others v National Land Commission & 3 others*, [2023] KEELC 243 (KLR)

was the government's failure to properly integrate land valuation and compensation mechanisms into a coherent land banking strategy. The Land Value (Amendment) Act 2019 was meant to standardize land acquisition and compensation by introducing a Land Value Index. However, by the time of this case, the index had not been developed, making valuation processes inconsistent and unpredictable. Without a systematic approach, land acquisitions became contentious, leading to accusations of undervaluation and unfair compensation.

2.6 CONCLUSION

This chapter has critically revealed the complexities and inconsistencies within Kenya's legal, policy, and institutional frameworks for land banking. Despite a robust constitutional foundation and well-intentioned policy proposals aimed at bridging legislative gaps, these measures have yet to be codified into enforceable laws, leaving a significant regulatory void in the land banking sector. The next chapter will focus on South Africa as a case study, a jurisdiction with similarly complex land tenure systems, to explore how innovative approaches to land banking have been implemented. By drawing lessons from South Africa's experience, Chapter 3 aims to offer valuable insights that could inform and improve Kenya's land banking strategies.



CHAPTER 3: SOUTH AFRICA'S LAND BANKING SYSTEM AS A MODEL FOR KENYA

3.1 INTRODUCTION

Building on the analysis of Kenya's land banking challenges outlined in the previous chapter, this chapter explores South Africa's land banking system as a comparative model, seeking to identify legal and policy insights that could address Kenya's regulatory and coordination shortcomings. South Africa presents a particularly relevant case study due to its historical and contemporary land challenges, which parallel those of Kenya. Both countries have struggled with historical land dispossession, leading to persistent land inequities. South Africa's colonial and apartheid-era land policies, such as the 1913 Natives Land Act and 1994 Restitution of Land Rights Act, have shaped a highly fragmented land tenure system²⁴⁷. Similarly, Kenya's land governance has been shaped by British colonial land ordinances, resulting in a dual land system where formal title deeds coexist with customary tenure. This shared colonial legacy has led to legal uncertainties, land speculation, and challenges in public land management²⁴⁸.

Additionally, both nations face significant urbanization pressures, with rising populations driving the demand for land in cities. In Kenya, rapid urbanization has resulted in informal settlements housing 60% of Nairobi's population, with land speculation pricing out lower-income residents²⁴⁹. Likewise, South Africa has struggled with urban land shortages, prompting the government to use

²⁴⁷ Lahiff E, Guo L 'Land Redistribution in South Africa', *World Bank*, 2012, 3 - <http://hdl.handle.net/10986/27168>.

²⁴⁸ Roth M, 'Integrating Land Issues and Land Policy with Poverty Reduction and Rural Development in Southern Africa', *World Bank*, 2002, 6 - https://www.researchgate.net/publication/228865405_Integrating_Land_Issues_and_Land_Policy_with_Poverty_Reduction_and_Rural_Development_in_Southern_Africa.

²⁴⁹ NASA Earth Observatory 'Nairobi Swells with Urban Growth', 2016 - <https://earthobservatory.nasa.gov/images/88822/nairobi-swells-with-urban-growth#:~:text=Rapid%20urban%20growth%20strains%20existing,nearby%20national%20parks%20and%20forests.>>.

land banking as a tool to acquire and redistribute land for housing, industrialization, and agricultural development²⁵⁰.

South Africa's experience with land banking institutions, such as the Land and Agricultural Development Bank of South Africa (Land Bank), provides a valuable model for Kenya. The Land Bank has been instrumental in financing land acquisition, supporting smallholder farmers, and facilitating infrastructure development²⁵¹. However, South Africa has also faced challenges such as bureaucratic inefficiencies, corruption, and slow land redistribution²⁵², issues that Kenya must anticipate and address.

This chapter thus examines South Africa's land banking frameworks while reflecting on their applicability to Kenya, a country with comparable land challenges but a less coordinated system. The insights gained will inform recommendations for developing a comprehensive land banking policy in Kenya, ensuring that land is equitably allocated, efficiently utilized, and safeguarded for future development.

3.2 THE LAND BANK

The Land Bank, established under Section 3 of the Land Bank Act, 1912 (Act No. 18 of 1912) 1912, is South Africa's sole development finance institution (DFI) dedicated to agriculture²⁵³. Unlike commercial banks focused on profit, the Land Bank balances financial sustainability with

²⁵⁰ Manona S, Masiya T, Averbek W, 'Proposed Land Tenure and Land Administration Interventions to Increase Productivity on Smallholder Irrigation Schemes in South Africa', *ResearchGate*, 2013 - https://www.researchgate.net/publication/228924110_Proposed_Land_Tenure_and_Land_Administration_Interventions_to_Increase_Productivity_on_Smallholder_Irrigation_Schemes_in_South_Africa.

²⁵¹ 'Products and Services', Land and Agricultural Development Bank of South Africa - <https://landbank.co.za/Products-and-Services/Pages/Products-and-Services.aspx>.

²⁵² Ntsebeza L, Ruth H, 'The Land Question in South Africa: The Challenge of Transformation and Redistribution', *OpenUCT*, 2007, 223 - <https://open.uct.ac.za/server/api/core/bitstreams/7de7a426-a1fb-4444-a5a2-0818e98ba5b9/content>.

²⁵³ National Government of South Africa, *Annual Report*, 2024, 16 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

developmental impact²⁵⁴, sourcing capital from diverse channels to catalyze private sector investment in a sector often deemed risky²⁵⁵. Historically, it provided affordable loans to farmers, but over the past three decades, limited state funding has pushed reliance on capital markets, raising gearing ratios and funding costs, thus hampering its developmental role²⁵⁶.

To counter these challenges, the government has intervened with guarantees²⁵⁷ and R10 billion in appropriations since the 2020 default²⁵⁸, alongside R7 billion allocated from 2021/22 to 2023/24 to settle debts²⁵⁹. The Land Bank also pursued Credit Enhancement Guarantees from the National Treasury to bolster lender confidence and secure external funds²⁶⁰. In FY24, its board adopted a blended financing strategy, merging state and market-based capital to ensure a sustainable funding model that supports its dual mandate²⁶¹.

Distinguishing itself from commercial banks, the Land Bank's mission prioritizes transformation and inclusivity²⁶². While traditional banks assess loans via financial metrics, the Land Bank evaluates developmental indicators such as job creation, gender equality, and youth employment,

²⁵⁴ National Government of South Africa, *Annual Report, 2024*, 48 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁵⁵ Schreiber R, 'AMC Insights: Land Bank Report' *Africa Merchant Capital*, 5 - <https://www.africamerchantcapital.co.uk/wp-content/uploads/AMC-Insights-LandBank-Report-Reuben-Schreiber.pdf>.

²⁵⁶ National Government of South Africa, *Annual Report, 2024*, 33 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁵⁷ National Government of South Africa, *Annual Report, 2024*, 366 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁵⁸ National Government of South Africa, *Annual Report, 2024*, 204 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁵⁹ National Government of South Africa, *Annual Report, 2024*, 15 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁶⁰ National Government of South Africa, *Annual Report, 2024*, 33 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁶¹ National Government of South Africa, *Annual Report, 2024*, 33 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁶² Schreiber R, 'AMC Insights' *Africa Merchant Capital*, 3 - <https://www.africamerchantcapital.co.uk/wp-content/uploads/AMC-Insights-LandBank-Report-Reuben-Schreiber.pdf>.

mitigating risks in high-impact projects²⁶³. Its clientele includes historically disadvantaged individuals and Black-owned agribusinesses²⁶⁴, offering below-market rate loans to smallholders and transformation-focused enterprises²⁶⁵, unlike the profit-driven focus of commercial lenders.

South Africa's framework provides a clear statutory definition of the Land Bank which sets out its developmental finance role, objectives, and operational scope - anchoring its functions within the broader legal and policy architecture. In contrast, Kenya's legal framework lacks an equivalent definition despite multiple policy references in instruments such as the National Land Use Policy, 2017²⁶⁶ and the Recommended National Land Policy, 2023²⁶⁷. This absence of legal codification creates ambiguity, limiting the operationalization of land banking as a coordinated and strategic tool for development.

3.3 LEGAL AND POLICY FRAMEWORKS GOVERNING LAND BANKING IN SOUTH AFRICA

3.3.1 LAND BANK ACT, NO. 18 OF 1912

The Land Bank, established in 1912 by the Union of South Africa, aimed to bolster agriculture, a key driver of economic stability given its role in providing food security²⁶⁸ and employment in

²⁶³ Schreiber R, 'AMC Insights' *Africa Merchant Capital*, 3 - <<https://www.africamerchantcapital.co.uk/wp-content/uploads/AMC-Insights-LandBank-Report-Reuben-Schreiber.pdf>>.

²⁶⁴ Schreiber R, 'AMC Insights' *Africa Merchant Capital*, 7 - <<https://www.africamerchantcapital.co.uk/wp-content/uploads/AMC-Insights-LandBank-Report-Reuben-Schreiber.pdf>>.

²⁶⁵ Schreiber R, 'AMC Insights' *Africa Merchant Capital*, 15, <<https://www.africamerchantcapital.co.uk/wp-content/uploads/AMC-Insights-LandBank-Report-Reuben-Schreiber.pdf>>.

²⁶⁶ Chapter 3.7.xvi, Sessional Paper, No. 1 of 2017

²⁶⁷ Chapter 5.3.5, Recommended National Land Policy, 2023

²⁶⁸ National Government of South Africa, *Annual Report*, 2024, 4 - <[https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf)>.

rural areas²⁶⁹, by providing affordable credit solely to white farmers²⁷⁰. This exclusivity enabled them to expand holdings and boost productivity with government-backed loans²⁷¹. However, black South Africans were denied access, entrenching racial inequalities and limiting their ability to own or develop land. Consequently, this institutional bias deepened land ownership disparities for decades²⁷².

The Land Bank Act of 1912 drew sharp criticism for its restrictive lending, necessitating its replacement by the 1944 Act. It mandated first mortgage bonds on land as collateral²⁷³, a rule that favored established landowners but sidelined emerging farmers, especially historically disadvantaged groups on communal or leased land²⁷⁴. Moreover, the Act ignored movable assets like livestock and machinery²⁷⁵, vital wealth for many, curtailing their borrowing power and growth potential. Additionally, it overlooked the need for unsecured credit to cover seasonal costs like seeds and labor, leaving farmers without flexible financing²⁷⁶.

These limitations prompted the 1944 Act's reforms, which expanded collateral options, introduced unsecured advances, and aligned governance with broader agricultural policy objectives.

²⁶⁹ 'Project Summary Note', *African Development Bank*, 2012, 2 - https://www.afdb.org/sites/default/files/documents/projects-and-operations/south_africa_land_and_agricultural_development_bank_of_south_africa_land_bank_-_project_summary_note.pdf.

²⁷⁰ Coleman A, 'Land Bank on the Path to Financial Stability', *Farmer's Weekly*, 2023 - <https://www.farmersweekly.co.za/agri-business/agribusinesses/land-bank-on-the-path-to-financial-stability/>.

²⁷¹ Coleman A, 'Land Bank on the Path to Financial Stability', *Farmer's Weekly*, 2023 - <https://www.farmersweekly.co.za/agri-business/agribusinesses/land-bank-on-the-path-to-financial-stability/>.

²⁷² Kirsten J, Sihlobo W, 'South Africa's Land Bank can be fixed: change the funding model and narrow the focus', *The Conversation*, 2023 - <https://theconversation.com/south-africas-land-bank-can-be-fixed-change-the-funding-model-and-narrow-the-focus-209241>.

²⁷³ *Land and Agricultural Development Bank of SA t/a Landbank v Master of the High Court and Others*, 2006, para 30

²⁷⁴ *Land and Agricultural Development Bank of SA t/a Landbank v Master of the High Court and Others*, 2006, para 13

²⁷⁵ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 9 - <https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>.

²⁷⁶ *Land and Agricultural Development Bank of SA t/a Landbank v Master of the High Court and Others*, 2006, para 33 & 55

3.3.2 LAND BANK ACT, NO. 3 OF 1944

This Act addressed the inadequacies of a fragmented and exclusionary legal framework by consolidating disparate laws into a unified structure, laying the groundwork for the modern Land and Agricultural Bank of South Africa. Its enactment represented a strategic pivot, driven by the need to centralize and streamline financial support for agricultural development at a time when the sector demanded greater flexibility and inclusivity.

Section 3 (2) of the Land Bank Act of 1944 (herein known as the Principal Act) was amended by Section 6 of Act No. 31 of 1969 to include the exemption from general banking laws allowing the bank to function outside the regulatory constraints imposed on commercial banks²⁷⁷.

Unlike commercial banks, which operate primarily to maximize profits for shareholders, the Land Bank was established with a broader socio-economic objective; to support the growth and transformation of the agricultural sector²⁷⁸. This developmental function required a fundamentally different regulatory approach, as applying conventional banking laws designed for profit-driven institutions could have hindered its ability to provide affordable and accessible financing to farmers.

3.3.2.1 Financial and Lending Mechanisms

Financial Intermediaries

Section 21 of the Principal Act authorized the Land Bank to enter into agreements with financial intermediaries²⁷⁹ thereby expanding its lending reach beyond direct loans. Financial intermediaries, such as cooperatives, rural banks, and microfinance institutions, act as conduits for

²⁷⁷ Section 3(2), *Land Bank Act* (No. 3 of 1944).

²⁷⁸ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 17 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

²⁷⁹ Section 21, *Land Bank Act* (No. 3 of 1944).

disbursing credit to farmers who lack the collateral or financial history required by traditional banks²⁸⁰.

The use of financial intermediaries has been central to the Land Bank's efforts to reach historically underserved farmers, ensuring that both large-scale commercial operations and smallholder farmers benefit from affordable and accessible agricultural credit. Through provincial lending networks, these intermediaries streamline the credit process, handling key functions such as loan disbursement, risk assessment, monitoring, collection, and legal recoveries. This decentralized approach allows the Land Bank to extend its services to clients it might not otherwise reach, reducing administrative inefficiencies while enhancing financial inclusion in rural areas²⁸¹.

A significant mechanism for structuring these partnerships is the use of Service Level Agreements (SLAs). These agreements formalize collaborations with financial intermediaries, often incorporating risk- and profit-sharing arrangements to ensure the quality of loan assets. By 2018, the Land Bank had partnered with eleven intermediaries, collectively managing 53% of its loan book, demonstrating the scale and impact of this model²⁸².

One of the most significant developments by the Land Bank has been the Wholesale Financing Facility (WFF) in 2012, specifically designed to support emerging farmers. Rather than providing loans directly, the Land Bank channels funds to intermediaries, who then work closely with farmers, offering not only credit but also technical assistance and market access support²⁸³.

²⁸⁰ Section 2, *Land Bank Act* (No. 3 of 1944).

²⁸¹ National Government of South Africa, *Annual Report*, 2024, 40, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁸² Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 21 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

²⁸³ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 24-25 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

Recognizing the financial constraints faced by emerging farmers, the Department of Agriculture, Forestry and Fisheries (DAFF) provided an R150 million wholesale financing support facility to subsidize lending rates, making financing more affordable and accessible. This dual-layered support system ensures that finance alone is not the sole determinant of success, but is complemented by agronomic expertise, infrastructure investment, and value chain integration²⁸⁴.

Despite its numerous advantages, the intermediary financing model is not without challenges. A key concern is the potential barrier to entry for emerging farmers due to strict intermediary selection criteria. If these criteria are too rigid, they could inadvertently exclude smaller, community-based financial institutions that are best positioned to serve grassroots farming communities²⁸⁵. Ensuring that intermediary eligibility requirements are not overly restrictive remains a critical policy consideration. Another challenge relates to commercial lending terms. There has been criticism that the Land Bank's intermediary lending model still operates on largely commercial terms, making it difficult for emerging farmers with limited collateral and financial track records to access funding²⁸⁶.

Despite these challenges, the authorization provided by Section 21 of the 1944 Act has been a foundational element in the Land Bank's operational strategy to broaden its reach and support the diverse needs of the agricultural sector.

Collateral Flexibility

The initial provisions of Section 25(1) of the Act established a restrictive lending framework, stipulating that, with certain exceptions, the Land Bank could only advance loans against a first

²⁸⁴ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 23 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

²⁸⁵ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 39 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

²⁸⁶ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 21 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

mortgage on land within the Republic²⁸⁷. This requirement reflected traditional banking practices, which prioritized immovable property as the primary form of security. Recognizing the exclusionary impact of this rigid collateral framework, Section 25(2) introduced a crucial amendment, empowering the Land Bank's board to determine alternative forms of security²⁸⁸ beyond the strict requirement of a first mortgage on land such as agricultural produce, farming contracts, or guarantees from cooperatives. This amendment marked a significant policy shift, allowing the Bank to exercise greater flexibility in assessing credit applications and ensuring that farmers without land ownership could still qualify for financing²⁸⁹.

Furthermore, the substitution of Section 34(1) of the Principal Act by Section 18 of Act No. 21 of 1998 marked another critical shift in the Land Bank's mandate by explicitly authorizing it to provide working capital loans to farmers²⁹⁰. Working capital loans are short-term loans designed to finance the day-to-day operational needs of a business, in this case, a farming operation. They provide the necessary funds to cover expenses related to the immediate production cycle²⁹¹. They provide farmers with the liquidity needed to manage their immediate operational costs and invest in essential short-to-medium term assets, ensuring the smooth functioning of their agricultural activities.

Prior to this explicit authorization, the Land Bank's primary focus leaned heavily towards long-term financing secured by land. Section 21(a)(i) of the Principal Act established the foundation of the Bank's lending activities by authorizing it to advance money to farmers on the mortgage of land within the Republic²⁹². This positioned land ownership as the primary prerequisite for financing, ensuring that loans were secured against immovable property. Similarly, Section 22(f) of the Principal Act extended this principle by permitting the Bank to provide credit for the

²⁸⁷ Section 25(1), *Land Bank Act* (No. 3 of 1944).

²⁸⁸ Section 25(2), *Land Bank Act* (No. 3 of 1944).

²⁸⁹ National Government of South Africa, *Annual Report*, 2024, 48 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁹⁰ Section 18, *Land Bank Amendment Act* (No. 21 of 1998).

²⁹¹ National Government of South Africa, *Annual Report*, 2024, 33, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

²⁹² Section 21(a)(i), *Land Bank Act* (No. 3 of 1944).

purchase of land, with a particular focus on acquisition for agricultural purposes, improvements, and stock investments²⁹³ reinforcing the notion that land ownership was not only a prerequisite for financing but also a central mechanism for agricultural growth.

Additionally, Section 22(a) of the Principal Act allowed the Bank to advance funds for land improvements, covering investments such as farm buildings, fencing, water tanks, and land clearing activities²⁹⁴. These provisions further entrenched the long-term developmental approach, where financing was largely tied to fixed agricultural assets rather than short-term operational needs.

Collective Lending Structures

Another major development was the introduction of Section 45ter, which authorized the Land Bank to lend money to financial intermediaries, joint ventures, partnerships, trusts, and associations involved in agriculture²⁹⁵.

The *Analysis of Finance as a Barrier to Entry for Emerging Farmers* highlights that the Land Bank had engaged with eleven financial intermediaries, who played a crucial role in disbursing funds and providing advisory support, particularly to emerging farmers. These intermediaries operate through Service Level Agreements (SLAs) and manage a significant portion of the Bank's loan portfolio, demonstrating the effectiveness of this indirect lending model²⁹⁶.

The Wholesale Financing Facility (WFF), designed specifically for emerging farmers, also relies on intermediary institutions to channel funds, assess creditworthiness, and provide ongoing financial and operational support²⁹⁷. By working through these established networks, the Land

²⁹³ Section 22(f), *Land Bank Act* (No. 3 of 1944).

²⁹⁴ Section 22(a), *Land Bank Act* (No. 3 of 1944).

²⁹⁵ Section 45, *Land Bank Act* (No. 3 of 1944).

²⁹⁶ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 21 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

²⁹⁷ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 23 - <<https://www.compcom.co.za/wp->

Bank ensures that credit reaches farmers who might otherwise struggle to access direct loans due to collateral or administrative barriers. The *Implementation Plan for the Proactive Land Acquisition Strategy of 2006* further highlights the potential of such partnerships, advocating for service level agreements between the state and financial institutions like the Land Bank to support land reform strategies²⁹⁸.

The use of financial intermediaries, joint ventures, and collective lending structures also serves as a risk mitigation strategy for the Land Bank. By channeling funds through established entities, the Land Bank could potentially mitigate some of the risks associated with direct lending to individual farmers, especially those who may lack a strong credit history or operational track record. Intermediaries, with their expertise and local knowledge, can play a role in assessing creditworthiness and managing loan portfolios, as highlighted in the *Analysis of finance as a barrier to entry for emerging farmers* where it notes that this structure allowed the Land Bank to reduce its non-performing loans and hold intermediaries accountable for loan book quality²⁹⁹.

Another significant advantage of Section 45ter is its ability to increase the scale and coordination of agricultural finance. Lending to collective entities like joint ventures, partnerships, trusts, and associations can facilitate the provision of larger and more coordinated financial support for agricultural projects. The *2024 Land Bank Annual Report* highlights the Blended Finance Scheme, which provides finance to Black agri-business enterprises³⁰⁰. These enterprises could very well operate under the structures of joint ventures or partnerships, benefiting from the Land Bank's broadened lending authorization. The report also mentions the Agro-Processing Master Plan,

[content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf](https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf)>.

²⁹⁸ Section 4.3, The Proactive Land Acquisition Strategy, 2006

²⁹⁹ Mtombeni S, Bove D, and Thibane T, 'An Analysis of Finance as a Barrier to Entry for Emerging Farmers' Competition Commission of South Africa, 2019, 25 - <<https://www.compcom.co.za/wp-content/uploads/2019/09/CC201901-Mtombeni-S-Bove-D-Thibane-T-An-analysis-of-finance-as-a-barrier-to-entry-for-emerging-farmers.pdf>>.

³⁰⁰ National Government of South Africa, *Annual Report*, 2024, 14 - <[https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf)>.

which aims to create a supportive environment for farmers and potentially involves investment through or in collaboration with such collective entities³⁰¹.

In essence, the introduction of Section 45ter strategically positioned the Land Bank to enhance its developmental impact and contribute to the transformation of the agricultural sector by working through and alongside a wider network of agricultural stakeholders.

Strategic Investments

Additionally, the insertion of Section 25(e) equal by Section 14(c) of Act No. 21 of 1998 allowed the Land Bank to make strategic investments in agriculture, either independently or in collaboration with other entities³⁰². This insertion represented a strategic evolution in the Land Bank's mandate, equipping it with the necessary legal framework to play a more proactive and multifaceted role in the development and transformation of South Africa's agricultural sector³⁰³. It acknowledged that sustainable progress required not only financial credit but also targeted investments in critical areas, often in collaboration with other key players³⁰⁴. This broader approach aimed to address systemic challenges, foster innovation, and ultimately contribute to a more competitive and sustainable agricultural landscape³⁰⁵, which aligns with the Land Bank's core mission and strategic priorities³⁰⁶.

³⁰¹ National Government of South Africa, *Annual Report, 2024*, 14 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³⁰² Section 25(e) equal, *Land Bank Act* (No. 3 of 1944).

³⁰³ National Government of South Africa, *Annual Report, 2024*, 13 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³⁰⁴ National Government of South Africa, *Annual Report, 2024*, 4 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³⁰⁵ National Government of South Africa, *Annual Report, 2024*, 14 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³⁰⁶ National Government of South Africa, *Annual Report, 2024*, 4 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

3.3.2.2 Governance and Institutional Oversight of the Land Bank

A strong governance framework is essential for the Land Bank's operational efficiency, financial sustainability, and developmental impact. At the center of this framework is the Board of Directors, which is appointed by the Minister of Finance and entrusted with strategic leadership, policy formulation, and operational oversight under Section 4(1) of the Principal Act. The Board is responsible for determining and implementing policies that align with the national economic and agricultural agenda, ensuring that the Bank fulfills its role as a Development Finance Institution (DFI)³⁰⁷.

The *2024 Annual Report* further emphasizes the Board's role in providing ethical leadership, strategic direction, and oversight across the Land Bank and its subsidiaries³⁰⁸. It also approves the Integrated Annual Report, reinforcing its commitment to financial and operational transparency³⁰⁹. To enhance governance efficiency, the Board is supported by specialized committees, including the Audit and Finance Committee, Risk and Governance Committee, Human Resource and Remuneration Committee, Credit and Investment Committee, Social and Ethics Committee, and the Nominations Committee³¹⁰. These committees focus on financial oversight, risk management, executive accountability, and ethical governance, ensuring that fiduciary responsibilities are upheld³¹¹. To maintain financial accountability, Section 70 of the Act grants the Board the authority to conduct inspections through designated officials³¹², ensuring that loan advances are utilized effectively.

³⁰⁷ Section 4(1), *Land Bank Act* (No. 3 of 1944).

³⁰⁸ National Government of South Africa, *Annual Report*, 2024, 138 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³⁰⁹ National Government of South Africa, *Annual Report*, 2024, 22 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹⁰ National Government of South Africa, *Annual Report*, 2024, Figure 15 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹¹ National Government of South Africa, *Annual Report*, 2024, 141 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹² Section 70, *Land Bank Act* (No. 3 of 1944).

Beyond the Board, several institutions and mechanisms contribute to the Land Bank's governance and service delivery, ensuring that it operates in alignment with national economic priorities.

The Minister of Finance, as the appointing authority, plays a significant governance role through policy consultations and funding model discussions, ensuring that the Bank's financial strategy aligns with national fiscal and agricultural policies³¹³. The Shareholder Compact, signed between the Bank and the Minister, formalizes the Bank's development and transformation objectives, ensuring that its operations remain aligned with government priorities³¹⁴.

The Land Bank Insurance SOC Limited (LBIC) and Land Bank Life Insurance SOC Limited (LBLIC) serve as wholly owned subsidiaries that provide crop, asset, and credit life insurance to mitigate agricultural risks. By protecting farmers against financial losses from climate variability, market fluctuations, and operational disruptions, these insurance entities contribute to the Bank's broader risk management strategy³¹⁵. Both subsidiaries maintain independent Boards and governance structures, ensuring alignment with the Land Bank Group's strategic objectives³¹⁶.

The National Treasury plays a critical financial oversight role, particularly in addressing the Land Bank's default position and facilitating discussions around a sustainable funding model³¹⁷. Meanwhile, the Department of Agriculture remains a key strategic partner, focusing on policy alignment, land reform, and farmer support initiatives³¹⁸. The Bank also provides fund

³¹³ National Government of South Africa, *Annual Report, 2024*, 138 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹⁴ National Government of South Africa, *Annual Report, 2024*, 154 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹⁵ National Government of South Africa, *Annual Report, 2024*, 12 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹⁶ National Government of South Africa, *Annual Report, 2024*, 105 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹⁷ National Government of South Africa, *Annual Report, 2024*, 15 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³¹⁸ National Government of South Africa, *Annual Report, 2024*, 57 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

management services for the Department, ensuring that government-backed agricultural funding is disbursed efficiently³¹⁹.

The Auditor-General of South Africa (AGSA) is responsible for conducting independent financial audits, ensuring compliance with financial regulations and evaluating the Bank's governance standards. This external audit function enhances transparency, risk management, and accountability in financial reporting³²⁰.

At the operational level, executive management, led by the Chief Executive Officer (CEO), oversees the day-to-day administration of the Bank. This leadership team is responsible for financial management, stakeholder engagement, and implementing the Board's strategic directives³²¹. The internal audit function, reporting to the Audit and Finance Committee, further strengthens governance by assessing internal controls and risk management processes, ensuring that they remain robust and aligned with best practices³²².

Section 21 of the Principal Act authorizes the Land Bank to partner with financial intermediaries like cooperatives and microfinance institutions to extend its lending reach enabling indirect financing, such as the Wholesale Financing Facility (WFF), which supports emerging farmers with credit and technical assistance, enhancing land acquisition and management for agricultural purposes. This is complemented by Section 25(2), allowing alternative security forms beyond land mortgages.

³¹⁹ National Government of South Africa, *Annual Report, 2024*, 57 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³²⁰ National Government of South Africa, *Annual Report, 2024*, 20 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³²¹ National Government of South Africa, *Annual Report, 2024*, 151 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³²² National Government of South Africa, *Annual Report, 2024*, 22 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

In contrast, Kenya's land management governance is fragmented, with responsibilities spread across multiple institutions, including the National Land Commission (NLC), county governments, and KenInvest. The NLC manages public land under Section 5 of the NLC Act³²³, while county governments oversee local land use planning under Section 10 of the Land Act³²⁴. However, the absence of a unified entity coordinating land banking efforts leads to jurisdictional overlaps and inefficiencies.

3.3.3 CONSTITUTION OF SOUTH AFRICA, 1996

Section 25 of the Constitution of South Africa, commonly known as the "property clause," indeed embodies a dual mandate³²⁵. It serves both as a protector of existing property rights and as a mechanism for facilitating transformative land reform aimed at addressing the historical injustices of colonialism and apartheid³²⁶.

On the one hand, Section 25(1) establishes a negative right not to be arbitrarily deprived of property³²⁷, benefiting all property owners, regardless of their historical advantage or disadvantage³²⁸. The Constitutional Court has clarified that even regulatory changes by the state that affect the use of property, while potentially constituting deprivation, are not arbitrary if they serve a legitimate public purpose³²⁹, highlighting that property rights are not absolute.

³²³ Section 5, National Land Commission Act, 2012

³²⁴ Section 10, Land Act, 2012

³²⁵ Dugard J 'Unpacking Section 25: What, If Any, Are the Legal Barriers to Transformative Land Reform?' Constitutional Court Review, vol. 9, 2019, Abstract
<https://doi.org/10.2989/CCR.2019.0006>.

³²⁶ Alexander G, 'The Potential of the Right to Property in Achieving Social Transformation in South Africa', ESR Review, vol. 8, no. 2, 3 -
<[³²⁷ Section 25\(1\), *Constitution of South Africa* \(1996\).](https://journals.co.za/doi/pdf/10.10520/AJA1684260X_340#:~:text=If%20widely%20adopted%2C%20it%20has,p%20property%20be%2D%20come%20genuinely%20transformative.&text=It%20is%20unquestionable%20that%20the,Africa%20primarily%20means%20land%20reform.>.</p></div><div data-bbox=)

³²⁸ Dugard, Jackie. 'Unpacking Section 25: What, If Any, Are the Legal Barriers to Transformative Land Reform?' Constitutional Court Review, vol. 9, 2019, 145
<https://doi.org/10.2989/CCR.2019.0006>.

³²⁹ Dugard, Jackie. 'Unpacking Section 25: What, If Any, Are the Legal Barriers to Transformative Land Reform?' Constitutional Court Review, vol. 9, 2019, 145
<https://doi.org/10.2989/CCR.2019.0006>.

On the other hand, Section 25 facilitates transformative land reform by allowing for the expropriation of property in the public interest. Notably, Section 25(4) broadens the interpretation of public interest to explicitly encompass the nation's commitment to land reform and the pursuit of equitable access to South Africa's natural resources³³⁰ recognizing the imperative to address the racially skewed patterns of land ownership that are a legacy of South Africa's colonial and apartheid past³³¹. The Constitution also requires the state to take reasonable legislative and other measures to foster conditions enabling citizens to gain access to land on an equitable basis³³² and to advance tenure security³³³.

This duality reflects a significant compromise reached during South Africa's constitutional negotiations in the early 1990s; balancing the rights and interests of both property owners and those who were historically denied access to or deprived of land³³⁴.

The subsections within Section 25 create a legal foundation that allows the Land Bank to pursue its developmental mandate in the agricultural sector. The Land Bank's mandate is specifically geared toward supporting emerging farmers, particularly those from historically disadvantaged backgrounds, who often struggle to access traditional credit due to limited collateral or equity³³⁵. This objective aligns directly with Section 25(5)'s commitment to facilitating equitable access to land, which seeks to increase agricultural land ownership among previously marginalized groups³³⁶. By providing tailored financial services, including affordable finance and products to bridge equity and collateral gaps³³⁷, the Land Bank supports the beneficiaries of land reform

³³⁰ Section 25(4), *Constitution of South Africa* (1996).

³³¹ Dugard, Jackie. 'Unpacking Section 25: What, If Any, Are the Legal Barriers to Transformative Land Reform?' *Constitutional Court Review*, vol. 9, 2019, 137
<https://doi.org/10.2989/CCR.2019.0006>.

³³² Section 25(5), *Constitution of South Africa* (1996).

³³³ Section 25(6), *Constitution of South Africa* (1996).

³³⁴ Dugard, Jackie. 'Unpacking Section 25: What, If Any, Are the Legal Barriers to Transformative Land Reform?' *Constitutional Court Review*, vol. 9, 2019, 138
<https://doi.org/10.2989/CCR.2019.0006>.

³³⁵ National Government of South Africa, *Annual Report*, 2024, 29,
[https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³³⁶ Section 25(5), *Constitution of South Africa* (1996).

³³⁷ National Government of South Africa, *Annual Report*, 2024, 13,
[https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

programs enabled by Section 25. The Bank's commitment to these goals is further emphasized by its strategic decision to split its loan book into Commercial & Corporate and Transformation & Developments segments³³⁸. This split allows the Land Bank to develop and offer financial products and services that are specifically tailored to the needs and risk profiles of emerging and developing farmers, as opposed to the more established commercial clients in the Commercial & Corporate segment³³⁹.

Moreover, The Land and Agricultural Development Bank Act of 2002, which reconstituted the Land Bank, is framed within the constitutional parameters set by Section 25 which will be discussed later.

In essence, Section 25 lays the constitutional groundwork for land reform, and the Land Bank operates as a key financial institution in supporting the outcomes of this reform.

Section 25 of the Constitution of South Africa works by embedding a dual mandate, protection and transformation, offering a legal backbone for policies like PLAS and the Land Bank's operations. This is different from Article 60(1) of the Constitution of Kenya, which sets progressive principles³⁴⁰ but lacks enforceable directives, resulting in a passive approach to land reform. South Africa's explicit linkage of property rights to historical redress³⁴¹ empowers state intervention, whereas Kenya's vagueness (e.g., no expropriation clarity) hampers proactive land banking. Kenya's NLC is a strong institution, potentially surpassing South Africa's lack of a similar constitutional body, but its effectiveness is undermined by overlapping mandates.

³³⁸ National Government of South Africa, *Annual Report*, 2024, 29, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³³⁹ Schreiber, Reuben, AMC Insights: Land Bank Report. Africa Merchant Capital, 15, <https://www.africamerchantcapital.co.uk/wp-content/uploads/AMC-Insights-LandBank-Report-Reuben-Schreiber.pdf>.

³⁴⁰ Article 60(1), Constitution of Kenya, (2010).

³⁴¹ Section 25(4), *Constitution of South Africa* (1996).

3.3.4 WHITE PAPER ON SOUTH AFRICAN LAND POLICY, 1997

The Department of Land Affairs (DLA) developed the White Paper as a policy document to give effect to the land reform objectives under Section 25 of the Constitution. The rationale was fourfold: to remedy the land injustices of the apartheid system, to enhance national reconciliation and stability, to spur economic development through increased agricultural productivity, and to ensure equitable access to land for marginalized groups³⁴². The White Paper also laid the groundwork for a more defined and expanded role for the Land Bank in supporting the transformation of the agricultural sector, which was later formalized in the Land Bank Act of 2002

3.3.4.1 Framework for the Land Bank's Development

The White Paper outlines the government's approach to providing financial services to land reform beneficiaries, drawing on recommendations from the Presidential Commission of Enquiry into Rural Financial Services, commonly known as the Strauss Commission³⁴³. The Commission proposed transforming the Land and Agricultural Bank into an institution that could provide mortgage finance for land acquisition, as well as financial support for agriculturally related activities³⁴⁴.

To effectively serve a new clientele, particularly historically disadvantaged farmers, the Land Bank's operational network required rationalization and expansion. This could be achieved through agency agreements and partnerships with institutions such as the Post Office³⁴⁵, enabling broader access to financial services in rural areas.

A key aspect of the land reform policy is its market-based approach, relying on willing buyer, willing seller transactions, where landowners voluntarily sell their land at negotiated prices, and the state intervenes primarily as a facilitator rather than an active purchaser of land³⁴⁶. This model ensures that historically disadvantaged groups have the necessary financial support to acquire and

³⁴² Land Policy, White Paper On South African Land Policy, 1997

³⁴³ Land Redistribution, White Paper On South African Land Policy, 1997

³⁴⁴ Chapter 4.5.5, White Paper On South African Land Policy, 1997

³⁴⁵ Chapter 4.5.4, White Paper On South African Land Policy, 1997

³⁴⁶ Land Market Issues, White Paper On South African Land Policy, 1997

develop land while maintaining market stability³⁴⁷. The Land Bank, alongside other financial institutions, played a crucial role in this framework by offering credit, developing financial products, and supporting land reform beneficiaries with tailored funding solutions.

Challenges in the Market-Based Approach to Land Reform

The adoption of a market-based approach to land reform in South Africa has been subject to criticism due to policy confusion, expediency in practice, and a neglect of local contexts. While the White Paper on Land Policy (1997) outlined the principles of a market-friendly framework, the actual implementation has been inconsistent, leading to inefficiencies in land redistribution and tenure reform.

One of the primary concerns is the lack of policy clarity in the government's approach to land acquisition. The market-based model, premised on voluntary transactions between willing buyers and sellers, required a coherent and structured implementation strategy to be effective. However, ambiguities in policy objectives and guidelines created uncertainty for key institutions, including the Land Bank, which plays a critical role in providing financial support for land reform beneficiaries. The absence of clear directives resulted in institutional inefficiencies, making it difficult for financial entities to align their lending models with government land reform priorities. Additionally, uncertainty in policy direction may have discouraged landowners from participating in voluntary sales, further slowing down the redistribution process³⁴⁸.

Another major flaw in the market-based approach has been its expediency in practice, where short-term political considerations often outweighed the long-term developmental needs of land reform beneficiaries³⁴⁹. The emphasis on strict adherence to market principles, particularly the willing buyer-willing seller model, led to delays in land acquisition and, in some cases, inflated land prices

³⁴⁷ White Paper On South African Land Policy, 1997, 41

³⁴⁸Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 4 -

https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constitution_on_an_End_to_the_Land_Reform_Debate>.

³⁴⁹Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 4 -

https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constitution_on_an_End_to_the_Land_Reform_Debate>.

due to budgetary constraints³⁵⁰. This model often resulted in inequitable transactions, where landowners set high prices, making it difficult for previously disadvantaged individuals to afford land, even with state subsidies. Furthermore, the one-size-fits-all approach failed to account for the diverse local economic conditions, institutional structures, and regional land tenure systems, thereby limiting its effectiveness in addressing the specific needs of different communities³⁵¹.

Perhaps the most critical shortcoming of the market-based model has been its neglect of local contexts³⁵². The assumption that all landless communities share the same needs and experiences ignored the complex interrelationships, power dynamics, and socio-political realities within these groups³⁵³. By failing to consider issues such as elite capture, power imbalances, and the vested interests of local stakeholders, the approach undermined equitable redistribution. Instead of fostering broad-based land ownership, it often resulted in land being acquired by well-connected individuals or entities, leaving many of the intended beneficiaries without meaningful access to land³⁵⁴.

This has led to policy discussions on alternative approaches, including state-led land acquisition and expropriation with just and equitable compensation, to accelerate land redistribution and tenure reform such as the Proactive Land Acquisition Strategy.

³⁵⁰Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 3 -

<https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constituti_on_an_End_to_the_Land_Reform_Debate>.

³⁵¹Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 4 -

<https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constituti_on_an_End_to_the_Land_Reform_Debate>.

³⁵²Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 4 -

<https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constituti_on_an_End_to_the_Land_Reform_Debate>.

³⁵³Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 6 -

<https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constituti_on_an_End_to_the_Land_Reform_Debate>.

³⁵⁴Lekunze J, Luvhengo U, 'Is Amending Section 25 of the South African Constitution an End to the Land Reform Debate?' 2019, 4 -

<https://www.researchgate.net/publication/337965229_Is_Amending_Section_25_of_the_South_African_Constituti_on_an_End_to_the_Land_Reform_Debate>.

3.3.4.2 Institutions Managing and Collaborating with the Land Bank

The Department of Land Affairs (DLA) plays a crucial oversight role by appraising all land transactions under the Land Reform Programme³⁵⁵ ensuring that state resources are utilized effectively and that land prices remain just and equitable.

The Department of Agriculture, in turn, implements state funding mechanisms, including risk-sharing agreements and subsidies, to assist beneficiaries in establishing viable commercial farming enterprises³⁵⁶. To further enhance financial accessibility, a commercially oriented parastatal institution was proposed to coordinate agricultural finance³⁵⁷, ensuring reliability and inclusivity. As part of this transformation, the Land Bank was tasked with expanding its mandate to include both land acquisition mortgage finance and broader agricultural financing³⁵⁸. Recognizing the risks associated with lending to land reform beneficiaries, the government committed to a risk-sharing agreement³⁵⁹, providing financial safeguards and incentives to encourage lending institutions to extend credit to previously excluded groups.

South Africa's White Paper demonstrates adaptability, shifting from a market-based model to state intervention when market failures (e.g., inflated prices) emerged. This is different from Kenya's NLUP³⁶⁰, which mentions land banking but lacks mechanisms to counter speculative hoarding, as noted in the previous chapter. South Africa's policy explicitly supports institutions like the Land Bank with financing³⁶¹, while Kenya's vague procurement³⁶² and fragmented institutional roles hinder execution. Kenya's KIP³⁶³ offers a promising county-level approach, potentially more decentralized than South Africa's centralized model.

³⁵⁵ Chapter 4.6.1, White Paper On South African Land Policy, 1997

³⁵⁶ Land Redistribution, White Paper On South African Land Policy, 1997

³⁵⁷ Chapter 4.5.5, White Paper On South African Land Policy, 1997

³⁵⁸ Chapter 4.5.5, White Paper On South African Land Policy, 1997

³⁵⁹ Chapter 4.5.8, White Paper On South African Land Policy, 1997

³⁶⁰ Chapter 3.7, Sessional Paper, No. 1 of 2017

³⁶¹ Chapter 4.5.5, White Paper On South African Land Policy, 1997

³⁶² Chapter 3.7.xvii, Sessional Paper, No. 1 of 2017

³⁶³ Chapter 3.3.6, Kenya Investment Policy, 2019

3.3.5 LAND BANK ACT, 2002

The Land Bank Act, 2002 repealed the Land Bank Act, 1944 primarily to address the constitutional invalidity of certain debt recovery provisions within the 1944 Act, as declared by the Constitutional Court in the case of *First National Bank of SA Ltd v Land and Agricultural Bank of SA and others*. The Court found that sections 34 and 55 of the 1944 Act, which allowed the Land Bank to attach and sell a debtor's property without recourse to a court of law, were inconsistent with the right of access to courts as enshrined in the Constitution³⁶⁴. The Constitutional Court had suspended the invalidity of certain provisions of Section 34 for two years, with the expectation that Parliament would amend the legislation³⁶⁵. The 2002 Act served as this legislative response repealing the 1944 Act in its entirety and replacing it³⁶⁶.

3.3.5.1 Objects of the Bank

Section 3 of the Land Bank Act, 2002 provides the legislative foundation for the Bank's operations and strategic objectives, emphasizing its role as a Development Finance Institution (DFI) tasked with advancing transformation, inclusivity, and sustainability in South Africa's agricultural sector.

A core pillar of the Land Bank's mandate is the promotion of equitable ownership of agricultural land, particularly by historically disadvantaged individuals (HDIs)³⁶⁷. Given South Africa's history of racially skewed land ownership, this objective is fundamental to the Bank's transformation agenda. By facilitating land redistribution and supporting HDIs in acquiring and developing farmland, the Land Bank plays a direct role in redressing historical injustices and ensuring greater inclusivity in agricultural production.

Beyond ownership redistribution, the Land Bank is also tasked with supporting agrarian reform³⁶⁸ efforts aimed at creating a more inclusive and equitable agricultural sector. This requires not only

³⁶⁴ *First National Bank of SA Ltd v Land and Agricultural Bank of SA and others* (2000), Constitutional Court of South Africa, para 5

³⁶⁵ *First National Bank of SA Ltd v Land and Agricultural Bank of SA and others* (2000), Constitutional Court of South Africa, para 14

³⁶⁶ Section 53, Land and Agricultural Development Bank Act, 2002

³⁶⁷ Section 3(1)(a), Land and Agricultural Development Bank Act, 2002

³⁶⁸ Section 3(1)(b), Land and Agricultural Development Bank Act, 2002

facilitating access to land but also ensuring that land reform beneficiaries receive the necessary financial support to make their agricultural enterprises viable³⁶⁹. As part of this function, the Bank is mandated to provide tailored financial services, including affordable credit, innovative financing models, and risk-sharing mechanisms that help bridge equity contributions and collateral gaps³⁷⁰.

As a responsible DFI, the Land Bank is expected to act as a catalyst for inclusive growth, promoting employment, economic empowerment, and sectoral transformation³⁷¹. By expanding financial access to previously excluded farmers, the Bank enhances economic participation, strengthens rural livelihoods, and supports the overall objectives of South Africa's land reform framework. In doing so, it plays a critical role in bridging the gap between state-led policy initiatives and private-sector-driven agricultural growth, ensuring that land reform translates into meaningful economic opportunities for its beneficiaries.

3.3.5.2 Governance Structures

The Land and Agricultural Development Bank Act of 2002 modernizes the governance framework of the Land Bank, addressing the centralized and less transparent structure of the Land Bank Act of 1944. Under Section 4(1) of the 2002 Act, the Minister of Agriculture appoints a Board of Directors to oversee the Bank's operations³⁷². This shift moves away from direct government departmental control toward a board-led model, enhancing strategic oversight. According to Section 8(6), Board members must collectively represent a diverse cross-section of South Africa's population and possess appropriate qualifications, expertise, and experience³⁷³, while remaining committed to the Bank's objectives as outlined in Section 3. Notably, the Act does not explicitly require expertise in agriculture, finance, or development; instead, it prioritizes suitability and alignment with the Bank's goals.

³⁶⁹ Section 3(1)(c), Land and Agricultural Development Bank Act, 2002

³⁷⁰ Land and Agricultural Development Bank of South Africa, Annual Report 2024, National Government of South Africa, 38, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

³⁷¹ Section 3(1)(f), Land and Agricultural Development Bank Act, 2002

³⁷² Section 4(1), Land and Agricultural Development Bank Act, 2002

³⁷³ Section 8(6), Land and Agricultural Development Bank Act, 2002

The Board holds the authority to direct and control the Bank's operations³⁷⁴, with the Chairperson³⁷⁵ and the Chief Executive Officer (CEO), appointed under Section 17³⁷⁶, ensuring compliance with national policies. This contrasts sharply with the government-dominated governance of the 1944 Act, which lacked such a structured approach. As the state remains the sole shareholder³⁷⁷, the 2002 Act aligns with modern corporate governance principles, improving transparency, accountability, and efficiency.

3.3.5.3 Management and Control Mechanisms

The 2002 Act refines management and control mechanisms to bolster efficiency and accountability, rectifying the 1944 Act's susceptibility to mismanagement. Sections 8 to 12 detail the Board's composition³⁷⁸, appointment procedures³⁷⁹, and disqualification criteria³⁸⁰, while the appointment of a CEO under Section 17 professionalizes day-to-day management³⁸¹. This marks a significant improvement over the less defined leadership structure of the 1944 Act. Furthermore, Section 15(5) mandates an audit committee, chaired by a Board member and composed of non-employees³⁸², to ensure robust financial oversight though it is not specifically labeled an Internal Audit and Risk Committee.

The Bank's compliance with the Public Finance Management Act, 1999³⁸³ introduces additional layers of accountability, including periodic reporting to the Minister and oversight by Parliament. These enhancements address the weaker controls of the 1944 Act, reducing risks of financial instability and policy misalignment through professional leadership and stringent oversight mechanisms.

³⁷⁴ Section 5, Land and Agricultural Development Bank Act, 2002

³⁷⁵ Section 8(5), Land and Agricultural Development Bank Act, 2002

³⁷⁶ Section 17, Land and Agricultural Development Bank Act, 2002

³⁷⁷ Section 2(6), Land and Agricultural Development Bank Act, 2002

³⁷⁸ Section 8, Land and Agricultural Development Bank Act, 2002

³⁷⁹ Section 9, Land and Agricultural Development Bank Act, 2002

³⁸⁰ Section 10, Land and Agricultural Development Bank Act, 2002

³⁸¹ Section 18, Land and Agricultural Development Bank Act, 2002

³⁸² Section 15(5), Land and Agricultural Development Bank Act, 2002

³⁸³ Section 2(5), Land and Agricultural Development Bank Act, 2002

3.3.5.4 Funding Arrangements

Unlike the 1944 Act, which relied heavily on government appropriations, the 2002 Act prioritizes financial sustainability by diversifying the Bank's funding sources. Section 22 specifies that the Bank's funds include capital vested in the Bank, operational revenues, investment interest, parliamentary appropriations, loan proceeds, donations, and deposits³⁸⁴. This broader funding base reduces dependence on state subsidies, enabling the Bank to raise additional capital through loans and deposits³⁸⁵. This blended financing approach, highlighted in the 2024 Annual Report, combines state funding with market-based capital, reducing fiscal dependency and sustaining operations.

In Kenya, the Land Settlement Fund under Section 135 of the Land Act, 2012, provides financial resources for land acquisition³⁸⁶, but lacks evidence of market-based diversification. The RNLP 2023 proposes a Land Fund³⁸⁷, yet it remains state-dependent and aspirational.

3.3.5.5 Business Operations

The 2002 Act expands the Bank's operational scope beyond the narrower focus of the 1944 Act. Section 26(1) defines the Bank's business as providing financial services for agriculture and rural development, including finance, investments, grants, insurance, and other services³⁸⁸, to achieve objectives like equitable land ownership and agrarian reform³⁸⁹. This developmental focus, particularly on emerging farmers, integrates small-scale farmers into the agricultural economy, advancing South Africa's land reform goals.

3.3.5.6 Risk Management Protocols

The 2002 Act strengthens risk management to safeguard the Bank's stability, addressing the 1944 Act's vulnerabilities to defaults and liquidity crises. Section 26(2) governs security arrangements

³⁸⁴ Section 22, Land and Agricultural Development Bank Act, 2002

³⁸⁵ Section 24, Land and Agricultural Development Bank Act, 2002

³⁸⁶ Section 135, Land Act, 2012

³⁸⁷ Chapter 12.1, Recommended National Land Policy, 2023

³⁸⁸ Section 26(1), Land and Agricultural Development Bank Act, 2002

³⁸⁹ Section 3, Land and Agricultural Development Bank Act, 2002

for advances³⁹⁰, while Section 33 outlines remedies for default, such as attaching and selling debtor property. Additionally, the audit committee³⁹¹ and adherence to the Public Finance Management Act³⁹² enhance internal controls. This proactive approach marks a significant improvement over the 1944 Act’s weaker risk management framework.

3.3.5.7 Administrative and Transitional Matters

The transition from the 1944 Act to the 2002 Act is meticulously managed under Section 52, addressing the structural inefficiencies of the earlier legislation³⁹³. This section ensures continuity of valid actions, employee transitions, and asset/liability management, aligning the Bank with modern financial regulations and developmental priorities, such as supporting historically disadvantaged persons³⁹⁴. Employment agreements were preserved, and prior regulations remained valid until repealed under Section 49³⁹⁵, facilitating a seamless shift to the new framework.

3.3.6 THE PROACTIVE LAND ACQUISITION STRATEGY (PLAS), 2006

Proactive Land Acquisition (PLAS) is a state-driven strategy for land redistribution, where the state takes the lead in identifying, targeting, and acquiring land, rather than relying solely on beneficiary-initiated demand or the “willing seller - willing buyer” approach³⁹⁶. The strategy was developed by the Department of Land Affairs (DLA) as a response to the challenges and inefficiencies of the beneficiary-driven model of land reform. Recognizing that land redistribution was progressing too slowly due to the complexities of private negotiations, the government sought to accelerate land reform by shifting to a state-led approach. Section 1.1 emphasizes the need for proactive land acquisition to address historical inequities, promote economic growth, and enhance employment opportunities³⁹⁷. This shift positioned the state as the lead driver of land

³⁹⁰ Section 26(2), Land and Agricultural Development Bank Act, 2002

³⁹¹ Section 15(5), Land and Agricultural Development Bank Act, 2002

³⁹² Section 2(5), Land and Agricultural Development Bank Act, 2002

³⁹³ Section 52, Land and Agricultural Development Bank Act, 2002

³⁹⁴ Section 3, Land and Agricultural Development Bank Act, 2002

³⁹⁵ Section 49, Land and Agricultural Development Bank Act, 2002

³⁹⁶ Section 1.1, The Proactive Land Acquisition Strategy, 2006

³⁹⁷ Section 1.1, The Proactive Land Acquisition Strategy, 2006

redistribution, allowing it to purchase land strategically and allocate it to beneficiaries based on national development priorities.

In 2005, the National Land Summit was held to reassess and strengthen the direction of land and agrarian reform in South Africa, with the objective of ensuring that it would drive sustained economic growth, job creation, and greater social equity by 2014. A key outcome of the Summit was the development of the PLAS, which aimed to expedite land redistribution efforts. This strategy introduced a state-led approach to land acquisition, allowing the government to actively purchase land from the market and allocate it to specific beneficiary groups, rather than relying solely on voluntary transactions between willing buyers and sellers³⁹⁸. By giving the state control over land selection and allocation, PLAS aimed to enhance economic productivity and social equity, with a target of significantly advancing redistribution by 2014.

3.3.6.1 Improving Beneficiary Selection and Ensuring Productive Land Use

A critical challenge in previous land reform programs was the mismatch between land supply and beneficiary needs, often leading to underutilization of acquired land. Section 7.1 of PLAS addresses this by allowing the state to target land strategically, ensuring that beneficiaries receive land with high agricultural potential rather than marginal or unproductive parcels³⁹⁹. This approach optimizes agricultural output, ensuring that land reform contributes meaningfully to food security and rural economic development. Additionally, the framework promotes thorough planning before land allocation, reducing the risk of land lying fallow due to lack of infrastructure, financing, or expertise.

To ensure that acquired land is productively utilized, PLAS incorporates financial support mechanisms and institutional collaboration. Section 4.3 of PLAS highlights the importance of Service Level Agreements (SLAs) between the government and key institutions such as the Land Bank⁴⁰⁰. Through these agreements, the Land Bank, along with commercial financial institutions

³⁹⁸ Section 1.1, The Proactive Land Acquisition Strategy, 2006

³⁹⁹ Section 7.1, The Proactive Land Acquisition Strategy, 2006

⁴⁰⁰ Section 4.3, The Proactive Land Acquisition Strategy, 2006

and agricultural organizations, can assist in identifying and acquiring suitable land for redistribution. This partnership model ensures that the financial viability of land acquisition projects is carefully assessed, reducing risks and promoting sustainable land use post-transfer.

3.3.6.2 Financing and Institutional Support for Beneficiaries

Recognizing that many land reform beneficiaries lack the financial resources to purchase land outright, PLAS provides for structured financing options to facilitate access to land. Section 5.1 of PLAS outlines the acquisition and disposal financing framework, under which beneficiaries who cannot cover land costs through grants or discounts are assisted in securing financing from commercial banks, DFIs such as the Land Bank, and MAFISA (Micro Agricultural Financial Institutions of South Africa)⁴⁰¹. This approach ensures that land reform beneficiaries receive the necessary capital not only to acquire land but also to develop it into productive agricultural enterprises.

3.3.6.3 The Land Bank's Role in Facilitating Land Reform

Beyond its role as a financial intermediary, the Land Bank plays a direct role in land redistribution through its existing Memorandum of Understanding with the Department of Land Affairs. Section 7.2.1 of PLAS formalizes this arrangement, granting the DLA first option to purchase properties acquired by the Land Bank⁴⁰². Under this framework, the Land Bank is required to inform Provincial Land Reform Offices (PLROs) of newly acquired properties, allowing the DLA to assess their suitability for redistribution. If the DLA expresses interest in purchasing a property, the Land Bank withdraws it from the market for up to five months to allow the government to finalize planning and approval processes. This mechanism enhances state capacity to access strategically located land, ensuring that redistribution efforts align with national and regional development priorities.

⁴⁰¹ Section 5.1, The Proactive Land Acquisition Strategy, 2006

⁴⁰² Section 7.2.1, The Proactive Land Acquisition Strategy, 2006

The Land Bank's 2022 Blended Finance Scheme, developed with the Department of Agriculture, Land Reform, and Rural Development (DALRRD), exemplifies this synergy. The scheme combined government grants with Bank loans to support emerging farmers, with 60% of beneficiaries being women and youth. By 2023, these transactions had generated an estimated 104 permanent and 484 seasonal jobs, reflecting a policy shift toward inclusive development⁴⁰³.

South Africa's PLAS provides a structured, state-led approach to land acquisition, enabling targeted redistribution and supporting land banking objectives. By strategically purchasing and allocating high-potential agricultural land, PLAS ensures thorough planning and financial sustainability, reinforced through Service Level Agreements (SLAs) with institutions like the Land Bank.

Unlike South Africa, Kenya lacks a comparable national strategy, instead relying on ad hoc land acquisitions for settlement schemes and public purposes under Section 134 of the Land Act⁴⁰⁴. The NLC has the authority to reserve land under Section 15⁴⁰⁵, but without a cohesive, state-driven framework like PLAS, Kenya's approach remains fragmented and less effective.

South Africa's integrated model, which combines beneficiary selection, financial support, and institutional coordination, proves more effective than Kenya's disjointed system. By adopting a similar structured strategy, Kenya could enhance its land banking efforts, ensuring greater efficiency, equitable redistribution, and long-term sustainability.

⁴⁰³ National Government of South Africa, *Integrated Annual Report, 2023*, 37 - <https://landbank.co.za/Shared%20Documents/13926%20LANDBANK%20LAYOUT%20OF%20INTEGRATED%20ANNUAL%20REPORT%20V11.pdf>.

⁴⁰⁴ Section 134, Land Act, 2012

⁴⁰⁵ Section 15, Land Act, 2012

3.4 TRANSFORMATIVE IMPACT OF SOUTH AFRICA'S LAND BANK

The Land Bank has emerged as a critical driver of agricultural transformation, particularly through its innovative Blended Finance Scheme and targeted support for historically disadvantaged farmers. Over the past decade, the Bank has facilitated the growth of Black-owned agribusinesses, improved food security, and revitalized rural economies.

3.4.1 The Blended Finance Scheme

The Land Bank's Blended Finance Scheme, launched in partnership with the DALRRD, combines grant funding with concessional loans to reduce collateral burdens for emerging farmers. This model directly addresses historical barriers faced by Black farmers, who were systematically excluded from land ownership and formal credit markets under apartheid. By FY24, the scheme had allocated R358 million in loans and R365 million in grants, primarily targeting commodities aligned with South Africa's Agriculture and Agro-Processing Master Plan: grains, oilseeds, fruits, and livestock⁴⁰⁶.

The report further highlights the success story of Sefale Petrus Letsitsa in the Free State, who used two loans from the Land Bank Blended Finance Scheme to plant maize and sunflower, purchase equipment, and increase production capacity by 50%. Similarly, Moses Khoza in Mpumalanga also received funding from the Land Bank Blended Finance Scheme to purchase a second sugarcane farm, cover input costs, acquire farm implements and machinery, and streamline operations, furthering his vision of a sustainable enterprise⁴⁰⁷.

The Land Bank's Blended Finance Scheme has had a transformative impact, supporting Black-owned agribusinesses with millions in loans and grants by FY24, targeting key commodities and

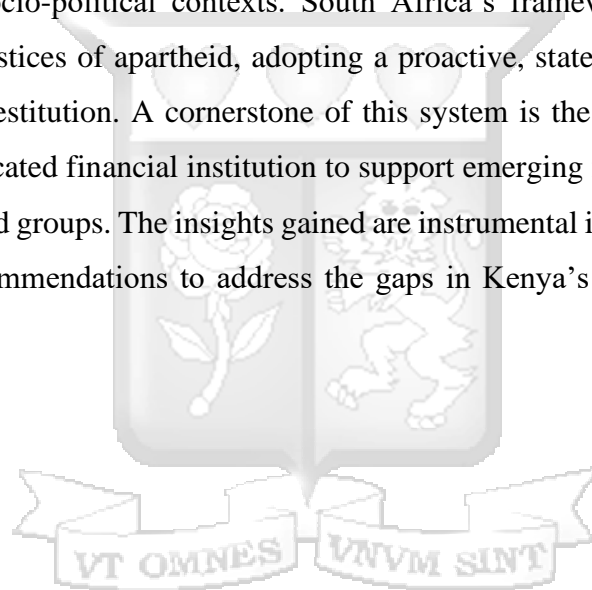
⁴⁰⁶ National Government of South Africa, *Annual Report*, 2024, 14, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

⁴⁰⁷ National Government of South Africa, *Annual Report*, 2024, 28 - [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

generating jobs. Success stories like Sefale Petrus Letsitsa highlight tangible outcomes. In Kenya, the lack of a centralized land banking system has led to inefficiencies, as seen in the Ndoro case, where poor integration of valuation and compensation mechanisms caused disputes⁴⁰⁸ highlighting how outcomes remain fragmented due to uncoordinated

3.4 CONCLUSION

The comparative analysis of South Africa and Kenya's land reform frameworks highlights distinct approaches to addressing land management, redistribution, and financial support, shaped by their unique historical and socio-political contexts. South Africa's framework is deeply rooted in correcting the racial injustices of apartheid, adopting a proactive, state-led approach focused on land redistribution and restitution. A cornerstone of this system is the Land Bank Act of 2002, which established a dedicated financial institution to support emerging farmers, particularly from historically disadvantaged groups. The insights gained are instrumental in shaping the next chapter which will propose recommendations to address the gaps in Kenya's land banking framework tailored to its context.



⁴⁰⁸ Ndoro & 191 others v National Land Commission & 3 others, [2023] KEELC 243 (KLR)

CHAPTER 4: INTEGRATING SOUTH AFRICAN LAND BANKING IN KENYA'S FRAMEWORK

4.1 INTRODUCTION

This chapter proposes actionable recommendations to address the policy, legal, and institutional gaps in Kenya's land banking framework, as identified in Chapter 2, by drawing lessons from South Africa's Land Bank model. Chapter 2 highlighted Kenya's fragmented institutional mandates, unclear procurement processes, and insufficient financial mechanisms, despite land banking being referenced in policies like the National Land Use Policy (NLUP) 2017 and the Recommended National Land Policy (RNLP) 2023. In contrast, Chapter 3 showcased South Africa's structured approach through the Land Bank Act of 2002 and the Proactive Land Acquisition Strategy (PLAS), which integrate land banking into a cohesive legal and financial framework. This chapter critically analyzes how South Africa's practices can be adapted to fit Kenya's legal and policy structures, focusing on feasibility within Kenya's devolved governance and socio-economic context.

4.2 OVERVIEW OF SOUTH AFRICA'S LAND BANKING PRACTICES

South Africa's land banking framework, examined in Chapter 3, offers valuable lessons that can help bridge the legislative, financial, and institutional gaps outlined in Chapter 2. Central to this framework is the presence of clear legal provisions, as established in the Land Bank Act of 2002, which articulates the roles, processes, and responsibilities of key actors. This level of clarity contrasts sharply with Kenya's current legislative framework, which lacks a defined structure for land banking. South Africa also employs a diversified financing model, blending state funds with private capital to support land acquisition and development. In contrast, Kenya relies heavily on the Land Settlement Fund, which is limited by its dependence on public financing. Moreover, institutional coordination in South Africa is enhanced through Service Level Agreements (SLAs)

between the Land Bank and relevant government bodies - an approach that addresses mandate fragmentation, a persistent issue in Kenya. The PLAS further strengthens South Africa's model by facilitating strategic, state-led land purchases. Additionally, targeted financial and technical support ensures that beneficiaries utilize land productively, a component largely missing in Kenya.

These elements provide a robust model for Kenya, though they must be adapted to its unique devolved governance structure and broader land use needs beyond agriculture, such as urban development and infrastructure. The following sections analyze how these lessons can be integrated into Kenya's legal and policy frameworks to enhance cohesion and effectiveness in land banking.

4.3 ESTABLISHMENT OF A LAND BANKING ACT

Chapter 2 highlighted the absence of detailed legal procedures for the establishment and management of land banks in Kenya, resulting in operational inefficiencies and underutilized land resources that hinder sustainable development and economic growth.

South Africa has established a robust legal framework for land banks through the Land Bank Act of 2002, which repealed and replaced the earlier Land Bank Act of 1944. This Act provides a comprehensive structure for the establishment, management, and operation of the Land Bank. It defines the Bank's mandate to promote equitable land ownership, agrarian reform, and inclusive growth, particularly for historically disadvantaged individuals (HDIs)⁴⁰⁹. The Act outlines governance through a Board of Directors appointed by the Minister of Agriculture⁴¹⁰, funding mechanisms blending state appropriations with market-based sources⁴¹¹, and operational protocols for financing land acquisition and agricultural development⁴¹². Additionally, the Proactive Land Acquisition Strategy (PLAS) of 2006 complements this by enabling state-led land acquisition⁴¹³, ensuring strategic allocation to beneficiaries, and integrating financial support via the Land Bank.

⁴⁰⁹ Section 3, *Land And Agricultural Development Bank Act* (No. 15 of 2002).

⁴¹⁰ Section 4, *Land And Agricultural Development Bank Act* (No. 15 of 2002).

⁴¹¹ Section 22, *Land And Agricultural Development Bank Act* (No. 15 of 2002).

⁴¹² Part IV, *Land And Agricultural Development Bank Act* (No. 15 of 2002).

⁴¹³ Section 1.1, *The Proactive Land Acquisition Strategy*, 2006

Kenya can adopt a similar structured approach by enacting a Kenyan Land Bank Act, tailored to its devolved governance system and socio-economic priorities. This Act would address the fragmented institutional mandates, unclear procurement processes, and inadequate funding identified in Chapter 2.

4.3.1 DEFINITION AND PURPOSE

Chapter 2 noted the absence of a uniform definition of land banking across Kenya's policies like the NLUP 2017 and RNLP 2023, leading to fragmented implementation and unclear institutional roles. South Africa defines the Land Bank as a development finance institution (DFI)⁴¹⁴ with a clear mandate to promote equitable land ownership and agrarian reform⁴¹⁵. This clarity has enabled effective operations and alignment with national land reform goals. A similar approach can be applied by incorporating a clear definition of land banking into the proposed Land Banking Act.

The proposed definition could be:

“Land banking refers to the strategic acquisition, reservation, and management of land by the state or designated entities for future public or private development, infrastructure projects, urban expansion, or investment, aimed at ensuring equitable access, sustainable land use, and economic growth.”⁴¹⁶

The FAO's definition is internationally recognized and has informed successful land banking frameworks in Europe and Central Asia. Adopting a definition rooted in this scholarship provides Kenya with a tested conceptual foundation for policy and legal frameworks.

⁴¹⁴ Land and Agricultural Development Bank of South Africa, Annual Report 2024, National Government of South Africa, 16, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

⁴¹⁵ Section 3, *Land And Agricultural Development Bank Act* (No. 15 of 2002).

⁴¹⁶ Hartvigsen M, Tomas V, Maxim G, 'European Good Practices on Land Banking and Its Application in Eastern Europe and Central Asia', FAO, 2021, 2 - https://fig.net/resources/proceedings/fig_proceedings/fig2021/papers/FAO_banking/Hartvigsen_etal_paper.pdf.

Unlike South Africa's definition, which focuses on agricultural development and land reform due to its historical context of apartheid redress, Kenya's definition emphasizes urbanization, industrialization, and infrastructure development, reflecting its rapid urban growth and economic priorities outlined in Kenya Vision 2030⁴¹⁷.

Based on the above definition, the purpose will be to establish a legal framework for the creation, management, and utilization of land banks to promote sustainable development, equitable land access, and economic growth, aligning with Article 60 of the Constitution⁴¹⁸ and national land policies such as the NLUP 2017⁴¹⁹.

4.3.2 OBJECTS OF THE ACT

The proposed Act will outline key objectives aimed at facilitating strategic land acquisition and reservation for future development, ensuring transparent and accountable management of land banks, and promoting equitable access to land for both public and private investment. It will also seek to integrate land banking within national and county spatial planning frameworks, while providing financial mechanisms to support its operations.

These objectives draw from South Africa's emphasis on equity and economic empowerment⁴²⁰ but are adapted to Kenya's specific context, particularly the growing pressures of urban expansion and infrastructure development.

4.3.3 MANAGEMENT OF THE LAND BANK

NLC will be designated as the primary institution responsible for the establishment and management of land banks. This choice is grounded in Article 67 of the Constitution, which mandates the NLC to manage public land⁴²¹, making it the most appropriate body for this function.

⁴¹⁷ Executive Summary, Sessional paper No. 10 of 2012

⁴¹⁸ Article 60(1), *Constitution of Kenya* (2010).

⁴¹⁹ Executive Summary, Sessional Paper No. 1 of 2017

⁴²⁰ Section 3, *Land And Agricultural Development Bank Act* (No. 15 of 2002).

⁴²¹ Article 67, *Constitution of Kenya* (2010).

Additionally, its existing statutory responsibilities under Section 15 of the Land Act⁴²² position it to oversee land banking without the need for creating new institutional structures. The NLC's functions will include identifying and acquiring land for banking, maintaining a comprehensive Land Bank Registry, collaborating with county governments and stakeholders in land allocation, and ensuring that banked land is allocated in alignment with both national and county development plans. This centralized approach, while respecting Kenya's devolved governance framework, will address the institutional fragmentation highlighted in Chapter 2.

4.3.4 LAND BANK COMMITTEE

The establishment of a Land Bank Committee is proposed to ensure effective, coordinated governance of land banking across institutions. This multi-agency body will comprise representatives from the National Land Commission (NLC), Ministry of Lands and Physical Planning, County Governments through the Council of Governors, Kenya Investment Authority (KenInvest), National Treasury, Ministry of Devolution and Planning, alongside proposed institutions such as the County Investment Units (CUI) in the KIP, 2019⁴²³ and the National Land Policy Implementation Unit (NLPIU), as proposed in the RNLP 2023⁴²⁴. To further enhance this coordination, and recognizing the significant role of Public Private Partnerships in infrastructure and development projects that require land, a representative from the Public Private Partnership (PPP) Committee⁴²⁵ should also be a member of the Land Bank Committee.

Coordination among members is structured to ensure efficiency, alignment, and accountability across national and county levels. The NLC will work closely with County Governments and the Ministry of Lands to identify and plan land use priorities. These efforts will be supported by the National Treasury, which will provide funding for strategic land acquisitions, while KenInvest and CIUs will guide investment-driven allocations. The Ministry of Lands will collaborate with both the NLC and County Governments to harmonize national and county land use policies, with the Ministry of Devolution ensuring coherence within the devolved governance structure. County

⁴²² Section 15, *Land Act* (Act No. 6 of 2012).

⁴²³ Chapter 6.2.3, *Kenya Investment Policy*, 2019

⁴²⁴ Chapter 11.8.1, *Recommended National Land Policy*, 2023

⁴²⁵ Section 6, *The Public Private Partnerships Act* (No. 14 of 2021).

Governments and CIUs will further align local development needs with investment opportunities through coordination with KenInvest and the PPP Committee, while the NLPIU will monitor policy compliance. The PPP Committee will also liaise with KenInvest, CIUs, and the NLC to secure land for projects, with the National Treasury assessing and supporting financial viability.

This structure reflects South Africa's successful inter-agency coordination model highlighted in the previous chapter, but adapts it to Kenya's devolved governance framework and policy landscape. It addresses the institutional ambiguity identified in Chapter 2 by providing a clear and collaborative governance structure.

4.3.5 LAND BANK REGISTRY

Section 8(1) of the LRA facilitates the registration of community land by mandating the maintenance of a Community Land Register in each registration unit⁴²⁶. This dedicated register ensures the legal recognition and protection of land held by communities for various purposes such as agriculture, industry, or conservation.

A Land Banking Register could be modeled after the Community Land Register and managed by the Chief Land Registrar under the Land Registration Act. Section 12 of the Act assigns this office responsibility for maintaining land registers and cadastral maps, overseeing transactions, and ensuring legal compliance⁴²⁷. This makes the Chief Land Registrar best positioned to integrate the Land Bank Register within existing systems. Additionally, Section 14(2)(d) mandates the Registrar to report annually on land registration⁴²⁸, reinforcing their oversight role and ensuring legal and administrative coherence in managing land banking data.

The registry will contain detailed information on banked parcels, including their location, size, intended use, acquisition method, and current allocation status. This transparency is essential to prevent speculative acquisition, ensure public oversight, and guide planning and investment

⁴²⁶ Section 8(1), *Land Registration Act* (Act No. 3 of 2012).

⁴²⁷ Section 12, *Land Registration Act* (Act No. 3 of 2012).

⁴²⁸ Section 14(2)(d), *Land Registration Act* (Act No. 3 of 2012).

decisions. By making land banking data openly available, the registry enhances trust and facilitates coordinated action across national and county governments. It also supports Kenya's digital transformation agenda under Vision 2030⁴²⁹, addressing the opacity and fragmentation highlighted in Chapter 2. This approach mirrors South Africa's PLAS registry practices⁴³⁰, but is tailored to Kenya's context of devolved land governance and increasing demand for digital land records.

4.3.6 LAND BANKING FUND

To ensure the sustainability of land banking initiatives, a dedicated Land Banking Fund should be established to finance the acquisition, management, and maintenance of banked land. This fund would reduce reliance on ad hoc state budgets by drawing from multiple sources, including government appropriations, county government contributions, private sector investments through Public-Private Partnerships (PPPs), donor funding, and revenue generated from land leases or sales.

A key component of this fund would be a Blended Finance Scheme, modelled on South Africa's approach⁴³¹, which combines grants and concessional loans. This mechanism would support both urban development projects, such as housing and infrastructure, and rural agricultural initiatives, thus reflecting Kenya's diverse land use priorities. By diversifying funding sources beyond the state-dependent Land Settlement Fund⁴³², this proposal aligns with the KIP, 2019, which emphasizes PPPs⁴³³, and the RNLP, 2023, which advocates for a specialized Land Fund⁴³⁴.

⁴²⁹ Executive Summary, Sessional paper No. 10 of 2012

⁴³⁰ Section 7.4, The Proactive Land Acquisition Strategy, 2006

⁴³¹ Land and Agricultural Development Bank of South Africa, Annual Report 2024, National Government of South Africa, 14, [https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-\(land-bank\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/3899/2024-land-and-agricultural-development-bank-of-south-africa-(land-bank)-annual-report.pdf).

⁴³² Section 135, *Land Act* (Act No. 6 of 2012).

⁴³³ Chapter 6.3.2, Kenya Investment Policy, 2019

⁴³⁴ Chapter 12.1, Recommended National Land Policy, 2023

4.3.7 CATEGORIES OF LAND BANKS

To ensure efficient and purpose-driven land utilization, the proposed framework should classify land banks into distinct categories: Urban Land Banks for infrastructure, housing, and industrial development; Rural Land Banks for agriculture and conservation; and Special Purpose Land Banks for environmental or cultural preservation. This categorization mitigates the risk of misallocation and aligns each parcel with its most suitable function, whether advancing urban growth, enhancing rural productivity, or safeguarding ecological and cultural assets. By clearly delineating these categories, the framework directly addresses the issue of underutilization identified in Chapter 2 and promotes more strategic and sustainable land use planning across Kenya's diverse development contexts.

4.3.8 IDENTIFICATION AND ACQUISITION PROCESS

The identification and acquisition of land for banking should follow a structured process grounded in national and county spatial plans, with input from the proposed Land Bank Committee. Land may be acquired through purchase, compulsory acquisition with compensation as provided under the Land Act⁴³⁵, or through voluntary donation. Priority in land acquisition should be given to land with high development potential or strategic value, as identified within the framework of national and county spatial plans. This might include land suitable for urban expansion, infrastructure corridors, industrial development, agricultural intensification, or conservation efforts, aligning with the diverse categories of land banks previously proposed. This strategic prioritization mirrors the principles of South Africa's PLAS, which emphasizes the state taking a leading role in identifying and acquiring land based on national development priorities, rather than solely relying on willing buyer-willing seller arrangements⁴³⁶.

To address the lack of a clear framework for implementing government land buy-backs⁴³⁷, a structured approach is required. Criteria for identifying land eligible for buy-back should align with national and county spatial plans and focus on underutilized or strategically located land

⁴³⁵ Part VIII, *Land Act* (Act No. 6 of 2012).

⁴³⁶ Section 1.1, *The Proactive Land Acquisition Strategy*, 2006

⁴³⁷ Chapter 3.7, *Sessional Paper*, No. 1 of 2017

needed for infrastructure or public services. The proposed Land Bank Committee should guide this process. It is also essential to clarify which institution - NLC, the Committee, or county governments - can initiate buy-backs and the necessary approval procedures. Valuation and compensation must be transparent, drawing on Land Value Indices proposed in the RNLP, 2023⁴³⁸ and complying with Articles 40⁴³⁹ and 66⁴⁴⁰ of the Constitution. Strategic prioritization should be guided by spatial planning and development needs. Funding should be drawn primarily from the Land Banking Fund, ensuring financial sustainability

4.3.9 ALLOCATION AND RELEASE PROCEDURES

The allocation and release of banked land should follow a clear and transparent process managed by the NLC, including competitive bidding for private investors and direct allocation for public projects. For commercial projects (e.g., industrial parks, housing estates), the NLC will issue public tenders, with bids evaluated based on alignment with development plans, financial capacity, and socio-economic benefits. Bidding guidelines will be published in the Land Bank Registry and national media. For strategic public projects (e.g., schools, hospitals, infrastructure under Vision 2030⁴⁴¹), the NLC will allocate land directly to relevant government entities, subject to approval by the Land Bank Committee and compliance with county spatial plans. Land will only be released if its use aligns with approved County Physical and Land Use Development Plans⁴⁴² or Special Area Plans⁴⁴³, verified by the NLC and county governments. This approach addresses the underutilization challenge identified in Chapter 2 by ensuring land serves its intended purpose efficiently.

⁴³⁸ Chapter 3.8, Recommended National Land Policy, 2023

⁴³⁹ Article 40, *Constitution of Kenya* (2010).

⁴⁴⁰ Article 66, *Constitution of Kenya* (2010).

⁴⁴¹ Executive Summary, Sessional paper No. 10 of 2012

⁴⁴² Section 36, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁴³ Section 52, *Physical And Land Use Planning Act* (Act No.13 of 2019).

4.3.10 LAND DISPUTES

Disputes arising from land banking, including those related to acquisition, allocation, or management, will fall under the jurisdiction of the Environment and Land Court, established under Article 162(2)(b) of the Constitution⁴⁴⁴ and operationalized by the Environment and Land Court Act (ELC), 2011. This court has exclusive jurisdiction to hear land-related matters, including disputes over public land, compulsory acquisition, and land use planning, as outlined in Section 13 of the ELC Act⁴⁴⁵. The NLC will refer disputes to the court, ensuring timely resolution through existing judicial mechanisms.

With the proposed Land Banking Act, the current ELC Act would also have to be amended to recognize and coordinate with the proposed Land Banking Act of Kenya.

4.4 DEFINITION OF KEY TERMS

4.4.1 Defining “Strategic Land”

The current Land Act grants the NLC authority to reserve land for long-term strategic purposes⁴⁴⁶ and to set aside land for investment purposes⁴⁴⁷. However, it lacks a clear definition of what constitutes “strategic.” This ambiguity leads to disjointed processes and makes it difficult to ensure that land banking efforts align with overarching national goals. It is proposed that an amendment to the Land Act be made to include the definition of “strategic” in Section 2 of the Land Act, (the interpretation section) preventing varying interpretations by the NLC, courts, or county governments. The definition would include public land identified by the National Land Commission (NLC) in consultation with national and county governments for national development priorities such as infrastructure, industrialization, food security, affordable housing, environmental conservation, and addressing historical land injustices. The designation would consider long-term socio-economic benefits, alignment with spatial plans, and the need

⁴⁴⁴ Article 162(2)(b), *Constitution of Kenya* (2010).

⁴⁴⁵ Section 13, *Environment and Land Court*, (Act No. 19 of 2011).

⁴⁴⁶ Section 15, *Land Act* (Act No. 6 of 2012).

⁴⁴⁷ Section 12(3), *Land Act* (Act No. 6 of 2012).

for future land reservation. By clearly defining “strategic land”, it lays the groundwork for targeted land banking efforts.

4.4.2 Defining Special Planning Areas

The Physical and Land Use Planning Act⁴⁴⁸ provides for the designation of Special Planning Areas (SPAs) but also fails to define what SPAs are. SPAs are designated zones identified by county governments for their unique characteristics or strategic importance. They facilitate public-private partnerships (PPPs) by reserving land for industrial parks, logistics hubs, and agricultural processing zones⁴⁴⁹. Section 52 lists the characteristics of such an area⁴⁵⁰ which describes the circumstances for establishing an SPA, not a fundamental explanation of what an SPA is. Without a clear definition in the Act, different county governments might interpret the criteria for declaring an SPA in varying ways. The proposed definition would be:

“Special Planning Area (SPA)” means a specific geographical area formally declared by a county government through a notice in the Gazette and in at least two newspapers of national circulation, as provided under Section 52 of this Act.

A standardized definition would promote a more uniform approach across all counties in Kenya, ensuring that the designation is applied based on consistent principles and criteria outlined in the Act.

4.5 LAND ACT, 2012

Alongside including the proposed definition of “land banking” in the proposed Land Banking Act, Section 2 which defines the term “public purposes” should be amended to explicitly include land banking. This change would formally recognize land banking as a legitimate public purpose, thereby allowing the state to invoke Part VIII of the Act to compulsorily acquire land

⁴⁴⁸ Section 52, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁴⁹ Farrelly M ‘Agro-Industrial Park’ -

< <https://farrellymitchell.com/agro-industrial-park/?form=MG0AV3>>.

⁴⁵⁰ Section 52, *Physical And Land Use Planning Act* (Act No.13 of 2019).

for future strategic development. Without this amendment, compulsory acquisition for land banking purposes remains legally ambiguous, potentially exposing such actions to constitutional challenges under Article 40 on the right to property.

Secondly, Section 8(1)(a) should be revised to ensure that the public land database maintained by the NLC captures land held specifically for land banking⁴⁵¹. This would support coordination with the proposed Land Bank Registry, ensuring transparency, accountability, and effective land use planning.

Finally, a new subsection should be introduced to Section 12 to explicitly authorize the NLC to reserve public land for land banking. This provision would defer the allocation and management of such land to the proposed Land Banking Act, enabling seamless legal and operational integration between existing land laws and the new land banking framework.

4.6 NATION LAND COMMISSION ACT, 2012

Section 5 is the foundational provision that delineates the NLC's mandate under Article 67(2) of the Constitution⁴⁵², which includes managing public land, advising on land policy, and conducting research⁴⁵³. Its broad scope makes it the ideal provision to integrate land banking as a core function, as it already empowers the NLC to act as the primary custodian of public land. The inclusion of a dedicated subsection empowers the NLC to identify, acquire, manage, and allocate land for strategic purposes, including public infrastructure, housing, and investment. Moreover, the requirement to maintain a Land Bank Registry and collaborate with county governments ensures transparency and alignment with devolved planning systems under Article 6(2) of the Constitution⁴⁵⁴. This amendment also enables the NLC to act proactively, rather than reactively, in managing land for long-term national development goals.

⁴⁵¹ Section 8(1)(a), *Land Act* (Act No. 6 of 2012).

⁴⁵² Section 5, National Land Commission Act, 2012

⁴⁵³ Section 5, National Land Commission Act, 2012

⁴⁵⁴ Article 6(2), *Constitution of Kenya* (2010).

To operationalize this mandate, a new section is proposed, detailing the Commission’s land banking responsibilities. These include identifying and acquiring land based on spatial plans, categorizing banked land (e.g., urban, rural, and special-purpose), managing such land for future use, and facilitating its release through transparent mechanisms such as competitive bidding or direct public allocation. Crucially, this section embeds public participation, thereby reinforcing the constitutional principles of accountability and inclusivity⁴⁵⁵. Coordination with a dedicated Land Bank Committee, to be established under the Land Banking Act, further addresses the problem of institutional fragmentation, promoting coherence in decision-making.

Section 6 of the Act outlines the NLC’s operational powers making the appropriate to expand the NLC’s authority to acquire land for land banking through purchase, compulsory acquisition (in line with the Land Act, 2012⁴⁵⁶), or voluntary donation. Furthermore, Section 6’s flexibility to engage with stakeholders allows for the inclusion of PPPs, as endorsed by the Kenya Investment Policy (KIP) 2019⁴⁵⁷.

Section 16 empowers the NLC to form committees to support its functions⁴⁵⁸, making it the most suitable provision for establishing a dedicated Land Bank Committee. This committee, will be comprised by representatives from the NLC, Ministry of Lands, county governments, National Treasury, and other stakeholders, aligns with Kenya’s devolved governance structure under Article 6(2)⁴⁵⁹.

To ensure effective intergovernmental relations, Section 17 should be revised to expand the scope of consultation. It governs the NLC’s obligation to consult and cooperate with national and county governments⁴⁶⁰, making it the ideal provision to strengthen intergovernmental coordination for land banking. It would now require the Commission to coordinate not only with national and county governments but also with the Land Bank Committee and other entities

⁴⁵⁵ Article 10, *Constitution of Kenya* (2010).

⁴⁵⁶ Part VIII, *Land Act* (Act No. 6 of 2012).

⁴⁵⁷ Chapter 6.3.2, Kenya Investment Policy, 2019

⁴⁵⁸ Section 16, National Land Commission Act, 2012

⁴⁵⁹ Paragraph 21, Part I, Fourth Schedule, *Constitution of Kenya* (2010).

⁴⁶⁰ Section 17, National Land Commission Act, 2012

established under the Land Banking Act. Additionally, it allows for memoranda of understanding to clarify institutional roles, reducing conflict and overlapping mandates.

Moreover, Section 26, governs the Commission's financial resources⁴⁶¹ making it the most fitting provision to recognize the Land Banking Fund, as proposed in the Land Banking Act. Crucially, this provision should be read in tandem with a corresponding clause in the Land Banking Act, which establishes the Land Banking Fund as a distinct financial entity, managed by the National Land Commission in accordance with public finance laws and relevant accountability standards. This dual recognition within both the NLC Act and the Land Banking Act ensures legal coherence and operational effectiveness, bridging the current funding gap left by limited and outdated mechanisms such as the Land Settlement Fund⁴⁶².

To reinforce transparency and accountability, a new subsection is proposed under Section 33, requiring the Commission to include a detailed report on land banking activities in its annual report to Parliament and county assemblies. Section 33 mandates the NLC to submit annual reports to Parliament⁴⁶³ making this the most appropriate Section for the amendment. This would cover land acquired, the functioning of the Land Bank Registry, financial transactions, and how banking has contributed to national and county development goals.

Finally, Section 36, which empowers the Commission to make regulations⁴⁶⁴, should be amended to enable the formulation of detailed land banking procedures. This includes rules for acquisition, management, allocation, public participation, and the operation of the Land Bank Registry and Fund. By creating an enabling regulatory environment, the NLC can ensure uniform implementation, procedural fairness, and public confidence in land banking processes.

⁴⁶¹ Section 26, National Land Commission Act, 2012

⁴⁶² Section 135, *Land Act* (Act No. 6 of 2012).

⁴⁶³ Section 33, National Land Commission Act, 2012

⁴⁶⁴ Section 36, National Land Commission Act, 2012

4.7 LAND REGISTRATION ACT, 2012

The proposed land banking definition should also be incorporated into the Act ensures legal coherence, enabling the Chief Land Registrar, courts, and other stakeholders to apply a uniform understanding of land banking when registering banked parcels, recording dispositions, or resolving disputes.

The proposed Land Bank Register, modeled after the Community Land Register under Section 8 of the LRA⁴⁶⁵, would provide a centralized, transparent, and accessible database of land parcels earmarked for future strategic use. Managed by the Chief Land Registrar, the register would include parcel-specific information such as geographic coordinates, legal status before banking (public, private, or community), intended use (e.g., infrastructure, urban housing, conservation), the management authority (e.g., NLC), and any applicable restrictions or conditions.

Additionally, it would record the full transaction history and allow public inspection to promote transparency and community oversight. This register would complement existing land records, without duplicating the general⁴⁶⁶ or community registers⁴⁶⁷.

To operationalize land banking within the LRA, a Section 36 should be amended to govern the registration of dispositions involving land banked parcels. Its focus on regulating how land transactions are formalized and recorded makes it the most suitable provision for incorporating land banking-specific requirements. It would require any such transaction to include a notation that the land is subject to land banking, obtain written consent from the relevant land banking authority, and comply with all applicable conditions. The Registrar would be mandated to reflect these restrictions in the register and ensure public access to such information. This provision would also establish that properly registered dispositions take precedence over any unregistered claims, thereby protecting strategic land assets from legal uncertainty.

⁴⁶⁵ Section 8(1), *Land Registration Act* (Act No. 3 of 2012).

⁴⁶⁶ Section 7, *Land Registration Act* (Act No. 3 of 2012).

⁴⁶⁷ Section 8(1), *Land Registration Act* (Act No. 3 of 2012).

Further amendments are proposed to Section 37, which governs transfers⁴⁶⁸ making it the most appropriate provision for introducing safeguards to prevent unauthorized or premature transfers of banked parcels. A new subsection would ensure that no transfer of a banked parcel can be completed without full compliance with the amended Section 36. The Registrar would be required to confirm that the transfer is consistent with the purpose and conditions of the land banking designation. This would prevent unauthorized or premature transfers that may undermine the strategic objectives of land banking.

Finally, Section 43 governs the form and content of instruments of disposition, ensuring that documents submitted for registration are standardized, clear, and legally enforceable⁴⁶⁹. This makes it the ideal provision for requiring that instruments involving banked land specify the responsible land banking authority, the intended purpose of banking, and any applicable restrictions. Therefore, it should be amended to require that instruments involving banked land clearly identify the responsible land banking authority, specify the intended purpose of the banking (as per the Land Banking Act), and outline any applicable restrictions. This ensures clarity, consistency, and enforceability during registration, allowing the Registrar to effectively oversee compliance.

Together, these proposed amendments to the Land Registration Act would institutionalize land banking within Kenya's land registration framework, foster inter-agency coordination, and uphold the principles of transparency, legal coherence, and sustainable land use planning envisioned by the Constitution and national land policies.

4.7 PHYSICAL AND LAND USE PLANNING ACT, 2019

4.7.1 DESIGNATING LAND BANKS AS SPAS

The Physical and Land Use Planning Act allows counties to declare SPAs where land has unique development potential or faces environmental or resource challenges⁴⁷⁰. This designation enables

⁴⁶⁸ Section 37, *Land Registration Act* (Act No. 3 of 2012).

⁴⁶⁹ Section 43, *Land Registration Act* (Act No. 3 of 2012).

⁴⁷⁰ Section 52, *Physical And Land Use Planning Act* (Act No.13 of 2019).

counties to reserve land for future public use, ensuring orderly development while long-term plans are formulated. Since land banking similarly involves securing land for future strategic use, areas identified for land banking (such as for infrastructure, industry, or housing) could also qualify as SPAs. Their shared objective of enabling structured, sustainable land use makes SPA designation a suitable legal mechanism to support land banking within county planning frameworks.

Therefore it is proposed that an amendment be made to Section 52(1) to include a subsection that explicitly includes "land identified and held for future strategic development or public purpose" as a characteristic under which an area can be declared an SPA. This amendment directly addresses the core function of a land bank and provides a clear legal basis for using the SPA designation for areas specifically intended for land banking purposes.

It is also proposed that the scope of subsection (b) be expanded to include planned future development within a land bank. This revised wording acknowledges that a land bank might not currently have intensive development but is being held specifically for such future use, aligning with the concept of land banking as acquiring land in anticipation of future development.

4.7.2 AMENDMENTS ALIGNING WITH THE PROPOSED LAND BANKING ACT

Section 2 of PLUPA, which provides definitions for key planning terms⁴⁷¹, should be amended to include a definition of "land banking" that reflects the meaning adopted in the proposed Land Banking Act. This is crucial for providing a clear legal understanding of land banking within the planning context.

Section 24 outlines the contents of the National Physical and Land Use Development Plan⁴⁷². Its role in identifying priority areas for development makes it the most suitable provision for an amendment mandating the identification and mapping of land suitable for banking. This provision should also require the national plan to outline broad strategies for integrating land

⁴⁷¹ Section 2, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁷² Section 24, *Physical And Land Use Planning Act* (Act No.13 of 2019).

banks into the national development agenda. Such integration would anchor land banking within Kenya's long-term planning frameworks, including Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA)⁴⁷³, ensuring that land reserved today can meet the infrastructural and settlement needs of tomorrow.

Correspondingly, Section 39 requires counties to outline land use strategies aligned with local needs and national plans⁴⁷⁴. Its focus on county-level spatial planning makes it the most appropriate provision for mandating counties to designate areas for potential land banks in consultation with the NLC. This designation should occur in consultation with the NLC and be aligned with national spatial plans. This amendment would operationalize land banking at the county level, reflecting the principles of devolved governance under Article 6(2) of the Constitution⁴⁷⁵ and ensuring that land banking responds to localized needs as set out in County Integrated Development Plans (CIDPs)⁴⁷⁶.

A related reform should target Section 30, which concerns Inter-County Physical and Land Use Development Plans⁴⁷⁷. A new provision should be inserted requiring that inter-county plans address the establishment and management of land banks that span more than one county. This would facilitate coordinated planning for large-scale infrastructure projects or regional development zones, where the benefits or impacts of land banking extend beyond administrative boundaries. This approach is especially pertinent given the increasing interdependence of counties in metropolitan regions and special economic zones.

Additionally, a new section should be inserted under Part V of the Act, which addresses Development Control and Regulation⁴⁷⁸, to govern the release of land from land banks. This section should require that any proposed development on land designated within a land bank be subject to a special approval process. Such approvals must be consistent with both the Land Banking Act and the relevant national and county spatial plans. This procedural safeguard would

⁴⁷³ Chapter 2.4, Recommended National Land Policy, 2023

⁴⁷⁴ Section 39, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁷⁵ Article 6(2), *Constitution of Kenya* (2010).

⁴⁷⁶ Section 108, *County Government Act*, (Act No.17 of 2012).

⁴⁷⁷ Section 30, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁷⁸ Part V, *Physical And Land Use Planning Act* (Act No.13 of 2019).

prevent premature or speculative development on banked land and preserve its intended strategic function.

Section 9, which outlines the functions of NLC⁴⁷⁹, should be amended to explicitly include collaboration with the NLC in the identification, designation, and management of land banks. Its focus on county-level planning makes it the ideal provision to mandate such collaboration. This amendment would formalize the cooperative relationship between counties and the NLC and embed land banking into the regular planning responsibilities of local authorities. As demonstrated in Chapter 2 of this study, inter-agency collaboration is often lacking in Kenya's land governance framework, resulting in inefficiencies and jurisdictional conflicts.

Furthermore, Section 56, which provides for development control⁴⁸⁰, should be amended to empower counties to regulate any development that occurs on land designated for banking. The provision's existing authority to enforce planning standards provides a clear mechanism to prevent unauthorized development on banked land. This would ensure that the use of banked land remains consistent with the strategic purposes for which it was reserved, such as future transport corridors or industrial parks. A corresponding amendment should also be made to Section 57, which governs development permission⁴⁸¹, to stipulate that such permission may only be granted where the proposed development aligns with the objectives set out for the land bank by the Land Bank Committee. These two provisions would collectively create a legal filter to prevent unauthorized or inappropriate development of banked land.

The Act's dispute resolution and oversight mechanisms should also reflect the role of land banking. To this end, Section 74⁴⁸² on the composition of the National Physical and Land Use Planning Liaison Committee and Section 77⁴⁸³ on the County Physical and Land Use Planning Liaison Committees should be amended to include a representative from the Land Bank Committee. This ensures that land banking considerations are embedded in planning decisions

⁴⁷⁹ Section 9, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁸⁰ Section 56, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁸¹ Section 57, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁸² Section 74, *Physical And Land Use Planning Act* (Act No.13 of 2019).

⁴⁸³ Section 77, *Physical And Land Use Planning Act* (Act No.13 of 2019).

and that potential disputes involving banked land benefit from expert input and a unified strategic outlook.

To bolster compliance, a new provision should be inserted specifically addressing enforcement on banked land. This section should grant county governments the power to issue enforcement notices and impose penalties for unauthorized development on designated land banks. Fines should reflect the high strategic value of such land, with potential penalties including financial sanctions or short-term custodial sentences. This is critical to deterring speculative or unlawful occupation of land set aside for long-term public use.

4.9 THE URBAN AREAS AND CITIES ACT, 2011

It is proposed that the proposed definition of land banking be included in this Act. This definition provides legal clarity within the urban planning framework, specifically tailored to the context of urban areas and cities.

Section 38, which governs the preparation of Integrated Urban Area or City Development Plans⁴⁸⁴, makes it the ideal provision for mandating the inclusion of land banking strategies due to its focus on comprehensive urban planning. A new subsection should be added requiring that such plans include clear strategies for the identification, reservation, and eventual development of land banks situated within or adjacent to the urban area. These strategies must be developed in coordination with the NLC and in accordance with both the proposed Land Banking Act and the National Physical and Land Use Development Plan⁴⁸⁵. The inclusion of this provision ensures that land banking becomes a central consideration in urban planning processes, rather than an afterthought. It would allow cities and municipalities to plan proactively for land needed for future urban expansion, infrastructure development, and the provision of affordable housing and public amenities. This mirrors South Africa's approach, where land banking is integrated into

⁴⁸⁴ Section 38, Urban Areas and Cities Act, 2011

⁴⁸⁵ Section 24, *Physical And Land Use Planning Act* (Act No.13 of 2019).

broader urban and regional development frameworks, allowing governments to pre-emptively secure land for socially and economically important projects.

In addition, Section 4A, which deals with the delineation of boundaries for urban areas and cities⁴⁸⁶, should also be amended to require that the appointed ad hoc committee considers the location and potential of both existing and planned urban land banks. When determining city boundaries, the committee must take into account whether strategic land has already been earmarked for future expansion or infrastructural use. This would ensure that the expansion of urban areas is not only responsive to population growth and economic development but also strategically aligned with long-term land management goals.

Further, a new section should be introduced within Part IV of the Act, which focuses on Planning and Development Control⁴⁸⁷, to provide a specific regulatory framework for development on Strategic Urban Land Bank Land. This provision would require that any development proposed on land designated for banking purposes must receive formal approval from the county government. Such approval should be guided by the applicable integrated urban or city development plan and must be consistent with the intended use for which the land was reserved.

In addition, this new section should mandate that county governments consult the National Land Commission before approving any development that may alter the strategic purpose of land designated as part of a land bank. This requirement reaffirms the role of the NLC as the primary oversight body in the administration of land banks, while promoting vertical coordination between national and county levels of government. It also safeguards against inconsistent or politically motivated decisions at the county level, ensuring that land banking remains aligned with broader national planning objectives, as envisaged in the proposed Land Banking Act.

Lastly, the Third Schedule to the Act, which outlines the components of an integrated urban area or city development plan⁴⁸⁸, should also be revised. Under the section detailing proposals for

⁴⁸⁶ Section 4A, Urban Areas and Cities Act, 2011

⁴⁸⁷ Part IV, Urban Areas and Cities Act, 2011

⁴⁸⁸ Third Schedule, Urban Areas and Cities Act, 2011

land management within urban areas, a new requirement should be added compelling planners to include mechanisms for identifying, protecting, and allocating land designated as strategic urban land banks. These mechanisms should be designed in consultation with the NLC and implemented in accordance with the Land Banking Act. By embedding this requirement in the statutory planning schedule, land banking becomes a legally mandated and operational component of urban development plans, rather than a discretionary or policy-driven initiative.

Together, these proposed amendments would significantly strengthen the role of land banking in urban planning and development control in Kenya.

4.10 INVESTMENT PROMOTION ACT, 2004

Section 4 currently governs entitlement to an Investment Certificate, focusing on investment thresholds, legality, and benefits to Kenya⁴⁸⁹. This section is the most appropriate for amendment because it establishes the foundational criteria for approving investments, which can be extended to include specific requirements for accessing banked land.

Under the new provision, access to such land would be permitted only where the investment aligns with designated development objectives outlined in the proposed Land Banking Act. Eligible investments must also contribute to key national priorities, including job creation, technology transfer, foreign exchange generation through exports, environmental sustainability, and local content utilization, with thresholds determined by regulation.

Additionally, applicants must submit an approved land use plan that complies with spatial planning and zoning frameworks outlined in the Physical and Land Use Planning Act, 2019, and demonstrate financial capacity to develop the land within a specified period to deter speculative holding. Compliance with public participation requirements under the Land Banking Act is also mandatory. KenInvest, in consultation with the NLC, will verify land availability and purpose, oversee application submissions, and facilitate a formal agreement with the investor outlining

⁴⁸⁹ Section 4, *Investment Promotion Act* (Act No.6 of 2004).

land use conditions and reversion clauses. These provisions aim to ensure that banked land is allocated transparently and used efficiently.

The National Investment Council (NIC), under Section 27⁴⁹⁰, should also be assigned an advisory role in relation to land banking. The Council should assist the government in identifying land suitable for designation as Strategic Investment Land Bank Land, working closely with the NLC and relevant county governments. Furthermore, it should help formulate policies that prioritize the allocation of such land to high-impact, strategic investments. This expanded mandate would enhance institutional coordination and ensure that land use decisions reflect both planning and investment priorities from the outset. This proposal draws inspiration from South Africa's model, which emphasizes inter-agency coordination in land reform and development planning⁴⁹¹, but adapts the principle to Kenya's unique institutional context by giving a formal role to the NIC.

To institutionalize collaboration between the Kenya Investment Authority and the National Land Commission, a new section should be inserted within Part IV of the Act⁴⁹². This section should mandate the establishment of a memorandum of understanding (MoU) between KenInvest and the NLC to facilitate the sharing of information on the availability and intended use of Strategic Investment Land Bank Land. It should also require KenInvest to designate a liaison officer responsible for handling investor inquiries related to land banking and to streamline communication between investors and the NLC.

Additionally, KenInvest's role should be expanded to include information on land banking in its promotional materials and outreach programs. This would ensure that investors are aware of available strategic land and the procedures for accessing it under the Land Banking Act. It enhances transparency and promotes the effective use of banked land in attracting targeted investments. These provisions reinforce the coordination mechanisms necessary for an effective land banking framework, tailored to support Kenya's investment-led development agenda⁴⁹³.

⁴⁹⁰ Section 27, *Investment Promotion Act* (Act No.6 of 2004).

⁴⁹¹ Land Policy, White Paper On South African Land Policy, 1997

⁴⁹² Part IV, *Investment Promotion Act* (Act No.6 of 2004).

⁴⁹³ Executive Summary, Sessional paper No. 10 of 2012

4.11 LIMITATIONS

While the reforms outlined above present a structured approach to establishing a comprehensive land banking framework, various procedural, constitutional, and institutional barriers may hinder their effective implementation.

The NLC's mandate is constitutionally defined under Article 67 of the Constitution of Kenya, which specifically outlines its functions regarding public land management⁴⁹⁴. Expanding this mandate to include explicit land banking powers may require constitutional amendments because the proposed functions go beyond the interpretation of its current constitutional mandate. This presents a significant limitation as constitutional amendments typically follow one of two arduous paths.

The parliamentary initiative pathway requires a bill to be passed by at least two-thirds majority in both houses⁴⁹⁵, while the popular initiative requires one million signatures and majority approval in at least 24 counties⁴⁹⁶, both pathways ultimately culminate in a referendum⁴⁹⁷.

4.11.1 Legislative Enactment Challenges

The creation of a new Land Banking Act faces procedural limitations inherent in Kenya's legislative process. Any new bill must navigate through multiple stages including drafting, publication, first reading, committee stage, second reading, committee of the whole house, third reading, and presidential assent⁴⁹⁸. This comprehensive process, while necessary for democratic legitimacy, introduces significant time delays that may postpone implementation of the land banking framework.

⁴⁹⁴ Article 67, *Constitution of Kenya* (2010).

⁴⁹⁵ Article 256(1)(d), *Constitution of Kenya* (2010).

⁴⁹⁶ Article 257(1), *Constitution of Kenya* (2010).

⁴⁹⁷ Article 257(10), *Constitution of Kenya* (2010).

⁴⁹⁸ 'FactSheet 2: How Law is Made', The National Assembly - http://www.parliament.go.ke/sites/default/files/2018-04/2_How_Law_is_Made.pdf.

New legislation also requires extensive stakeholder consultations under public participation requirements established in Articles 10⁴⁹⁹ and 118⁵⁰⁰ of the Constitution. These consultations, while essential for democratic governance, frequently reveal conflicting interests among stakeholders, necessitating compromises that might dilute the effectiveness of the original land banking vision.

The proposed framework recommends establishing several new institutions, including the National Land Policy Implementation Unit (NLPIU) and County Investment Units (CIU), both of which face significant procedural limitations. Creating statutory institutions in Kenya generally requires dedicated legislation or amendments to existing acts, triggering the full parliamentary process described earlier.

4.12 CONCLUSION

This chapter has outlined actionable recommendations for establishing a robust land banking framework in Kenya, drawing valuable lessons from South Africa's experiences while adapting them to Kenya's unique context. While South Africa offers a useful blueprint, Kenya's approach diverges significantly due to existing policy and legal frameworks, institutional mandates, and socio-economic priorities. Unlike South Africa, where land banking is primarily focused on agricultural development and land redistribution, Kenya's framework emphasizes urbanization, industrialization, and infrastructure development, reflecting the nation's rapid urban growth and the goals outlined in Kenya Vision 2030.

⁴⁹⁹ Article 10, *Constitution of Kenya* (2010).

⁵⁰⁰ Article 118, *Constitution of Kenya* (2010).

CHAPTER 5: CONCLUSION

This dissertation has undertaken a comprehensive examination of land banking and investment frameworks in Kenya, with the objective of extracting valuable lessons from South Africa's established land banking system. Through detailed analysis of both countries' legal and policy frameworks, this study has identified strategic opportunities for Kenya to enhance its land management approach by adopting and adapting successful elements from South Africa's model.

Chapter 2's analysis of Kenya's legal and policy frameworks revealed several critical shortcomings that undermine the effective implementation of land banking, despite its gradual uptake in select initiatives. Notable examples include the LAPSET Corridor Program, which has set aside land for future infrastructure; the Affordable Housing Program (AHP), which allocates public land for strategic housing development; and the development timelines enforced at Konza Technopolis, where landholders must develop allocated land within 18 months or risk repossession. While these efforts signal growing recognition of land banking's value, they remain fragmented and lack a coherent legal and policy backbone to ensure consistency and long-term effectiveness.

Although the Land Act (2012), enacted to implement Article 68 of the Constitution, aims to consolidate and rationalize land laws in Kenya, it falls short in operationalizing land banking. Despite its broad objectives, including equitable access and sustainable management, it does not include clear provisions for identifying, reserving, or managing land for strategic use. This omission reflects a significant missed opportunity. Similarly, the Land Registration Act (2012), which seeks to enhance legal certainty in land ownership and support devolved governance, lacks mechanisms for recording or managing banked land, limiting its relevance for land banking initiatives.

The chapter further highlights systemic gaps within Kenya's legal and policy landscape. One major issue is the absence of a standard legal definition of "land banking" across key frameworks such as the Land Act, Land Registration Act, and the National Land Use Policy (2017), leading to inconsistent interpretation and implementation. Institutional fragmentation compounds the

problem: overlapping mandates between the National Land Commission (NLC), the Ministry of Lands, and county governments often result in bureaucratic inefficiencies and jurisdictional disputes. The lack of a dedicated legislative framework and inadequate financial instruments - such as over-reliance on the underfunded Land Settlement Fund - further hinder progress. These limitations have led to underutilized land assets, speculative holding practices, and missed investment opportunities, ultimately restricting Kenya's ability to meet development goals such as those outlined in Vision 2030. These shortcomings leave the country vulnerable to speculative landholding and missed investment opportunities, underscoring the need for reform to harness land banking's potential.

Chapter 3 provided a comparative lens through South Africa's land banking system, which offers a robust model for Kenya to emulate. A defining feature of South Africa's framework is its explicit legal definition of land banking, as established in the Land Bank Act of 1912 - a clarity that Kenya's current framework lacks, contributing to regulatory ambiguity and coordination challenges. This legal precision is rooted in South Africa's historical context of addressing apartheid-era land dispossession, a tailored approach that contrasts with Kenya's land banking efforts, which are shaped by colonial and post-independence land reform struggles but lack a similarly focused legal foundation. South Africa's system is further distinguished by well-coordinated institutional roles, where agencies have clear mandates and effective collaboration, unlike Kenya's fragmented institutional architecture marked by overlapping responsibilities and inefficiencies.

Additionally, South Africa employs diversified funding sources, blending state appropriations with private capital to sustain land banking operations, while Kenya relies heavily on limited public funds, constraining its financial capacity. The Proactive Land Acquisition Strategy (PLAS) enhances South Africa's model by enabling strategic, state-led land purchases, a proactive mechanism that outshines Kenya's less coordinated acquisition methods.

Moreover, South Africa provides targeted financial and technical support to beneficiaries to ensure productive land use, addressing a critical gap in Kenya, where the absence of such support often leads to underutilization of land resources. These structured mechanisms have enabled South

Africa to make significant strides in addressing historical land injustices while fostering economic development and social equity - outcomes that Kenya could adapt to its context of rapid urbanization and infrastructure needs, despite its current shortcomings in legal definition, institutional coherence, and operational capacity.

Drawing on the insights developed throughout the study, Chapter 4 proposed a comprehensive suite of legal, policy, and institutional reforms aimed at strengthening Kenya's land banking framework. At the heart of these recommendations is the call for the enactment of a dedicated Kenyan Land Banking Act. This proposed legislation would provide the much-needed legal clarity and institutional structure currently absent in the existing regulatory landscape. One of its core features would be the formal definition of "land banking" as the strategic acquisition, holding, and management of land for future development purposes, framed around the principles of equitable access, sustainable land use, and long-term public benefit.

The proposed Act would designate the NLC as the principal authority responsible for overseeing all land banking activities. To enhance inter-agency coordination and reduce institutional fragmentation, it further recommends the establishment of a multi-agency Land Bank Committee comprising representatives from the Ministry of Lands, county governments, and relevant planning authorities. This committee would serve as a central body for policy harmonization, technical guidance, and dispute resolution, ensuring that land banking initiatives are implemented cohesively at both the national and devolved levels.

The proposed framework would also introduce a centralized Land Bank Registry to promote transparency and accountability in the management of banked land. This registry would contain comprehensive data on land parcels earmarked for public projects, industrial zones, housing developments, or environmental conservation. Complementing this, the Act would establish a Land Banking Fund - a blended financing mechanism that pools resources from public budgets, private investors, and development partners. This fund would support the acquisition, maintenance, and servicing of land in strategic locations, thereby ensuring the long-term viability of land banking initiatives.

To operationalize these reforms effectively, the study also recommends targeted amendments to existing statutes, including the Land Act, Land Registration Act, and the Physical and Land Use Planning Act that recognize and coordinate with the proposed Land Banking Act. These amendments would embed land banking principles within the broader land management system and facilitate integration into both national and county-level spatial planning processes. For example, the Land Act could be revised to include explicit provisions on land reservation for future public use, while the Land Registration Act could incorporate procedures for recording and managing banked land. Similarly, the Physical and Land Use Planning Act could be updated to recognize land banks as key instruments within development control and zoning regulations.

Collectively, these legal and institutional reforms are designed to address the regulatory deficiencies identified in Chapter 2, streamline coordination among land governance bodies, and align Kenya's land management practices with its long-term development objectives. By institutionalizing land banking through a dedicated legal framework, Kenya would be better positioned to secure land for strategic purposes, mitigate speculative landholding, and promote inclusive, sustainable economic growth.

While South Africa's land banking model offers valuable lessons, several critiques must be acknowledged. First, direct transplantation of South Africa's institutional model without adaptation to Kenya's unique constitutional arrangement of devolved land management functions could create implementation challenges. Kenya's system of devolved governance requires careful consideration of national-county coordination mechanisms that have no direct parallel in South Africa's more centralized approach.

Moreover, South Africa's Land Bank has faced its own challenges, including periods of financial distress requiring government intervention. These experiences highlight the importance of robust risk management protocols and sustainable financing models - lessons Kenya should heed in any institutional reforms.

In addition, this research acknowledges the different historical contexts of land dispossession and reform in Kenya and South Africa. While both countries address historical injustices, the specific

patterns of land inequality and the socio-political dynamics surrounding land reform differ significantly. These differences necessitate careful adaptation rather than wholesale adoption of South Africa's approach.

Kenya has the opportunity to transform land banking from an implicit and underutilized concept to a powerful tool for advancing equitable and sustainable development. The lessons from South Africa provide not a template to be copied, but rather a set of tested principles that can inform Kenya's own journey toward more effective land governance.



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