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NATIONAL ASSEMBLY

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By chairman, Depr.
Comm. on Lands on
Wed. Hon. Alex
Mwumi, MP, on
Wed 14 Oct.
2015 at
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A:*

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE LAND LAWS (AMENDMENT) BILL, 2015



CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2015

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1.0 PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Lands and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Land Laws (Amendment) Bill, 2015. The Bill was committed to the Committee on 19th August, 2015 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

1.1 Mandate of the Committee

The Committee on Lands is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) reports and makes recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee oversees the operations of the Ministry of Land, Housing and Urban Development on the following matters: Land Policy and Physical Planning, Land Transactions, Survey and Mapping, Land Adjudication, Settlement, Land registration, Land Valuation, Administration of community and public land, and Land Information and Management System.

1.2 Committee membership

1. The Committee comprises the following members:
2. The Hon. Alex Mwiru, M.P. – Chairperson
3. The Hon. Moses Ole Sakuda, M.P - Vice Chairperson
4. The Hon. Onesmus Ngunjiri, M.P.
5. The Hon. Mutava Musyimi, M.P.



6. The Hon. John Kihagi, M.P.
7. The Hon. Francis W. Nderitu, M.P.
8. The Hon. Francis Njenga, M.P.
9. The Hon. A. Shariff, M.P.
10. The Hon. Eusilah Jepkosgei, M.P.
11. The Hon. Benard Bett, M.P.
12. The Hon. Kipruto Moi, M.P.
13. The Hon. Oscar Sudi, M.P.
14. The Hon. Hellen Chepkwony, M.P.
15. The Hon. Sarah Korere, M.P.
16. The Hon. Julius Ndegwa, M.P.
17. The Hon. Benson Mbai, M.P.
18. The Hon. Kanini Kega, M.P.
19. The Hon. Esther Murugi, M.P.
20. The Hon. Gideon M. Mung'aro, M.P.
21. The Hon. Hezron Awiti Bollo, M.P.
22. The Hon. Suleiman Dori Ramadhani, M.P.
23. The Hon. George Oner Ogalo, M.P.
24. The Hon. Lekidime L. Mathew, M.P.
25. The Hon. Shakila Abdallah, M.P.
26. The Hon. Paul Otuoma, M.P.
27. The Hon. Thomas Mwadeghu, M.P.
28. The Hon. Magwanga Joseph Oyugi, M.P.
29. The Hon. Aburi Lawrence Mpuru, M.P.
30. The Hon. King'ola Patrick Makau, M.P.

1.3 Consideration of the Bill

The Land Laws (Amendment) Bill, 2015 was published and read a first time on 19th August, 2015 and thereafter committed to the Departmental Committee on Lands for consideration pursuant to Standing Order 127.

The main objective of the Bill is to amend the Land Registration Act, 2012, the National Land Commission Act, 2012 and the Land Act, 2012 which were enacted as required for the implementation of the Constitution, in order to clarify the roles and mandates of the Ministry of Land, Housing and Urban Development and the National Land Commission.

The Bill proposes to rectify inconsistencies and overlap of mandates in the land laws that have resulted in difficulties in the implementation of the Land Registration Act, 2012, the National Land Commission Act, 2012 and the Land Act, 2012.

1.3.1 Key provisions of the Bill

The Land Laws (Amendment) Bill, 2015 has 109 clauses which provide for amendments to the Land Registration Act, 2012, the National Land Commission Act, 2012, and the Land Act, 2012.

The Land Registration Act, 2012

The Bill proposes to amend the Land Registration Act, 2012 to clarify the mandate of the National Land Commission and the Ministry of Land, Housing and Urban Development to eliminate the overlap of mandates that has caused conflicts between the Ministry and the Commission in matters relating to the registration of land.

The Bill provides key definitions, Offices of the Deputy Chief Land Registrar, County Registrars, other Registrars, prescribes their qualifications, powers and the procedure for the constitution of land registration units.

The National Land Commission Act, 2012

The Bill proposes to amend the National Land Commission Act 2012 in order to eliminate the duplication of institutions at the County level, provides the manner in which the National Land Commission shall undertake the investigation of historical land injustices complaints pursuant to Article 67(2)(e) of the Constitution and to harmonize the mandate of the Commission with those of the Ministry of Land, Housing and Urban Development.

The Land Act, 2012

The Bill proposes to amend the Land Act in order to harmonize the Act with the Constitution and eliminate overlap as well as clarify the mandates of the Ministry of Land, Housing and Urban Development and the National Land Commission which resulted in difficulties in the implementation of the Act.

The Bill proposes to limit the mandate of the National Land Commission to the management of public land on behalf of the National and County governments, limit the policy making powers of the National Land Commission, clarify the powers of the Commission regarding the allocation of public land, proposes the establishment of a Board of Trustees to manage the Settlement Scheme Fund, proposes the mode of prescribing minimum and maximum private land holding acreages pursuant to Article 68(c)(i) of the Constitution and to provide for the manner of undertaking evictions from private, community and public land.

1.3.2 Bill Processing by the Committee

In reviewing the Bill, the committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Thursday, 3rd September, 2015 pursuant to Article 118 of the constitution and Standing Order 127.

The Committee received various memoranda and held a stakeholders' conference in Mombasa between 15th to 20th September, 2015. The views are captured and contained in the body of the report.

The following were the stakeholders present at the retreat –

- 1) Ministry of Land, Housing and Urban Development;
- 2) Ministry of Agriculture, Livestock and Fisheries;
- 3) National Land Commission;
- 4) Commission for the Implementation of the Constitution;
- 5) Kenya National Commission on Human Rights;
- 6) Transition Authority;
- 7) Council of Governors;
- 8) County Land Management Board;
- 9) Land Development and Governance Institute;
- 10) Reconcile;
- 11) Kenya Land Alliance;
- 12) Lawyers in private practice;
- 13) Kenya Private Sector Alliance;
- 14) Katiba Institute;
- 15) World Wildlife Fund;
- 16) Act Change Transform (ACT);
- 17) Ogiek Peoples' Development Program;
- 18) Institution of Surveyors of Kenya;
- 19) Economic and Social Rights Centre- Haki Jamii;
- 20) Kenya National Commission on Human Rights
- 21) National Environment Management Authority
- 22) Kenyatta University- Njoro Campus
- 23) Kenya Private Sector Alliance
- 24) Kenya Institute of Planners
- 25) Kenya Forest Service
- 26) Law Society of Kenya
- 27) Kenya Forest Research Institute

1.4 Adoption of the Report

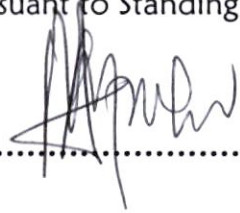
We the members of the Departmental Committee on Lands have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity per the attached adoption list(Annexe I).

1.5 Acknowledgement

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The committee wishes to thank all stakeholders for their participation in scrutinising the Bill. I also wish to express my appreciation to the Honourable Members of the Committee who made useful contributions towards the preparation and production of this report.

Finally, it is my pleasant duty and privilege, on behalf of the Departmental Committee on Lands, to table this Report on the consideration of the Land Laws (Amendment) Bill, 2015 pursuant to Standing Order 127.

SIGNED



DATE

13th October 2015

(HON. ALEX M. MWIRU, MP)
CHAIRPERSON

2.0 BACKGROUND INFORMATION

The Land Laws (Amendment) Bill, 2015 is one of the Constitutional bills outlined in the Fifth Schedule to the Constitution of Kenya, with a constitutional timeline of August 27th, 2015. The National Assembly on August 25th, 2015 extended the period in respect of passing the legislation by 12 months from August 27th, 2015.

The main objective of the Land Laws (Amendment) Bill, 2015 is to amend the Land Registration Act, 2012, the National Land Commission Act, 2012 and the Land Act, 2012, which were enacted as required for the implementation of the Constitution, in order to clarify the roles and mandates of the Ministry of Land, Housing and Urban Development and the National Land Commission. The Bill proposes to rectify inconsistencies and overlap of mandates in the land laws that have resulted in difficulties in the implementation of the Land Registration Act, 2012, the National Land Commission Act, 2012 and the Land Act, 2012.

The Land Laws (Amendment) Bill, 2015 was introduced in the National Assembly by the Leader of the Majority Party on 19th August, 2015 and thereafter committed to the Departmental Committee on Lands for consideration in line with Article 118 of the Constitution and Standing Order 127. The enactment of the Land Laws (Amendment) Bill, 2015 shall occasion additional expenditure of public funds and the Bill further concerns county governments in terms of Article 110 of the Constitution.

The Committee engaged a number of stakeholders whose views are contained in this Report.

3.0 CONSIDERATION OF THE LAND LAWS (AMENDMENT) BILL, 2015

The Committee held a retreat from 15th to 20th September, 2015 in Mombasa to receive and consider stakeholder views on the Land Laws (Amendment) Bill, 2015 amongst other Bills. The Committee also considered written memoranda from the public.

3.1 STAKEHOLDERS VIEWS ON THE LAND LAWS (AMENDMENT) BILL, 2015

3.1.1 MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT

The following is a summary of issues raised by the representatives of the Ministry of Land, Housing and Urban Development on the Land Laws (Amendment) Bill, 2015:

1. The Land Act 2012, National Land Commission Act 2012 and the Land Registration Act 2012 had anomalies. The Presidency, Ministry of Lands, Housing and Urban Development and National Land Commission submitted individual amendments to the Bills and forwarded to the Departmental Committee on Lands for consideration. The Committee forwarded the same to the Constitutional Implementation Commission (CIC) for harmonization. It is on the basis of the matrix prepared by the CIC that the Bill was drafted;

2. The Amendments were meant to bring the three land statutes in line with the Constitution and harmonize the functions of the Ministry of Lands, Housing and Urban Development and the National Land Commission;
3. Most of the functions of the National Land Commission as provided for in Article 67 1 deal with oversight, advisory and recommendations;
4. Repealing section 15 of the National Land Commission Act is meant to anchor back the issue of Historical Land Injustices administration as a function of the National Land Commission as opposed to creating a new law on Historical Land Injustices;
5. The Land Act, 2012 as it is has several contradictions on Land Registration. The role of the National Land Commission should be advising and monitoring. The Bill seeks to align the roles;
6. No settlement can happen on public land. For settlement to happen the process of alienation starts and once adjudicated, it ceases to be public land;
7. Clause 9 - introducing section 13 A, creating the office of the Deputy /County Land Registrar and Land Registrar introduces the qualification of the registrar being an advocate. Advocate qualification is meant to professionalize the profession.(The ministry has already hired 40 advocates to as registrars);
8. Introduction of a new Section 6 A on registration of land. The rationale is that registration should be a function of the Ministry and not of the National Land Commission. The manner in which the register will be prescribed should be through legislation and be done by the Cabinet Secretary;
9. Section 95 e of the Land Act,2012 on succession limitations puts limitation to prevent people from selling land on settlement scheme as soon as titles are issued;
10. Minimum and Maximum, Evictions and Historical Land Injustices aspects in the Acts can be repealed after they have fulfilled their purpose;

3.1.2 MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

The following is a summary of issues raised by the representatives of the Ministry of Agriculture, Livestock and Fisheries on the Land Laws (Amendment) Bill, 2015:

1. In section 159 (1),the Bill should give a time limit within which the Cabinet Secretary will be required to prescribe the Minimum and Maximum Land Holding Acreages after enactment of the amended Bill. Also, specify that the prescriptions should be regulations rather than guidelines to ensure parliamentary oversight;
2. Insert a section after 159(i) indicating how the Cabinet Secretary will develop the prescriptions envisaged in the previous section. The new section should provide for a participatory process as required in the constitution and the key factors to be taken into consideration as specified in section 159(B) (1) and (2);
3. Insert a section after 159(1) indicating that the Minimum and Maximum provisions by the Cabinet Secretary will not apply retrospectively to avoid disruption of the agricultural sector and rights to property ownership specified in the Bill of rights;
4. In section 159B (2) (a) replace with agro-ecological zones;

5. Add an additional parameter on food security, for determination of Minimum and Maximum Land Holding Acreages;
6. In section 159C (a) (iii) delete "subsistence and" from this section because its implied in food crop farming.

3.1.3 NATIONAL LAND COMMISSION

The following is a summary of issues raised by the representatives of the National Land Commission on the Land Laws (Amendment) Bill, 2015:-

1. There is was no justification for the proposed amendments replacing Commission with Cabinet Secretary in clause 6 of the Land Registration Act, 2012 (LRA) being amended in subsection (1) by deleting the words "Commission in consultation with the National and County Governments" and substituting therefore with the words "Cabinet Secretary, in consultation with the Commission". Declaration of Registration units is a first step towards adjudication of land which only happens on Community land;
2. Proposed section 4 of amended law of the Land Registration Act, 2012 gives procedures for adjudication of land through direction of the Cabinet Secretary. The effect of this new section is to have adjudication process directed and undertaken by the Cabinet Secretary lands. Hence proposing adjudicating community land using the Land Registration Act, 2012 thus nullifying the need to have a community law and denying communities to be in charge of community land as envisaged in Article 63(4) of the Constitution;
3. Section 7 of the Land Registration Act, 2012 on Land Registry removes role of National Land Commission and replaces with Cabinet Secretary. Subject to these provisions, the Registrar may at any time, open a new edition of a register showing only the subsisting entries and omitting there from all entries that have ceased to have effect;
4. The Registrar may cancel any entry in the register which have ceased to have effect;
5. This amendment effectively gives the Land Registrar powers not only to tamper and erase history on land rights but can be ordered to do so by the Cabinet Secretary;
6. Amendment of section 18 of the Land Registration Act, 2012 goes against the spirit of devolution. Boundaries function should be a function of the County Governments as provided in the Fourth Schedule of the Constitution. This amendment seeks to give this function to the Director of Surveys;
7. Amendment of Section 28 of Land Registration Act, 2012 on Spousal rights over matrimonial property deletes spousal ownership of matrimonial property;
8. Amendment to section 26 of the Land Registration Act, 2012 - certificate of title to be held as conclusive evidence of proprietorship- this would restrict the courts in the case of titles received through corrupt means Amendments relating to Institutional Issues;
9. Amendment of Section 15 of the National Land Commission Act, 2012 on Historical Land Injustices- The prescription given by the proposed procedures inserted in section 5 cannot work without a legislation to determine what a historical injustice is, committed by who, when and what are the possible remedies and by who;

10. Removal of Section 18 of the National Land Commission Act, 2012-This Totally takes away County Land Management Boards without proposing how the functions of National Land Commission are to be devolved or decentralized closer to the public;
11. Amendment of schedule 1 of National Land Commission Act, 2012 gives the Public Service Commission the role of appointing commissioners. This removes the need for a panel to select commissioners and the Presidents role in having a Commission in place.
12. New clause introduced in section 54- Cabinet Secretary may prescribe regulations on registration of leases.

3.1.4 COUNCIL OF GOVERNORS

The following is a summary of issues raised by the representatives of the Council of Governors on the Land Laws (Amendment) Bill, 2015:

1. There were no stakeholder consultations on the Bill. County Governments are the custodians of Community Land but they were not consulted;
2. The Bill is attempting to take over the functions of the National Land Commission and to recentralize again the management of land through land registration;
3. Trust land should be managed by the local community through the National Land Commission- and not be under the Cabinet Secretary;
4. The law allowing for the establishment of the the County Land Management Boards was passed with no opposition from Constitutional Implementation Commission, so it should not now be said that the the County Land Management Boards are now unconstitutional. Removal of County Land Management Boards is therefore unacceptable. The board does the work of the National Land Commission and is created by statute.

3.1.5 COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The following is a summary of issues raised by the representatives of the Commission for the Implementation of the Constitution on the Land Laws (Amendment) Bill, 2015:

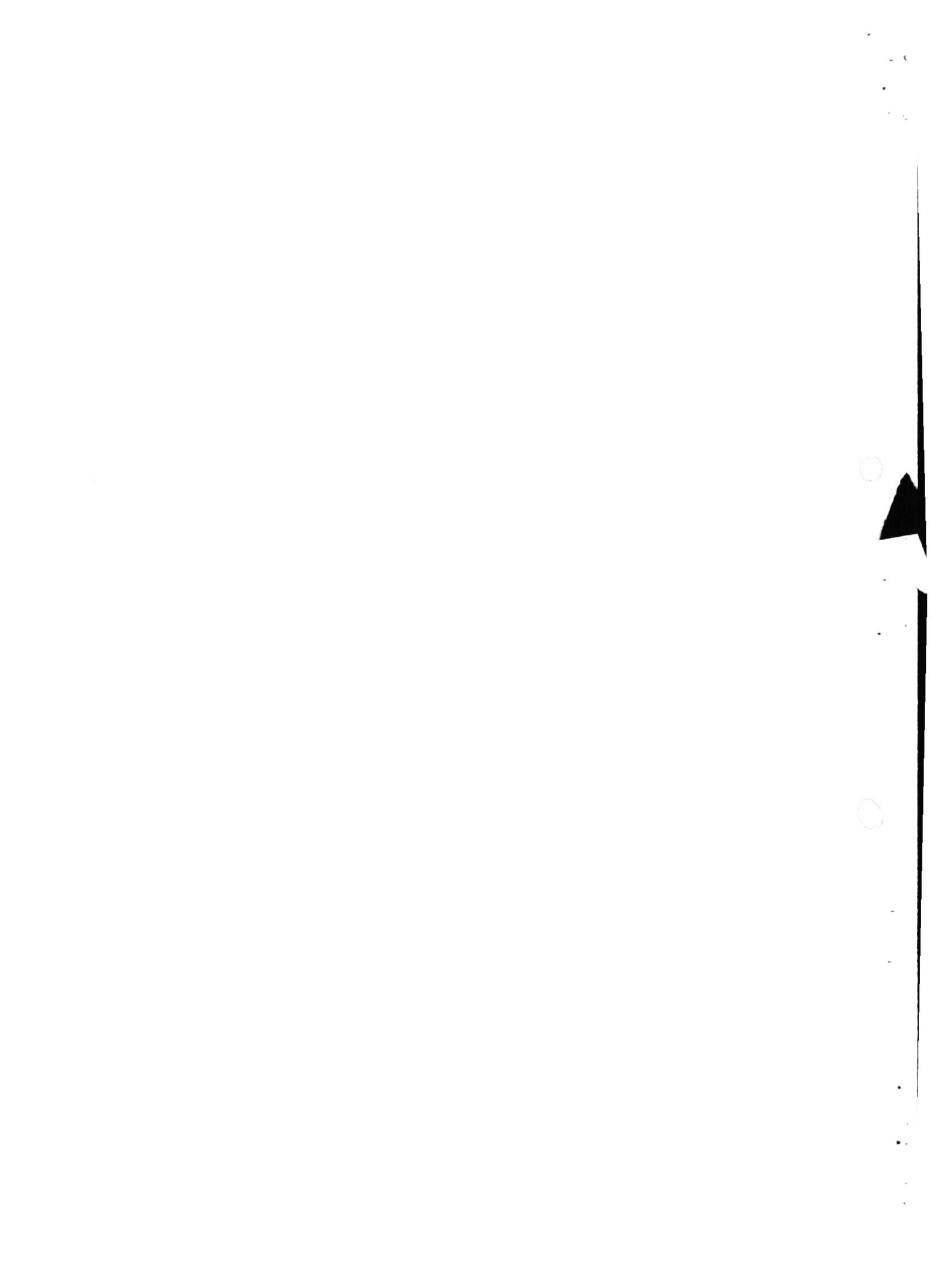
1. The Constitutional Implementation Commission was presented with the Bills by the committee for comments. There was no public participation on the on the Land Laws Amendment Bill, 2015;
2. The National Land Policy predated the constitution and has certain provisions which are contrary to the Constitution. Any inconsistencies with the constitution are therefore null and void to the extent of their inconsistencies;
3. Historical injustices provisions in Land Laws amendment Bill are not sufficient as there are clear gaps e.g. There is no provision for time frame, definition nor a demarcation of a historical and present injustice and does not provide for how claims will be assessed and resolved. There is also No provision on how claims are bought to the commission;
4. The Constitution provides that shall adjudicate and make recommendations-this is not provided for in the Bill;

5. Minimum and Maximum land holding and Historical Land Injustices aspects have been captured in the Bill;
6. Registration: Article 67 provides that the National Land Commission shall advise on a comprehensive method of land registration- the registration of an interest is what has been left to the ministry/ Cabinet Secretary. The Cabinet Secretary prescribes regulations. The Bill seeks to restrict the role of the Cabinet Secretary with regard to registration;
7. Appointment of commissioners- the Public Service Commission has no mandate to appoint commissioners;
8. County Land Management Boards- this is a function of National Land Commission- there is therefore no need to create another structure with persons being appointed by the executive yet the Commission has the function provided by the constitution. The National Land Commission can decentralize services administratively in law and does not have to create another body to perform that function;
9. Trust land:-There are no provisions in the Bill. Unregistered community land is held by County Governments in the Community Land Bill.

3.1.6 INSTITUTION OF SURVEYORS OF KENYA

The following is a summary of issues raised by the representatives of the Institution of Surveyors of Kenya on the Land Laws (Amendment) Bill 2015:

1. Professionals who deal with land were not involved in the process of developing the Land Laws Amendments Bill 2015;
2. To streamline operations in the land sector it is recommended that the Ministry of Land Housing and Urban Development deals with land registration including being the custodian of land registries while the National Land Commission deals/handles Land Administration both at the National and County level;
3. Some proposed amendments are against the spirit of the Constitution and such include scrapping of the County Land Management Boards, and transferring some of the Constitutional roles of the National Land Commission to the Cabinet Secretary;
4. Qualifications of the Land Registrars: The Bill, in section 9, seeks to amend the qualification of the Land Registrars. The amendment however discriminates against land sector professionals in the land sector. The land sector professionals are equally qualified by virtue of their training and practice. Majority of the current Land Registrars have a background in land related courses. Limiting the same to only advocates will be discriminating against qualified Kenyans. The requirement of one to be advocate should be done away with;
5. Functions of County Land Management Boards: Section 42 & 45, seeks to scrap the County Land Management Boards (CLMB). This section should be deleted in its entirety due to the fact that Boards are the devolved or decentralized National Land Commission structure at County level where the function of administering land is undertaken. The boards were formed so as to create an avenue for participation by the public in decision making in land matters. The functions of the National Land Commission at the County level can only be



performed by a body created by the Commission. If not those functions will be performed by County Governments which will bring about conflict of interest and revert to the old order County Councils;

6. Autonomy of the National Land Commission- Section 46 (c) (d) (g) (h) (i) (k), seeks to amend the First Schedule of National Land Commission Act, 2012. This effectively denies the National Land Commission its Autonomy as espoused in the Constitution. The National Land Commission, as listed under Article 148 is an independent Commission and it should be accorded sufficient autonomy and independence to perform its functions effectively, including recruitment of the its Commissioners and staff;
7. Administration of Private Land: Section 49 proposes to give powers to the Cabinet Secretary to administer. This issue has been contested mainly because its definition is wide and covers other sectoral laws. Further discussions on who should deal with administration of this category of land, in most the convenient and cost effective manner at all levels should be held. Should we have both Sub-County Land Control Committees and the County Land Management Boards? Would there be replication of duties?;
8. Settlement Trust Funds: Section 96 (1B) should be expanded to include the representative from the Council of Governors, private sector and the relevant professional body. This shall promote the principle of openness, accountability and public participation in line with Article (201) (a) of the Constitution.
9. Section 108 provides for the provisions on Minimum and Maximum land holding and thereby contradicts Article 40 of the Constitution which grants persons rights to own land of any prescription in any part of the Country. There is need to take cognizance of the existing legislations, specifically Urban Areas and Cities Act, 2011 and Physical Planning Act that grants powers vested on County Government to regulate minimum land sizes. Limiting land holding sizes will greatly impact on Country's food security.

3.1.7 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

The following is a summary of issues raised by the representatives of the Kenya National Commission on Human Rights on the Land Laws (Amendment) Bill, 2015:

1. The Current Content of Section 44 of the Land Laws (Amendments) Bill, 2015, amending section 15 of the National Land Commission Act, 2012. It eliminates the aspect of developing specific legislation on historical injustices and lacks an elaborate description of the institutional framework that would undertake the task. It's also devoid of sufficient mechanisms for effective participation of local mechanisms;
2. The clause outlines a rudimentary procedure on the processing of claims that only contemplates the National Land Commission investing on its own initiative, this omits critical considerations such as the procedure for submission of complaints to trigger an investigation, the standard of proof and an appeals mechanism in the event a complainant is dissatisfied with the initial outcome.

3. There are no guidelines as to the remedies available and how it would be arrived at. Importantly, the provision is silent on both the financing component and concrete timelines for the resolution of complaints.

3.1.8 LAND DEVELOPMENT AND GOVERNANCE INSTITUTE

The following is a summary of issues raised by the representatives of the Land Development and Governance Institute on the Land Laws (Amendment) Bill, 2015:

1. Clause 6(1) of the Land Registration Act, 2012 Shifts functions to Cabinet Secretary “in consultation with the Commission”. This introduces consistency in initiating land registration around the country. The ‘consultation’ expected with National Land Commission should be indicated;
2. Clause 7 of the Land Registration Act, 2012 Removal of Commission’s role in the design and maintenance of land register. This provision seeks to remove conflict that arose from contradiction between section 7, and section 110(1) (b) that empowered Minister to make regulations on design and operations of register. This makes it possible to drive land registration as a technical process under one command.
3. Qualifications of County Land Registrar: The requirement for County Land Registrars to be advocates of the High Court should be made futuristic and not be applied to serving County Land Registrars. Non-graduate County Land Registrars are many and could occasion a major personnel gap if suddenly redeployed;
4. Clause 18 deletes all clauses on County Land Management Boards .The established County Land Management Boards have increased the cost of doing business and competition for supremacy with land registry functions at County level. Their functions can be performed by a branch of the National Land Commission without any negative impacts;
5. Insertion of clauses 152(A) to 152H.The sections will embolden unlawful occupiers and escalate invasions of Private, Public and Community Land. The provisions particularly appear to undermine the private land rights as enshrined under Art 40. These provisions be struck out of the Bill;
6. Removal of clause 28(a), spousal rights over matrimonial property as an overriding interest will expose families;
7. New clause 8A—appointment of commissioners- would ensure that appointments are not delayed;
8. Unlawful occupation-burden of removal is given to the land owner- this threatens the sanctity of title;
9. Clause 159 on Minimum and Maximum holdings- these should be regulations and not guidelines while Minimum and Maximum should be left to the planning and land use process.

3.1.9 KENYA LAND ALLIANCE

The following is a summary of issues raised by the representatives of the Kenya Land Alliance on the Land Laws (Amendment) Bill, 2015:

1. The architecture of the Bill is faulty. Consultations between the presidency, the ministry, the National Land Commission and the Constitutional Implementation Commission were not enough. The Bill did not meet the Constitutional threshold of participation in legislation;
2. The Bill does not reflect the philosophical principles of land reforms i.e. the preamble of the Bill seeks to align the three land laws but in the same way abolishes the Historical Land Injustices, Minimum and Maximum holding and the Evictions law;
3. The Bill Undermines independence of National Land Commission eg. Appointment of commissioners should not be done by the Public Service Commission since the PSC has no duty to appoint state officers and can therefore not recruit National Land Commission commissioners;
4. The Bill abolishes County Land Management Boards;
5. In Land registration (Article 67 (2) c- the National Land Commission advises the National government. The Bill removes the commission from the process;
6. Settlement :The Bill returns the settlement process to the Cabinet Secretary;
7. The constitution directs parliament to prescribe Minimum and Maximum holdings. Article 159 of the Land Act postpones the prescription of Minimum and Maximum land holding indefinitely;
8. Leases- the Bill proposes the compensation of the lease holder which is wrong;
9. Evictions- all safeguards to evictions have been removed by the Bill.

3.1.10 KENYA FOREST RESEARCH INSTITUTE

The following is a summary of issues raised by the representatives of the Kenya Forest Research Institute on the Land Laws (Amendment) Bill 2015:

1. Use of public and community land for common services i.e. research and education is not covered. There is need to incorporate these aspects into the Bill;
2. Minimum and Maximum land holding provisions may affect the usage of the land. Categorization/classification does not deal with economic use which means issues of economic value of the land are not addressed.

3.1.11 LAW SOCIETY OF KENYA

The following is a summary of issues raised by the representatives of the Law Society of Kenya on the Land Laws (Amendment) Bill 2015:

1. Errors on the land laws were identified in 2012 when the laws were passed;
2. Clause 13 - renewal of leases- the process should be automatic, unless the County Government has a need for the specific piece of land, of which proper notice must be given by the County Governments in good time;
3. Compensation must be done in case of any developments on the land;

4. Controlled land - Land Laws Amendment Bill should contain a provision stating that the Land Control Act has been repealed;
5. Lease registration in counties should be left to the National Land Commission, while land falling under National government should be left to Ministry;
6. Overriding interests - Clause 28-should provide a categorization, i.e. it should only apply in respect of matrimonial property- should protect the innocent purchaser;
7. Official searches - there is need to legislate on electronic conveyance i.e. searches should be done electronically;
8. Clause 13 Land Act on preemptive rights is not proper as it is;
9. Clause 12 on controlled land - the act should include a clause indicating the repeal of Land Control act;
10. Spousal interest - There is need to recognize matrimonial home and to protect the purchasers

3.2 MEMORANDA RECEIVED ON THE LAND LAWS (AMENDMENT) BILL, 2015

The Committee received written memoranda from the public as hereunder:-

3.2.1 ASHITIVA AND COMPANY ADVOCATES

The following is a summary of issues raised by Ashitiva and Company Advocates on the Land Laws (Amendment) Bill, 2015:

1. The proposed new section 6A is in conflict with the Constitution as it causes confusion in the roles of the Cabinet Secretary and those of the Commission;
2. The requirement that all land registrars must be advocates of the High Court will ensure efficiency as they will now be in a position to offer legal expertise to deal with the complex land matters;
3. The proposed deletion of section 28(a) of the Land Registration Act, 2012 on overriding interests should not be allowed and should instead be amended to provide spousal rights over the matrimonial home only;
4. The proposed amendment of section 13 of the Land Act, 2012 by substituting the Commission with the Cabinet Secretary in subsection (2) is improper and not in line with the Constitution. This responsibility should be left to the Commission and not the Cabinet Secretary as the Commission manages public land on behalf of the government as provided for under Article 67 of the Constitution; and
5. The proposed amendment to section 23 of the Land Act, 2012 to introduce a new subsection that a lease or license for public land shall be issued by the Commission with the written consent of the National and County government might cause delays in issuance of the lease or license because the amendments fails to provide a mechanism on how to approach the governments. The section if read with the proposed amendment on approvals on controlled land, might cause a very long delay and this will discourage foreign investors.

3.2.2 SIRIKWA PEACE SOCIETY INITIATIVE

The following is a summary of issues raised by the Sirikwa Peace Society Initiative on the Land Laws (Amendment) Bill, 2015:

1. The proposed amendments are not in tandem with constitutional provisions and are an attempt to further solidify the ambiguities currently present in the land laws. The inconsistencies create conflict of the laws, as they trim down the independence and the powers of the National Land Commission and consequently increase the powers of the Cabinet Secretary.

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations;

1. There is justification for the proposed amendments replacing the Commission with the Cabinet Secretary in Section 6 and Section 7 of the Land Registration Act 2012;
2. There is no justification for the repeal of section 153 of the Land Act, 2012 which provides for the Land Compensation Fund. The objects of the Fund have not been achieved and neither has an alternative Fund been established. The Fund was established to offer compensation to *bona fide* purchasers for value of land lost without notice. Its repeal offends Article 40 of the Constitution that requires compensation for any loss of land by a *bona fide* purchaser;
3. The eviction process proposed is long, expensive and very bureaucratic. There is need for more consultations on the eviction and resettlement law. The evictions provisions in the Bill do not distinguish between trespassers and unlawful occupiers implying that they are treated the same way in the eviction;
4. County Land Management Boards- this is a function of National Land Commission. The National Land Commission can therefore decentralize services administratively in law and does not have to create another statutory body to perform that function;
5. Clause 44 of the Bill provides for the investigation of historical land injustices. Care must however be taken to ensure that the clause is comprehensive enough to cover all case of historical and present land injustices;
6. Clause 108 of the Bill gives provisions for minimum and maximum land holding acreages as required by Article 68 (2) (c)(i).The Committee observes that there are other laws handling this provision, specifically the Urban Areas and Cities Act, 2011 and Physical Planning Act, 2010.The clause therefore needs to be harmonized with these existing laws;
7. The requirement that all land registrars must be advocates of the High Court discriminates land sector professionals who are equally qualified by virtue of their training. The qualification should therefore not be limited only to advocates.

5.0 COMMITTEE RECOMMENDATION

Having listened to the stakeholders and from its own analysis, the Committee will propose amendments for introduction into the Bill during the Committee Stage.

ATTENDANCE LIST

ANNEX 1

DEPARTMENTAL COMMITTEE ON LANDS

Date: 9th October 2015

Agenda: - Adoption of the Report on the Land Laws (Amendment) Bill, 2015

Venue:- Boma Hotel

NO.	NAME	TITLE	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)	Chairman	
2.	The Hon. Moses Ole Sakuda, M.P (Vice Chairperson)	Vice Chairman	
3.	The Hon. Onesmas Ngunjiri, M.P.		
4.	The Hon. Mutava Musyimi, M.P.	Member	
5.	The Hon. John Kihagi, M.P.	Member	
6.	The Hon. Francis W. Nderitu, M.P.	Member	
7.	The Hon. Francis Njenga, M.P.		
8.	The Hon. A. Shariff, M.P.		
9.	The Hon. Eusilah Jepkosgei, M.P.	Member	
10.	The Hon. Benard Bett, M.P.	Member	
11.	The Hon. Kipruto Moi, M.P.	Member	
12.	The Hon. Oscar Sudi, M.P.		
13.	The Hon. Hellen Chepkwony, M.P.	Member	
14.	The Hon. Sarah Korere, M.P.		
15.	The Hon. Julius Ndegwa, M.P.	Member	
16.	The Hon. Benson Mbai, M.P.	Member	
17.	The Hon. Kanini Kega, M.P.		
18.	The Hon. Esther Murugi, M.P.		
19.	The Hon. Gideon M. Mung'aro, M.P.	Member	
20.	The Hon. Hezron Awiti Bollo, M.P.		
21.	The Hon. Suleiman Dori Ramadhani, M.P.		
22.	The Hon. George Oner Ogalo, M.P.	Member	
23.	The Hon. Lekidime Lempurkel Mathew, M.P.	Member	
24.	The Hon. Shakila Abdallah, M.P.		
25.	The Hon. Paul Otuoma, M.P.	Member	
26.	The Hon. Thomas Mwadeghu, M.P.	Member	
27.	The Hon. Magwanga Joseph Oyugi, M.P.		
28.	The Hon. Aburi Lawrence Mpuru, M.P.		
29.	The Hon. King'ola Patrick Makau, M.P.		

James Ginoia
F.C.A

9/10/15

MINUTES OF THE 203RD SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON FRIDAY 9TH OCTOBER 2015 AT THE AMANI CONFERENCE ROOM, BOMA HOTEL AT 10.00 .AM

PRESENT:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice - Chairperson
3. The Hon. Onesmus Ngunjiri, M.P.
4. The Hon. Mutava Musyimi, M.P.
5. The Hon. John Kihagi, M.P.
6. The Hon. Francis W. Nderitu, M.P.
7. The Hon. Eusilah Ngeny, M.P.
8. The Hon. Bernard Bett, M.P.
9. The Hon. Kipruto Moi, M.P.
10. The Hon. Hellen Chepkwony, M.P.
11. The Hon. Julius Ndegwa, M.P.
12. The Hon. Benson Mbai, M.P.
13. The Hon. Gideon Mung'aro, M.P.
14. The Hon. George Oner, M.P.
15. The Hon. Mathew L. Lempurkel, M.P.
16. The Hon. Dr. Paul Otuoma, M.P.
17. The Hon. Thomas Mwadeghu, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Esther Murugi, M.P.
2. The Hon. Patrick Makau, M.P.
3. The Hon. Francis Njenga Kigo, M.P.
4. The Hon. Shakila Abdallah, M.P.
5. The Hon. Joseph Oyugi Magwanga, M.P.
6. The Hon. Kanini Kega, M.P.
7. The Hon. A. Shariff, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Mpuru Aburi, M.P.
2. The Hon. Oscar Sudi, M.P.
3. The Hon. Suleiman Dori, M.P.
4. The Hon. Sarah Korere, M.P.
5. The Hon. Hezron Awiti Bollo, M.P.

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono - Clerk Assistant I
2. Ms. Ruth Mwihaki - Clerk Assistant III
3. Mr. Emmanuel Muyodi - Clerk Assistant III
4. Ms. Christine Odhiambo - Legal Counsel II
5. Mrs. Farida Ngasura - Audio Supervisor II
6. Mr. Yakub Ahmed - Media Relations Officer III

MINUTE NO. DCL/LN/2015/726 PRELIMINARIES

The Chairperson called the meeting to order at 10.10 am, followed by a word of prayer.

MINUTE NO. DCL/LN/2015/727 CONFIRMATION OF MINUTES

Minutes of the 193rd Sitting held on Wednesday 16th September, 2015 were confirmed as a true record of the proceedings after being proposed by the Hon. Gideon Mung'aro, M.P. and Seconded by the Hon. Thomas Mwadeghu, M.P., and signed by the Chairman.

MINUTE NO. DCL/LN/2015/728 MATTERS ARISING

Vide minute no DCL/LN/2015/691 (g and h) - Submission by the National Land Commission

1. The National Land Commission should devolve its functions administratively through establishment of administrative offices at the counties as opposed to establishing County Land Management Boards. The Boards should not be statutory but operate within the administrative structures of the National Land Commission.
2. Registration and guarantee of title deeds is a function of the National Government and the National Land Commissions role is advisory.

MINUTE NO. DCL/LN/2015/729 CONSIDERATION AND ADOPTION OF THE REPORT ON THE LAND LAWS AMENDMENT BILL, 2015

The Committee Considered and adopted the report as follows:

The Committee makes the following Observations: THAT

1. There is justification for the proposed amendments replacing the Commission with the Cabinet Secretary in Section 6 and Section 7 of the Land Registration Act 2012;
2. There is no justification for the repeal of section 153 of the Land Act, 2012 which provides for the Land Compensation Fund. The objects of the Fund have not been achieved and neither has an alternative Fund been established. The Fund was established to offer compensation to

bona fide purchasers for value of land lost without notice. Its repeal offends Article 40 of the Constitution that requires compensation for any loss of land by a *bona fide* purchaser;

3. The eviction process proposed is long, expensive and very bureaucratic. There is need for more consultations on the eviction and resettlement law. The evictions provisions in the Bill do not distinguish between trespassers and unlawful occupiers implying that they are treated the same way in the eviction;
4. County Land Management Boards- this is a function of National Land Commission. The National Land Commission can therefore decentralize services administratively in law and does not have to create another statutory body to perform that function;
5. Clause 44 of the Bill provides for the investigation of historical land injustices. Care must however be taken to ensure that the clause is comprehensive enough to cover all case of historical and present land injustices;
6. Clause 108 of the Bill gives provisions for minimum and maximum land holding acreages as required by Article 68 (2) (c)(i).The Committee observes that there are other laws handling this provision, specifically the Urban Areas and Cities Act, 2011 and Physical Planning Act, 2010.The clause therefore needs to be harmonized with these existing laws;
7. The requirement that all land registrars must be advocates of the High Court discriminates land sector professionals who are equally qualified by virtue of their training. The qualification should therefore not be limited only to advocates.

The Committee makes the following Recommendation: THAT

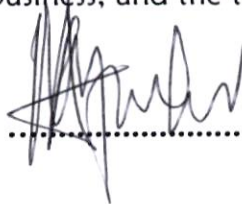
Having listened to the stakeholders and from its own analysis, the Committee will propose amendments for introduction into the Bill during the Committee Stage.

MINUTE NO. DCL/LN/2015/730

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 1.26 p.m. the meeting was adjourned.

SIGNED



.....
(CHAIRPERSON)

DATE

.....
13th October 2015

MINUTES OF THE 193RD SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON WEDNESDAY 16TH SEPTEMBER 2015 AT THE JUMBO CONFERENCE ROOM TRAVELLERS BEACH RESORT AND SPA AT 2.00 P.M

PRESENT:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice - Chairperson
3. The Hon. George Oner, M.P.
4. The Hon. Eusilah Ngeny, M.P.
5. The Hon. John Kihagi, M.P.
6. The Hon. Bernard Bett, M.P.
7. The Hon. Hellen Chepkwony, M.P.
8. The Hon. Benson Mbai, M.P.
9. The Hon. Sarah Korere, M.P.
10. The Hon. Thomas Mwadeghu, M.P.
11. The Hon. Mathew L. Lempurkel, M.P
12. The Hon. Patrick Makau, M.P
13. The Hon. Gideon Mung'aro, M.P.
14. The Hon. Hezron Awiti Bollo, M.P.
15. The Hon. Francis Njenga Kigo, M.P.
16. The Hon. Francis W. Nderitu, M.P
17. The Hon. Joseph Oyugi Magwanga, M.P.
18. The Hon. Onesmus Ngunjiri, M.P.
19. The Hon. A. Shariff, M.P.
20. The Hon. Dr. Paul Otuoma, M.P.
21. The Hon. Suleiman Dori, M.P.
22. The Hon. Mutava Musyimi, M.P.
23. The Hon. Julius Ndegwa, M.P.
24. The Hon. Kanini Kega, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Shakila Abdallah, M.P.
2. The Hon. Esther Murugi, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Kipruto Moi, M.P.
2. The Hon. Mpuru Aburi, M.P.
3. The Hon. Oscar Sudi, M.P

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

1. Mr. Nicholas Emejen - Ag. Deputy Director, Committee Services
2. James Ginono - Clerk Assistant I
3. Ms. Ruth Mwhaki - Clerk Assistant III
4. Mr. Emmanuel Muyodi - Clerk Assistant III
5. Ms. Christine Odhiambo - Legal Counsel II
6. Mr. Yakub Ahmed - Media Relations Officer III

STAKEHOLDERS

1. Ministry of Lands, Housing and Urban Development
2. Ministry of Agriculture, Livestock and Fisheries
3. The National Land Commission
4. Commission for the Implementation of the Constitution
5. Kenya National Commission on Human Rights
6. Council of Governors
7. Transition Authority
8. Institution of Surveyors of Kenya
9. Kenya Institute of Planners
10. Kenya Forest Service
11. Kenya Forest Research Institute
12. Law Society of Kenya
13. County Land Management Boards
14. National Environmental Management Authority
15. Kenyatta University- Njoro Campus
16. Kenya Land Alliance
17. Land Development and Governance Institute
18. Reconcile
19. Katiba Institute
20. World Wildlife Fund
21. Act Change Transform
22. Economic and Social Rights Centre-Haki Jamii
23. Oxfam GB
24. Action aid

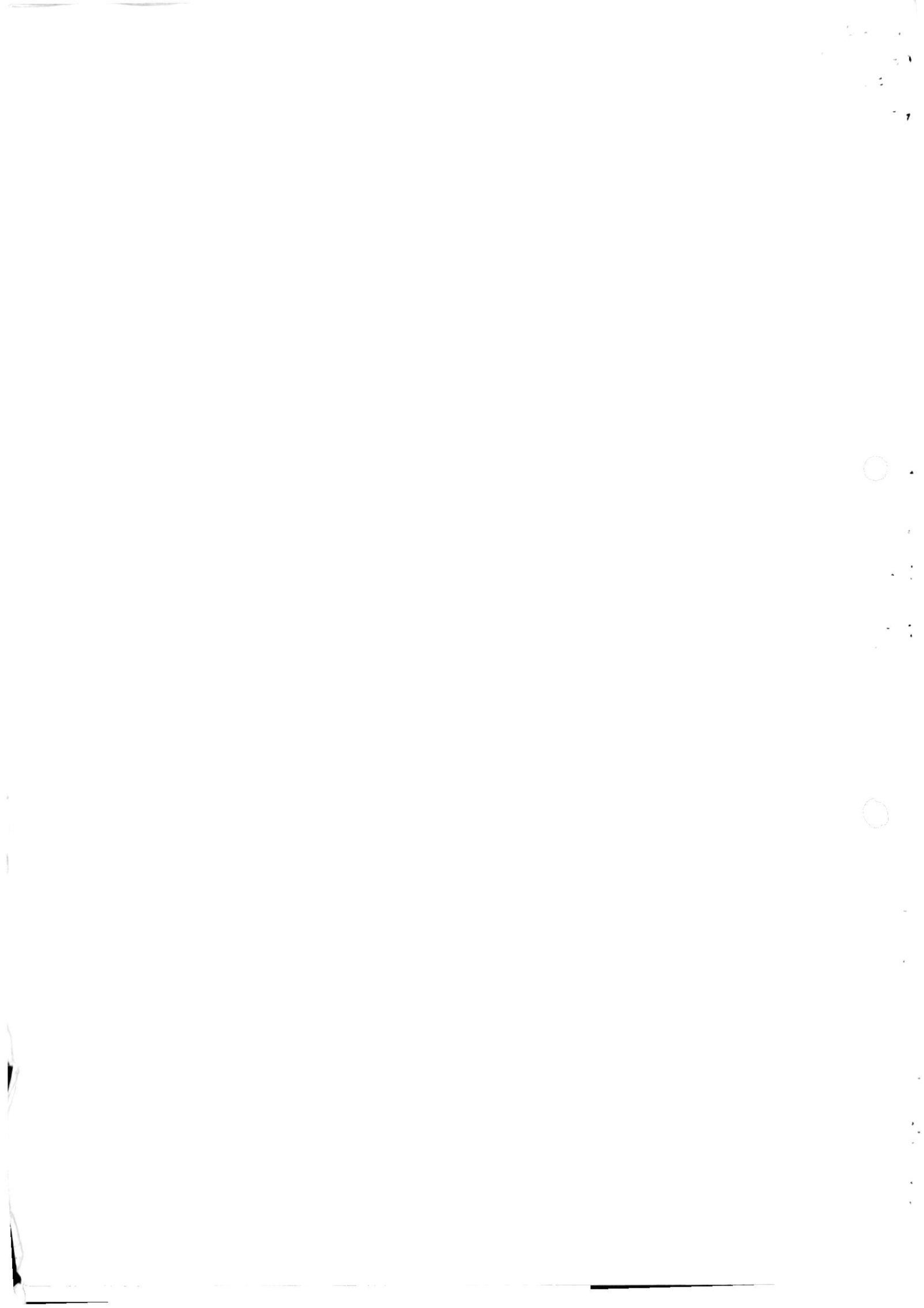
MINUTE NO. DCL/LN/2015/690 PRELIMINARIES

The Chairperson called the meeting to order at 2.28 pm, followed by a word of prayer and thereafter opening remarks by the Clerk of the National Assembly and the Chairman, Departmental Committee on Lands as follows:

Remarks from the Clerk of the National Assembly

The highlights of the opening remarks from the Clerk of the National Assembly, who was represented by Mr. Nicholas Emejen, Ag. Deputy Director Committee Services are as hereunder:

- a. The Community Land Bill, 2015, the Physical Planning Bill 2015, and the Land (Amendment Bill) were read a first time on 19th August and August 27th 2015, and Committed to the Committee for consideration. The timeline for the enactment of the laws had been extended by the House by one year;
- b. Invitations for Memorandums from the public had been done and the Committee had received several memorandums for consideration;



- c. The purpose of the stakeholders Conference was to provide a forum for engagement with a view of enriching the legislations;
- d. The office of the Clerk would offer all the necessary support to the Committee to ensure the legislations were passed within set timelines.

Remarks from the Chairman, Departmental Committee on Lands

The highlights of the opening remarks from The Hon. Alex Mwiru, M.P., Chairman, and Departmental Committee on Lands are as hereunder:

- a. The five-year constitutional deadline to enact key land laws elapsed on Thursday August 27, 2015, however the House had voted to extend the enactment of Constitutional bills by a further 1 year thus giving the Committee an opportunity to scrutinize and engage stakeholders with a view to give Kenyans, Laws which are clearly thought-out;
- b. The laws having undergone First Reading pursuant to Standing Order 127 were committed to the Committee for consideration and the Committee had 20 days for to give table its report. The stakeholder's engagement was therefore crucial in pinpointing loopholes, gaps, areas of convergence and divergence to enrich the legislative proposals;
- c. The expected outcome of the stakeholder engagements was to have laws that provide for the recognition, protection and proper management of natural resources and investment on Community land. Laws that would pave way for establishment of governance institutions and provide a mechanism for settlement of disputes relating to Community land;
- d. The amendment of the three Land laws as proposed in the Land Laws (Amendment) Bill 2015 was aimed at ensuring that the National Land Commission and the Ministry of Lands work together as they are expected for effective service delivery.

MINUTE NO. DCL/LN/2015/691

LAND LAWS (AMENDMENT) BILL 2015

The main object of the Land Laws (Amendment) Bill, 2015 is to amend the laws relating to land to align them with the Constitution, to give effect to Articles 68(c) (i) and 67 (2) (e) of the Constitution and to provide for the procedures of evictions from land and for connected purposes.

Submissions on the Bill were made as follows:

Ministry of Lands, Housing and Urban Development

The representatives of the Ministry of Lands, Housing and Urban Development submitted as hereunder, that:-

- a) The Land Act 2012, National Land Commission Act 2012 and the Land Registration Act 2012 had anomalies. The Presidency, Ministry of Lands, Housing and Urban Development and National Land Commission submitted individual amendments to the Bills and forwarded to the Departmental Committee on Lands for consideration. The Committee forwarded the same to the Constitutional Implementation Commission (CIC) for harmonization. It is on the basis of the matrix prepared by the CIC that the Bill was drafted;
- b) The Amendments were meant to bring the three land statutes in line with the Constitution and harmonize the functions of the Ministry of Lands, Housing and Urban Development and the National Land Commission;

- c) Most of the functions of the National Land Commission as provided for in Article 67 1deal with oversight, advisory and recommendations;
- d) Repealing section 15 of the National Land Commission Act is meant to anchor back the issue of Historical Land Injustices administration as a function of the National Land Commission as opposed to creating a new law on Historical Land Injustices;
- e) The Land Act as it is has several contradictions on Land Registration. The role of the National Land Commission should be advising and monitoring. The Bill seeks to align the roles;
- f) No settlement can happen on public land. For settlement to happen the process of alienation starts and once adjudicated, it ceases to be public land;
- g) Clause 9 - introducing section 13 A, creating the office of the Deputy /County Land Registrar and Land Registrar introduces the qualification of the registrar being an advocate. Advocate qualification is meant to professionalize the profession.(The ministry has already hired 40 advocates to as registrars);
- h) Introduction of a new Section 6 A on registration of land. The rationale is that registration should be a function of the Ministry and not of the National Land Commission. The manner in which the register will be prescribed should be through legislation and be done by the Cabinet Secretary;
- i) Section 95 e of the Land Act on succession limitations puts limitation to prevent people from selling land on settlement scheme as soon as titles are issued;
- j) Minimum and Maximum, Evictions and Historical Land Injustices aspects in the Acts can be repealed after they have fulfilled their purpose;

National Land Commission

The representatives of the National Commission submitted as hereunder, that:-

- a) There is was no justification for the proposed amendments replacing Commission with Cabinet Secretary in clause 6 of the Land Registration Act (LRA) being amended in subsection (1) by deleting the words "Commission in consultation with the National and County Governments" and substituting therefore with the words "Cabinet Secretary, in consultation with the Commission". Declaration of Registration units is a first step towards adjudication of land which only happens on Community land;
- b) Proposed section 4 of amended law of the LRA gives procedures for adjudication of land through direction of the Cabinet Secretary. The effect of this new section is to have adjudication process directed and undertaken by the Cabinet Secretary lands. Hence proposing adjudicating community land using the LRA Act thus nullifying the need to have a community law and denying communities to be in charge of community land as envisaged in Article 63(4) of the Constitution;
- c) Section 7 LRA on Land Registry removes role of National Land Commission and replaces with Cabinet Secretary. Subject to these provisions, the Registrar may at any time, open a new edition of a register showing only the subsisting entries and omitting there from all entries that have ceased to have effect;

The Registrar may cancel any entry in the register which have ceased to have effect;

This amendment effectively gives the Land Registrar powers not only to tamper and erase history on land rights but can be ordered to do so by the Cabinet Secretary;

- d) Amendment of section 18 of the Land Registration Act goes against the spirit of devolution. Boundaries function should be a function of the County Governments as provided in the Fourth Schedule of the Constitution. This amendment seeks to give this function to the Director of Surveys;
- e) Amendment of Section 28 of LRA on Spousal rights over matrimonial property deletes spousal ownership of matrimonial property;
- f) Amendment to section 26 of the LRA- certificate of title to be held as conclusive evidence of proprietorship- this would restrict the courts in the case of titles received through corrupt means Amendments relating to Institutional Issues;
- g) Amendment of Section 15 of the National Land Commission Act on Historical Land Injustices- The prescription given by the proposed procedures inserted in section 5 cannot work without a legislation to determine what a historical injustice is, committed by who, when and what are the possible remedies and by who;
- h) Removal of Section 18 of the National Land Commission Act-This Totally takes away County Land Management Boards without proposing how the functions of National Land Commission are to be devolved or decentralized closer to the public;
- i) Amendment of schedule 1 of National Land Commission Act gives the Public Service Commission the role of appointing commissioners. This removes the need for a panel to select commissioners and the Presidents role in having a Commission in place.
- j) New clause introduced in section 54- Cabinet Secretary may prescribe regulations on registration of leases.

Institute of Surveyors of Kenya

The representatives of the Institute of Surveyors of Kenya submitted as hereunder, that:-

- a) Professionals who deal with land were not involved in the process of developing the Land Laws Amendments Bill 2015;
- b) To streamline operations in the land sector it is recommended that the Ministry of Land Housing and Urban Development deals with land registration including being the custodian of land registries while the National Land Commission deals/handles Land Administration both at the National and County level;
- c) Some proposed amendments are against the spirit of the Constitution and such include scrapping of the County Land Management Boards, and transferring some of the Constitutional roles of the National Land Commission to the Cabinet Secretary;
- d) Qualifications of the Land Registrars: The Bill, in section 9, seeks to amend the qualification of the Land Registrars. The amendment however discriminates against land sector professionals in the land sector. The land sector professionals are equally qualified by virtue of their training and practice. Majority of the current Land Registrars have a background in land related courses. Limiting the same to only advocates will be discriminating against qualified Kenyans. The requirement of one to be advocate should be done away with;
- e) Functions of County Land Management Boards: Section 42 & 45, seeks to scrap the County Land Management Boards (CLMB). This section should be deleted in its entirety due to the fact that Boards are the devolved or decentralized National Land Commission structure at County level where the function of administering land is undertaken. The boards were

formed so as to create an avenue for participation by the public in decision making in land matters. The functions of the National Land Commission at the County level can only be performed by a body created by the Commission. If not those functions will be performed by County Governments which will bring about conflict of interest and revert to the old order County Councils;

- f) Autonomy of the National Land Commission- Section 46 (c) (d) (g) (h) (i) (k), seeks to amend the First Schedule of National Land Commission Act. This effectively denies the National Land Commission its Autonomy as espoused in the Constitution. The National Land Commission, as listed under Article 148 is an independent Commission and it should be accorded sufficient autonomy and independence to perform its functions effectively, including recruitment of the its Commissioners and staff;
- g) Administration of Private Land: Section 49 proposes to give powers to the Cabinet Secretary to administer. This issue has been contested mainly because its definition is wide and covers other sectoral laws. Further discussions on who should deal with administration of this category of land, in most the convenient and cost effective manner at all levels should be held. Should we have both Sub-County Land Control Committees and the County Land Management Boards? Would there be replication of duties?
- h) Settlement Trust Funds: Section 96 (1B) should be expanded to include the representative from the Council of Governors, private sector and the relevant professional body. This shall promote the principle of openness, accountability and public participation in line with Article (201) (a) of the Constitution.
- i) Section 108 provides for the provisions on Minimum and Maximum land holding and thereby contradicts Article 40 of the Constitution which grants persons rights to own land of any prescription in any part of the Country. There is need to take cognizance of the existing legislations, specifically Urban Areas and Cities Act, 2011 and Physical Planning Act that grants powers vested on County Government to regulate minimum land sizes. Limiting land holding sizes will greatly impact on Country's food security.

Council of Governors

The representatives of the Council of Governors submitted as hereunder, that:-

- a) There were no stakeholder consultations on the Bill. County Governments are the custodians of Community Land but they were not consulted;
- b) The Bill is attempting to take over the functions of the National Land Commission and to recentralize again the management of land through land registration;
- c) Trust land should be managed by the local community through the National Land Commission- and not be under the Cabinet Secretary;
- d) The law allowing for the establishment of the the County Land Management Boards was passed with no opposition from Constitutional Implementation Commission, so it should not now be said that the the County Land Management Boards are now unconstitutional. Removal of County Land Management Boards is therefore unacceptable. The board does the work of the National Land Commission and is created by statute.

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National Environment Management Authority

The representatives of the National Environment Management Authority submitted as hereunder, that:-

- a) Clause 43 of the Bill touching on section 5 of the National Land Commission Act does not provide for how National level and County level activities will be managed for the conservation of environment;
- b) Functions of National Land Commission- how will the coordination be done both at the National and County level so as to manage the environment if the County Land Management Boards are disbanded?
- c) There is need for a coordinated way of managing the environment so that Environmental Impact Assessments fit into land administration.

State Department of Agriculture

The representatives of the State Department of Agriculture proposed amendments as hereunder, that:-

- a) In section 159 (1), should give a time limit within which the Cabinet Secretary will be required to prescribe the Minimum and Maximum Land Holding Acreages after enactment of the amended Bill. Also, specify that the prescriptions should be regulations rather than guidelines to ensure parliamentary oversight;
- b) Insert a section after 159(i) indicating how the Cabinet Secretary will develop the prescriptions envisaged in the previous section. The new section should provide for a participatory process as required in the constitution and the key factors to be taken into consideration as specified in section 159(B) (1) and (2);
- c) Insert a section after 159(1) indicating that the Minimum and Maximum provisions by the Cabinet Secretary will not apply retrospectively to avoid disruption of the agricultural sector and rights to property ownership specified in the Bill of rights;
- d) In section 159B (2) (a) replace with agro-ecological zones;
- e) Add an additional parameter on food security. for determination of Minimum and Maximum Land Holding Acreages;
- f) In section 159C (a) (iii) delete "subsistence and" from this section because its implied in food crop farming.

Constitutional Implementation Commission

The representatives of the Constitutional Implementation Commission submitted as hereunder, that:-

- a) The Constitutional Implementation Commission was presented with the Bills by the committee for comments. There was no public participation on the on the Land Laws amendment Bill;
- b) The National Land Policy predated the constitution and has certain provisions which are contrary to the Constitution. Any inconsistencies with the constitution are therefore null and void to the extent of their inconsistencies;
- c) Historical injustices provisions in Land Laws amendment Bill are not sufficient as there are clear gaps e.g. There is no provision for time frame, definition nor a demarcation of a



historical and present injustice and does not provide for how claims will be assessed and resolved. There is also No provision on how claims are bought to the commission;

- d) The Constitution provides that shall adjudicate and make recommendations-this is not provided for in the Bill;
- e) Minimum and Maximum land holding and Historical Land Injustices aspects have been captured in the Bill;
- f) Registration: Article 67 provides that the National Land Commission shall advise on a comprehensive method of land registration- the registration of an interest is what has been left to the ministry/ Cabinet Secretary. The Cabinet Secretary prescribes regulations. The Bill seeks to restrict the role of the Cabinet Secretary with regard to registration;
- g) Appointment of commissioners- the Public Service Commission has no mandate to appoint commissioners;
- h) County Land Management Boards- this is a function of National Land Commission- there is therefore no need to create another structure with persons being appointed by the executive yet the Commission has the function provided by the constitution. The National Land Commission can decentralize services administratively in law and does not have to create another body to perform that function;
- i) Trust land:-There are no provisions in LLAB- unregistered community land is held by County Governments- this is dealt with in the Community Land Bill.

Land Development and Governance Institute

The representatives of the Land Development and Governance Institute submitted as hereunder, that:-

- a) Clause 6(1) of the Land Registration Act Shifts functions to Cabinet Secretary "in consultation with the Commission". This introduces consistency in initiating land registration around the country. The 'consultation' expected with National Land Commission should be indicated;
- b) Clause 7 of the Land Registration Act Removal of Commission's role in the design and maintenance of land register. This provision seeks to remove conflict that arose from contradiction between section 7, and section 110(1) (b) that empowered Minister to make regulations on design and operations of register. This makes it possible to drive land registration as a technical process under one command.
- c) Qualifications of County Land Registrar: The requirement for County Land Registrars to be advocates of the High Court should be made futuristic and not be applied to serving County Land Registrars. Non-graduate County Land Registrars are many and could occasion a major personnel gap if suddenly redeployed;
- d) Clause 18 deletes all clauses on County Land Management Boards .The established County Land Management Boards have increased the cost of doing business and competition for supremacy with land registry functions at County level. Their functions can be performed by a branch of the National Land Commission without any negative impacts;
- e) Insertion of clauses 152(A) to 152H.The sections will embolden unlawful occupiers and escalate invasions of Private, Public and Community Land. The provisions particularly



- appear to undermine the private land rights as enshrined under Art 40. These provisions be struck out of the Bill;
- f) Removal of clause 28(a), spousal rights over matrimonial property as an overriding interest will expose families;
 - g) New clause 8A—appointment of commissioners- would ensure that appointments are not delayed;
 - h) Unlawful occupation-burden of removal is given to the land owner- this threatens the sanctity of title;
 - i) Clause 159 on Minimum and Maximum holdings- these should be regulations and not guidelines while Minimum and Maximum should be left to the planning and land use process;

Kenya National Commission on Human Rights

The representatives of the Kenya National Commission on Human Rights submitted as hereunder, that:-

- a) The Current Content of Section 44 of the Land Laws (Amendments) Bill, 2015, amending section 15 of the National Land Commission Act. It eliminates the aspect of developing specific legislation on historical injustices and lacks an elaborate description of the institutional framework that would undertake the task. It's also devoid of sufficient mechanisms for effective participation of local mechanisms;
- b) The clause outlines a rudimentary procedure on the processing of claims that only contemplates the National Land Commission investing on its own initiative, this omits critical considerations such as the procedure for submission of complaints to trigger an investigation, the standard of proof and an appeals mechanism in the event a complainant is dissatisfied with the initial outcome.
- c) There are no guidelines as to the remedies available and how it would be arrived at. Importantly, the provision is silent on both the financing component and concrete timelines for the resolution of complaints.

Kenya Land Alliance

The representatives of the Kenya Land Alliance submitted as hereunder, that:-

- a) The architecture of the Bill is faulty. Consultations between the presidency, the ministry, the National Land Commission and the Constitutional Implementation Commission were not enough. The Bill did not meet the Constitutional threshold of participation in legislation;
- b) The Bill does not reflect the philosophical principles of land reforms i.e. the preamble of the Bill seeks to align the three land laws but in the same way abolishes the Historical Land Injustices, Minimum and Maximum holding and the Evictions law;
- c) The Bill Undermines independence of National Land Commission eg. Appointment of commissioners should not be done by the Public Service Commission since the PSC has no duty to appoint state officers and can therefore not recruit National Land Commission commissioners;
- d) The Bill abolishes County Land Management Boards;



- e) In Land registration (Article 67 (2) c- the National Land Commission advises the National government. The Bill removes the commission from the process;
- f) Settlement :The Bill returns the settlement process to the Cabinet Secretary;
- g) The constitution directs parliament to prescribe Minimum and Maximum holdings. Article 159 of the Land Act postpones the prescription of Minimum and Maximum land holding indefinitely;
- h) Leases- the Bill proposes the compensation of the lease holder which is wrong;
- i) Evictions- all safeguards to evictions have been removed by the Bill.

Kenya Forestry Research Institute

The representatives of the Kenya Forestry Research Institute submitted as hereunder, that:-

- a. Use of public and community land for common services i.e. research and education is not covered. There is need to incorporate these aspects into the Bill;
- b. Minimum and Maximum land holding provisions may affect the usage of the land. Categorization/classification does not deal with economic use which means issues of economic value of the land are not addressed

Law Society of Kenya

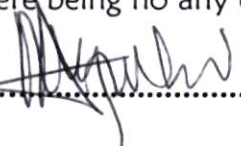
The representatives of the Law Society of Kenya submitted as hereunder, that:-

- a. Errors on the land laws were identified in 2012 when the laws were passed;
- b. Clause 13 - renewal of leases- the process should be automatic, unless the County Government has a need for the specific piece of land, of which proper notice must be given by the County Governments in good time;
- c. Compensation must be done in case of any developments on the land;
- d. Controlled land - Land Laws Amendment Bill should contain a provision stating that the Land Control Act has been repealed;
- e. Lease registration in counties should be left to the National Land Commission, while land falling under National government should be left to Ministry;
- f. Overriding interests - Clause 28-should provide a categorization, i.e. it should only apply in respect of matrimonial property- should protect the innocent purchaser;
- g. Official searches - there is need to legislate on electronic conveyance i.e. searches should be done electronically;
- h. Clause 13 Land Act on preemptive rights is not proper as it is;
- i. Clause 12 on controlled land - the act should include a clause indicating the repeal of Land Control act;
- j. Spousal interest - There is need to recognize matrimonial home and to protect the purchasers

MINUTE NO. DCL/LN/2015/692

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 18.40 p.m. the meeting was adjourned.

SIGNED..........(CHAIRPERSON) DATE.....13th October 2015.....

