



28th October 2015

18TH LDGI LAND WATCH NOTE

LAND REFORMS IN KENYA : PROPOSED LAND LAWS 2015

I. Background

Parliament recently extended time by one year in order to be able to enact some obligatory legislation under the Fifth Schedule of the Constitution of Kenya (CoK) 2010. Among these were some land bills. In April 2012, Parliament enacted the first set of land laws. These were the Land Act 2012, the Land Registration Act 2012 and the National Land Commission Act 2012.

According to the Fifth Schedule detailing legislation to be enacted by Parliament following the promulgation of Kenya's Constitution in 2010, legislation relating to Community land (Article 63 of CoK 2010) and that relating to regulation of land use and property (Article 66 of CoK 2010) had been tied to a five year timeline. After enacting the first set of laws in April 2012, the country had over three years to enact the law relating to community land and that relating to regulation of land use and property. This was however not to be and come August 2015 when the five year constitutional timeline expired, these laws were among those pending enactment and will now be delivered within the next one year following the extension of timeline by Parliament.

It is appreciated that Parliament has since moved with speed to seek stakeholder input to the Community Land Bill 2015 (Article 63), the Physical Planning Bill 2015 (Article 66) and the Land Laws (Amendment) Bill 2015 and is soon expected to move discussion on these critical bills. This helps to avoid tabling these bills for discussion in 2016, by which time national politics will be beginning to tilt towards the 2017 general elections, hence the risk of politicization of the land bills.

II. Different versions of Community Land Bill

The Institute notes though that while a Community Land Bill 2015 (National Assembly Bills No. 45) now pends discussion in the National Assembly, another, and a different version,



Community Land Bill 2014 (Senate Bill No. 38 of 2014), pends discussion in the Senate. The Institute calls upon Parliament to address this duo track to the preparation of this critical bill and ensure convergence so that stakeholders and Members of Parliament can be better informed in their further discussions on the Community Land Bill.

The Institute further hopes that Parliament will maintain its current momentum on the land bills so that the laws are enacted soonest for use by Kenyans. Parliament needs to however carefully scrutinize each of the bills to ensure consistency and harmony in order to ensure that institutional conflicts such as those noted in the past are minimized.

III. Key observations/recommendations

The Institute provided detailed inputs to each of the three land bills in line with the call by the call by the National Assembly Departmental Committee on Land in early September 2015. It is hoped that the input will be considered along with that from other stakeholders in order to improve the bills. Overall, the Institute wishes to make the following observations.

1. **Keep land laws and institutions to a minimum:** In enacting further land bills, Parliament needs to be guided by the principle of keeping land bills to a working minimum. Parliament should also be careful not to establish too many land institutions since, besides escalating costs to the country, the Institute's studies have informed that the consumer public feels overwhelmed by the number of land institutions and is nowadays usually unable to tell which institution to go to for specific services.
2. **Public debate welcome:** That the intense public discussion on the proposed land bills is healthy as it helps to sensitise and inform more Kenyans about the looming enactment of the bills and their highlights. This will help implementation.
3. **Converge National Assembly and Senate processes on community land bill:** That the National Assembly and Senate processes on the community land bill should be converged earliest possible for effective public input and discussion.
4. **Stakeholder contributions:** Stakeholders should seize the opportunity available to contribute to the respective bills given their diverse competences and experiences in various aspects of land reforms and land administration in Kenya. The Departmental Committee on Land should carefully consider stakeholder submissions on each of the bills since it is these varied perspectives and experiences that will help us to develop good laws.
5. **Community land bill:** That given that an over 60% of Kenya's stock of land is unregistered community land, a law to help in its identification, registration, management, transactions and investments on it needs to be expedited. The heavy



interest in investing on community land in regard to oil and mineral exploration/exploitation, infrastructural development within community land and the fact that the constitution, in Article 63 (d)(4), provides that community land cannot be disposed of except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively, should inform us to expedite this basic law.

6. **Physical planning bill:** That the Physical Planning bill will help to support the planning, use, regulation and development of our land and is therefore critical for interventions to guide the rapid development of our urban and rural spaces.
7. **Land Laws (Amendment) Bill:** That this bill helps to resolve the routine conflicts between the Ministry of Lands, Housing and Physical Planning and the National Land Commission. It also contains provisions for the receiving, investigating and recommending solutions to claims on historical injustices, managing evictions on all categories of land and curbing limits on minimum and maximum land holding. The Institute's May 2014 audit results on the conflicting clauses in the Constitution of Kenya 2010, Land, Land Registration and National Land Commission Acts, which have led to incessant institutional conflicts and which the 'Omnibus Bill' now seeks to resolve among other things, can be found on sites www.ldgi.org/www.ldgi.co.ke.
8. **Enactment of subsidiary legislation to land laws:** That once Parliament enacts the pending land laws, it will move with speed to enact subsidiary legislation (regulations) to support the effective implementation of the 2012 and the 2015 land laws.

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