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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

*Paper laid
By chairperson of
Dept. Committee on
Lands Hon. Alex Mwangi, MP
on Wed 14 Oct. 2015
at 2.30 pm.
14/10/2015*

ELEVENTH PARLIAMENT – THIRD SESSION
THE DEPARTMENTAL COMMITTEE ON LANDS



REPORT ON THE PHYSICAL PLANNING BILL, 2015

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2015

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1.0 PREFACE

On behalf of the Departmental Committee on Lands and pursuant to provisions of Standing Order 127 (4) it is my pleasant privilege and honor to present to the House the Report of the Committee on its consideration of the Physical Planning 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 recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee oversees the operations of the Ministry of Lands, 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

The Committee comprises the following members:

1. The Hon. Alex Mwiru, M.P. - **Chairperson**
2. The Hon. Moses Ole Sakuda, M.P - **Vice Chairperson**
3. The Hon. Onesmas 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. Francis Njenga, M.P.
8. The Hon. A. Shariff, M.P.
9. The Hon. Eusilah Jepkosgei, M.P.
10. The Hon. Benard Bett, M.P.
11. The Hon. Kipruto Moi, M.P.
12. The Hon. Oscar Sudi, M.P.
13. The Hon. Hellen Chepkwony, M.P.
14. The Hon. Sarah Korere, M.P.
15. The Hon. Julius Ndegwa, M.P.
16. The Hon. Benson Mbai, M.P.
17. The Hon. Kanini Kega, M.P.
18. The Hon. Esther Murugi, M.P.
19. The Hon. Gideon M. Mung'aro, M.P.
20. The Hon. Hezron Awiti Bollo, M.P.
21. The Hon. Suleiman Dori Ramadhani, M.P.
22. The Hon. George Oner Ogalo, M.P.
23. The Hon. Lekidime L. Mathew, M.P.
24. The Hon. Shakila Abdallah, M.P.
25. The Hon. Paul Otuoma, M.P.
26. The Hon. Thomas Mwadeghu, M.P.
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.

1.3 Consideration of the Bill

The Physical Planning 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 provide a legislative framework to give effect to Article 66 (1) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the

interest of defense, public safety, public order, public morality, public health, or land use Planning.

Towards this end the Bill seeks to repeal and replace the Physical Planning Act, No. 6 of 1996. It intends to provide for the Planning, use, regulation and development of land in Kenya. It is divided into seven Parts and four Schedules.

1.3.1 Key provisions of the Bill

The Physical Planning Bill, 2015 has 95 clauses and four schedules and contains the following parts;

Part I deals with preliminary matters including objects of the Bill which include providing for the preparation and implementation of physical development plans at all levels of government, the administration and management of Physical Planning in Kenya, the procedures and standards for development control and regulation of land use and Physical Planning, the co-ordination of Physical Planning between the two levels of government, dispute resolution, and the functions of and relationships among Planning authorities.

Part II deals with the establishment, functions and powers of Planning institutions. These are the National Physical Planning Consultative Forum, the Cabinet Secretary, the National Land Commission, the National Director of Physical Planning, and the County Physical Planning Consultative Forums.

Part III deals with the types of physical development plans, their contents, the process of their preparation, revision, modification or withdrawal, resolution of disputes in relation to physical plans and uses of physical plans. These include the National Physical Development Plans, the Regional Physical Development Plans, the County Physical Development Plans, the Local Physical Development Plans and Special Area Plans.

Part IV deals with development control. It sets out the objectives of development control, the authority of Planning Authorities to undertake development control, the procedures for obtaining Planning permission by developers, offences in relation to development control and the preservation of heritage sites during development, among other matters.

Part V deals with the enforcement of development control permits or licenses and makes provisions for enforcement notices and requisition notices.

Part VI deals with the liaison committees, their powers and functions at both National and local level. These are the National Physical Planning Liaison Committee and the County Physical Planning Liaison Committees. It also makes provisions for the

procedures of the liaison committees and appeals from their decisions.

Part VII provides for miscellaneous matters, including the repeal of the Physical Planning Act, 1996, and transitional provisions relating to Planning permissions granted under the repealed Act. It also makes provisions for dealing with pending disputes under the repealed Act.

1.3.2 Bill Processing by the Committee

In processing 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(3). The Committee received various memoranda and held a stakeholder's 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 as per the attached adoption list (Annex 1).


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 its report on the consideration of the Physical Planning Bill, 2015 pursuant to the Standing Order 127.

SIGNED



DATE

13th October 2015

(HON. ALEX M. MWIRU, MP)
CHAIRPERSON

2.0 BACKGROUND INFORMATION

The Physical Planning Bill, 2015 is one of the Constitutional Bills outlined in the Fifth schedule of the Constitution of Kenya, and which had a Constitutional timeline of August 27th, 2015. The National Assembly on August 25th 2015 extended the period in respect to passing the legislation by 12 months from August 27th 2015.

The main objective of the Physical Planning Bill is to provide a legislative framework to give effect to Article 66 (1) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use Planning.

Towards this end the Bill seeks to repeal and replace the Physical Planning Act, No. 6 of 1996. It intends to provide for the Planning, use, regulation and development of land in Kenya. It is divided into seven Parts and four Schedules.

The Physical Planning, 2015 was introduced in the National Assembly by the Leader of the Majority Party on, 19th August, 2015 and therefore committed to the Departmental Committee on Lands for consideration in line with Articles 63 and 118 of the Constitution and Standing Order 127.

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

3.0 CONSIDERATION OF THE PHYSICAL PLANNING BILL, 2015

The Committee held a retreat from 15th to 20th September 2015 in Mombasa to receive and consider stakeholder views on the Physical Planning Bill, 2015 amongst other Bills. The following section provides detailed submissions on the Bill by various stakeholders;

3.1 STAKEHOLDERS VIEWS ON THE COMMUNITY LAND BILL, 2015

3.1.1 MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

The representatives of the Ministry of Lands, Housing and Urban Development informed the Committee as hereunder, That;

1. The new Constitutional order has presented an opportunity for curing the separation between preparation and implementation, monitoring and oversight Planning function and opportunities for Planning and implementing decisions made at the lowest possible levels of devolution by establishing Planning authorities at County levels. In addition it has presented an opportunity to the National Level to formulate policy plans to standardize Planning practice across the Country;
2. The process of reviewing the Physical Planning Act Cap 286 was initiated immediately after the promulgation of the Constitution of Kenya 2010. A Concept Paper was developed in 2012 to guide the Bill's formulation process. The process benefitted from professional input from the Kenya Law Reform Commission and insights and presentation from the Chairperson of the Devolution Taskforce;

3. On 28th April, 2014 the Bill was circulated by the Director of Physical Planning for comments to the following individuals/ organizations:-
 - i. The Chairman of the National Land Commission;
 - ii. The Chairman Transition Authority;
 - iii. County Secretaries;
 - iv. Chairman of National Environment Management Authority;
 - v. The Registrar Physical Planners Registration Board;
 - vi. The Chairman Kenya Institute of Planners;
 - vii. The Chairman Architectural Association of Kenya;
 - viii. The Chairman Land Development and Governance Institute;
 - ix. The Chairman Association of Professional Societies in East Africa (APSEA);
 - x. The Chairman Institute of Surveyors of Kenya;
 - xi. The Chairman Department of Urban and Regional Planning University of Nairobi;
 - and
 - xii. The Chairman Department of Urban and Regional Planning Maseno University;
4. The Director of Physical Planning received comments from various institutions. On 1st July, 2015 following the stakeholders Round Table meeting organized by Commission for the implementation of the Constitution at the Kenya School of Government, the Council of Governors through the County Executive Committee members (CEC) "Lands Group" submitted their considered comments on the Bill;
5. The Commission for the implementation of the Constitution held a round table meeting on 24th June, 2014 at the Kenya School of Government. The National Land Commission, County Governments, Kenya Institute of Planners, Kenya Land Alliance and Architectural Association of Kenya (Town Planning Chapter) were in attendance. County Governments were therefore not excluded in the process of formulation of the Bill;
6. The Bill met the Constitutional threshold of public participation, respects the devolved systems of governance, interlinks and relates with other existing relevant legislation, respects sound Planning theory and is consistent with global best practices;
7. The Bill provides an institutional framework for the State to regulate the use of any land to the interest of public safety, public order, public morality, public health or Land Use Planning in line with the provisions of Article 66 of the Constitution;
8. The Bill provides that public Institutions at the National and County levels are required to prepare and submit to the National Land Commission status reports of implementation of the National physical Development Plan. This will ensure that Planning Authorities at the National and County levels are answerable to the Commission;
9. The Bill revises and consolidates Land Use laws which currently fall under various statutes;
10. The Bill accords to the devolved system of government in the following manner:-
 - i. Part I – Preliminary- County Governments are Planning authorities;
 - ii. Part II – Physical Planning institutions - County Executive Committee Members are responsible for formulating County and Urban Physical Development policies, enforcement of Planning standards and development control;

- iii. Part III – Types of physical development plans- County and Local Physical Development Plans will be prepared and approved by County Governments.
- iv. Parts IV and V– Development control - County Governments are responsible for development control.
- v. Part VI– Physical Planning Liaison Committees - County Physical Liaison Committees will hear and determine appeals on disputes relating to Physical Planning. Appeals will be lodged in the Environment and Land Court and not the National Physical Planning Liaison Committee.

11. Linkage between the Bill and other relevant existing legislation:-

- i. The Bill provides a framework to actualize the objectives of County Planning as outlined in Section 103 of the County Government Act 2012;
- ii. The Bill is applicable in National Legislation with regard to Physical Planning referred to in Article 191(3) and Section 20(1)(i) of the Urban Areas and Cities Act 2011;
- iii. The Bill outlines the Physical Planning requirements referred to in Section 18(9)(a) of the National Land Commission Act, 2012;
- iv. The Bill is the relevant law relating to development control referred to in Section 115(4) of the Land Act 2012 with respect to care, control and management of reserved public land;

12. The Bill does not undermine the spirit and letter of devolution as contained in Article 6 of the Constitution of Kenya.

3.1.2 NATIONAL LAND COMMISSION

The following is a summary of issues raised by the National Land Commission on the Physical Planning Bill 2015:

- 1. The Title of the Bill “Physical Planning” is alien to the Constitution which provides for Land Use Planning at Articles 60, 66, 67, 68 and the Fifth schedules. The National Land Policy at paragraphs 101-143, provides for “Land Use Planning” and not “Physical Planning”. The Commission recommends that the Bill be renamed as Land Use Planning Bill in line with articles 60, 66, 67(2)(h), and 68 of the Constitution and paragraphs 101-123 of the National Land policy;
- 2. The Bill does not recognize the functions of the National Land Commission as provided for in Article 67 of the Constitution:-
 - i. to manage public land on behalf of the National and County Governments 2(a);
 - ii. to monitor and have oversight responsibilities over land use Planning throughout the Country (2)(h).

These functions should be clearly elaborated and find explicit expression in any legislation relating to Land Use Planning;

- 3. The proposed Physical Planning Bill 2015 fails to meet the requirements of Article 68(b) of the Constitution which requires Parliament to revise sectoral land use laws in accordance with the principles set out in Article 60(1). This is in respect to administrative institutions that are efficient, sustainable, transparent, and cost effective;

4. National Physical Planning consultative Forum (membership of over 60 persons), Cabinet Secretary, National Director of Physical Planning and the National Land Commission is large, amorphous and an unnecessary burden on the taxpayers. The functions assigned to this forum are a duplication of the functions of the National Land Commission and the Cabinet Secretary;
5. Clause 9 - County Physical Planning Consultative Forum:- The functions of the forum are unconstitutional and duplicates functions of the County Government;
6. The Bill at Clause 15 creates the office of the National Director of Physical Planning. The office of the Director of Physical Planning under the current Physical Planning Act has performed dismally. The office is redundant under the current Constitutional framework;
7. The Physical Planning Bill 2015 disregards and conflicts with the County Governments Act 2012, the Urban Areas and Cities Act 2011 and the National Land Commission Act, 2012. This is with respect to the functions of the National Government/ Executive, the County Governments and the National Land Commission;
8. Clause 19-54, outlines types of physical development plans that may be prepared under this Bill. These plans are at variance with the plans that are already provided for at sections 107, 108,109, 110 and 111 of the County Government Act and sections 36-42 of the Urban Areas and Cities Act. The types of plans should be in tandem with the already existing legislated laws. It is recommended that the Bill should provide for comprehensive hierarchy of plans to include: National Land Use Plan, County Land Use Plan, Sub-County, City and Urban Areas Land Use Plans, Wards and Village Areas Land Use Plans;
9. Clause 95 of the Bill purports to amend the County Governments Act, 2012 ostensibly to take away the approval powers of the County Assemblies. This is against Article 185(4) of the Constitution. This is retrogressive as the Assemblies are the policy makers of the Counties and are responsible for allocating resources for the implementation of the plans in their respective wards. It is therefore ill advised to take away this crucial responsibility from them;
10. The Bill is not in line with the land reform agenda as required under Article 60(2) of the Constitution and the Sessional Paper No. 3 of 2009 on the National Land policy paragraphs 101-143 on the preparation of land use plans and 228-253 on the Institutional Framework for delivery of land reforms at the National and County levels;
11. The Bill is not progressive and does not meet the requirements of the new Constitution of Kenya 2010 and strives to maintain the old order. The proposed Bill is not fundamentally different from the current Physical Planning Act of 1996 that has not been effective and only introduces cosmetic changes to the Act;
12. The proposed Bill fails to be an enabling legislation of the Constitution in respect to Article 66 and the Fifth schedule which provides for Land Use Planning. The Bill therefore does not provide clarity to the Implementation of the Constitution but causes confusion;
13. The proposed Bill has glaring inconsistencies in structure and content with respect to mixed up usage of terms "Physical Planning" and "Spatial Planning". The content and scope is limited and does not cover new areas of concern like rural areas, marine, mining, oil

exploration and development, infrastructure, environmentally fragile areas and trans-National areas.

3.1.3 COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The following is a summary of issues raised by the Commission for the implementation of the Constitution on the Physical Planning Bill 2015:

1. Title – The title should not necessarily be as stated in the Constitution, e.g. Public Finance and Management Act is not stated in the Constitution. The Bill must however address the issues raised in the Constitution and this has been addressed by the Physical Planning Bill. Further, there was no agreement among the Physical Planning professionals on what should be the proper title of the Bill. The title as it is in the Bill incorporates more than land use;
2. National Physical Planning consultative forum – The forum is necessary and not bloated given that every County Executive Member from the forty seven Counties will be a member of the consultative forum in addition to other representations in the forum;
3. The County Planning forums are not unconstitutional and incorporates all the broad players in the Constitution;
4. The National Land Commission cannot carry out plan preparation. The Commissions function is to oversee the plan preparation;
5. Approval of plans by the County Assemblies - Regional plans involve more than one County. It would therefore cause confusion as to which County Assembly should approve the plan, or if it would have to be approved by each of the concerned County Assemblies. The Development plan is a tool of the executive and the County Assemblies should therefore not necessarily approve the County development plans in the same manner the National Government plans are not taken to the National Assembly for approval;
6. Roles-National director of Physical Planning advises the Cabinet Secretary while the County Government plays a coordinating role;
7. There were consultations on the Bill.

3.1.4 TRANSITION AUTHORITY

The following is a summary of issues raised by the Transition Authority on the Physical Planning Bill 2015:

1. The devolved system of Governance provided for under Constitution of Kenya 2010 provides for two tiers of Government - the National Government and County Governments. Amongst National Government Functions is the function of National economic policy and Planning while the County Governments undertake County Planning and development, including Land survey, mapping, boundaries and fencing and housing;
2. Land survey, mapping and housing were transferred to County Governments vide Legal Notice No. 16 of 1st February, 2013;
3. The Transition Authority transferred to County Governments, not only land survey, mapping, boundaries, fencing and housing but also Planning (both Physical Planning and economic/integrated development Planning) and statistics;

4. Agreements on transfer of functions- Article 187(1) provides that a function or power of a government at one level may be transferred to government at another level by agreement between governments if:
 - i. A function or power would be more effectively performed or exercised by the receiving government; and
 - ii. If a power or function is not prohibited by legislation under which it is to be performed or exercised
3. Article 187(2) provides that a power or function is transferred from one level of government to another level of government:
 - i. Arrangement shall be put in place to ensure that the resources to perform the function or exercise the power are transferred; and
 - ii. Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule;
4. The Constitution of Kenya makes reference to National economic policy and Planning but not Physical Planning;
5. The only area the National government can perform Physical Planning function is in National projects (e.g. LAPSET or special purpose cities), or joint international projects;
6. Section 9-12 of the Physical Planning Bill, 2015 creates the County consultative forum which is a duplicating function of the County Government and creates confusion and renders land use planning impracticable.
7. The County Government Act, and the Urban Areas and Cities Act already clarifies the Planning framework in the County.
8. On the composition of the National Physical Planning Council in Clause 5(2) if the council will oversee development of regional physical plans, the Cabinet Secretary responsible for devolution should be a member;
9. The functions of the Council in section 10 will promote effective integration between physical, economic and sectoral Planning within the framework of National and County Development policies;
10. It is not clear the difference of the objectives of the National Physical Planning Council and those of the MTP and Vision 2030;
11. The Bill is clearly inconsistent with Presidential Order on the structure of the government.
12. The Bill states that the National Physical Planning Consultative Forum will provide Counties with capacity building upon request. As mentioned earlier it is a Constitutional requirement for the National Government to provide capacity building to Counties;
13. Clause 15 talks about appointment of and establishment of the office of the National Director of Physical Planning while Clause 16 provides for qualification for appointment as the National Director of Spatial Planning. There is need to clarify if there are these two different offices or one office with different titles;
14. Clause 17 gives the functions of the National Director of Planning. There are several directors of Planning in the state department for Planning in the Ministry of Devolution and Planning;

15. In Clause 20 there is confusion between the purpose/function of the National Physical Plan with those of the Medium Term Plan and Vision 2030 with regard to promoting economic growth and location of National investments;
16. The National Physical Planning Consultative forum should be made by principal secretaries and not Cabinet Secretaries;
17. There is need to understand what sectors and sectoral plans in the Bill are. In the County Government Act, County sectoral plans are departmental plans. In Kenya sectoral plans are what is also referred to as strategic plans;
18. There is confusion with the chairmanship of Regional Physical Planning committee.
19. Clause 28(1) provides that two Counties may, by mutual agreement or out of necessity, formulate a Regional Physical Development Plan, subsection (2) states that in preparation of such a plan the Counties will form a regional Physical Planning committee chaired by the National Director of Physical Planning. Clause 28(3) (b) provides that the members of the County executive committee responsible for Physical Planning will elect the person to chair the committee. The Bill does not take into consideration/account the situations in Counties where the executive committee member for Physical Planning is not responsible for urban development.
20. Any type of regional plans can only be undertaken under the guidance of Intergovernmental Relations Act, 2012.
21. Clause 34(2) - the Regional Development Plan should not be approved by the relevant governors but by the Counties executive committees and in subsection (3) the approved plan should be tabled in the County assemblies for approval - not just deposited in the relevant assemblies.

3.1.5 COUNCIL OF GOVERNORS

The following is a summary of issues raised by the Council of Governors on the Physical Planning Bill, 2015:

1. The County Governments were not involved in the formulation of the Bill;
2. Title- The title of the Bill does not derive from the Constitution since the Constitution provides for land use Planning;
 - a. Recommendation: rename the Bill to Land Use Planning Bill in line with Articles 60, 66, 67 (2) and 68 of the Constitution and paragraphs 101 – 123 of the National Land Policy;
3. Institutions –Clause 5 of the Bill creates the National Physical Planning consultative forum with a membership of 60 members. The functions of this forum can be performed by existing agencies namely the National Land Commission and the Cabinet Secretary. The Clause should be deleted and the functions assigned to the National Land Commission and the Cabinet Secretary;
4. Types of development Plans-Clause 19 outlines types of physical plans that may be prepared under the Bill. These plans are at variance with the plans that are already provided for in Sections 107, 108, 109, 110 and 111 of the County Governments Act and Sections 36- 42 of the Urban Areas and Cities Act. The Bill should create a section of types of plans that may be

prepared e.g. National land use plan, County Land Use Plan, Sub-County, City and Urban Areas Land Use plans, Wards and Village Areas Land Use Plans;

5. The Bill creates many institutions leading to bureaucracy and stifling functions best discharged by Constitutional bodies. In case of weakness within an existing institution, the capacity of the institutions should be enhanced instead of creating duplicate bodies;
6. National Director of Physical Planning- Clause 15 provides for the National Director of Physical Planning. The Constitution of Kenya assigns the role of monitoring and overseeing land use planning throughout the Country to the National Land Commission. The office of the director of Physical Planning is therefore redundant under the current Constitutional framework;
7. Clause 95 of the Bill purports to amend the County Governments Act, 2012 ostensibly to take away the approval powers of County Assemblies. This is retrogressive as the Assemblies are the policy makers of Counties and are responsible for allocating resources for the implementation of the plans in their respective wards. It is therefore ill advised to take away this crucial responsibility should therefore not be taken away from them.

3.1.6 KENYA INSTITUTE OF PLANNERS (KIP)

The following is a summary of issues raised by the Kenya Institute of Planners (KIP) on the Physical Planning Bill 2015:

1. KIP has in the past submitted a complete copy of draft which has clauses that need to be synchronized with the published Bill;
2. Title- The Bill should be given either of the following titles- 'The Planning Bill' or - The Spatial Planning Bill;
3. A definition of Physical Planning is required to explain that the term is variously referred to as Spatial Planning, Land Planning, Urban and Regional Planning, Town & Country Planning and Land use Planning;
4. Planning Authorities as provided for in the Bill are agreeable;
5. Planning institutions established are agreeable except for the membership. i.e. membership should include the National Director as be a member of the National Physical Planning consultative forum, County Director as a member of the County Physical Consultative forum, National Land Commission and Cabinet Secretary;
6. There should be qualification for the National Director of Physical Planning, County Director of Physical Planning and the Municipal Director of Physical Planning to be a corporate members of the Kenya Institute of Planners;
7. Functions- There is need to add a provision for the National Director to prepare and update the Physical Planning manual at least once every ten years;
8. National Development Plan- the Bill proposes an implementation period of 20 years which is too short. We propose -'National Spatial Development Plan' which Should cover a period of 30-35 years as is the normal practice;
9. County Physical Development Plan-The term should be 'County Spatial Plan' as used in County Governments Act. The two should ideally be the same to avoid duplication of resources;

10. Preparation of Plans- A new clause should be added as follows, 'Development Plans may be prepared by contracted Consulting Registered Planners' as existed in the Physical Planning Act, Cap 286. Guidelines should be formulated for the same;
11. Local Physical Development Plans should include 'Integrated City or Urban Development Plan' (ISUDP) under the Urban Areas and Cities Act, 2011, long or short term plans, urban renewal or redevelopment, subject plans, zoning plans and Planning policies;
12. Development Control - Section 59 (3) to include all subdivisions (the Bill states only subdivisions exceeding 2 plots), Land Readjustments- involving plots of different owners, and Land Use Master Plans -schemes where there are no subdivisions .The same should also be added in the Fourth Schedule;
13. Registration of documents- retain the clauses existing in the Physical Planning Act as;
 - i. The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with;
 - ii. Registrar has the same definition assigned to it in the Land registration Act 2012
 - iii. It shall be deemed to be an offence if the registrar acts contrary to (1) above
 - iv. Add the following clauses on Approval of title surveys;
 - a. The Surveyor shall refuse to approve any title survey relating to the development of land unless a development permission has been granted as required under this Act in respect of such development
 - b. The Surveyor has the same definition assigned to it in the Survey Act 110.
 - c. Failure to comply with Section 108 (1) shall be an offence under this Act and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.
14. Dispute resolution – The bill should provide a clause specifying procedure of communicating decisions made by the committees;
15. Key Schedules Missing- a. PPA1 - To Be Improved from PPA1 Cap 286, Enforcement notices - To Be Improved from Cap 286 and Appeals notice - To Be Improved from Cap 286.

3.1.7 LAND DEVELOPMENT AND GOVERNANCE INSTITUTE

The following is a summary of issues raised by the Land Development and Governance Institute on the Physical Planning Bill 2015:

Summary of findings:

1. Clause 2 :- Reference to spatial development plans with respect to development control Definition is provided for "spatial Planning" but the term is not applied in the Bill. Spatial development plans are not provided for. The Bill should remain consistent with use of Physical development plans rather than floating across terminology;
2. Clause 4:- Principles and norms The Bill should set out specific principles that inform and guide the Physical Planning process, from the spatial stage to development control – and give an indication of how such principles will be applied. For example –
 - a. principle of connectivity

- b. principle of sustainable land management and use
- c. polluter pays principle

the currently provided principles are generic – and may not assist in the interpretation of the law

3. Clause 13 :- Functions of the NLC relative to the power of the Cabinet Secretary set out in the Bill, it is unclear what “oversee” and “monitor” means in practice – and could result in conflict and paralysis in Physical Planning;
4. Clause 14:- Functions of the Cabinet Secretary - It is unclear what “coordinating” Physical Planning by County Planning authorities – legally amounts to;
5. Clause 15:- Director of Physical Planning - Office is variously referred to as National Director of Physical Planning, National Director of Spatial Planning, and National Director of Planning. - Consistent use of language is necessary;
6. Clause 17:- Functions of Director of Physical Planning - An additional function should include advising the Cabinet Secretary on procedure for undertaking meaningful public participation in the Physical Planning process at National and County level ; And advising the Cabinet Secretary on strategies for ensuring that National and Physical Planning is consistent with the principles of sustainable development, environmental conservation, and connectivity;
7. Clause 18:- Functions of County Executive Member:- The section refers to “standards of Physical Planning” but the Bill has no explicit provision for setting of such standards;
8. Clause 20 :- Purpose of the National Physical Development Plan - On the basis of the Plan in 20(2) – the Bill should add that the Plan should be the Basis for “use of space available in a manner cognizant of National development priorities and sustainable development”;
9. Clause 22:- Content of the National Physical Development Plan - This should also include:
 - a. environmental conservation;
 - b. strategies for ensuring sustainable utilization of space and natural resources;
 - c. principles of ensuring connectivity in Planning across sectors, and at all levels of government.
10. Clause 23:- Appeal to Cabinet on dissatisfaction with National Physical Plan -An appeal to the Cabinet maybe out of reach for ordinary Kenyans. In any event, this amounts to converting the Cabinet into a Tribunal;
11. Clause 26:- Status reports on implementation of National physical development plan- Section should be modified to empower the NLC to consolidate the reports into a single National report and forward to National Assembly and Senate – as part of oversight in development;
12. Clause 28:- Section 28(2) contemplates creation of a regional Physical Planning committee- Section should be modified to note that this committee is within the meaning of joint authorities contemplated by article 189 of the Constitution;
13. Clause 29:- Scope of regional physical development plan-The scope should also set out any unique spatial, natural resource, environmental, economic or social circumstances peculiar to the Counties undertaking joint Planning – and analyse how to utilize such circumstances as

opportunities, or how to overcome, if challenges-Such a plan should also contain an implementation plan;

14. Clause 30:- Purpose of a regional physical development plan-Section 30(2) – the purposes should extend to specific Physical Planning concepts, including connectivity (including of peculiar circumstances referred to above) or connectivity in resource Planning and use – such as joint protected areas, or greenbelts for conservation and catchment management;
15. Clause 36:- Implementation of regional physical development plan-The hierarchy of the National and regional plans, relative to those at County, urban etc. – should be clear;
16. Clause 38:- County physical development plan-The section should specify how this plan relates to the County Integrated Development Plan, and the spatial plans prepared thereunder;
17. Clause 46:- Local physical development plans- Section 46(2) cross-applies the term to “local spatial development plans” – consistency in terminology is missing in the Bill
18. Clause 53-54:- Special Planning area-Special areas are presented as unique stand-alone and as a result, Connectivity is missing between the special Planning area – and the surrounding County/regional physical development plan;
19. Clause 57:- Development permission- Section should be explicit that permission is sought from the Planning authority of a County Government;
Clause 57(3) may result in demolition of properties built without permission. While this may be desirable in some instances, economic loss maybe extreme in others. In any event, the design of this section opens it up to judicial challenge;
20. Clause 58:- Application for development permission-Provision should require that the prescribed fees, including the computation formula for the fees should be publicly disclosed;
21. Clause 62:- Environmental Impact assessment-In this section, EIA is cast as optional. The Bill should be modified to require an applicant for development permission to have obtained an EIA license prior to making an application – or in the absence of an EIA license, to demonstrate the grant of an exemption by the National Environment and Management Authority. This ensures that no development permit application is considered by a Planning authority without a prior mandatory EIA process;
22. Clause 64:- Development fees- The word “may” should be replaced with shall (in subsection 2) to ensure the publication of fees is mandatory;
23. Clause 74:- Requisition notice- A requisition notice issued on a private property to stop its development in the public interest exceeds the police (land use Planning) power of the state and amounts to compulsory acquisition – within the meaning of article 40 (for public purpose or public interest);
24. Clause 76:- Appeal on requisition notice to Liaison committees-The subject matter of such an appeal is mainly on questions of law, not fact, and is therefore suitable for a court of law (Environment and Land) or for arbitration. In addition, functions of the Liaison Committees are now performed by the National forum and as such the liaison committees should be removed from the Bill.

3.1.8 THE ARCHITECTURAL ASSOCIATION OF KENYA

The following is a summary of issues raised by the Architectural Association of Kenya on the Physical Planning Bill 2015:

1. The Bill centralizes Physical Planning functions at the National level;
2. The Bill has bestowed a lot of powers and responsibilities in the preparation of physical development plans to politically appointed persons such as the Cabinet Secretary and the County Executive Committee member in charge of Physical Planning;
3. There is no clarity in how the two levels of government would relate in executing Physical Planning functions. The National government should be charged with preparation of National Physical development plans and policies only. The County Governments should be left to undertake Planning within their jurisdiction;
4. The Bill has established too many institutions with excess membership therefore creating unnecessary bureaucracy and likely misuse of resources. Decision making will also likely be ineffective;
5. The Bill establishes the office of the National Director of Physical Planning and ignoring the need to have the office of the County director of Physical Planning in each County appointed by the County Public Service board to execute Physical Planning matters at County level;
6. The qualifications of the National Director of Physical Planning and the County director of Physical Planning should be provided for in the Bill to include a first degree in urban or regional Planning or related spatial Planning field, registration as a Physical
a. Planner, experience and integrity;
7. Development control is mainly a County Government function. The Bill has not been clear on who receives application and grant permission for development. It has only mentioned County Governments and what it calls Planning authority in passing without stating the actual office at the County level. All applications for development permission under the development control section should be addressed to the County director of Physical Planning who should process them in consultations with the relevant authorities and grant /reject approval for development as the main agent of the County Government;
8. The Bill should clearly define Planning Authorities;

3.1.9. KENYA LAND ALLIANCE

The following is a summary of issues raised by the Kenya Land Alliance on the Physical Planning Bill 2015:

- a. There is need to revise sectoral land use laws in line with Article 68(b) of the Constitution;
- b. Section 101 of the current Physical Planning act, 2010 - should be retained.
- c. Parts II and VI of the Bill should be combined as they deal with the establishment of institutions

3.1.10 ASHITIVA & CO.ADVOCATES

The following is a summary of issues raised by Ashitiva and Co. Advocates on the Physical Planning Bill 2015:

1. The Bill purpose is to make provision for the Planning, use, regulation and development of land and for connected purposes.
2. The Physical Planning Bill, 2015 gives effect to Article 66 (l) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use Planning.
3. The Bill also seeks to repeal the Physical, Planning Act, 1996.
4. Objects of the Bill - The Bill seeks to provide;
 - i. The principles, procedures and standards for the preparation and implementation of physical
 - ii. Development plans at the National, regional, County, urban and cities level;
 - iii. The administration and management of Physical Planning in Kenya;
 - iv. The procedures and standards for development control and the regulation of Physical Planning and land use;
 - v. A framework for the co-ordination of Physical Planning by County Governments;
 - vi. A mechanism for dispute resolution;
 - vii. A framework for equitable and sustainable use, Planning and management of land; and the functions of and the relationship between Planning Authorities.
5. County Plans -The Bill provides for development of County plans in every ten years. The plans should be in compliant with the National plans which are also provided for in the Bill;
6. The Physical County plans will provide for;
 - i. Zoning, urban renewal, or redevelopment;
 - ii. Guiding and co-coordinating the development of infrastructure;
 - iii. regulating land use and development
 - iv. providing a framework for coordinating various sectorial agencies
 - v. giving effect to any Integrated City or Urban Development Plan; and
 - vi. providing a framework and guidelines on building and works development
7. The Act provide for public participation (clause 48) including mechanisms for objections to any plans under clause 50;
8. Development Control- the Bill under Section 56 gives the County the power to control developments in their respective Counties. The Counties have jurisdiction subject to the provisions of the Urban Areas and Cities Act, 2011, and the County Governments Act, 2012. Each County Government may, in the area under its jurisdiction;
 - i. Control or prohibit the use or development of land or buildings for the proper and orderly development of the area;
 - ii. Control or prohibit the sub-division of land or existing parcels of property;
 - iii. Consider and approve applications for all developments;
 - iv. Grant development permissions to applicants;
 - v. Ensure compliance with the provisions of the Bill and any other written laws

- vi. Protect and preserve all land reserved open spaces, parks, urban forests and green belt;
9. The Bill requires any person wishing to carry out a development in a Planning area to obtain permission from the County Planning authority. Failure to obtain the permits leads to an offence and one is liable to a fine equivalent to not less than 5% and not more than 10% of the value of the land on which the development is taking place or to imprisonment for a term not exceeding two years.

3.2 MEMORANDUMS RECEIVED ON THE PHYSICAL PLANNING BILL, 2015

3.2.1 KENYATTA UNIVERSITY

The following is a summary of issues raised by Kenyatta University on the Physical Planning Bill 2015:

- a) Proposed Amendments
Add in the definitions: Environmental Planning and Management means a Discipline which is a hybrid between Environmental and Spatial Planning.
- b) Page 5 – Article 5
Add Article 42 and 69 of the Constitution of Kenya (2010)
- c) Page 8 Article – 13 (b)
i and v be merged to form a new I that reads Urban and City Planning then draft a new iv which reads Environmental Planning and Management with a spatial Planning orientation
- d) Article 8 a insert the word ‘environment’ between the words physical and economic
- e) Page 10 – Article – 17(b)
Add iii which reads, Environmental Planning and Management with a spatial Planning orientation.
- f) Page – Article 21 (b)
Add iii which reads, Environmental Planning and Management with a spatial Planning orientation.

3.2.2 A TEAM OF CONCERNED PRACTISING PHYSICAL PLANNERS

The following is a summary of issues raised by a team of concerned practicing physical planners on the Physical Planning Bill 2015:

The key concerns and recommendations are as follows:

1. The citation of the Physical Planning Bill, 2015 does not capture the essence of planning legislation and should be amended to be in tandem with existing Physical Planning Act. The principle purpose of any Planning legislation is to provide for preparation and implementation of plans;
2. The interpretation of terminologies used in the Physical Planning Bill, 2015 is grossly inadequate and does not in certain instances capture the actual meaning of the terms used as they are known in Planning practice world over. The recommendation is to widen the scope

of the interpretation and to clarify the meaning of the terms used to be in tandem with taxonomy used in Planning practice world over;

3. The objects of the act captured in the Physical Planning Bill, 2015 are inaccurate as they do not capture the correct output of the Planning law. The correct objects be outlined relating to the; organization and administration of Planning; the preparation and implementation of physical development plans at both National and County levels of government; the conflict resolution mechanism;
4. The inadequacy of the structures established to perform the Planning functions. For instances, the Physical Planning Bill, 2015 omits to establish structures to perform the technical functions of preparation and implementation of plans at the County level. The recommendation in this respect is for the Physical Planning Bill, 2015 to establish an institution of the County resolution mechanism;
 - a. The Bill allocates these technical functions to The County Executive Committee member who cannot perform such functions as they may not necessarily be trained in the art and science of Planning. It is recommended that general policy functions of Planning be performed by the County Executive represented by the County Executive Member responsible for Planning while technical functions are performed as aforesaid;
5. The concept of Planning Authority has not been properly applied to address the process of development control. The recommendation is that this concept should be applied appropriately to strengthen development control aspects which are key to implementation of plans at County level particularly;
6. The plan preparation processes and the coordination between different levels of Planning are not outlined and described. For instance, omission of regional Planning aspect and the reference to this level of Planning as inter-County Planning is inappropriate. Any issue which transcend two or more Counties are of both National and County concern. These issues relates to areas and developments such as; the National transportation corridors such as the Northern corridor and LAPPSSET; metropolitan development such as that occurring around Nairobi; river basins and water catchment areas and game reserves among others. The Planning instrument which is used world over to address such issues is referred to as a regional physical development plan. In the pecking order of plans, the regional physical development plan falls immediately below the National plan and hence provides a way of coordinating National and County Planning. Both National and County Planning authorities should be involved in preparation of this plan. In terms of categorization, the plan falls within the functions to be coordinated from the National level;
7. The key concern relating to the National Physical Development Plan is the allocation of the preparatory function to the Cabinet Secretary. This concern relates also to County level plans of County Physical Development Plan and the Local Physical Development Plan both which are proposed to be prepared by the County Executive Member in charge of Planning. Since Planning is a professional and technical process, it is recommended that the Cabinet Secretary and the County Executive Member be omitted from the preparatory process. However, they may be allocated a policy function such as the causing and facilitating the

plan to be done in case the preparatory authority fails to do so or is encumbered by resource challenges;

8. In respect to the County Spatial Plan and the County Physical Plan the Physical Planning 2015, seems to suggest that these two typologies of plans are different which for all purposes and intent should not be the case. The recommendation is that the problem be cured by putting the interpretation of these plans to mean the same. The local Physical Development plan is variously referred to in the body of the Physical Planning Bill 2015 as Urban Plan, City Plan, Municipal Plan etc. The recommendation is that these anomalies be cured by bonding all these typologies in the interpretation of the Bill within the Local Physical development plan;
9. Local Planning is a terminology that was borrowed from the English jurisprudence that forms the basis of the formulation of the Kenya Planning law. The terminology has been adopted widely within the common wealth countries.

3.2.3 PETROLEUM INSTITUTE OF EAST AFRICA

The following is a summary of issues raised by the Petroleum Institute of East Africa on the Physical Planning Bill 2015:

1. Clause 5:- To avoid conflicts arising from due diligence processes we do suggest that National Environment Management Authority (NEMA) be included to nominate a representative to cover environmental issues in Physical Planning;
2. Clause 2:- NEMA should be included to cover the environment aspect since they have directors of environment in each County.

4.0 COMMITTEE OBSERVATIONS

1. The Bill revises sectoral land use laws in line with Article 68(b) of the Constitution;
2. There was comprehensive public participation and stakeholder engagement in the development of the Physical Planning Bill;
3. There were varied views on the title of the Bill from various stakeholders. Some were of the view that the title of the Bill should be restricted to the terms used in the Constitution, while others that the title of the Bill should be broader and should be either 'Land Use Planning Bill', 'Spatial Planning' or be retained as 'Physical Planning Bill';
4. In the definition section, there is need to define the terms 'spatial planning', 'land use planning' and 'physical planning' so as to avoid any uncertainties as regards the terms;
5. In the qualifications for appointment as a National Director of Planning, there is need to improve on the requirements necessary for the candidate;
6. Physical planning is a shared function between the national government and the county government. Policy formulation, national and regional plan preparation is a function of the National government while plan preparation and approval at County level is a function of the County Government.;
7. The stakeholders were of the view that certain sections of the Bill contradict with some sections in existing Acts. Part III of the Bill, which provides for the types of physical development plans, contradicts with sections 36-42 of the Urban Areas and Cities Act, 2012,

and 108-111 of the County Governments Act, 2012. However the Committee noted that it is only the names of the plans that are at variance, and therefore the names of the plans should be in tandem with the titles in existing laws to avoid confusion;

8. Some stakeholders quoted articles in the Constitution that were not relevant to Physical Planning. The reference to Article 185(4) of the Constitution was not applicable. The Article provides that the County Assembly may receive and approve plans and policies for the management and exploitation of the county's resources, and the development and management of its infrastructure and institutions. This Article therefore does not deal with physical plans. The development plan is a tool of the Executive and therefore the county assembly should therefore not necessarily approve the development plans in the same manner as the National Assembly does not approve the national development plans;
9. Pursuant to Article 67 (2) (h) of the constitution, the function of the National Land Commission is to monitor and have oversight responsibilities over land use planning throughout the country and not to carry out the actual plan preparation;
10. There were concerns that the National Physical Planning Consultative Forum is bloated. The Committee observes that that the Forum is necessary and not bloated given that every County Executive Committee Member from each of the forty seven Counties will be a member of the consultative forum in addition to other representatives in the Forum;
11. On the issue of Status reports on implementation of National physical development plans, the section should be modified to empower the National Land Commission to consolidate the reports into a single National report and forward to National Assembly and Senate, as part of oversight in land use planning.

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

DEPARTMENTAL COMMITTEE ON LANDS

Date: 16th October 2015

Agenda: - Adoption of the Report on the Physical Planning 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)	V. Chairperson	
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.	M	
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 Gino

E.G.A

~~Signature~~

10/10/15

**MINUTES OF THE 204TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS
HELD ON FRIDAY 9TH OCTOBER 2015 AT THE AMANI CONFERENCE ROOM, BOMA HOTEL
AT 2.00 PM**

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 Mwhaki | - | 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/2015/731

PRELIMINARIES

The Chairperson called the meeting to order at 2.30 pm, followed by a word of prayer.

MINUTE NO. DCL/LN/2015/732

CONFIRMATION OF MINUTES

Minutes of the 196th Sitting held on Friday 18th September, 2015 (Morning) were confirmed as true record of the proceedings after being proposed by the Hon. Onesmas Ngunjiri, M.P. and Seconded by the Hon. Gideon Mung'aro, M.P., and signed by the Chairman.

Minutes of the 197th Sitting held on Friday 18th September, 2015 (Afternoon) were confirmed as a true record of the proceedings after being proposed by the Hon. George Oner, M.P. and Seconded by the Hon. Hellen Chepkwony, M.P., and signed by the Chairman.

MINUTE NO. DCL/LN/2015/733

CONSIDERATION AND ADOPTION OF THE REPORT ON THE PHYSICAL PLANNING BILL, 2015

The Committee Considered and adopted the report as follows:

The Committee made the following observations:

1. The Bill revises sectoral land use laws in line with Article 68(b) of the Constitution;
2. There was comprehensive public participation and stakeholder engagement in the development of the Physical Planning Bill;
3. There were varied views on the title of the Bill from various stakeholders. Some were of the view that the title of the Bill should be restricted to the terms used in the Constitution, while others that the title of the Bill should be broader and should be either 'Land Use Planning Bill', 'Spatial Planning' or be retained as 'Physical Planning Bill';
4. In the definition section, there is need to define the terms 'spatial planning', 'land use planning' and 'physical planning' so as to avoid any uncertainties as regards the terms;
5. In the qualifications for appointment as a National Director of Planning, there is need to improve on the requirements necessary for the candidate;
6. Physical planning is a shared function between the national government and the county government. Policy formulation, national and regional plan preparation is a function of the National government while plan preparation and approval at County level is a function of the County Government.;

7. The stakeholders were of the view that certain sections of the Bill contradict with some sections in existing Acts. Part III of the Bill, which provides for the types of physical development plans, contradicts with sections 36-42 of the Urban Areas and Cities Act, 2012, and 108-111 of the County Governments Act, 2012. However the Committee noted that it is only the names of the plans that are at variance, and therefore the names of the plans should be in tandem with the titles in existing laws to avoid confusion;
8. Some stakeholders quoted articles in the Constitution that were not relevant to Physical Planning. The reference to Article 185(4) of the Constitution was not applicable. The Article provides that the County Assembly may receive and approve plans and policies for the management and exploitation of the county's resources, and the development and management of its infrastructure and institutions. This Article therefore does not deal with physical plans. The development plan is a tool of the Executive and therefore the county assembly should therefore not necessarily approve the development plans in the same manner as the National Assembly does not approve the national development plans;
9. Pursuant to Article 67 (2) (h) of the constitution, the function of the National Land Commission is to monitor and have oversight responsibilities over land use planning throughout the country and not to carry out the actual plan preparation;
10. There were concerns that the National Physical Planning Consultative Forum is bloated. The Committee observes that that the Forum is necessary and not bloated given that every County Executive Committee Member from each of the forty seven Counties will be a member of the consultative forum in addition to other representatives in the Forum;
11. On the issue of Status reports on implementation of National physical development plans, the section should be modified to empower the National Land Commission to consolidate the reports into a single National report and forward to National Assembly and Senate, as part of oversight in land use planning.

The Committee makes the following recommendation:

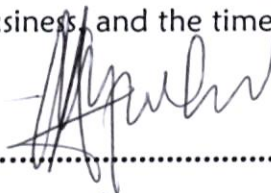
Having listened to the stakeholders and from its own analysis, the Committee will propose amendments for introduction into the Bill during the Committee Stage.

MINUTE NO. DCL/LN/2015/734

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 4.40 p.m. the meeting was adjourned.

SIGNED


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(CHAIRPERSON)

DATE

13th October 2015
.....

**MINUTES OF THE 196TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS
HELD ON FRIDAY 18TH SEPTEMBER 2015 AT THE JUMBO CONFERENCE ROOM
TRAVELLERS BEACH RESORT AND SPA AT 9.30 A.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.
3. The Hon. Kipruto Moi, M.P.

ABSENT WITHOUT APOLOGIES:

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

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono - Clerk Assistant I
2. Ms. Ruth Mwhaki - 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

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 Board
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/2015/699

PRELIMINARIES

The Chairperson called the meeting to order at 10.00 am, followed by a word of prayer.

MINUTE NO. DCL/LN/2015/700

PHYSICAL PLANNING BILL, 2015

The main purpose of the Physical Planning Bill, 2015 is to give effect to Article 68 (2) of the Constitution which provides that Parliament shall revise sectoral land use laws in accordance with the principles set out in Article 60 (1).

The Bill provides for the establishment of Physical Planning institutions and includes the county governments in the preparation of physical development plans.

Submissions on the Bill were made as follows:

Council of Governors

The Chairman, Council of Governors submitted as hereunder, that:-

- a. The County Governments were not involved in the formulation of the Bill;

- b. Title- The title of the Bill does not derive from the Constitution since the Constitution provides for land use Planning;
 Recommendation: rename the Bill to Land Use Planning Bill in line with Articles 60, 66, 67 (2) and 68 of the Constitution and paragraphs 101 – 123 of the National Land Policy;
- c. Institutions –Clause 5 of the Bill creates the National Physical Planning consultative forum with a membership of 60 members. The functions of this forum can be performed by existing agencies namely the National Land Commission and the Cabinet Secretary.
 The clause should be deleted section and the functions assigned to the National Land Commission and the Cabinet Secretary;
- d. Types of development Plans-Clause 19 outlines types of physical plans that may be prepared under the Bill. These plans are at variance with the plans that are already provided for in Sections 107, 108, 109, 110 and 111 of the County Governments Act and Sections 36- 42 of the Urban Areas and Cities Act. The Bill should create a section of types of plans that may be prepared e.g. National land use plan, County Land Use Plan, Sub-County, City and Urban Areas Land Use plans, Wards and Village Areas Land Use Plans;
- e. The Bill creates many institutions leading to bureaucracy and stifling functions best discharged by Constitutional bodies. In case of weakness within an existing institution, the capacity of the institutions should be enhanced instead of creating duplicate bodies;
- f. National Director of Physical Planning- Clause 15 provides for the National Director of Physical Planning. The Constitution of Kenya assigns the role of monitoring and overseeing land use planning throughout the Country to the National Land Commission. The office of the director of Physical Planning is therefore redundant under the current Constitutional framework;
- g. Clause 95 of the Bill purports to amend the County Governments Act ostensibly to take away the approval powers of County Assemblies. This is retrogressive as the assemblies are the policy makers of Counties and are responsible for allocating resources for the implementation of the plans in their respective wards. It is therefore ill advised to takeaway this crucial responsibility should therefore not be taken away from them

Constitutional Implementation Commission

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

- a. Title – The title should not necessarily be as stated in the Constitution, e.g. Public Finance and Management Act is not stated in the Constitution. The Bill must however address the issues raised in the Constitution and this has been addressed by the Physical Planning Bill. Further, there was no agreement among the Physical Planning professionals on what should be the proper title of the Bill. The title as it is in the Bill incorporates more than land use;
- b. National Physical Planning consultative forum – The forum is necessary and not bloated given that every County Executive Member from the forty seven Counties will be a member of the consultative forum in addition to other representations in the forum;
- c. The County Planning forums are not unconstitutional and incorporates all the broad players in the Constitution;

- d. The National Land Commission cannot carry out plan preparation. The commissions function is to oversee the plan preparation;
- e. Approval of plans by the County Assemblies - Regional plans involve more than one County. It would therefore cause confusion as to which County Assembly should approve the plan, or if it would have to be approved by each of the concerned County assemblies. The Development plan is a tool of the executive and the County Assemblies should therefore not necessarily approve the County development plans in the same manner the National Government plans are not taken to the National Assembly for approval;
- f. Roles-National director of Physical Planning advises the Cabinet Secretary while the County Government plays a coordinating role;
- g. There were consultations on the Bill.

Kenya Institute of Planners (KIP)

The representatives of the Kenya Institute of Planners (KIP) submitted as hereunder, that:-

- a. KIP has in the past submitted a complete copy of draft which has clauses that need to be synchronized with the published Bill;
- b. Title- The Bill should be given either of the following titles- 'The Planning Bill' or - The Spatial Planning Bill;
- c. A definition of Physical Planning is required to explain that the term is variously referred to as Spatial Planning, Land Planning, Urban and Regional Planning, Town & Country Planning and Land use Planning;
- d. Planning Authorities as provided for in the Bill are agreeable;
- e. Planning institutions established are agreeable except for the membership. I.e. membership should include the National Director as be a member of the National Physical Planning consultative forum, County Director as a member of the County Physical Consultative forum, National Land Commission and Cabinet Secretary;
- f. There should be qualification for the National Director of Physical Planning, County Director of Physical Planning and the Municipal Director of Physical Planning to be a corporate members of the Kenya Institute of Planners;
- g. Functions- There is need to add a provision for the National Director to prepare and update the Physical Planning manual at least once every ten years;
- h. National Development Plan- the Bill proposes an implementation period of 20 years not which is too short. We propose -'National Spatial Development Plan' which Should cover a period of 30-35 years as is the normal practice;
- i. County Physical Development Plan-The term should be 'County Spatial Plan' as used in County Governments Act. The two should ideally be the same to avoid duplication of resources;
- j. Preparation of Plans- A new clause should be added as follows, 'Development Plans may be prepared by contracted Consulting Registered Planners' as existed in the Physical Planning Act, Cap 286. Guidelines should be formulated for the same;

- k. Local Physical Development Plans should include 'Integrated City or Urban Development Plan' (ISUDP) under the Urban Areas and Cities Act, 2011, long or short term plans, urban renewal or redevelopment, subject plans, zoning plans and Planning policies;
- l. Development Control - Section 59 (3) to include all subdivisions (the Bill states only subdivisions exceeding 2 plots), Land Readjustments- involving plots of different owners, and Land Use Master Plans -schemes where there are no subdivisions .The same should also be added in the Fourth Schedule;
- m. Registration of documents- retain the clauses existing in the Physical Planning Act as;
 - i. The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with;
 - ii. Registrar has the same definition assigned to it in the Land registration Act 2012
 - iii. It shall be deemed to be an offence if the registrar acts contrary to (1) above
 - iv. Add the following clauses on Approval of title surveys;
 - a. The Surveyor shall refuse to approve any title survey relating to the development of land unless a development permission has been granted as required under this Act in respect of such development
 - b. The Surveyor has the same definition assigned to it in the Survey Act 110.
 - c. Failure to comply with Section 108 (1) shall be an offence under this Act and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.
- n. Dispute resolution – The bill should provide a clause specifying procedure of communicating decisions made by the committees;
- o. Key Schedules Missing- a. PPA1 - To Be Improved from PPA1 Cap 286, Enforcement notices - To Be Improved from Cap 286 and Appeals notice - To Be Improved from Cap 286.

Transition Authority

The representatives of the Transition Authority submitted as hereunder, that:-

- a. The devolved system of Governance provided for under COK 2010 provides for two tiers of Government - the National Government and County Governments. Amongst National Government Functions is the function of National economic policy and Planning while the County Governments undertake County Planning and development, including Land survey, mapping, boundaries and fencing and housing;
- b. Land survey, mapping and housing were transferred to County Governments vide Legal Notice No. 16 of 1st February, 2013;
- c. The Transition Authority transferred to County Governments, not only land survey, mapping, boundaries, fencing and housing but also Planning (both Physical Planning and economic/integrated development Planning) and statistics;
- d. Agreements on transfer of functions- Article 187(1) provides that a function or power of a government at one level may be transferred to government at another level by agreement between governments if:

- i. A function or power would be more effectively performed or exercised by the receiving government; and
 - ii. If a power or function is not prohibited by legislation under which it is to be performed or exercised
- e. Article 187(2) provides that If a power or function is transferred from one level of government to another level of government:
 - f. Arrangement shall be put in place to ensure that the resources to perform the function or exercise the power are transferred; and
 - g. Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule;
 - h. The Constitution of Kenya makes reference to National economic policy and Planning but not Physical Planning;
 - i. The only area the National government can perform Physical Planning function is in National projects (e.g. LAPSET or special purpose cities), or joint international projects;
 - j. Section 9-12 of the Physical Planning Bill, 2015 creates the County consultative forum which is a duplicating function of the County Government and creates confusion and renders land use planning impracticable.
 - k. The County Government Act and the Urban Areas and Cities Act already clarifies the Planning framework in the County.
 - l. On the composition of the National Physical Planning Council in clause 5(2) if the council will oversee development of regional physical plans, the Cabinet Secretary responsible for devolution should be a member;
 - m. The functions of the council in section 10 will promote effective integration between physical, economic and sectoral Planning within the framework of National and County Development policies;
 - n. It is not clear the difference of the objectives of the National Physical Planning Council and those of the MTP and Vision 2030;
 - o. The Bill is clearly inconsistent with Presidential Order on the structure of the government.
 - p. The Bill states that the National Physical Planning Consultative Forum will provide Counties with capacity building upon request. As mentioned earlier it is a Constitutional requirement for the National Government to provide capacity building to Counties;
 - q. Clause 15 talks about appointment of and establishment of the office of the National Director of Physical Planning while clause 16 provides for qualification for appointment as the National Director of Spatial Planning. There is need to clarify if there are these two different offices or one office with different titles;
 - r. Clause 17 gives the functions of the National Director of Planning. There are several directors of Planning in the state department for Planning in the Ministry of Devolution and Planning;
 - s. In clause 20 there is confusion between the purpose/function of the National Physical Plan with those of the Medium Term Plan and Vision 2030 with regard to promoting economic growth and location of National investments;
 - t. The National Physical Planning Consultative forum should be made by principal secretaries and not cabinet secretaries;

- u. There is need to understand what sectors and sectoral plans in the Bill are. In the County Government Act, County sectoral plans are departmental plans. In Kenya sectoral plans are what is also referred to as strategic plans;
- v. There is confusion with the chairmanship of Regional Physical Planning committee.
- w. Clause 28(1) provides that two Counties may, by mutual agreement or out of necessity, formulate a Regional Physical Development Plan, subsection (2) states that in preparation of such a plan the Counties will form a regional Physical Planning committee chaired by the National Director of Physical Planning. Clause 28(3) (b) provides that the members of the County executive committee responsible for Physical Planning will elect the person to chair the committee. The Bill does not take into consideration/account the situations in Counties where the executive committee member for Physical Planning is not responsible for urban development.
- x. Any type of regional plans can only be undertaken under the guidance of Intergovernmental Relations Act, 2012.
- y. Clause 34(2) - the Regional Development Plan should not be approved by the relevant governors but by the Counties executive committees and in subsection (3) the approved plan should be tabled in the County assemblies for approval - not just deposited in the relevant assemblies.

Ministry of Lands, Housing and Urban Development

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

- a. The new Constitutional order has presented an opportunity for curing the separation between preparation and implementation, monitoring and oversight Planning function and opportunities for Planning and implementing decisions made at the lowest possible levels of devolution by establishing Planning authorities at County levels. In addition it has presented an opportunity to the National Level to formulate policy plans to standardize Planning practice across the Country Article 60, 66(1), 67, 186 Constitution;
- b. The process of reviewing the Physical Planning Act Cap 286 was initiated immediately after the promulgation of the Constitution of Kenya 2010. A Concept Paper was developed in 2012 to guide the Bill's formulation process. The process benefitted from professional input from the Kenya Law Reform Commission and insights and presentation from the Chairperson of the Devolution Taskforce;
- c. On 28th April, 2014 the Bill was circulated by the Director of Physical Planning for comments to the following individuals/ organizations:
 - i. The Chairman of the National Land Commission
 - ii. The Chairman Transition Authority
 - iii. County Secretaries
 - iv. Chairman of National Environment Management Authority
 - v. The Registrar Physical Planners Registration Board
 - vi. The Chairman Kenya Institute of Planners
 - vii. The Chairman Architectural Association of Kenya
 - viii. The Chairman Land Development and Governance Institute

- ix. The Chairman Association of Professional Societies in East Africa (APSEA)
 - x. The Chairman Institute of Surveyors of Kenya
 - xi. The Chairman Department of Urban and Regional Planning University of Nairobi
 - xii. The Chairman Department of Urban and Regional Planning Maseno University
- d. The Director of Physical Planning received comments from various institutions. On 1st July, 2015 following the stakeholders Round Table meeting organized by Constitutional Implementation Commission at the Kenya School of Government, the Council of Governors through the County Executive Committee members CEC “Lands Group” submitted their considered comments on the Bill;
- e. The Commission for Implementation of the Constitution held a round table meeting on 24th June, 2014 at the Kenya School of Government. The National Land Commission, County Governments, Kenya Institute of Planners, Kenya Land Alliance and Architectural Association of Kenya (Town Planning Chapter) were in attendance. County Governments were therefore not excluded in the process of formulation of the Bill;
- f. The Bill met the Constitutional threshold of public participation, respects the devolved systems of governance, interlinks and relates with other existing relevant legislation, respects sound Planning theory and is consistent with global best practices;
- g. The Bill provides an institutional framework for the State to regulate the use of any land to the interest of public safety, public order, public morality, public health or Land Use Planning in line with the provisions of Article 66 of the Constitution;
- h. The Bill provides that public Institutions at the National and County levels are required to prepare and submit to the National Land Commission status reports of implementation of the National physical Development Plan. This will ensure that Planning Authorities at the National and County levels are answerable to the Commission;
- i. The Bill revises and consolidates Land Use laws which currently fall under various statutes;
- j. The Bill accords to the devolved system of government in the following manner:-
- i. Part I – Preliminary- County Governments are Planning authorities;
 - ii. Part II – Physical Planning institutions - County Executive Committee Members are responsible for formulating County and Urban Physical Development policies, enforcement of Planning standards and development control;
 - iii. Part III – Types of physical development plans- County and Local Physical Development Plans will be prepared and approved by County Governments.
 - iv. Parts IV and V– Development control - County Governments are responsible for development control.
 - v. Part VI– Physical Planning Liaison Committees - County Physical Liaison Committees will hear and determine appeals on disputes relating to Physical Planning. Appeals will be lodged in the Environment and Land Court and not the National Physical Planning Liaison Committee.
- k. Linkage between the Bill and other relevant existing legislation:-
- i. The Bill provides a framework to actualize the objectives of County Planning as outlined in Section 103 of the County Government Act 2012;

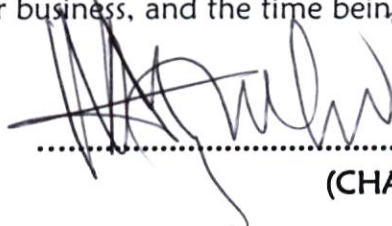
- ii. The Bill is applicable in National Legislation with regard to Physical Planning referred to in Article 191(3) and Section 20(1)(i) of the Urban Areas and Cities Act 2011;
 - iii. The Bill outlines the Physical Planning requirements referred to in Section 18(9)(a) of the National Land Commission Act, 2012;
 - iv. The Bill is the relevant law relating to development control referred to in Section 115(4) of the Land Act 2012 with respect to care, control and management of reserved public land;
- I. The Bill does not undermine the spirit and letter of devolution as contained in Article 6 of the Constitution of Kenya.

MINUTE NO. DCL/LN/2015/701

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 2.23p.m. The meeting was adjourned.

SIGNED



.....
(CHAIRPERSON)

DATE

12th October 2015
.....

MINUTES OF THE 197TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS
HELD ON FRIDAY 18TH SEPTEMBER 2015 AT THE JUMBO CONFERENCE ROOM
TRAVELLERS BEACH RESORT AND SPA AT 3.30 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.
3. The Hon. Kipruto Moi, M.P.

ABSENT WITHOUT APOLOGIES:

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

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono - Clerk Assistant I
2. Ms. Ruth Mwhaki - 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

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 Board
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/2015/702

PRELIMINARIES

The Chairperson called the meeting to order at 3.40 pm, followed by a word of prayer.

MINUTE NO. DCL/LN/2015/703

PHYSICAL PLANNING BILL, 2015

Submissions on the Bill were made as follows:

National Land Commission;

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

- a. The Title of the Bill "Physical Planning" is alien to the Constitution which provides for Land Use Planning at Articles 60, 66, 67, 68 and the Fifth schedules. The National Land Policy at paragraphs 101-143, provides for "Land Use Planning" and not "Physical Planning". They

recommend that the Bill is renamed as Land Use Planning Bill in line with articles 60, 66, 67(2)(h), and 68 of the Constitution and paragraphs 101-123 of the National Land policy;

- b. The Bill does not recognize the functions of the National Land Commission as provided for in Article 67 of the Constitution:-
 - i. to manage public land on behalf of the National and County Governments 2(a);
 - ii. to monitor and have oversight responsibilities over land use Planning throughout the Country (2)(h).

These functions should be clearly elaborated and find explicit expression in any legislation relating to Land Use Planning;

- c. The proposed Physical Planning Bill 2015 fails to meet the requirements of Article 68(b) of the Constitution which requires parliament to revise sectoral land use laws in accordance with the principles set out in Article 60(1). This is in respect to administrative institutions that are efficient, sustainable, transparent, and cost effective;
- d. National Physical Planning consultative Forum (membership of over 60 persons), Cabinet Secretary, National Director of Physical Planning and the National Land Commission is large, amorphous and an unnecessary burden on the taxpayers. The functions assigned to this forum are a duplication of the functions of the National Land Commission and the Cabinet Secretary;
- e. Clause 9 - County Physical Planning Consultative Forum:- The functions of the forum are unconstitutional and duplicates functions of the County Government;
- f. The Bill at clause 15 creates the office of the National Director of Physical Planning. The office of the Director of Physical Planning under the current Physical Planning Act has performed dismally. The office is redundant under the current Constitutional framework;
- g. The Physical Planning Bill 2015 disregards and conflicts with the County Governments Act 2012, the Urban Areas and Cities Act 2011 and the National Land Commission Act 2012. This is With respect to the functions of the National Government/ Executive, the County Governments and the National Land Commission;
- h. Clause 19-54, outlines types of physical development plans that may be prepared under this Bill. These plans are at variance with the plans that are already provided for at sections 107, 108,109, 110 and 111 of the County Government Act and sections 36-42 of the Urban Areas and Cities Act. The types of plans should be in tandem with the already existing legislated laws. It is recommended that the Bill should provide for comprehensive hierarchy of plans to include: National Land Use Plan, County Land Use Plan, Sub-County, City and Urban Areas Land Use Plans, Wards and Village Areas Land Use Plans.
- i. Clause 95 of the Bill purports to amend the County Governments Act ostensibly to take away the approval powers of the County assemblies this is against article 185(4) of the Constitution. This is retrogressive as the assemblies are the policy makers of the Counties and are responsible for allocating resources for the implementation of the plans in their respective wards. It is therefore ill advised to take away this crucial responsibility from them.
- j. The Bill is not in line with the land reform agenda as required under Article 60(2) of the Constitution and the Sessional Paper No. 3 of 2009 on the National Land policy paragraphs

101-143 on the preparation of land use plans and 228-253 on the Institutional Framework for delivery of land reforms at the National and County levels.

- k. The Bill is not progressive and does not meet the requirements of the new Constitution of Kenya 2010 and strives to maintain the old order. The proposed Bill is not fundamentally different from the current Physical Planning Act of 1996 that has not been effective and only introduces cosmetic changes to the act.
- l. The proposed Bill fails to be an enabling legislation of the Constitution in respect to Article 66 and the Fifth schedule which provide for Land Use Planning. The Bill therefore does not provide clarity to the Implementation of the Constitution but causes confusion;
- m. The proposed Bill has glaring inconsistencies in structure and content with respect to mixed up usage of terms "Physical Planning" and "Spatial Planning". The content and scope is limited and does not cover new areas of concern like rural areas, marine, mining, oil exploration and development, infrastructure, environmentally fragile areas and trans-National areas.

The Architectural Association of Kenya

- a. The Bill centralizes Physical Planning functions at the National level;
- b. The Bill has bestowed a lot of powers and responsibilities in the preparation of physical development plans to politically appointed persons such as the Cabinet Secretary and the County Executive Committee member in charge of Physical Planning;
- c. There is no clarity in how the two levels of government would relate in executing Physical Planning functions. The National government should be charged with preparation of National Physical development plans and policies only. The County Governments should be left to undertake Planning within their jurisdiction;
- d. The Bill has established too many institutions with excess membership therefore creating unnecessary bureaucracy and likely misuse of resources. Decision making will also likely be ineffective;
- e. The Bill establishes the office of the National Director of Physical Planning and ignoring the need to have the office of the County director of Physical Planning in each County appointed by the County Public Service board to execute Physical Planning matters at County level;
- f. The qualifications of the National Director of Physical Planning and the County director of Physical Planning should be provided for in the Bill to include a first degree in urban or regional Planning or related spatial Planning field, registration as a Physical Planner, experience and integrity;
- g. Development control is mainly a County Government function. The Bill has not been clear on who receives application and grant permission for development. It has only mentioned County Governments and what it calls Planning authority in passing without stating the actual office at the County level. All applications for development permission under the development control section should be addressed to the County director of Physical Planning who should process them in consultations with the relevant authorities and grant /reject approval for development as the main agent of the County Government;
- h. The Bill should clearly define Planning Authorities.

Land Development and Governance Institute (LDGI);

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

- a. Clause 2 :- Reference to spatial development plans with respect to development control Definition is provided for “spatial Planning” but the term is not applied in the Bill. Spatial development plans are not provided for. The Bill should remain consistent with use of Physical development plans rather than floating across terminology.
- b. Clause 4:- Principles and norms The Bill should set out specific principles that inform and guide the Physical Planning process, from the spatial stage to development control – and give an indication of how such principles will be applied. For example –
 - i. principle of connectivity
 - ii. principle of sustainable land management and use
 - iii. polluter pays principleThe currently provided principles are generic – and may not assist in the interpretation of the law
- c. Clause 13 :- Functions of the NLC relative to the power of the Cabinet Secretary set out in the Bill, it is unclear what “oversee” and “monitor” means in practice – and could result in conflict and paralysis in Physical Planning;
- d. Clause 14:- Functions of the Cabinet Secretary - It is unclear what “coordinating” Physical Planning by County Planning authorities – legally amounts to;
- e. Clause 15:- Director of Physical Planning - Office is variously referred to as National Director of Physical Planning, National Director of Spatial Planning, and National Director of Planning. - Consistent use of language is necessary;
- f. Clause 17:- Functions of Director of Physical Planning - An additional function should include advising the Cabinet Secretary on procedure for undertaking meaningful public participation in the Physical Planning process at National and County level ; And advising the Cabinet Secretary on strategies for ensuring that National and Physical Planning is consistent with the principles of sustainable development, environmental conservation, and connectivity;
- g. Clause 18:- Functions of County Executive Member:- The section refers to “standards of Physical Planning” but the Bill has no explicit provision for setting of such standards;
- h. Clause 20 :- Purpose of the National Physical Development Plan - On the basis of the Plan in 20(2) – the Bill should add that the Plan should be the Basis for “use of space available in a manner cognizant of National development priorities and sustainable development”;
- i. Clause 22:- Content of the National Physical Development Plan - This should also include:
 - i. environmental conservation;
 - ii. strategies for ensuring sustainable utilization of space and natural resources;
 - ii. principles of ensuring connectivity in Planning across sectors, and at all levels of government.
- j. Clause 23:- Appeal to Cabinet on dissatisfaction with National Physical Plan -An appeal to the Cabinet maybe out of reach for ordinary Kenyans. In any event, this amounts to converting the Cabinet into a Tribunal;

- k. Clause 26:- Status reports on implementation of National physical development plan- Section should be modified to empower the NLC to consolidate the reports into a single National report and forward to National Assembly and Senate – as part of oversight in development;
- l. Clause 28:- Section 28(2) contemplates creation of a regional Physical Planning committee- Section should be modified to note that this committee is within the meaning of joint authorities contemplated by article 189 of the Constitution;
- m. Clause 29:- Scope of regional physical development plan-The scope should also set out any unique spatial, natural resource, environmental, economic or social circumstances peculiar to the Counties undertaking joint Planning – and analyse how to utilize such circumstances as opportunities, or how to overcome, if challenges-Such a plan should also contain an implementation plan;
- n. Clause 30:- Purpose of a regional physical development plan-Section 30(2) – the purposes should extend to specific Physical Planning concepts, including connectivity (including of peculiar circumstances referred to above) or connectivity in resource Planning and use – such as joint protected areas, or greenbelts for conservation and catchment management;
- o. Clause 36:- Implementation of regional physical development plan-The hierarchy of the National and regional plans, relative to those at County, urban etc. – should be clear;
- p. Clause 38:- County physical development plan-The section should specify how this plan relates to the County Integrated Development Plan, and the spatial plans prepared thereunder;
- q. Clause 46:- Local physical development plans- Section 46(2) cross-applies the term to “local spatial development plans” – consistency in terminology is missing in the Bill
- r. Clause 53-54:- Special Planning area-Special areas are presented as unique stand-alone and as a result, Connectivity is missing between the special Planning area – and the surrounding County/regional physical development plan;
- s. Clause 57:- Development permission- Section should be explicit that permission is sought from the Planning authority of a County Government;
- t. Clause 57(3) may result in demolition of properties built without permission. While this may be desirable in some instances, economic loss maybe extreme in others. In any event, the design of this section opens it up to judicial challenge;
- u. Clause 58:- Application for development permission-Provision should require that the prescribed fees, including the computation formula for the fees should be publicly disclosed;
- v. Clause 62:- Environmental Impact assessment-In this section, EIA is cast as optional. The Bill should be modified to require an applicant for development permission to have obtained an EIA license prior to making an application – or in the absence of an EIA license, to demonstrate the grant of an exemption by the National Environment and Management Authority. This ensures that no development permit application is considered by a Planning authority without a prior mandatory EIA process;
- w. Clause 64:- Development fees- The word “may” should be replaced with shall (in subsection 2) to ensure the publication of fees is mandatory;

- x. Clause 74:- Requisition notice- A requisition notice issued on a private property to stop its development in the public interest exceeds the police (land use Planning) power of the state and amounts to compulsory acquisition – within the meaning of article 40 (for public purpose or public interest);
- y. Clause 76:- Appeal on requisition notice to Liaison committees-The subject matter of such an appeal is mainly on questions of law, not fact, and is therefore suitable for a court of law (Environment and Land) or for arbitration. In addition, functions of the Liaison Committees are now performed by the National forum and as such the liaison committees should be removed from the Bill.

Kenya Land Alliance

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

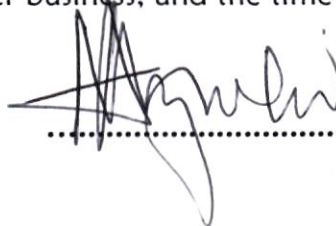
- a. There is need to revise sectoral land use laws in line with Article 68(b) of the Constitution;
- b. Section 101 of the current Physical Planning act- should be retained.
- c. Parts II and VI of the Bill should be combined as they deal with the establishment of institutions.

MINUTE NO. DCL/LN/2015/704

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 17.26 p.m. the meeting was adjourned.

SIGNED



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(CHAIRPERSON)

DATE

12th October 2015

Approved by *Blahina*
3/12/14

PARLIAMENT
OF KENYA
LIBRARY

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION - 2014

REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS

ON

LAND ADJUDICATION ISSUES IN MERU & THARAKA NITHI COUNTY

*paper laid
by chair Land
committee on
3/12/14
Blahina*

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

DECEMBER, 2014

DEPARTMENTAL COMMITTEE ON LANDS

The Departmental Committee on Lands was constituted on 16th May 2013, pursuant to the provisions of Standing Order no. 216 (1) and (5) of the National Assembly. The functions and mandate are outlined in the SO and House Rules.

The Committee oversees the operations of the Ministry of Lands, 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.

COMMITTEE MEMBERSHIP

The Committee comprises of the following Members:

The Hon. Alex Mwiru, M.P - Chairman	The Hon. George Oner
The Hon. Moses Ole Sakuda, M.P. -Vice Chairman	The Hon. Mathew L. Lempurkel
The Hon. Rev. Mutava Musyimi	The Hon. Shakila Abdallah
The Hon. John Kihagi	The Hon. Dr. Paul Otuoma
The Hon. Francis W. Nderitu	The Hon. Thomas Mwadeghu
The Hon. Eusilah J. Ngeny	The Hon. Ali A. Shariff
The Hon. Raymond K. Moi	The Hon. Francis Njenga
The Hon. Hellen Chepkwony	The Hon. Hezron Awiti Bollo
The Hon. Sarah Korere	The Hon. Benard Bett
The Hon. Benson Mbai	The Hon. Esther Murugi
The Hon. Kanini Kega	The Hon. Oscar Sudi
The Hon. Gideon Mung'aro	The Hon. Onesmus Ngunjiri
The Hon. Suleiman Dori	The Hon. Julius Ndegwa
The Hon. Lawrence Mpuru Aburi	The Hon. Joseph Magwanga
The Hon. Patrick King'ola	

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to register its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee and the staff, in the execution of its mandate.

Let me take this opportunity to thank all Members of the Committee for their patience, endurance and dedication to committee business, despite their other commitments and tight schedules, which enabled the Committee to complete this Report.

On behalf of the Departmental Committee on Lands, and pursuant to Standing Orders No.199 of the National Assembly, I now have the honor to present the Report and Recommendations thereto for adoption pursuant to the provisions of standing orders of the National Assembly.

Thank You,

SIGNED 

CHAIRPERSON

(HON. ALEX M. MWIRU, MP)

DEPARTMENTAL COMMITTEE ON LANDS

DATE 12/11/14

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1.0 INTRODUCTION

1. The Departmental Committee on Lands Toured TharakaNithi and Meru County between 6th to 10th February, 2014 having noted the boundary disputes between Communities in TharakaNithi and Meru Counties in order to address the issues and get views from the local Communities.

2.0 FINDINGS

The Committee during its visit in Tharaka Nithi County made the following findings;

2.1 HISTORICAL LAND INJUSTICES & CONFLICT IN MURINDA SUB-LOCATION

The Committee toured Murinda Sub-Location and was informed as follows, That:

2. The sub-location was created in 1997 out of Gakurungu location Tunyai Division, It is located in the Northern part of Gakurungu Location Tunyai Division Tharaka Sub-Country, TharakaNithi County, It borders Kirendene sub-location Mitunguu Location of Imenti South District/Counstituency. Karocho sub-location, Gakurungu sub-location and lastly Tunyai Sub-location of Tharaka sub-county.
3. The sub-location is the largest in Gakurungu location and residents live under intense threats and intimidation from Imenti South politicians and Imenti South land Claimers (see some copies of notices to vacate the land).
4. Historical injustices existed after independence in 1963 due to Pressure from the Administration Police Officers from Mitunguu Location, Imenti South. The Government of Kenya established the land office for land adjudication and demarcation, the process commenced in 1964. At the time Meru consisted of Tharaka, Meru, Tigania, Igembe, Mwimbi and Chuka less than one District Commissioner who had an office in Meru Town. The adjudication process commenced from Meru because it was the headquarter of the greater Meru District.
5. The adjudication officers under the then land Minister the Late Hon. Jackson Angaine from Meru visited Murinda sub-location and demarcated land after that Land officers in Meru, allocated title deed to other people from Meru and other parts of the country leaving behind the real land owners (Residents) of Murinda without title deed who were living in the area. However unknown to Murinda residents they continued with their daily activities developing their land whereas awaiting allocation of land or to be shown their beacons and get title deed which never happened however after some years they were surprised by aliens (foreigners) who were visiting the area claiming to have title deed and referring to residents as squatters. These action bread conflicts between the title owners and those occupying the land; Later the title deed owners started visiting the area with police officials and surveyors searching for the land whose title deeds they possessed since they did not know its site and location.

6. The residents complained about the injustice by land official to different offices i.e the administration, political leader's minister and even to the President of the Republic of Kenya through Memoranda without success. This led to the formation of the **Zackary Ogongo Commission of Inquiry** which on its finalization of its work recommended that the people of Murinda should be given their title deeds which were given to other people who are not true residents.

7. The Committee was also informed that the residents of Murinda sub-location have suffered greatly, economically, socially and due to that there is no development activities in the area which has been occasioned by the following issues among others;
 - a) Lack of title deeds which are important for development of the area.
 - b) Intimidation by the Provincial administration from South Imenti and political leaders who summon people and order them to vacate their land leading to conflicts which results into tribal and clan wars/skirmishes leading to people being arrested and prosecuted.
 - c) Dismissal and interdiction of provincial administration officers from the service whose origin is the area to intimidate resident so that they can surrender their land.
 - d) Serving the residents with advocate letters demanding them to surrender the land or get arrested and be prosecuted.
 - e) Visitation in the area by police officers and surveyors who then survey the land causing conflicts between residents and visitors.
 - f) Intrusion and commencement of CDF project by South Imenti Leaders which is illegal and forcefully evicting residents, for example the Police Post in KarimaKaathi, NjuriNceke shrine in KarimaKaathi and Rwararwalchongi Dispensary whereas when the communities in Murinda commence project they are stopped e.g. Matagatani – Mbeti road was stopped from being implemented under (KaziKwaVijana) KKV programme, Muthitwa – Mbeti-Karocho road, Magati water project was stopped when some hired homesteads declined to allow water line through their land due to the influence from the political leadership from Imenti South.
 - g) Political leaders from South Imenti extending administration boundaries an order to have power to grab land belonging to Murinda residents and commanding Area Chiefs and Assistant Chiefs, Administration Police and District Officer to summon Murinda residents ordering them to know that that they are under jurisdiction.

8. The residents of Murinda requested the Committee to settle these land injustices once and for all to enable current and future generations to live in peace. Secondly, they asked to be given title deeds in Murinda sub-location, Gakurungu Location, Chiakanga Wards, Tharaka sub-country, Tharaka- Nithi County.

2.2 MEETING IN KIBUNG'A TRADING CENTRE TURIMA DIVISION, THARAKA SOUTH DISTRICT.

On Wednesday 8th February 2014 the Committee visited the area and was informed as follows, That:

2.2.1 THE AMERU GROUP

9. The word "MERU" is thought to have been derived from the "Maa" Samburu (URU) language denoting the group as NDIANKIRI (the peaceful group) since they were not warlike unlike the pastoral communities. The Ameru group is made up of the MBUGI AND MURUNTU descendants. Mbugi and Muruntu were the two sons of Kambugi, son of Kirindi, son of ten according to the Tharaka tradition.
10. "TharakaNithi County is made up of the children of Mbugi while Meru County is made up of Muruntu group. The diversity is depicted by the use of the suffix "...n" for Mbug's and i-ne" for Muruntus, Mbugi's have twelve Njaus' (bulls) as individual tartans while the Muruntu have none. The Ameru are made up of the following sub-tribes:-Chuka, Muthambi, Tharaka, Igoji, Imenti, Tigania and Igembe among the Imenti the generic group is the MiirigaMieru while among the Tigania is Kiriene and lastly Igembe , Mitiire sub-tribe is a hybrid of Igoji and Imenti.

2.2.2 PRE-COLONIAL HISTORY

11. These communities had their own trival lands collectively owned by clans. At Igairon, each group was assigned its jurisdiction by Mugwe.

2.2.3 COLONIAL RULE

12. Authoritative British rule was established by 1st District Commissioner, Mr. Horn (Kangangi) 1906 – 8 where he created administrative boundaries on the basis of areas occupied by each tribe; Tharaka community was bordered to the south by the Mbeere, west by Chuka, Muthambi, Mwimbi and Igoji, North west by the Imenti, in the north the Tigania and Igembe, in the east by the Galla (Ukara/Boran) and in the sout east by the Kamba.

2.2.4 COMMUNITY LAND (ANCESTRAL)

13. TharakaNithi – much of Igambang'ombe division of Chuka/Igambangombe, Tharaka South District, Tharaka North District including Meru National Park, Thagichu in Mwingi and Nthigirani/Muthanthara in Mbeere.

2.2.5 COLONIAL BOUNDARY SETTINGS

- (a) 1908 – Mr. Horn (Kangangi)

14. Mr. Horn set the boundary of Tharaka and its neighbors from Thuci River Riamukoro-Kanduvuu/MbitaYaKaarwa, MaigaMeru (Nduti), Gikuurani, MugaaWalrianKu-Maiga Ma Ikamba-Karorom Ka Utune (Near Nyagene Secondary School), YumbaniRiaKijja-IriaRiaNkandone, Gwatu River-Murika, Kithigiririni (IguruYaKunati) Turamba-Twiri-KarimaGaKarauki, Kithim Kia Mugumo. From Kithima Kia Mugumo the boundary goes down the river to Tana River (Thagana River). The colonial chiefs were Chief M'rwigoM'inanga (Tharaka) and Chief MpogoriWaKatheri (Abothuguchi).

(b) 1938 D.C. MACKTON

15. Chiefs – Tharaka – M'Miuro Kiegeri, later M'mburugu Mutemaankuruigane (Imenti) Kaburuburu; Chief Kaburuburu had requested Chief M'Miuro to cede some land to his people for farming purposes, they therefore agreed for the changes of their administrative areas as follows, from MutongaRiver, Kiiga Kia Nyambene (Mutonga) Kirendani – Thingithu, Mukuyu was Kigonko, Kathima-Mbirikani-Nandora, Kirigicha-Keria Ka Gatampanga-IgaRiaMware-Thangatha Bridge-Manyitani-Mukurukuruni-KaaiMurambani-MuthithinaKwaMutugiRukungi-Kithima Kia Muumo

(c) 1954 DC BUTT

16. M'Mburugu wa Mutemankuru succeeded M'Miuro Kiegeri as the chief for Tharaka but in 1953, was imprisoned during the state of emergency. M'Mugwika M'Njara succeeded him while M'Murithi Alexandar alias Kirugu was made chief for Abothunguci (Imenti group).
17. A new administration boundary was set as follows: Kiiga Kia Nyambene (MutongaGitara Kia Nderi-Muchogomoni-RwararutiGichangi-Gikongiro Kia Rikano (Thingithu)-Mugumo was Kari a-MaigaNkanga-Mooga Rock-Mariara/Kathita river confluence IriaRiaMuuru-Mwonyoni-Karima Ka Ng'arura-IgaRiaMware-Nandora (Kirigicha) Thangatha bridge-Kithima Kia Mugumo and from there down the river to river Tana.

(d) 1994/95 NJURI NCEKE COMMISSION

18. This group based their recommendations on Adjudication section, administrative boundaries and existing boundary beacons. The NjuriNceke Council of Elders was drawn from Tharaka, Niithi and Meru Central and North District, 12 elders from each district (total 35 elders). Their recommendations were varied in Tunyai where they recommended the Mitunguu – Tunyai adjudication boundary as the boundary between Meru District and Tharaka District.
19. The Tharaka group contended that the boundary was created by the then powerful Minister for Lands and Settlements, the Late Hon. Jackson Angaine for purposes of grabbing Tharaka land including Murinda sub-location. In Tharaka North section, Kindani (Macabini sub-location) in Gikingo location were contested by M'Thinkia (NjuriNceke Chairman, Igembe). However other changes in

boundary were acceptable. The Kindani residents were later ethnically displaced by Igembe group.

2.2.6 TASKFORCE ON BOUNDARY DISPUTES

(I) ZACHARY OGONGO

20. Mr. Ogongo came up with an acceptable proposition but his recommendations were scuttled before implementation. The Ogongo Commission was acceptable to the Tharaka Community and any meaningful settlement should be based on time recommendation.

(II) HISTORICAL INJUSTICES

(a) BALKANIZATION OF THARAKA COMMUNITY

21. During the colonial era, Tharaka was the only Meru sub-tribe that was rendered voiceless and insignificant by deliberate balkanization; in that there was Thagichu location as part of Kitui District, Nthigirani/Muthanthara in Mbeere (Embu District), Kajuki and Kamaindi in Chuka (Kamingani and Maginduri North and South Tharaka were administered as part of South Imenti. Therefore due to the split of the Tharaka Community rendered them as minority in every District hence ethnic bias and discrimination which was the order of the day where the reigning communities treated the Tharaka as fiefdom. This is evidenced by the rampant changes in the administrative boundaries especially between Imenti and Tharaka.

(b) HIVING OF CONSTITUENCY BOUNDARIES/LOCATIONS AND WARDS

22. Thagichu which was part of Tharaka Constituency was hived from Tharaka and given to Mwingi in Kitui without the consent of the Atharaka. Parts of Tunyai, Gakurungu (Murinda) Turima (Karocho and Turima) Nkondi (Mwanyani) were curved out to create new administrative areas and wards by Imenti community.

(c) LAND GRABBING

23. Using Map, overlap, swathes of Tharaka land were alienated by way of a deliberate adjudication procedure (Balloting) and issuance of title deeds in disregard of the actual owner of the land. A series of ordinance survey maps with shifting administrative boundaries were drawn.

(d) TRIBAL CRASHES

24. Residents of Macabini sub-location, Gikingo division (Kindani) were forcefully evicted by Igembe residents who were supported by the provincial administration and police. This was cited in the Ogongo Commission report as Kindani residents. The evictees have never been settled back to their ancestral land, these issue strengthened ethnic cleavage and mistrust.

(e) MERU GAME PARK (KENYA GAZETTE NOTICE NO. 4618 OF 3RD DEC 1966)

25. The game park was carved out of the then North Tharaka Sub-Location present day Tharaka North District. At independence, the area was listed as part of Igembe Constituency instead of being part of Tharaka Constituency. The Igembe Communities have never bordered with River Tana. The efforts to reclaim it have fallen on deaf ears 50 years since independence. There still exists Demand the return the same to Tharaka North District, Tharaka Constituency, Tharaka Nithi County.

(f) POLLING STATIONS

26. Successful electoral commissions have refused to open polling centres in our school in the areas contested by our neighbor (Imenti) although these schools are in Tharaka Constituency (see our memorandum to the TRJC of 16th November 2011 Article vi on the same) attached.

2.3 SUBMISSION BY THE DISPLACED THARAKA PEOPLE FROM MACHABINI, KINDANI, KARIMBA ON THE BORDER OF THARAKA AND IGEMBE/MERU NORTH DISTRICTS.

Members from the peace initiative committee of Tharaka District appeared before the Committee on 8th and made the following submission, That;

27. The government should intervene and resolve the ethnic clashes which began in 1997 between the Igembe and Tharaka people. The conflict displaced more than 2,500 families. Seven Primary Schools were destroyed while several people were killed during the conflict;
1. The curfew imposed by the Provincial Commissioner for Eastern province in 1997 and being enforced by Administration Police Officers based at Kathimani camp at ManchiKaibei's homestead be removed to allow the over 2,500 displaced families to access their land unconditionally.
 2. The security personnel at Gatithini Chief's Camp Tharaka should enforce joint patrol across Ura River together with security personnel at Kianda in Meru North/Igembe to give people confidence of one government to restore the status quo prior to 1997 evictions and curfew imposition.
 3. A joint peace initiative committee to be formed which should include Tharaka/Igembe and Kamba people for resettlement and peace keeping.
 4. A multi-sectorial task force on Truth, Justice and Reconciliation Commission to visit this area to establish and recommend on the magnitude of damage caused by the politically motivated ethnic clashes/cleansing.

5. That the government allocate resources to reconstruct the destroyed and closed schools namely;

(a) Karimba Primary School	Code Number 84-069-03-023
(b) Kabangua Primary School	Code Number 84-069-03-021
(c) Mpunguru Primary School	Code Number 84-069-03-024
(d) Machabini Primary School	Code Number 84-069-03-022
(e) Kanjoro Primary School	Code Number 84-069-03-027
(f) Riamwanki Primary School	Code Number 84-069-03-025
(g) Kiumbe Primary School	Code Number 84-069-03-026
6. Officers from Igembe/Meru North District should not be allowed to adjudicate, or allocate any land to anybody or organization within these areas of Kindani, Machabini and Karimba before the government acts positively on the mentioned issues.
7. The Government to provide the displaced Tharaka families with food, clothing and shelter.
8. The Provincial Administration, Church leaders, Ministry of Education, Ministry of Land, Ministry of Housing and Settlement be fully involved in the process of resettlement and peace keeping.

2.4 MEETING IN KIBURINE (KWANG'OMBE) THARAKA

The Residents of Kiburine appeared before the Committee and stated as follows, That:

28. The historical background of Tharaka people settlement in Kwang'ombe/Kiburine dates as early as 1960 according to the boundaries of 1954 imposed by colonial Government which has never been changed in other parts of Kenya but changed only in Tharaka. By then there was nobody living there from Imenti people. That Tharaka people knows about the old boundary put by colonial government with the agreement made by all elders from all corners of old Meru, of major tribes that is, Chuka, Tharaka, Imenti, Tigania and Igembe is that Tharaka people did not close it. Naming a few elders M'Ntoainoti, M'Njurai and M'Ruito.
29. The Tharaka residence of Kwang'ombe/Kiburine farmed, built schools, houses and kept livestock. In 1971, demarcation was conducted at Kwang'ombe/Mathunka and land given to Tharaka people who were living and farming there however title deeds were given to Imenti people due to corruption, cronyism and tribalism led by the then powerful Minister of Lands the late Hon. Jackson Angaine. The title deeds were given to Imenti people replacing the names of Tharaka community with the names of Imenti people by the time of issuing title deeds.
30. According to Cap 284 Laws of Kenya, if one is found living in a piece of land she/he has the right to own it. Because of corruption and tribalism used by surveyors with Imenti people, they gave the land belonging to Tharaka community to Imenti people.

31. After taking Buunta Primary School later they have started interfering with Iriaria Mathunka Primary School administration. This school was under Gatunga Catholic Mission sponsorship because of this corruption they took it to Nkabune Mission in Imenti however the administration of the school belong to Tharaka but sponsorship is in Nkabune in Imenti. Due to this correlation the school is under DEB. Tweru market was plotted where by now Mutharka people were not allocated even one plot even those who have built there have bought the land from Imenti people. Since all this period of time Tharaka people have suffered. In early 1980s people from Tharaka were arrested and imprisoned thereby their shambas in the hands of Imenti people. As this was the years of torture and persecution, some lost their lives eg. Kinyia Mbuthu husband to Jeniffer Ciamwarario whose shamba was grabbed by Ntimi and others were castrated eg Mwithi Kithiirawholseshamba was grabbed by Thiora. Many people of Tharaka are landless even today.
32. That the problem being faced by the people are among others;
1. Eviction from our parcel of land (continues up to-date)
 2. Lack of land to farm
 3. Continuous hunger
 4. Lack of education
 5. Lack of shelter
 6. Poor health
 7. Increase of squatterism
33. If the government of Kenya cannot be able to extract the truth of the boundary of Tharaka community put by the colonial government as other part of Kenya which are not changed let it seek assistance from the international communities.
34. That Marimanti via Mitunguu and Nkubu, stopping point was at Mkandune/ (Mukuyuni), the other point near Mitunguu where currently there is an airport. From Gatue Gatunga via Mukothima, other stopping was at Kithingirini near (Murika market) physical features, Mountains, Kiagu Mountains also Mt. Njuguni, Mt. Kiera they are within Tharaka land for it was Tharaka people who put solovary and trigonometrically points on top of these mountains.
35. When the government of Norway offered to support Kenya in irrigation, the project was targeted in Nkondi in Tharaka however the personnel who came put a lot of efforts to mark major areas of work along R. Kathita these people had guiding maps for they were working within Tharaka land and when the British government brought new cross breed crops e.g. Millet, sorghum, green grams etc. One personnel, Mr. Robert lee a European was given a trial test sites at Marimanti near BTL buildings the other one at Kanyaga at the shamba of Kerebu. The former assistant chief of Ntugi Location. This man had a map showing Mt. Kiagu which guided him to go and put another site at Kiburin/Kwang'ombe.
36. When Sweden's GT came to assist GT of Kenya in getting pure clean water for drinking, they had a map which was clear and true for they never moved outside

to any other community land. They dug boreholes within Tharaka land one at Kithioroka Primary School at the foot of Mt. Kiagu. The other Two IriaRiaMathunka Primary School Kwang'ombe camp and some along the boundary line eg. Rurii, Kirigicha, Kangurini, Gatithini and so on.

37. Mt. Njoguni is in Tharajka, even Meru National Park among other parks given to government of Kenya, the elder of Tharaka Mr. Simon Guachu signed it as Tharaka land.
38. When East Africa Community was formed, they had some areas of work. When they came in Tharaka, they borrowed the land at IriariaMathunka for demonstration to fight tsetse fly for Tharaka community. They kept herds of cattle and that is why it is called Kwang'ombe. When it declined in 1976 – 77, the land was left in the hands of Tharaka people as it was before. When sheep and goats project was brought in Tharaka, the major base was at Marimanti and the other one was at Kiburine/Kwang'ombe.
39. That the expectations of the residents are as follows;
 - a) Stop the eviction process.
 - b) Resettle the evicted people to their former land (shambas).
 - c) Revoke title deeds which were issued through corruption, canning and tribalism
 - d) Preach peace and reconciliation
 - e) Compensate affected people.
 - f) IriaRiaMathunka Primary School is in Mwanyani Location, Nkondi Zone.
 - g) Send an expert of Archeologist to disputed area assist in excavate ruins and other evidence of our former settlements.
 - h) Rescue the land left on hands on Tharaka people by East African Community after her decline in 1976 that these people of Imenti are planning to grab it from TharakaNithi county
 - i) Settle the TurimaTweru market and return it to Tharaka County.

2.5 CONFLICT RESOLUTION MECHANISM IN THE UNDERLISTED AREAS FOR PEACE STABILITY COHESION DEVELOPMENT ON LAND AND INSURANCE OF TITLE DEEDS RESETTLEMENT OF IDPS/SQUARTTERS

39. Due to the record of past conflicts skirmishes and other forms of interventions to restore peace and cohesion to the worrying communities of Tharaka, Kamba, Tigania, Igembe and Imenti at the borders of TharakaNithi and Meru counties the Committee was informed that the government should:-
 - a) Urgently implement Ogongo Taskforce Report Gazette Notice NO. 6064 of 11412 – 2008 in its full content.
 - b) To allocate financial resources to complete land adjudication process which Ogongo Taskforce had started using Cap 284 and GPS to give land owners numbers and title deeds in the following areas; Mukothima, Thiiti, Gatithini,

- Kirundi, Kioru, Riamikuu, Kirumone, Igarii, Kanjagi, Murinda, Kathuura, Turima, Ruungu and Karocho which are identified as hot spots due to land scramble.
- c) To resettle over 3500 Tharaka families and rebuild primary schools destroyed who were evicted by the government during clashes of 1997 between Igembe and Kamba against Tharaka people.
 - d) To nullify Amung'enti 'B' and Kilindine 'B' adjudication sections of Igembe South District which allocated parcels of land to rich and government prominent people like Hon. Stephen Kalonzo Musyoka after Tharaka people were evicted in areas of Kathimani, Kioru, riamikuu, Kindani, Machabini and Karimba.
 - e) To nullify Kiamuri 'B' Land Adjudication section of Imenti Central this is overlapping with Karocho and Turima adjudication section of Tharaka South District.
 - f) To compensate people who were given title deeds in areas of Kwang'ombe Riamathunka, Tumbura and the title deeds be re issued to Tharaka people who are the current residents and are currently occupying the land..
 - g) To compensate people who were given title deeds in areas of Kwan'ombe, Tumbura, riamathunka, Kanjagi Murinda, KwaAngaine, if these titles are genuine.

40. The Committee further heard that

- a) The government should recall the Ogongo team to complete the exercise and include at least one person in the Commission from both Tharaka Nithi and Meru counties in the government implementing team and the implementation of Zachary Ogongo Commission's recommendations on land disputes.
- b) Kithino Farmers Company Ltd owned by Hon. Kiraitu Murungi bought land while squatters were living inside but this land was previously allocated to the late Hon. Jackson Angaine.
- c) The government to form joint peace and land committees who will maintain and sustain peace and cohesion along the bordering sub-counties of Tharaka Nithi and Meru.
- d) An illegality in land adjudication should not be employed to steal Tharaka community land by crafting shifting boundary changes in an effort to legalize it. An adjudication area should not extend to another administrative section. Any title deed in Murinda, Karocho, Turima and Nkondi detailing them as part of adjudication section in Meru, Nyambene, Tigania or Igembe are illegal and fraudulent and this committee should rule likewise and set a precedent to protect marginalized communities from land grabbers.
- e) The detailed historical injustices on Tharaka Community should be settled now by the supreme law making body (Parliament).
- f) On the ground audit of administrative boundaries should be carried out, sub-unit by sub-unit and where a conflict of interest overlap investigations be carried out to settle the anomaly.
- g) The KINDANI IDPS should be resettled back to their land rather than dismiss them by way of "60 days dispute" after their deeds of land ownership and occupation were destroyed.

2.5 MJINI & SALAMA VILLAGES

41. The Committee Visited Meru County and Meru town having been invited by the Member for Meru town Hon. Dawood on 7th February 2014. The Committee visited Mjini and Salama Villages and was informed as follows, That:

- a) They were living in the area as squatters and the area has been reduced to a slum and the government has ignored them.
- b) In 2000 Allotment letters were issued to villagers having made the necessary payments to the Ministry of Land.
- c) The residents are currently paying the required land rates for their plots.
- d) Planning was done in the area in 2008 and a map for the area approved in 2009.
- e) The residents confirmed that they have file numbers from Ardhi House, the headquarters of the Ministry of Lands.
- f) The residents also confirmed that they have no lease or titles for their plots and out of the 94 plots only 55 owners have paid for the title deeds which have not been issued.
- g) Social mapping was being undertaken by the Ministry of Lands in the area, with a view of upgrading the slum with the help of donors through the Department of slum upgrading.

2.6 MAJENGO VILLAGE

43. The Committee visited in Majengo Villages and was informed as follows, That:

- a) The first settlement in the area was in 1926, where the original settlers bought the plots for about Kshs.425.
- b) 88 years later the descendants of the original settlers still have no titles for their plots.
- c) The land measures 7.6 hectares (ha) an equivalent of about 18.78 acres.
- d) Physical planning had been done in 2008 and a map for the area drawn.
- e) The residents confirmed that they had no allotment letters for their plots.

3.0 COMMITTEES OBSERVATIONS

THE COMMITTEE OBSERVED IN THARAKA NITHI COUNTY THAT:-

1. The historical background of Tharaka people settlement in Kwang'ombe/Kiburine dates as early as 1960 according to the boundaries of 1954 imposed by colonial Government which have never been changed in other parts of Kenya, but were changed in Tharaka.
2. There is insecurity in Murinda due to historical land injustices hence there is no peace and further residents have been denied title deeds in Murinda sub-

location, Gakurungu Location, Chiaaringa Wards, Tharaka sub-country, Tharaka Nithi County.

3. The Ogongo Taskforce Report Gazette Notice NO. 6064 of 11412 – 2008 was not implemented in its full content by the Government
4. Over 3,500 Tharaka families are displaced and primary schools destroyed during clashes of 1997 between Igembe and Kamba against Tharaka people, the Primary Schools include;
 - i. Karimba Primary School Code Number 84-069-03-023
 - ii. Kabangua Primary School Code Number 84-069-03-021
 - iii. Mpunguru Primary School Code Number 84-069-03-024
 - iv. Machabini Primary School Code Number 84-069-03-022
 - v. Kanjoro Primary School Code Number 84-069-03-027
 - vi. Riamiku Primary School Code Number 84-069-03-025
 - vii. Kiumbe Primary School Code Number 84-069-03-026
5. There is insecurity and lack of cohesion among the population living along the borders of Tharaka Nithi and Meru.
6. There are IDPS still living in KINDANI as a result of the 1997 clashes.

THE COMMITTEE OBSERVED IN MERU TOWN THAT:-

1. There are squatters living in slums in Meru town in such villages as Mjini, Majengo and Salama and Shauri Yako slums.
2. Residents of villages in Meru town have not been issued with title deeds despite having paid for them and being in possession of allotment letters.

4.0 COMMITTEES RECOMMENDATIONS

THE COMMITTEE RECOMMENDS THAT:-

- 1) The National Land Commission and the Ministry of Lands, Housing and Urban Development to form joint peace and land committees with a view to maintaining and sustaining peace and cohesion along the bordering sub-counties of Tharaka Nithi and Meru.
- 2) The National Land Commission to include Tharaka Nithi and Meru in their inquiry into land historical injustices and seek redress as provided by the law.
- 3) The National and County Government, Church leaders and the Ministry of Lands, Housing and Urban Development be fully involved in the process of resettlement and peace keeping once historical land injustices are addressed.

- 4) The security personnel at Gatithini Chief's Camp, Tharaka should enforce joint patrol across Ura River together with security personnel at Kianda in Meru North/Igembe to give people confidence in the government so as to restore the status quo prior to 1997 evictions and curfew imposition.
- 5) The County Administration, the National Government representatives and security agencies should form a joint peace initiative committee to include the Tharaka, Igembe and Kamba people for resettlement and peace keeping in the area.
- 6) The Ministry of Lands, Housing and Urban Development should implement the recommendations of the Zachary Ogongo task force which directed that land on the common border be adjudicated.
- 7) That Parliament should allocate resources to the relevant Ministry and compel the Ministry of Education, Science and technology to reconstruct the destroyed and closed schools in Tharaka County namely;
 - a. Karimba Primary School Code Number 84-069-03-023
 - b. Kabangua Primary School Code Number 84-069-03-021
 - c. Mpunguru Primary School Code Number 84-069-03-024
 - d. Machabini Primary School Code Number 84-069-03-022
 - e. Kanjoro Primary School Code Number 84-069-03-027
 - f. Riamwanki Primary School Code Number 84-069-03-025
 - g. Kiumbe Primary School Code Number 84-069-03-026

THE COMMITTEE RECOMMENDS IN MERU COUNTY THAT:-

The Ministry of Lands, Housing and Urban Development should issue title deeds to residents of the villages of Mjini, Salama, Shauri Yako slums and Majengo in Meru town

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DEPARTMENTAL COMMITTEE ON LANDS

DATE: 11/11/14

VENUE: Protection House, 4th floor

AGENDA: ADOPTION OF THE REPORT ON LAND ADJUDICATION ISSUES IN MERU & THARAKA NITHI COUNTY

NO.	NAME	TITLE	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)		
2.	The Hon. Moses Ole Sakuda, M.P (Vice Chairperson) (Chairing)	Chairman	
3.	The Hon. Onesmas Ngunjiri, M.P.	M-	
4.	The Hon. Mutava Musyimi, M.P.		
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.		
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.	member	
19.	The Hon. Gideon M. Mung'aro, M.P.		
20.	The Hon. Hezron Awiti Bollo, M.P.		
21.	The Hon. Suleiman Dori Ramadhani, M.P.	"	
22.	The Hon. George Oner Ogalo, M.P.		
23.	The Hon. Lekidime Lempurkel Mathew, M.P.		
24.	The Hon. Shakila Abdallah, M.P.		
25.	The Hon. Paul Otuoma, M.P.	M	
26.	The Hon. Thomas Mwadeghu, M.P.	Member	
27.	The Hon. Magwanga Joseph Oyugi, M.P.	member	
28.	The Hon. Aburi Lawrence Mpuru, M.P.		
29.	The Hon. King'ola Patrick Makau, M.P.		



MINUTES OF THE NINETY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON TUESDAY 4TH NOVEMBER 2014, AT THE 4TH FLOOR BOARD ROOM, PROTECTION HOUSE AT 10.00 A.M

PRESENT:

1. The Hon. Moses Ole Sakuda, M.P. - Chairing
2. The Hon. Mutava Musyimi, M.P.
3. The Hon. Francis W. Nderitu, M.P.
4. The Hon. Onesmus Ngunjiri, M.P.
5. The Hon. Francis Kigo Njenga, M.P.
6. The Hon. Hellen Chepkwony, M.P.
7. The Hon. Joseph Oyugi Magwanga, M.P.
8. The Hon. Bernard Bett, M.P.
9. The Hon. Kipruto Moi, M.P.
10. The Hon. Patrick Makau, M.P.
11. The Hon. John Kihagi, M.P.
12. The Hon. Benson Mbai, M.P.
13. The Hon. Julius Ndegwa, M.P.
14. The Hon. Suleiman Dori, M.P.
15. The Hon. Thomas Mwadeghu, M.P.
16. The Hon. Eusilah Ngeny, M.P.
17. The Hon. A. Shariff, M.P.
18. The Hon. Dr. Paul Otuoma, M.P.
19. The Hon. Esther Murugi, M.P.

APOLOGIES

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Kanini Kega, M.P.
3. The Hon. Gideon Mung'aro, M.P.
4. The Hon. Mpuru Aburi, M.P.
5. The Hon. Sarah Korere, M.P.
6. The Hon. George Oner, M.P.
7. The Hon. Hezron Awiti Bollo, M.P.
8. The Hon. Mathew L. Lempurkel, M.P.
9. The Hon. Shakila Abdallah, M.P.

ABSENT

1. The Hon. Oscar Sudi, M.P.

KENYA NATIONAL ASSEMBLY

- | | |
|-----------------------|-----------------------------|
| 1. Mr. James Ginono | Clerk Assistant I |
| 2. Ms. Ruth Mwihaki | Clerk Assistant III |
| 3. Ms. Noah Too | Research and Policy Analyst |
| 4. Ms. Lynette Otieno | Legal Counsel II |

MINUTE NO. DCK/LN/2014/239

PRELIMINARIES

The Chairman called the meeting to order at 10.20 a. m with a word of prayer.

MINUTE NO. DCK/LN/2014/240

ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by the Hon. Esther Murugi, M.P and seconded by the Hon. Bernard Bett, M.P.

MINUTE NO. DCK/LN/2014/241

CONFIRMATION OF MINUTES

The minutes of the 93rd sitting held on Thursday 23rd October 2014 were proposed by Hon. Francis Nderitu, M.P and seconded by the Hon. Onesmus Ngunjiri, M.P as a true record of the

proceedings and signed by the Chairman.

MINUTE NO. DCK/LN/2014/242 MATTERS ARISING

1. Vide MINUTE NO. DCK/LN/2014/225(i) Auction of Land in Kajiado West Constituency
Members were informed that the date of the planned Auction of public land in Kajiado West Constituency was 27th November 2013.

MINUTE NO. DCK/LN/2014/243 SUBMISSIONS FROM THE CABINET SECRETARY FOR LANDS, HOUSING AND URBAN DEVELOPMENT

Members were informed that the Cabinet Secretary had not confirmed her attendance in the days meeting despite various attempts by the Secretariat to contact her office on Monday 10th November to confirm attendance.

Members noted that the Committee had not received a formal Communication from the Cabinet informing the committee that she would not attend the sitting. Members further expressed their displeasure with the failure of the Cabinet Secretary to appear before the committee even on matters which she had prior Committed herself to. Members observed that the actions of the Cabinet Secretary in snubbing Committee invitations were rendering the Committee impotent and unable to fully perform its oversight function

Members also noted that the Committee leadership had failed to provide leadership to the Committee noting that the Committee had not achieved much in the one and a half years of its existence.

The Committee resolved to hold a press briefing at 1.00 p.m to address the issue of the Cabinet Secretary snubbing Committee invitation and exonerate itself.

The Committee further resolved to hold an in house meeting to deliberate on the Committee's leadership and look for a way forward.

MINUTE NO. DCK/LN/2014/244 ADOPTION OF THE REPORT ON COMPENSATION OF EVICTEES OF GALLERIA MALL AND THE EXPANSION OF LANG'ATA ROAD

The Report was adopted after being proposed by the Hon. Bernard Bett, M.P and Seconded by the Hon. Hellen Chepkwony, M.P with the following amendments:

The Committee observed THAT:

1. KURA had erred by entering into verbal agreements with the land owner's in regard to taking up their properties pending payment.
2. Payment should be fair, prompt and just and paying only five people in full would amount to discrimination against the 20 land owner's whose properties had already been taken over by KURA.
3. The valuation of Kshs. 1,037, 813, 089.00 was excessive and an inflated cost in comparison to the initial estimate of Kshs. 450 million leading to mistrust as to whether valuation was done with due diligence. (Valuation attached)

The Committee makes the following recommendations, THAT:

1. The Ministry of the Interior through the Criminal Investigation Department and the Ethics and Anti Corruption Commission investigates the alleged conspiracy for the escalation and inflation of the cost of the Land in question with a view to prosecute those found to be behind the scheme.
2. The Ethics and Anti Corruption Commission to investigate the Managers in Kenya Urban Roads Authority (KURA) who committed public funds in informal meetings and casual interactions, with a view to establishing if they are fit to hold public office and instigate measures to ensure that any agreement made by KURA and other parties in future touching on public funds should be in writing.
3. In future, calculations for compensation should be integrated in the road designs to allow for costing and budgeting for the compensations.
4. The National Treasury should consider prioritizing on compensation for land on Compulsory acquisitions while allocating funds to KURA in the supplementary budget.

MINUTE NO. DCK/LN/2014/245 ADOPTION OF THE REPORT ON THE DEGAZZETMENT OF LAND BELONGING TO CHORLIM COOPERATIVE SOCIETY

The Report was adopted after being proposed by the Hon. Thomas Mwadeghu, M.P and Seconded by the Hon. Francis Nderitu, M.P with the following amendments:

The Committee makes the following observations THAT:

1. No documentation showing ownership of the Land can be produced by the Government Forest Department.
2. The coordinates of the land as observed from the Global Positioning System equipment showed that the area in question is outside the Forest Land.
3. The Forest department in the area were acting with impunity and harassing the people in the area.
4. The gazzement of the area as forest land was influenced by political reasons.
5. The inhabitants of the area had paid the Government some money and issued with allotment letters.

The Committee makes the following recommendations. THAT:

1. The government through the Ministry of Lands, Housing and Urban Development should formalize the allocation of the land to the shareholders of the Cooperative Society and a directive issued to the forest department to forthwith cease harassing the people and to vacate the land.
2. The government through the Ministry of Lands, Housing and urban Development with the relevant agencies should institute investigations with a view of establishing the status and ownership and subsequently resettling and/or compensating the people evicted from the land.

MINUTE NO. DCK/LN/2014/246 ADOPTION OF THE REPORT ON LAND ISSUES IN TAITA/ TAVETA COUNTY

The Report was adopted after being proposed by the Hon. Joseph Magwanga, M.P and Seconded by the Hon. Esther Murugi, M.P with the following amendments:

The Committee Made the Following Observations in Taita Taveta County, THAT:

1. The boundary had been tampered with.
2. Damages had been caused by the management of Teita Sisal Estate in 1991 at Majengo where food crop were ploughed down without NOTICE when there was no court case and obstructing Community developments leading to the grabbing of land by the Sisal Estate.
3. Sisal Police Patrol is used by the Sisal Estate management as a private security institution to intimidate innocent people of Singila Majengo

The Committee made the following observation in Taveta Sub-County, THAT:

1. There are activities by land officers in Taveta Sub County and the beneficiaries to the scheme that needed to be stopped forthwith to pave way for thorough investigation and audit by the National Land Commission and other relevant bodies.

The Committee makes the following recommendations. THAT:

The Committee recommends as follows, THAT;

A. GENERAL RECOMMENDATIONS

1. The Ministry of Lands, Housing and Urban Development and the National Land Commission should bring proposals for legislation to ensure that investments in property benefits local community and their economy as provided for in Article 66(2) the Constitution.
2. The National Cohesion and Integration Commission should intervene for the purpose of averting possible land based ethnic clashes in the County.
3. The National Commission on Human Rights should intervene to ascertain the outright and blatant breach of the Bill of Rights (chapter four of the constitution).
4. The Constitution Implementation Commission intervenes to ensure that the entire process is constitutional, and that all respective Government Institutions and State agencies undertake their respective responsibilities accordingly.
5. The National Land Commission to initiate an inquiry into land historical injustices in Taita/Taveta County and seek redress as provided by the law.
6. Title deed and Deed Plans be reviewed in the entire county and Land lease reviewed to establish whether its terms have expired or not, and if it was renewed without legal procedures followed, be revoked and the land be given back to the community.

B. IN TEITA SISAL ESTATE

1. The Ministry of Interior and Coordination of Government should with immediate effect remove all illegal Road blocks on public roads and allow members of the local community access to public roads without conditions in Teita Sisal Estate and its neighborhood.
2. The Ministry of Lands, Housing and Urban Development through the Director of survey should carry out a survey with a view to ascertain the boundaries as per the records of 1992 from the Survey of Kenya, so as to separate the 33,000 acres that belongs to Teita Sisal Estate (LR Nos. LR 3380/5 (3880/4/R), LR 11378, LR 6924 and LR 9487(Dam) with a total acreage

of 33,284 acres), and the neighboring trust lands, so that the rest is given back to the community.

3. The Government through the Ministry of Land Housing and Urban Development and the National Lands Commission should determine if there is any encroachment on the road, airstrip, sanctuary, trust land around Tasha Hill and railway reserves by Teita Sisal Estate Limited.
4. Teita Sisal Estate Limited should compensate the neighboring indigenous citizens for economic, socio-cultural, other losses and damages for all their years of illegal occupation and the exploitation of the resources of the areas occupied illegally if any.
5. Damages caused by the management of Teita Sisal Estate in 1991 in Majengo when food crops were ploughed down without NOTICE when there was no court case and obstructing Community developments should be fully compensated.

C. IN MWATATE

1. The National Land Commission, Ministry of Lands, Housing and Urban Development and other stakeholders should fulfill their legal mandate of identification of beneficiaries and administration in settlement programs in Taita Taveta, Coast and other parts of the Country urgently. This will facilitate the long awaited access to land ownership and management by residents of Mwatate (Singila Majengo), Taveta and other parts of the country (Section 134 of the Land Act).
2. The Mwatate settlement scheme settlers should be given title deeds.
3. The Government through the Ministry of Transport and Infrastructure should establish why the public feeder road that links the Voi - Mwatate road with the Voi - Mwatate -Taveta - Moshi Railway Line (1911) near Mwatunge entrance gate have been blocked and measures put in place to re-open the roads and railways.

D. IN TAVETA

1. Kenya Ethics and Anti Corruption Commission should institute investigation against Settlement Fund Trust (SFT), the Taveta Land's Office and the entire land allocation committee, for the purpose of unearthing corruption and fraud committed during issuance of title deeds.
2. The National Land Commission initiates an audit for the list of beneficiaries and the entire process leading to land allocation in the contentious Taveta Settlement Scheme.
3. The Commission of Administrative Justice (Ombudsman) should investigate and take action against public officers (Taveta Land's Office, the CDF office, the Provincial Administration and their collaborators involved in the distribution and allocation of the Taveta Settlement Scheme Phase I and II.

MINUTE NO. DCK/LN/2014/247 ADOPTION OF THE REPORT ON LAND ADJUDICATION ISSUES IN MERU AND THARAKA NITHI COUNTIES

The Report was adopted after being proposed by the Hon. John Kihagi, M.P and Seconded by the Hon. , M.P with the following amendments:

The committee observed in Tharaka Nithi County that:-

1. The historical background of Tharaka people settlement in Kwang'ombe/Kiburine dates as early as 1960 according to the boundaries of 1954 imposed by colonial Government which have never been changed in other parts of Kenya, but were changed in Tharaka.
2. There is insecurity in Murinda due to historical land injustices hence there is no peace and further residents have been denied title deeds in Murinda sub-location, Gakurungu Location, Chiaaringa Wards, Tharaka sub-country, Tharaka- Nithi County.
3. The Ogongo Taskforce Report Gazette Notice NO. 6064 of 11412 – 2008 was not implemented in its full content by the Government
4. Over 3,500 Tharaka families are displaced and primary schools destroyed during clashes of 1997 between Igembe and Kamba against Tharaka people, the Primary Schools include;
 - i. Karimba Primary School Code Number 84-069-03-023
 - ii. Kabangua Primary School Code Number 84-069-03-021
 - iii. Mpunguru Primary School Code Number 84-069-03-024
 - iv. Machabini Primary School Code Number 84-069-03-022
 - v. Kanjoro Primary School Code Number 84-069-03-027
 - vi. Riamiku Primary School Code Number 84-069-03-025
 - vii. Kiumbe Primary School Code Number 84-069-03-026
5. There is insecurity and lack of cohesion among the population living along the borders of Tharaka Nithi and Meru.
6. There are visible signs of historical injustices imbedded on the Tharaka Community.
7. There are IDPS still living in KINDANI as a result of the 1997 clashes.

The Committee Observed in Meru Town that:-

1. There are squatters living in slums in Meru town in such villages as Mjini, Majengo and Salama.
2. Residents of villages in Meru town have not been issued with title deeds despite having paid for them and being in possession of allotment letters.

The Committee Recommends That:-

- 1) The National Land Commission and the Ministry of Lands, Housing and Urban Development to form joint peace and land committees with a view to maintaining and sustaining peace and cohesion along the bordering sub-counties of Tharaka Nithi and Meru.
- 2) The National Land Commission to include Tharaka Nithi and Meru in their inquiry into land historical injustices and seek redress as provided by the law.
- 3) The National and County Government, Church leaders and the Ministry of Lands, Housing and Urban Development be fully involved in the process of resettlement and peace keeping once historical land injustices are addressed.
- 4) The security personnel at Gatithini Chief's Camp, Tharaka should enforce joint patrol across Ura River together with security personnel at Kianda in Meru North/Igembe to give people confidence in the government so as to restore the status quo prior to 1997

evictions and curfew imposition.

- 5) The County Administration, the National Government representatives and security agencies should form a joint peace initiative committee to include the Tharaka, Igembe and Kamba people for resettlement and peace keeping in the area.
- 6) The Ministry of Lands, Housing and Urban Development should implement the recommendations of the Zachary Ogongo task force which directed that land on the common border be adjudicated.
- 7) That Parliament should allocate resources to the relevant Ministry and compel the Ministry of Education, Science and technology to reconstruct the destroyed and closed schools in Tharaka County namely;
 - a. Karimba Primary School Code Number 84-069-03-023
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 - e. Kanjoro Primary School Code Number 84-069-03-027
 - f. Riamwanki Primary School Code Number 84-069-03-025
 - g. Kiumbe Primary School Code Number 84-069-03-026

The Committee Recommends In Meru County That:-

The Ministry of Lands, Housing and Urban Development should issue title deeds to residents of the villages of Mjini, Salama, Shauri Yako slums and Majengo in Meru town .

MINUTE NO. DCK/LN/2014/248 ANY OTHER BUSINESS.

a. Foreign Visits

The Committee was informed that foreign visits have been rescheduled for the beginning of next year when the House resumes from long recess.

b. Galeria Mall Evictees

The Committee was informed that most tenants of Galeria mall have moved out after a fence that had been put up collapsed making the area insecure.

The committee was further informed that the balance of compensation to the evictees is still outstanding.

c. Lamu Report

Members were informed that the Report of the National land Commission on the Lamu Land has been released.

It was resolved that the report be availed to the members.

MINUTE NO. DCK/LN/2014/249 ADJOURNMENT & DATE OF THE NEXT SITTING

And the time being fifty four minutes past eleven O'clock, the Chairperson adjourned the Sitting to Thursday 13th November at 10.00 a. m

SIGNED


.....
(CHAIRPERSON)

DATE

2/12/2014
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