

Give Kenya a sound community land law!

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Ministry circulates draft bill

On 12th November, 2013, the Task Force on Community Land and Evictions and Resettlement Bills which has been working under the Ministry of Lands released the final draft bills for attention by the Lands Cabinet Secretary and public circulation. The bills are already circulating among stakeholders for inputs. It's expected that the bills will be published in local newspapers for faster publicity. There has been great public anticipation for a Community Land Bill. Unregistered community land, which supports the livelihoods of our pastoral communities, constitutes about 67% of our stock of land. Political leaders charged with County leadership and businesspeople, including lending institutions and firms interested in the exploitation of community land-based natural resources such as minerals and mineral oils, must carefully peruse and inform this bill. Once enacted into law, it'll be a lot harder to refine any imperfections.

Senate publishes community land bill 2013

But there is an interesting unexpected development. Last Monday 18th November 2013, I purchased the newly published Community Land Bill, 2013 intended for introduction and debate in the Senate. The bill, contained in Special Gazette Supplement No 152 (Senate Bills No 11) and dated 1st November, 2013, if not well handled, will cause avoidable confusion. Why? Because the entire content, other than the memorandum, is the May 2013 Version of the Community Land Bill developed by the Ministerial Task Force whose copy I have. The coincidence is curious. But if the Senate were to proceed and discuss the Bill, some things need be borne in mind. That since the May

version, the Task Force further improved the bill with inputs from the Ministry of Lands, the National Land Commission and some stakeholder groups. Following the inputs, several sections of the May version were reworked. The November 12 draft bill is therefore far superior.

Need for public input

Moreover, for compliance with the constitutional threshold, the November version has to be subjected to further public inputs before presentation to Cabinet and then Parliament. If the bill published for discussion by Senate excludes this phase, it is likely that any law subsequently enacted will be jettisoned for non-compliance with the constitution. Then the memorandum argues that the “bill is not a money bill within the meaning of Article 114 of the Constitution”. But how can it not be when it sets to establish new institutions and provides for compensation of any community land acquired compulsorily by the State for public purposes? Given its financial implications to public money, this is a “money bill”. Article 109 of the Constitution provides that a “money bill” may only be introduced in the National Assembly.

Senate and Lands Ministry need to converge efforts

But there's a positive side to this unexpected development! Other than for their parallel nature, the initiative by the Task Force and that by the Senate are aimed at securing this critical law. Besides giving this bill the much needed publicity, this little conflict may turn out godsend since it jolts the government to give this matter top priority. I think the Lands Cabinet Secretary should move with speed to lobby the Senate to allow her to conclude her Ministry's initiative so that Kenyans may have their say on the bill. But she must also undertake to ensure that the necessary public consultations are done and concluded without undue delay.

Community land bill protects communal land

The Community Land Bill broadly provides for the recognition and protection of community land, the establishment of governance institutions and conversion of community land to private or public and vice versa. It also provides for the management of natural resources and investments on community land and the settlement of disputes relating to community land.

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