

## LANDS THINK TANK SUPPORTS NGILU ON TITLE DEEDS

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*In a new report, the Land Development and Governance Institute, however, says the Lands ministry cannot afford to isolate the National Land Commission, reports* **MKALA MWAGHESHA**

Lands Cabinet Secretary Charity Ngilu did not break any law by playing a leading role in the recent issuance of title deeds to squatters at the Coast, a new report says.

Whereas the National Land Commission (NLC) has a constitutional mandate to manage all public land, issuance of titles is a purely ceremonial event that can be done by any relevant authority — the land registrars at county level, the director of land adjudication, the chair of the land commission, the principal secretary or the cabinet secretary — provided the pertinent technical processes have been done to the satisfaction of both the ministry and the commission.

“This should never be a matter for public contention,” says the report by land think-tank, the Land Development and Governance Institute (LDGI).

There has been a public debate since President Uhuru issued thousands of title deeds to squatters in the Coast about three weeks ago as to whether he was the right person to do that. The more than 60,000 titles had been lying uncollected at various land registries for years. Some said that by inviting the president to preside over the highly-publicised event, Lands cabinet secretary Charity Ngilu had usurped the powers of the National Land Commission and

was playing politics.

But LDGI disagrees. “Where a programme is fairly high level, with major national or public implications, the deputy president or the president himself could be called in to issue such titles,” LDGI chairman, Ibrahim Mwathane, said during the release of the report last week.

## **Spat**

During one of the events to issue the titles, there was a spat between Ngilu and the NLC chairman Mohammad Swazuri, forcing President Uhuru to publicly admonish them to work together.

In the new report, LDGI says the apparent misunderstanding is as a result of misinterpretation of the respective roles of the cabinet secretary in charge of Land and the National Land Commission.

Quoting the National Land Policy of 2009 and the Land Act 2012, the LDGI report states that the NLC has a constitutional role to manage all public land, which includes land allocation, compulsory acquisition (where a private land is to be allocated to landless Kenyans). This, it adds, gives the land commission a fundamental role in the resettlement of landless Kenyans.

However, it adds, in the policy and new land statutes, the Lands ministry retains the critical roles of political leadership, overall policy direction (including sectoral legislation), resource mobilisation and the management of land registries and processing of titles for all categories of land.

According to Mwathane, the land commission cannot purchase any private land for the settlement of landless persons if necessary funds have not been allocated by Parliament and administered by Treasury.

This means that in the current legal framework, the two organs, the ministry and the land commission, must work together in all programmes relating to the settlement of persons and issuance of titles to landless Kenyans.

How they do their internal consultations, he notes, is entirely up to them, “but public spats on account of their respective mandates give a negative public perception and undermines the credibility of any ownership documents”.

“Issuance of titles presupposes the prior involvement of the ministry and the commission as necessary. Once titles to any settlement schemes/programmes are ready, the onus is on the two organs to agree on who would be best suited, at respective moments, to do the physical issuance of the titles to the beneficiaries,” says Mwathane.

He attributes the friction between the Lands Cabinet Secretary and the NLC chairman to a policy shift from what was envisaged in the National Land Policy and the Constitution on one hand, and the new land laws on the other hand. “Under Chapter 5 of the Constitution of Kenya, the functions of the commission (which was supposed to facilitate land administration and management) had changed slightly from what was envisaged by the land policy,” the report says.

Article 67 of the Constitution, which establishes the land commission, does not give it power to “establish and manage a register of all public, private and community land in the country” as had the policy.

## **NLC ACT**

The National Land Commission Act 2012, restates the functions of the commission as only advisory and supervisory with respect to land registration.

In section 6, the Land Act 2012 provides that the cabinet secretary in charge of Lands will develop policies on land, facilitate the implementation of land policy and reforms, coordinate the management of the National Spatial Data Infrastructure, and the formulation of standards

of service delivery in the land sector.

The ministry should also regulate service providers and professionals, and monitor and evaluate land sector performance, all these on recommendation of the commission.

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