

Let's avoid rhetoric and make specific proposals to improve land bills

Posted on Oct 13, Posted by [Mwathane](#) Category [Land Laws](#)

Discussion is healthy

It's appreciated that our media today provides good space for matters land. This helps to routinely inform our policy makers, political drivers and the public. It's in this spirit that we should welcome the recent flurry of write ups on the proposed land bills. More of us should write and discuss. But we need to see more from practising land professionals like planners, surveyors and conveyancing lawyers since the new bills largely inform fairly technical processes on planning, surveying, land information management and land registration in which they have depth. In my verbal and e-space messages, I've kept imploring that in order to make objective comments to improve the bills, we need to first read through them. Not scale up what we heard, lest we misinform and undermine the quality of the bills. The bills are easily available on the web and at the government printers.

In my view, we need to enter the discussion by first appreciating that Parliament has done the right thing by prioritising the land bills. Even after the extension of timelines, the Lands Committee immediately called for stakeholder inputs which were followed by a stakeholder forum at Mombasa in mid-September. This helps us to expedite these bills and avoid the electoral season in 2016. This pace needs to be appreciated and encouraged. And since both the Senate and National Assembly have different versions of a Community Land bill pending discussion, we need to be urging Parliament to merge the two processes so that in our contributions, we can relate to just one version of this bill.

Myths

It's also useful to debunk some myths that appear to be almost acquiring a life in public space. It's not true that the proposed Land Laws (Amendment) bill transfers all functions of the National Land Commission to the Cabinet Secretary. It's also untrue that the constitution gives the Land Commission exclusive powers over land registration in the country. It's also deliberately alarmist to argue that the proposed amendments take Kenya's land administration system to pre-colonial days. What's not in doubt is that many aspects of the proposed land bills are good; some need to be improved while others may need to be struck off.

Lessons from 2012 land bills process

Stakeholders should have learnt lessons from the first tranche of land laws passed in early 2012. That general statements and rhetoric are never effective in improving published bills. But well-reasoned and compelling justifications to specific clauses in the bills do help both the drafters and legislators to improve them. Importantly, such contributions need to be submitted within the window parliament provides, otherwise, be canvassed through legislators for tabling during debates on the floor of the house. But it helps a great deal to keep them factual. This methodology should guide our current contributions.

In our written contributions and public discourse, let's also not compromise some of the critical perspectives. Key among these is that Kenyans need to be served efficiently in the various Lands offices countrywide. Any clauses that undermine this in the existing laws need to be revisited. And we all appreciate that the conflicts so far witnessed between the Ministry and the Commission need to be progressively addressed for effective sectoral services. In addition, private land owners with legitimate interests on any freehold or leasehold land need to feel secure under the legal clauses now under discussion. Communities holding interests to unregistered land need to be protected so that such land cannot be leased out or privatized without their participation. Investments on such land need to benefit them.

Then our public land needs to be effectively managed and secured for our common needs for posterity. This is why we needed the Land Commission. We also need to ensure that the resolution of claims to historical land injustices, while critical, is not used to undermine national cohesion and development. Furthermore, our laws must not be seen to encourage or protect trespassers and illegal occupiers of any category of land but at the same time must remain conscious that the callous eviction of any persons on such categories of land pose social-economic and security challenges. Even the compensation of such vulnerable people on unregistered community land or public land at market rates often leaves them unable to

effectively resettle. Many Kenyans will also have difficulties with the raw imposition of legislated minimums and maximum land sizes. The proposed amendments and bills speak to all these perspectives and we need to relate with them soberly.

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