

# NATIONAL LAND COMMISSION MUST DEFINE ITS TERMS

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The embryonic [National Land Commission](#) (NLC) is a creation of long and consorted struggle for democratization, good governance and accountability in Kenya.

One just needs to read the report on report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, commonly known as “Ndung’u Commission” to realise that the struggle for land has been synonymous with that for democratisation and social justice.

It is for the above reasons that Kenyans and the civil society insisted on both the land agenda as well as the NLC getting their place in the [Constitution](#) of Kenya. Today the Commission is in place with nine commissioners in office and huge mandate courtesy of a High Court order compelling the then president Kibaki to gazette them.

While the institution seems well defined, it remains widely “absent” on strategic interventions and have recently been bypassed by an overzealous Executive that gives direction on Land issues.

This “absence” is by no means an indictment of the professional standing or capability of its commissioners or officers of the NLC, rather it could be partially due to the ambivalence of the commission in taking lead to define its position.

Here one can learn from [Maina Kiai](#) and the emergence of the Kenya National Commission on Human Rights. When Kiai took charge of Kenya National Commission on Human Rights, the Commission had been established under statutory mandate under Kenya National Commission on Human Rights (KNCHR) Act 2002.

But knowing that the scope of human rights in Kenya was much wider, Kiai and his fellow commissioners engaged in the positioning of the Commission as a matter of priority.

Without an eviction notice from the state law office, Kiai insisted on moving the physical location of the Commission from the large, status-trapped and well-furnished offices at National Social Security Fund (NSSF) building to private offices along Lenana Road — an area that is more accessible.

Kiai also shed off other state largesse including mega vehicles, police security and personalised drivers. These choices would pay off in the short run. Shortly after the Ministry of Justice and [Constitutional Affairs](#) was established, the then minister and his successor required that the KNCHR should operate as a department within the Ministry.

But they were late. KNCHR had carved its niche and positioned itself as a national conscience on human rights that was accountable to the citizens of Kenya through parliament, to which they had obligation to submit an annual report. Kiai insisted the relationship between KNCHR and Ministry of Justice was that of liaison.

He established KNCHR as an autonomous, respectable and self-driven institution. In later years it is state functionaries who went to the KNCHR offices to consult and seek sanction. It was hardly the other way round.

## Largely minimalist

In contrast, six months after their appointment, Commissioners of the NLC still retain abode at the now Ministry of Lands, Housing and Urban Development. I have no doubt that the future of the NLC would be more successful if it positioned itself in a manner that allows it define the relationship with the Ministry of Lands, Housing and Urban Development and other agencies.

Today, it is the ministry that purports to suggest the kind of budget, bureaucratic positioning and threshold of mandate assigned the NLC. The Ministry's interpretation of NLC's mandate seems largely minimalist and intended at reducing the NLC to a mere department of the Ministry or one of the numerous state agencies.

The NLC must take a bold step in this situation and take charge in defining the terms of relation to the Ministry of Lands, Housing and Urban Development. At the onset, they should vacate Ardh House and get offices in a far off location. Perhaps Westlands or Upper Hill. Distance is of essence!

Second, rather than engage in episodic reactions and civic education for politicians, they ought to engage the public to share in their mandate and declare that although most of the reforms are progressive, there are certain irreducible minimums on Land reforms. They must also negotiate access to budget allocation that is not at the behest of the Ministry.

Beyond Kiai, a more contemporary example of the often competing positioning of institutions such as the [National Land Commission](#) is that between the [Constitution](#) Implementation Commission (CIC) and the executive. It is not once that the CIC has differed with the executive on constitutionality of various decisions. The CIC has also positioned itself to buffer the bullish nature of the executive.

In my opinion, going by what Kiai and [Charles Nyachae](#) have been able to deliver under their mandates, the NLC can do much more with its [Constitutional](#) Mandate.

Bold efforts such as that of halting evictions should now be anchored in positioning itself to define the term of relating to Ministry of Lands, Housing and Urban Development.

*Writer comments on land matters*

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