

We need consensus on new land laws

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Ibrahim Mwathane

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I hope those who have perused the laws now remember the early warnings issued by some stakeholders. Through this column, I also amplified some of the concerns prior to the enactment of the laws. There were concerns of process and content in the development of the laws. There were calls for a more inclusive manner of originating the content.

We needed the content to be driven by a wide cross-section of owners and users of land, professionals, lending institutions and other stakeholders besides the consultants and Lands Ministry experts. Despite efforts in this regard, more could have been done.

When the Bills were published, Kenyans were invited to make necessary improvements. Parliament was passionately lobbied to extend time for debate on the Bills so that stakeholders could read and intervene. Some did but many didn't, leaving the matter largely to MPs, most of whom aren't land experts.

So the laws we now have are largely a compromise between what the initial consultants fed into the Bills, some input from stakeholders but also some major input retained by the ever conservative Executive.

Many conveyancing lawyers and bankers woke up to the content of the new land laws rather late. Comments and concerns echoed by practitioners and financial sector experts now would have served this country better upfront. What's unfortunate is that there were efforts to sensitise Kenyans on the importance of these laws to daily lives and business in good time. Now we've to brace ourselves to improve them painfully.

But we must not sleep on our opportunities again. Those whose core businesses largely depend on good land laws must thoroughly read the new ones and identify gaps and issues of concern for discussions with stakeholders and parliament. Consensus formed around such issues would be used to inform the review of the land policy, the chapter on land in our constitution and the specific pieces of legislation.

The Land Development and Governance Institute has for instance undertaken a quick audit of the three new land laws.....the National Land Commission Act 2012, the Land Act 2012 and the Land Registration Act 2012 and posted the results on its websites.

A few conveyancing firms have reviewed the three laws too. Financial institutions and practitioners keen to improve the new laws should do so too. The outputs could be used to move parliament for necessary amendments. This approach would incrementally improve the new laws.

But while doing this, stakeholders must beware that efforts to develop a community land law are under way. Community land accounts for about sixty per cent of Kenya's stock of land. The security and efficiency with which such land can be held, transacted with or converted to individual ownership, which will be spelt by the community land law, will drive big business in Kenya in future. It's therefore imperative for land sector practitioners and financial institutions to take keen interest in the content of this law.

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