

13/11
REPUBLIC OF KENYA



NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – THIRD SESSION
THE DEPARTMENTAL COMMITTEE ON LANDS



.....
REPORT ON THE PHYSICAL PLANNING BILL, 2015

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2015

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1.0 PREFACE

On behalf of the Departmental Committee on Lands and pursuant to provisions of Standing Order 127 (4) it is my pleasant privilege and honor to present to the House the Report of the Committee on its consideration of the Physical Planning Bill, 2015. The Bill was committed to the Committee on 19th August, 2015 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

1.1 Mandate of the Committee

The Committee on Lands is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee oversees the operations of the Ministry of Lands, Housing and Urban Development on the following matters: Land Policy and Physical Planning, Land Transactions, Survey and Mapping, Land Adjudication, Settlement, Land registration, Land Valuation, Administration of community and Public Land, and Land Information and Management System.

interest of defense, public safety, public order, public morality, public health, or land use Planning.

Towards this end the Bill seeks to repeal and replace the Physical Planning Act, No. 6 of 1996. It intends to provide for the Planning, use, regulation and development of land in Kenya. It is divided into seven Parts and four Schedules.

1.3.1 Key provisions of the Bill

The Physical Planning Bill, 2015 has 95 clauses and four schedules and contains the following parts;

Part I deals with preliminary matters including objects of the Bill which include providing for the preparation and implementation of physical development plans at all levels of government, the administration and management of Physical Planning in Kenya, the procedures and standards for development control and regulation of land use and Physical Planning, the co-ordination of Physical Planning between the two levels of government, dispute resolution, and the functions of and relationships among Planning authorities.

Part II deals with the establishment, functions and powers of Planning institutions. These are the National Physical Planning Consultative Forum, the Cabinet Secretary, the National Land Commission, the National Director of Physical Planning, and the County Physical Planning Consultative Forums.

Part III deals with the types of physical development plans, their contents, the process of their preparation, revision, modification or withdrawal, resolution of disputes in relation to physical plans and uses of physical plans. These include the National Physical Development Plans, the Regional Physical Development Plans, the County Physical Development Plans, the Local Physical Development Plans and Special Area Plans.

Part IV deals with development control. It sets out the objectives of development control, the authority of Planning Authorities to undertake development control, the procedures for obtaining Planning permission by developers, offences in relation to development control and the preservation of heritage sites during development, among other matters.

Part V deals with the enforcement of development control permits or licenses and makes provisions for enforcement notices and requisition notices.

Part VI deals with the liaison committees, their powers and functions at both National and local level. These are the National Physical Planning Liaison Committee and the County Physical Planning Liaison Committees. It also makes provisions for the

- 23) Kenya Private Sector Alliance
- 24) Kenya Institute of Planners
- 25) Kenya Forest Service
- 26) Law Society of Kenya
- 27) Kenya Forest Research Institute

1.4 Adoption of the Report

We the members of the Departmental Committee on Lands have, pursuant to Standing Order 199 adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached adoption list (Annex 1).

2.0 BACKGROUND INFORMATION

The Physical Planning Bill, 2015 is one of the Constitutional Bills outlined in the Fifth schedule of the Constitution of Kenya, and which had a Constitutional timeline of August 27th, 2015. The National Assembly on August 25th 2015 extended the period in respect to passing the legislation by 12 months from August 27th 2015.

The main objective of the Physical Planning Bill is to provide a legislative framework to give effect to Article 66 (1) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use Planning.

Towards this end the Bill seeks to repeal and replace the Physical Planning Act, No. 6 of 1996. It intends to provide for the Planning, use, regulation and development of land in Kenya. It is divided into seven Parts and four Schedules.

The Physical Planning, 2015 was introduced in the National Assembly by the Leader of the Majority Party on, 19th August, 2015 and therefore committed to the Departmental Committee on Lands for consideration in line with Articles 63 and 118 of the Constitution and Standing Order 127.

The Committee engaged a number of stakeholders whose views are contained in this Report.

3.0 CONSIDERATION OF THE PHYSICAL PLANNING BILL, 2015

The Committee held a retreat from 15th to 20th September 2015 in Mombasa to receive and consider stakeholder views on the Physical Planning Bill, 2015 amongst other Bills. The following section provides detailed submissions on the Bill by various stakeholders;

3.1 STAKEHOLDERS VIEWS ON THE COMMUNITY LAND BILL, 2015

3.1.1 MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

The representatives of the Ministry of Lands, Housing and Urban Development informed the Committee as hereunder, That;

1. The new Constitutional order has presented an opportunity for curing the separation between preparation and implementation, monitoring and oversight Planning function and opportunities for Planning and implementing decisions made at the lowest possible levels of devolution by establishing Planning authorities at County levels. In addition it has presented an opportunity to the National Level to formulate policy plans to standardize Planning practice across the Country;
2. The process of reviewing the Physical Planning Act Cap 286 was initiated immediately after the promulgation of the Constitution of Kenya 2010. A Concept Paper was developed in 2012 to guide the Bill's formulation process. The process benefitted from professional input from the Kenya Law Reform Commission and insights and presentation from the Chairperson of the Devolution Taskforce;



- iii. Part III – Types of physical development plans- County and Local Physical Development Plans will be prepared and approved by County Governments.
- iv. Parts IV and V– Development control - County Governments are responsible for development control.
- v. Part VI– Physical Planning Liaison Committees - County Physical Liaison Committees will hear and determine appeals on disputes relating to Physical Planning. Appeals will be lodged in the Environment and Land Court and not the National Physical Planning Liaison Committee.

11. Linkage between the Bill and other relevant existing legislation:-

- i. The Bill provides a framework to actualize the objectives of County Planning as outlined in Section 103 of the County Government Act 2012;
- ii. The Bill is applicable in National Legislation with regard to Physical Planning referred to in Article 191(3) and Section 20(1)(i) of the Urban Areas and Cities Act 2011;
- iii. The Bill outlines the Physical Planning requirements referred to in Section 18(9)(a) of the National Land Commission Act, 2012;
- iv. The Bill is the relevant law relating to development control referred to in Section 115(4) of the Land Act 2012 with respect to care, control and management of reserved public land;

12. The Bill does not undermine the spirit and letter of devolution as contained in Article 6 of the Constitution of Kenya.

3.1.2 NATIONAL LAND COMMISSION

The following is a summary of issues raised by the National Land Commission on the Physical Planning Bill 2015:

- 1. The Title of the Bill “Physical Planning” is alien to the Constitution which provides for Land Use Planning at Articles 60, 66, 67, 68 and the Fifth schedules. The National Land Policy at paragraphs 101-143, provides for “Land Use Planning” and not “Physical Planning”. The Commission recommends that the Bill be renamed as Land Use Planning Bill in line with articles 60, 66, 67(2)(h), and 68 of the Constitution and paragraphs 101-123 of the National Land policy;
- 2. The Bill does not recognize the functions of the National Land Commission as provided for in Article 67 of the Constitution:-
 - i. to manage public land on behalf of the National and County Governments 2(a);
 - ii. to monitor and have oversight responsibilities over land use Planning throughout the Country (2)(h).

These functions should be clearly elaborated and find explicit expression in any legislation relating to Land Use Planning;

- 3. The proposed Physical Planning Bill 2015 fails to meet the requirements of Article 68(b) of the Constitution which requires Parliament to revise sectoral land use laws in accordance with the principles set out in Article 60(1). This is in respect to administrative institutions that are efficient, sustainable, transparent, and cost effective;



exploration and development, infrastructure, environmentally fragile areas and trans-National areas.

3.1.3 COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The following is a summary of issues raised by the Commission for the implementation of the Constitution on the Physical Planning Bill 2015:

1. Title – The title should not necessarily be as stated in the Constitution, e.g. Public Finance and Management Act is not stated in the Constitution. The Bill must however address the issues raised in the Constitution and this has been addressed by the Physical Planning Bill. Further, there was no agreement among the Physical Planning professionals on what should be the proper title of the Bill. The title as it is in the Bill incorporates more than land use;
2. National Physical Planning consultative forum – The forum is necessary and not bloated given that every County Executive Member from the forty seven Counties will be a member of the consultative forum in addition to other representations in the forum;
3. The County Planning forums are not unconstitutional and incorporates all the broad players in the Constitution;
4. The National Land Commission cannot carry out plan preparation. The Commissions function is to oversee the plan preparation;
5. Approval of plans by the County Assemblies - Regional plans involve more than one County. It would therefore cause confusion as to which County Assembly should approve the plan, or if it would have to be approved by each of the concerned County Assemblies. The Development plan is a tool of the executive and the County Assemblies should therefore not necessarily approve the County development plans in the same manner the National Government plans are not taken to the National Assembly for approval;
6. Roles-National director of Physical Planning advises the Cabinet Secretary while the County Government plays a coordinating role;
7. There were consultations on the Bill.

3.1.4 TRANSITION AUTHORITY

The following is a summary of issues raised by the Transition Authority on the Physical Planning Bill 2015:

1. The devolved system of Governance provided for under Constitution of Kenya 2010 provides for two tiers of Government - the National Government and County Governments. Amongst National Government Functions is the function of National economic policy and Planning while the County Governments undertake County Planning and development, including Land survey, mapping, boundaries and fencing and housing;
2. Land survey, mapping and housing were transferred to County Governments vide Legal Notice No. 16 of 1st February, 2013;
3. The Transition Authority transferred to County Governments, not only land survey, mapping, boundaries, fencing and housing but also Planning (both Physical Planning and economic/integrated development Planning) and statistics;

15. In Clause 20 there is confusion between the purpose/function of the National Physical Plan with those of the Medium Term Plan and Vision 2030 with regard to promoting economic growth and location of National investments;
16. The National Physical Planning Consultative forum should be made by principal secretaries and not Cabinet Secretaries;
17. There is need to understand what sectors and sectoral plans in the Bill are. In the County Government Act, County sectoral plans are departmental plans. In Kenya sectoral plans are what is also referred to as strategic plans;
18. There is confusion with the chairmanship of Regional Physical Planning committee.
19. Clause 28(1) provides that two Counties may, by mutual agreement or out of necessity, formulate a Regional Physical Development Plan, subsection (2) states that in preparation of such a plan the Counties will form a regional Physical Planning committee chaired by the National Director of Physical Planning. Clause 28(3) (b) provides that the members of the County executive committee responsible for Physical Planning will elect the person to chair the committee. The Bill does not take into consideration/account the situations in Counties where the executive committee member for Physical Planning is not responsible for urban development.
20. Any type of regional plans can only be undertaken under the guidance of Intergovernmental Relations Act, 2012.
21. Clause 34(2) - the Regional Development Plan should not be approved by the relevant governors but by the Counties executive committees and in subsection (3) the approved plan should be tabled in the County assemblies for approval - not just deposited in the relevant assemblies.

3.1.5 COUNCIL OF GOVERNORS

The following is a summary of issues raised by the Council of Governors on the Physical Planning Bill, 2015:

1. The County Governments were not involved in the formulation of the Bill;
2. Title- The title of the Bill does not derive from the Constitution since the Constitution provides for land use Planning;
 - a. Recommendation: rename the Bill to Land Use Planning Bill in line with Articles 60, 66, 67 (2) and 68 of the Constitution and paragraphs 101 – 123 of the National Land Policy;
3. Institutions –Clause 5 of the Bill creates the National Physical Planning consultative forum with a membership of 60 members. The functions of this forum can be performed by existing agencies namely the National Land Commission and the Cabinet Secretary. The Clause should be deleted and the functions assigned to the National Land Commission and the Cabinet Secretary;
4. Types of development Plans- Clause 19 outlines types of physical plans that may be prepared under the Bill. These plans are at variance with the plans that are already provided for in Sections 107, 108, 109, 110 and 111 of the County Governments Act and Sections 36- 42 of the Urban Areas and Cities Act. The Bill should create a section of types of plans that may be

10. Preparation of Plans- A new clause should be added as follows, 'Development Plans may be prepared by contracted Consulting Registered Planners' as existed in the Physical Planning Act, Cap 286. Guidelines should be formulated for the same;
11. Local Physical Development Plans should include 'Integrated City or Urban Development Plan' (ISUDP) under the Urban Areas and Cities Act, 2011, long or short term plans, urban renewal or redevelopment, subject plans, zoning plans and Planning policies;
12. Development Control - Section 59 (3) to include all subdivisions (the Bill states only subdivisions exceeding 2 plots), Land Readjustments- involving plots of different owners, and Land Use Master Plans -schemes where there are no subdivisions .The same should also be added in the Fourth Schedule;
13. Registration of documents- retain the clauses existing in the Physical Planning Act as;
 - i. The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with;
 - ii. Registrar has the same definition assigned to it in the Land registration Act 2012
 - iii. It shall be deemed to be an offence if the registrar acts contrary to (1) above
 - iv. Add the following clauses on Approval of title surveys;
 - a. The Surveyor shall refuse to approve any title survey relating to the development of land unless a development permission has been granted as required under this Act in respect of such development
 - b. The Surveyor has the same definition assigned to it in the Survey Act 110.
 - c. Failure to comply with Section 108 (1) shall be an offence under this Act and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.
14. Dispute resolution – The bill should provide a clause specifying procedure of communicating decisions made by the committees;
15. Key Schedules Missing- a. PPA1 - To Be Improved from PPA1 Cap 286, Enforcement notices - To Be Improved from Cap 286 and Appeals notice - To Be Improved from Cap 286.

3.1.7 LAND DEVELOPMENT AND GOVERNANCE INSTITUTE

The following is a summary of issues raised by the Land Development and Governance Institute on the Physical Planning Bill 2015:

Summary of findings:

1. Clause 2 :- Reference to spatial development plans with respect to development control Definition is provided for "spatial Planning" but the term is not applied in the Bill. Spatial development plans are not provided for. The Bill should remain consistent with use of Physical development plans rather than floating across terminology;
2. Clause 4:- Principles and norms The Bill should set out specific principles that inform and guide the Physical Planning process, from the spatial stage to development control – and give an indication of how such principles will be applied. For example –
 - a. principle of connectivity

- opportunities, or how to overcome, if challenges-Such a plan should also contain an implementation plan;
14. Clause 30:- Purpose of a regional physical development plan-Section 30(2) – the purposes should extend to specific Physical Planning concepts, including connectivity (including of peculiar circumstances referred to above) or connectivity in resource Planning and use – such as joint protected areas, or greenbelts for conservation and catchment management;
 15. Clause 36:- Implementation of regional physical development plan-The hierarchy of the National and regional plans, relative to those at County, urban etc. – should be clear;
 16. Clause 38:- County physical development plan-The section should specify how this plan relates to the County Integrated Development Plan, and the spatial plans prepared thereunder;
 17. Clause 46:- Local physical development plans- Section 46(2) cross-applies the term to “local spatial development plans” – consistency in terminology is missing in the Bill
 18. Clause 53-54:- Special Planning area-Special areas are presented as unique stand-alone and as a result, Connectivity is missing between the special Planning area – and the surrounding County/regional physical development plan;
 19. Clause 57:- Development permission- Section should be explicit that permission is sought from the Planning authority of a County Government;
Clause 57(3) may result in demolition of properties built without permission. While this may be desirable in some instances, economic loss maybe extreme in others. In any event, the design of this section opens it up to judicial challenge;
 20. Clause 58:- Application for development permission-Provision should require that the prescribed fees, including the computation formula for the fees should be publicly disclosed;
 21. Clause 62:- Environmental Impact assessment-In this section, EIA is cast as optional. The Bill should be modified to require an applicant for development permission to have obtained an EIA license prior to making an application – or in the absence of an EIA license, to demonstrate the grant of an exemption by the National Environment and Management Authority. This ensures that no development permit application is considered by a Planning authority without a prior mandatory EIA process;
 22. Clause 64:- Development fees- The word “may” should be replaced with shall (in subsection 2) to ensure the publication of fees is mandatory;
 23. Clause 74:- Requisition notice- A requisition notice issued on a private property to stop its development in the public interest exceeds the police (land use Planning) power of the state and amounts to compulsory acquisition – within the meaning of article 40 (for public purpose or public interest);
 24. Clause 76:- Appeal on requisition notice to Liaison committees-The subject matter of such an appeal is mainly on questions of law, not fact, and is therefore suitable for a court of law (Environment and Land) or for arbitration. In addition, functions of the Liaison Committees are now performed by the National forum and as such the liaison committees should be removed from the Bill.

3.1.10 ASHITIVA & CO.ADVOCATES

The following is a summary of issues raised by Ashitiva and Co. Advocates on the Physical Planning Bill 2015:

1. The Bill purpose is to make provision for the Planning, use, regulation and development of land and for connected purposes.
2. The Physical Planning Bill, 2015 gives effect to Article 66 (l) of the Constitution which provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use Planning.
3. The Bill also seeks to repeal the Physical, Planning Act, 1996.
4. Objects of the Bill - The Bill seeks to provide;
 - i. The principles, procedures and standards for the preparation and implementation of physical
 - ii. Development plans at the National, regional, County, urban and cities level;
 - iii. The administration and management of Physical Planning in Kenya;
 - iv. The procedures and standards for development control and the regulation of Physical Planning and land use;
 - v. A framework for the co-ordination of Physical Planning by County Governments;
 - vi. A mechanism for dispute resolution;
 - vii. A framework for equitable and sustainable use, Planning and management of land; and the functions of and the relationship between Planning Authorities.
5. County Plans -The Bill provides for development of County plans in every ten years. The plans should be in compliant with the National plans which are also provided for in the Bill;
6. The Physical County plans will provide for;
 - i. Zoning, urban renewal, or redevelopment;
 - ii. Guiding and co-coordinating the development of infrastructure;
 - iii. regulating land use and development
 - iv. providing a framework for coordinating various sectorial agencies
 - v. giving effect to any Integrated City or Urban Development Plan; and
 - vi. providing a framework and guidelines on building and works development
7. The Act provide for public participation (clause 48) including mechanisms for objections to any plans under clause 50;
8. Development Control- the Bill under Section 56 gives the County the power to control developments in their respective Counties. The Counties have jurisdiction subject to the provisions of the Urban Areas and Cities Act, 2011, and the County Governments Act, 2012. Each County Government may, in the area under its jurisdiction;
 - i. Control or prohibit the use or development of land or buildings for the proper and orderly development of the area;
 - ii. Control or prohibit the sub-division of land or existing parcels of property;
 - iii. Consider and approve applications for all developments;
 - iv. Grant development permissions to applicants;
 - v. Ensure compliance with the provisions of the Bill and any other written laws

- of the interpretation and to clarify the meaning of the terms used to be in tandem with taxonomy used in Planning practice world over;
3. The objects of the act captured in the Physical Planning Bill, 2015 are inaccurate as they do not capture the correct output of the Planning law. The correct objects be outlined relating to the; organization and administration of Planning; the preparation and implementation of physical development plans at both National and County levels of government; the conflict resolution mechanism;
 4. The inadequacy of the structures established to perform the Planning functions. For instances, the Physical Planning Bill, 2015 omits to establish structures to perform the technical functions of preparation and implementation of plans at the County level. The recommendation in this respect is for the Physical Planning Bill, 2015 to establish an institution of the County resolution mechanism;
 - a. The Bill allocates these technical functions to The County Executive Committee member who cannot perform such functions as they may not necessarily be trained in the art and science of Planning. It is recommended that general policy functions of Planning be performed by the County Executive represented by the County Executive Member responsible for Planning while technical functions are performed as aforesaid;
 5. The concept of Planning Authority has not been properly applied to address the process of development control. The recommendation is that this concept should be applied appropriately to strengthen development control aspects which are key to implementation of plans at County level particularly;
 6. The plan preparation processes and the coordination between different levels of Planning are not outlined and described. For instance, omission of regional Planning aspect and the reference to this level of Planning as inter-County Planning is inappropriate. Any issue which transcend two or more Counties are of both National and County concern. These issues relates to areas and developments such as; the National transportation corridors such as the Northern corridor and LAPPSSSET; metropolitan development such as that occurring around Nairobi; river basins and water catchment areas and game reserves among others. The Planning instrument which is used world over to address such issues is referred to as a regional physical development plan. In the pecking order of plans, the regional physical development plan falls immediately below the National plan and hence provides a way of coordinating National and County Planning. Both National and County Planning authorities should be involved in preparation of this plan. In terms of categorization, the plan falls within the functions to be coordinated from the National level;
 7. The key concern relating to the National Physical Development Plan is the allocation of the preparatory function to the Cabinet Secretary. This concern relates also to County level plans of County Physical Development Plan and the Local Physical Development Plan both which are proposed to be prepared by the County Executive Member in charge of Planning. Since Planning is a professional and technical process, it is recommended that the Cabinet Secretary and the County Executive Member be omitted from the preparatory process. However, they may be allocated a policy function such as the causing and facilitating the

and 108-111 of the County Governments Act, 2012. However the Committee noted that it is only the names of the plans that are at variance, and therefore the names of the plans should be in tandem with the titles in existing laws to avoid confusion;

8. Some stakeholders quoted articles in the Constitution that were not relevant to Physical Planning. The reference to Article 185(4) of the Constitution was not applicable. The Article provides that the County Assembly may receive and approve plans and policies for the management and exploitation of the county's resources, and the development and management of its infrastructure and institutions. This Article therefore does not deal with physical plans. The development plan is a tool of the Executive and therefore the county assembly should therefore not necessarily approve the development plans in the same manner as the National Assembly does not approve the national development plans;
9. Pursuant to Article 67 (2) (h) of the constitution, the function of the National Land Commission is to monitor and have oversight responsibilities over land use planning throughout the country and not to carry out the actual plan preparation;
10. There were concerns that the National Physical Planning Consultative Forum is bloated. The Committee observes that that the Forum is necessary and not bloated given that every County Executive Committee Member from each of the forty seven Counties will be a member of the consultative forum in addition to other representatives in the Forum;
11. On the issue of Status reports on implementation of National physical development plans, the section should be modified to empower the National Land Commission to consolidate the reports into a single National report and forward to National Assembly and Senate, as part of oversight in land use planning.

5.0 COMMITTEE RECOMMENDATION

Having listened to the stakeholders and from its own analysis, the Committee will propose amendments for introduction into the Bill during the Committee Stage.

DEPARTMENTAL COMMITTEE ON LANDS

Date: 16th October 2015

Agenda: - Adoption of the Report on the Physical Planning Bill, 2015

Venue:- Boma Hotel

NO.	NAME	TITLE	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)	Chairman	
2.	The Hon. Moses Ole Sakuda, M.P (Vice Chairperson)	Vice Chairman	
3.	The Hon. Onesmas Ngunjiri, M.P.		
4.	The Hon. Mutava Musyimi, M.P.	Member	
5.	The Hon. John Kihagi, M.P.	Member	
6.	The Hon. Francis W. Nderitu, M.P.	Member	
7.	The Hon. Francis Njenga, M.P.		
8.	The Hon. A. Shariff, M.P.		
9.	The Hon. Eusilah Jepkosgei, M.P.	Member	
10.	The Hon. Benard Bett, M.P.	Member	
11.	The Hon. Kipruto Moi, M.P.	Member	
12.	The Hon. Oscar Sudi, M.P.		
13.	The Hon. Hellen Chepkwony, M.P.	Member	
14.	The Hon. Sarah Korere, M.P.		
15.	The Hon. Julius Ndegwa, M.P.	Member	
16.	The Hon. Benson Mbai, M.P.	Member	
17.	The Hon. Kanini Kega, M.P.		
18.	The Hon. Esther Murugi, M.P.		
19.	The Hon. Gideon M. Mung'aro, M.P.	Member	
20.	The Hon. Hezron Awiti Bollo, M.P.		
21.	The Hon. Suleiman Dori Ramadhani, M.P.		
22.	The Hon. George Oner Ogalo, M.P.	Member	
23.	The Hon. Lekidime Lempurkel Mathew, M.P.	Member	
24.	The Hon. Shakila Abdallah, M.P.		
25.	The Hon. Paul Otuoma, M.P.	M	
26.	The Hon. Thomas Mwadeghu, M.P.	Member	
27.	The Hon. Magwanga Joseph Oyugi, M.P.		
28.	The Hon. Aburi Lawrence Mpuru, M.P.		
29.	The Hon. King'ola Patrick Makau, M.P.		

James Gwano
 P.C.A

 10/10/15

PRESENT:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice - Chairperson
3. ~~The Hon. Onesmus Ngunjiri, M.P.~~
4. The Hon. Mutava Musyimi, M.P.
5. The Hon. John Kihagi, M.P.
6. The Hon. Francis W. Nderitu, M.P.
7. The Hon. Eusilah Ngeny, M.P.
8. The Hon. Bernard Bett, M.P.
9. The Hon. Kipruto Moi, M.P.
10. The Hon. Hellen Chepkwony, M.P.
11. The Hon. Julius Ndegwa, M.P.
12. The Hon. Benson Mbai, M.P.
13. The Hon. Gideon Mung'aro, M.P.
14. The Hon. George Oner, M.P.
15. The Hon. Mathew L. Lempurkel, M.P.
16. The Hon. Dr. Paul Otuoma, M.P.
17. The Hon. Thomas Mwadeghu, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Esther Murugi, M.P.
2. The Hon. Patrick Makau, M.P.
3. The Hon. Francis Njenga Kigo, M.P.
4. The Hon. Shakila Abdallah, M.P.
5. The Hon. Joseph Oyugi Magwanga, M.P.
6. The Hon. Kanini Kega, M.P.
7. The Hon. A. Shariff, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Mpuru Aburi, M.P.
2. The Hon. Oscar Sudi, M.P.
3. The Hon. Suleiman Dori, M.P.
4. The Hon. Sarah Korere, M.P.
5. The Hon. Hezron Awiti Bollo, M.P.

7. The stakeholders were of the view that certain sections of the Bill contradict with some sections in existing Acts. Part III of the Bill, which provides for the types of physical development plans, contradicts with sections 36-42 of the Urban Areas and Cities Act, 2012; and 108-111 of the County Governments Act, 2012. However the Committee noted that it is only the names of the plans that are at variance, and therefore the names of the plans should be in tandem with the titles in existing laws to avoid confusion;
8. Some stakeholders quoted articles in the Constitution that were not relevant to Physical Planning. The reference to Article 185(4) of the Constitution was not applicable. The Article provides that the County Assembly may receive and approve plans and policies for the management and exploitation of the county's resources, and the development and management of its infrastructure and institutions. This Article therefore does not deal with physical plans. The development plan is a tool of the Executive and therefore the county assembly should therefore not necessarily approve the development plans in the same manner as the National Assembly does not approve the national development plans;
9. Pursuant to Article 67 (2) (h) of the constitution, the function of the National Land Commission is to monitor and have oversight responsibilities over land use planning throughout the country and not to carry out the actual plan preparation;
10. There were concerns that the National Physical Planning Consultative Forum is bloated. The Committee observes that that the Forum is necessary and not bloated given that every County Executive Committee Member from each of the forty seven Counties will be a member of the consultative forum in addition to other representatives in the Forum;
11. On the issue of Status reports on implementation of National physical development plans, the section should be modified to empower the National Land Commission to consolidate the reports into a single National report and forward to National Assembly and Senate, as part of oversight in land use planning.

The Committee makes the following recommendation:

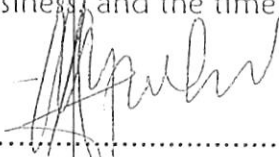
Having listened to the stakeholders and from its own analysis, the Committee will propose amendments for introduction into the Bill during the Committee Stage.

MINUTE NO. DCL/LN/2015/734

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 4.40 p.m. the meeting was adjourned.

SIGNED


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(CHAIRPERSON)

DATE

13th October 2015
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HELD ON FRIDAY 18TH SEPTEMBER 2015 AT THE JUMBO CONFERENCE ROOM
TRAVELLERS BEACH RESORT AND SPA AT 9.30 A.M

PRESENT:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice - Chairperson
3. The Hon. George Oner, M.P.
4. The Hon. Eusilah Ngeny, M.P.
5. The Hon. John Kihagi, M.P.
6. The Hon. Bernard Bett, M.P.
7. The Hon. Hellen Chepkwony, M.P.
8. The Hon. Benson Mbai, M.P.
9. The Hon. Sarah Korere, M.P.
10. The Hon. Thomas Mwadeghu, M.P.
11. The Hon. Mathew L. Lempurkel, M.P.
12. The Hon. Patrick Makau, M.P.
13. The Hon. Gideon Mung'aro, M.P.
14. The Hon. Hezron Awiti Bollo, M.P.
15. The Hon. Francis Njenga Kigo, M.P.
16. The Hon. Francis W. Nderitu, M.P.
17. The Hon. Joseph Oyugi Magwanga, M.P.
18. The Hon. Onesmus Ngunjiri, M.P.
19. The Hon. A. Shariff, M.P.
20. The Hon. Dr. Paul Otuoma, M.P.
21. The Hon. Suleiman Dori, M.P.
22. The Hon. Mutava Musyimi, M.P.
23. The Hon. Julius Ndegwa, M.P.
24. The Hon. Kanini Kega, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Shakila Abdallah, M.P.
2. The Hon. Esther Murugi, M.P.
3. The Hon. Kipruto Moi, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Mpuru Aburi, M.P.
2. The Hon. Oscar Sudi, M.P.

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono	Clerk Assistant I
2. Ms. Ruth Mwihaki	Clerk Assistant III
3. Mr. Emmanuel Muyodi	Clerk Assistant III
4. Ms. Christine Odhiambo	Legal Counsel II
5. Mrs. Farida Ngasura	Audio Supervisor II
6. Mr. Yakub Ahmed	Media Relations Officer III

STAKEHOLDERS

1. Ministry of Lands, Housing and Urban Development	13. County Land Management Board
2. Ministry of Agriculture, Livestock and Fisheries	14. National Environmental Management Authority
3. The National Land Commission	15. Kenyatta University- Njoro Campus
4. Commission for the Implementation of the Constitution	16. Kenya Land Alliance
5. Kenya National Commission on Human Rights	17. Land Development and Governance Institute
6. Council of Governors	18. Reconcile
7. Transition Authority	19. Katiba Institute
8. Institution of Surveyors of Kenya	20. World Wildlife Fund
9. Kenya Institute of Planners	21. Act Change Transform
10. Kenya Forest Service	22. Economic and Social Rights Centre-Haki Jamii
11. Kenya Forest Research Institute	23. Oxfam GB
12. Law Society of Kenya	24. Action aid

MINUTE NO. DCL/LN/2015/699

PRELIMINARIES

The Chairperson called the meeting to order at 10.00 am, followed by a word of prayer.

MINUTE NO. DCL/LN/2015/700

PHYSICAL PLANNING BILL, 2015

The main purpose of the Physical Planning Bill, 2015 is to give effect to Article 68 (2) of the Constitution which provides that Parliament shall revise sectoral land use laws in accordance with the principles set out in Article 60 (1).

The Bill provides for the establishment of Physical Planning institutions and includes the county governments in the preparation of physical development plans.

Submissions on the Bill were made as follows:

Council of Governors

The Chairman, Council of Governors submitted as hereunder, that:-

- The County Governments were not involved in the formulation of the Bill;

provides for land use Planning;

Recommendation: rename the Bill to Land Use Planning Bill in line with Articles 60, 66, 67 (2) and 68 of the Constitution and paragraphs 101 – 123 of the National Land Policy;

- c. Institutions – Clause 5 of the Bill creates the National Physical Planning consultative forum with a membership of 60 members. The functions of this forum can be performed by existing agencies namely the National Land Commission and the Cabinet Secretary. The clause should be deleted section and the functions assigned to the National Land Commission and the Cabinet Secretary;
- d. Types of development Plans- Clause 19 outlines types of physical plans that may be prepared under the Bill. These plans are at variance with the plans that are already provided for in Sections 107, 108, 109, 110 and 111 of the County Governments Act and Sections 36- 42 of the Urban Areas and Cities Act. The Bill should create a section of types of plans that may be prepared e.g. National land use plan, County Land Use Plan, Sub-County, City and Urban Areas Land Use plans, Wards and Village Areas Land Use Plans;
- e. The Bill creates many institutions leading to bureaucracy and stifling functions best discharged by Constitutional bodies. In case of weakness within an existing institution, the capacity of the institutions should be enhanced instead of creating duplicate bodies;
- f. National Director of Physical Planning- Clause 15 provides for the National Director of Physical Planning. The Constitution of Kenya assigns the role of monitoring and overseeing land use planning throughout the Country to the National Land Commission. The office of the director of Physical Planning is therefore redundant under the current Constitutional framework;
- g. Clause 95 of the Bill purports to amend the County Governments Act ostensibly to take away the approval powers of County Assemblies. This is retrogressive as the assemblies are the policy makers of Counties and are responsible for allocating resources for the implementation of the plans in their respective wards. It is therefore ill advised to takeaway this crucial responsibility should therefore not be taken away from them

Constitutional Implementation Commission

The representatives of the Constitutional Implementation Commission submitted as hereunder, that:-

- a. Title – The title should not necessarily be as stated in the Constitution, e.g. Public Finance and Management Act is not stated in the Constitution. The Bill must however address the issues raised in the Constitution and this has been addressed by the Physical Planning Bill. Further, there was no agreement among the Physical Planning professionals on what should be the proper title of the Bill. The title as it is in the Bill incorporates more than land use;
- b. National Physical Planning consultative forum – The forum is necessary and not bloated given that every County Executive Member from the forty seven Counties will be a member of the consultative forum in addition to other representations in the forum;
- c. The County Planning forums are not unconstitutional and incorporates all the broad players in the Constitution;

is to oversee the plan preparation;

- e. Approval of plans by the County Assemblies - Regional plans involve more than one County. It would therefore cause confusion as to which County Assembly should approve the plan, or if it would have to be approved by each of the concerned County assemblies. The Development plan is a tool of the executive and the County Assemblies should therefore not necessarily approve the County development plans in the same manner the National Government plans are not taken to the National Assembly for approval;
- f. Roles-National director of Physical Planning advises the Cabinet Secretary while the County Government plays a coordinating role;
- g. There were consultations on the Bill.

Kenya Institute of Planners (KIP)

The representatives of the Kenya Institute of Planners (KIP) submitted as hereunder, that:-

- a. KIP has in the past submitted a complete copy of draft which has clauses that need to be synchronized with the published Bill;
- b. Title- The Bill should be given either of the following titles- 'The Planning Bill' or - The Spatial Planning Bill;
- c. A definition of Physical Planning is required to explain that the term is variously referred to as Spatial Planning, Land Planning, Urban and Regional Planning, Town & Country Planning and Land use Planning;
- d. Planning Authorities as provided for in the Bill are agreeable;
- e. Planning institutions established are agreeable except for the membership. I.e. membership should include the National Director as a member of the National Physical Planning consultative forum, County Director as a member of the County Physical Consultative forum, National Land Commission and Cabinet Secretary;
- f. There should be qualification for the National Director of Physical Planning, County Director of Physical Planning and the Municipal Director of Physical Planning to be a corporate members of the Kenya Institute of Planners;
- g. Functions- There is need to add a provision for the National Director to prepare and update the Physical Planning manual at least once every ten years;
- h. National Development Plan- the Bill proposes an implementation period of 20 years not which is too short. We propose 'National Spatial Development Plan' which should cover a period of 30-35 years as is the normal practice;
- i. County Physical Development Plan-The term should be 'County Spatial Plan' as used in County Governments Act. The two should ideally be the same to avoid duplication of resources;
- j. Preparation of Plans- A new clause should be added as follows, 'Development Plans may be prepared by contracted Consulting Registered Planners' as existed in the Physical Planning Act, Cap 286. Guidelines should be formulated for the same;

- k. Local Physical Development Plans should include 'Integrated City or Urban Development Plan' (ISUDP) under the Urban Areas and Cities Act, 2011, long or short term plans, urban renewal or redevelopment, subject plans, zoning plans and Planning policies;
- l. Development Control - Section 59 (3) to include all subdivisions (the Bill states only subdivisions exceeding 2 plots), Land Readjustments- involving plots of different owners, and Land Use Master Plans -schemes where there are no subdivisions .The same should also be added in the Fourth Schedule;
- m. Registration of documents- retain the clauses existing in the Physical Planning Act as;
 - i. The Registrar shall refuse to register a document relating to the development of land unless a development permission has been granted as required under this Act in respect of such development or unless the appropriate conditions relating to such development permission have been complied with;
 - ii. Registrar has the same definition assigned to it in the Land registration Act 2012
 - iii. It shall be deemed to be an offence if the registrar acts contrary to (1) above
 - iv. Add the following clauses on Approval of title surveys;
 - a. The Surveyor shall refuse to approve any title survey relating to the development of land unless a development permission has been granted as required under this Act in respect of such development
 - b. The Surveyor has the same definition assigned to it in the Survey Act 110.
 - c. Failure to comply with Section 108 (1) shall be an offence under this Act and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.
- n. Dispute resolution – The bill should provide a clause specifying procedure of communicating decisions made by the committees;
- o. Key Schedules Missing- a. PPA1 - To Be Improved from PPA1 Cap 286, Enforcement notices - To Be Improved from Cap 286 and Appeals notice - To Be Improved from Cap 286.

Transition Authority

The representatives of the Transition Authority submitted as hereunder, that:-

- a. The devolved system of Governance provided for under COK 2010 provides for two tiers of Government - the National Government and County Governments. Amongst National Government Functions is the function of National economic policy and Planning while the County Governments undertake County Planning and development, including Land survey, mapping, boundaries and fencing and housing;
- b. Land survey, mapping and housing were transferred to County Governments vide Legal Notice No. 16 of 1st February, 2013;
- c. The Transition Authority transferred to County Governments, not only land survey, mapping, boundaries, fencing and housing but also Planning (both Physical Planning and economic/integrated development Planning) and statistics;
- d. Agreements on transfer of functions- Article 187(1) provides that a function or power of a government at one level may be transferred to government at another level by agreement between governments if:

- ... the function of power would be more effectively performed or exercised by the receiving government; and
- ii. If a power or function is not prohibited by legislation under which it is to be performed or exercised
 - e. Article 187(2) provides that If a power or function is transferred from one level of government to another level of government:
 - f. Arrangement shall be put in place to ensure that the resources to perform the function or exercise the power are transferred; and
 - g. Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule;
 - h. The Constitution of Kenya makes reference to National economic policy and Planning but not Physical Planning;
 - i. The only area the National government can perform Physical Planning function is in National projects (e.g. LAPSET or special purpose cities), or joint international projects;
 - j. Section 9-12 of the Physical Planning Bill, 2015 creates the County consultative forum which is a duplicating function of the County Government and creates confusion and renders land use planning impracticable.
 - k. The County Government Act and the Urban Areas and Cities Act already clarifies the Planning framework in the County.
 - l. On the composition of the National Physical Planning Council in clause 5(2) if the council will oversee development of regional physical plans, the Cabinet Secretary responsible for devolution should be a member;
 - m. The functions of the council in section 10 will promote effective integration between physical, economic and sectoral Planning within the framework of National and County Development policies;
 - n. It is not clear the difference of the objectives of the National Physical Planning Council and those of the MTP and Vision 2030;
 - o. The Bill is clearly inconsistent with Presidential Order on the structure of the government.
 - p. The Bill states that the National Physical Planning Consultative Forum will provide Counties with capacity building upon request. As mentioned earlier it is a Constitutional requirement for the National Government to provide capacity building to Counties;
 - q. Clause 15 talks about appointment of and establishment of the office of the National Director of Physical Planning while clause 16 provides for qualification for appointment as the National Director of Spatial Planning. There is need to clarify if there are these two different offices or one office with different titles;
 - r. Clause 17 gives the functions of the National Director of Planning. There are several directors of Planning in the state department for Planning in the Ministry of Devolution and Planning;
 - s. In clause 20 there is confusion between the purpose/function of the National Physical Plan with those of the Medium Term Plan and Vision 2030 with regard to promoting economic growth and location of National investments;
 - t. The National Physical Planning Consultative forum should be made by principal secretaries and not cabinet secretaries;

- u. There is need to understand what sectors and sectoral plans in the Bill are. In the County Government Act, County sectoral plans are departmental plans. In Kenya sectoral plans are what is also referred to as strategic plans;
- v. There is confusion with the chairmanship of Regional Physical Planning committee.
- w. Clause 28(1) provides that two Counties may, by mutual agreement or out of necessity; formulate a Regional Physical Development Plan, subsection (2) states that in preparation of such a plan the Counties will form a regional Physical Planning committee chaired by the National Director of Physical Planning. Clause 28(3) (b) provides that the members of the County executive committee responsible for Physical Planning will elect the person to chair the committee. The Bill does not take into consideration/account the situations in Counties where the executive committee member for Physical Planning is not responsible for urban development.
- x. Any type of regional plans can only be undertaken under the guidance of Intergovernmental Relations Act, 2012.
- y. Clause 34(2) - the Regional Development Plan should not be approved by the relevant governors but by the Counties executive committees and in subsection (3) the approved plan should be tabled in the County assemblies for approval - not just deposited in the relevant assemblies.

Ministry of Lands, Housing and Urban Development

The representatives of the Ministry of Lands, Housing and Urban Development submitted as hereunder, that:-

- a. The new Constitutional order has presented an opportunity for curing the separation between preparation and implementation, monitoring and oversight Planning function and opportunities for Planning and implementing decisions made at the lowest possible levels of devolution by establishing Planning authorities at County levels. In addition it has presented an opportunity to the National Level to formulate policy plans to standardize Planning practice across the Country Article 60, 66(1), 67, 186 Constitution;
- b. The process of reviewing the Physical Planning Act Cap 286 was initiated immediately after the promulgation of the Constitution of Kenya 2010. A Concept Paper was developed in 2012 to guide the Bill's formulation process. The process benefitted from professional input from the Kenya Law Reform Commission and insights and presentation from the Chairperson of the Devolution Taskforce;
- c. On 28th April, 2014 the Bill was circulated by the Director of Physical Planning for comments to the following individuals/ organizations:
 - i. The Chairman of the National Land Commission
 - ii. The Chairman Transition Authority
 - iii. County Secretaries
 - iv. Chairman of National Environment Management Authority
 - v. The Registrar Physical Planners Registration Board
 - vi. The Chairman Kenya Institute of Planners
 - vii. The Chairman Architectural Association of Kenya
 - viii. The Chairman Land Development and Governance Institute

x. The Chairman Association of Professional Societies in East Africa (APSEA)

x. The Chairman Institute of Surveyors of Kenya

xi. The Chairman Department of Urban and Regional Planning University of Nairobi

xii. The Chairman Department of Urban and Regional Planning Maseno University

d. The Director of Physical Planning received comments from various institutions. On 1st July, 2015 following the stakeholders Round Table meeting organized by Constitutional Implementation Commission at the Kenya School of Government, the Council of Governors through the County Executive Committee members CEC "Lands Group" submitted their considered comments on the Bill;

e. The Commission for Implementation of the Constitution held a round table meeting on 24th June, 2014 at the Kenya School of Government. The National Land Commission, County Governments, Kenya Institute of Planners, Kenya Land Alliance and Architectural Association of Kenya (Town Planning Chapter) were in attendance. County Governments were therefore not excluded in the process of formulation of the Bill;

f. The Bill met the Constitutional threshold of public participation, respects the devolved systems of governance, interlinks and relates with other existing relevant legislation, respects sound Planning theory and is consistent with global best practices;

g. The Bill provides an institutional framework for the State to regulate the use of any land to the interest of public safety, public order, public morality, public health or Land Use Planning in line with the provisions of Article 66 of the Constitution;

h. The Bill provides that public Institutions at the National and County levels are required to prepare and submit to the National Land Commission status reports of implementation of the National physical Development Plan. This will ensure that Planning Authorities at the National and County levels are answerable to the Commission;

i. The Bill revises and consolidates Land Use laws which currently fall under various statutes;

j. The Bill accords to the devolved system of government in the following manner:-

- i. Part I – Preliminary- County Governments are Planning authorities;
- ii. Part II – Physical Planning institutions - County Executive Committee Members are responsible for formulating County and Urban Physical Development policies, enforcement of Planning standards and development control;
- iii. Part III – Types of physical development plans- County and Local Physical Development Plans will be prepared and approved by County Governments.
- iv. Parts IV and V– Development control - County Governments are responsible for development control.
- v. Part VI– Physical Planning Liaison Committees - County Physical Liaison Committees will hear and determine appeals on disputes relating to Physical Planning. Appeals will be lodged in the Environment and Land Court and not the National Physical Planning Liaison Committee.

k. Linkage between the Bill and other relevant existing legislation:-

- i. The Bill provides a framework to actualize the objectives of County Planning as outlined in Section 103 of the County Government Act 2012;

- ii. The Bill is applicable in National legislation with regard to Physical Planning referred to in Article 191(3) and Section 20(1)(i) of the Urban Areas and Cities Act 2011;
- iii. The Bill outlines the Physical Planning requirements referred to in Section 18(9)(a) of the National Land Commission Act, 2012;
- iv. The Bill is the relevant law relating to development control referred to in Section 115(4) of the Land Act 2012 with respect to care, control and management of reserved public land;

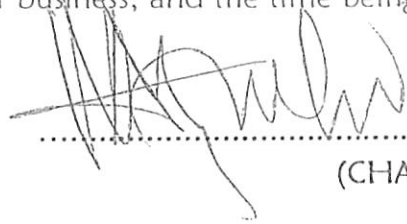
I. The Bill does not undermine the spirit and letter of devolution as contained in Article 6 of the Constitution of Kenya.

MINUTE NO. DCL/LN/2015/701

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 2.23p.m. The meeting was adjourned.

SIGNED



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(CHAIRPERSON)

DATE

13th October 2015
.....

HELD ON FRIDAY 18TH SEPTEMBER 2015 AT THE JUMBO CONFERENCE ROOM
TRAVELLERS BEACH RESORT AND SPA AT 3.30 P.M

PRESENT:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice - Chairperson
3. The Hon. George Oner, M.P.
4. The Hon. Eusilah Ngeny, M.P.
5. The Hon. John Kihagi, M.P.
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19. The Hon. A. Shariff, M.P.
20. The Hon. Dr. Paul Otuoma, M.P.
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ABSENT WITH APOLOGIES:

1. The Hon. Shakila Abdallah, M.P.
2. The Hon. Esther Murugi, M.P.
3. The Hon. Kipruto Moi, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Mpuru Aburi, M.P.
2. The Hon. Oscar Sudi, M.P

- 67(2)(h), and 68 of the Constitution and paragraphs 101-123 of the National Land policy;
- b. The Bill does not recognize the functions of the National Land Commission as provided for in Article 67 of the Constitution:-
 - i. to manage public land on behalf of the National and County Governments 2(a);
 - ii. to monitor and have oversight responsibilities over land use Planning throughout the Country (2)(h).

These functions should be clearly elaborated and find explicit expression in any legislation relating to Land Use Planning;

- c. The proposed Physical Planning Bill 2015 fails to meet the requirements of Article 68(b) of the Constitution which requires parliament to revise sectoral land use laws in accordance with the principles set out in Article 60(1). This is in respect to administrative institutions that are efficient, sustainable, transparent, and cost effective;
- d. National Physical Planning consultative Forum (membership of over 60 persons), Cabinet Secretary, National Director of Physical Planning and the National Land Commission is large, amorphous and an unnecessary burden on the taxpayers. The functions assigned to this forum are a duplication of the functions of the National Land Commission and the Cabinet Secretary;
- e. Clause 9 - County Physical Planning Consultative Forum:- The functions of the forum are unconstitutional and duplicates functions of the County Government;
- f. The Bill at clause 15 creates the office of the National Director of Physical Planning. The office of the Director of Physical Planning under the current Physical Planning Act has performed dismally. The office is redundant under the current Constitutional framework;
- g. The Physical Planning Bill 2015 disregards and conflicts with the County Governments Act 2012, the Urban Areas and Cities Act 2011 and the National Land Commission Act 2012. This is With respect to the functions of the National Government/ Executive, the County Governments and the National Land Commission;
- h. Clause 19-54, outlines types of physical development plans that may be prepared under this Bill. These plans are at variance with the plans that are already provided for at sections 107, 108,109, 110 and 111 of the County Government Act and sections 36-42 of the Urban Areas and Cities Act. The types of plans should be in tandem with the already existing legislated laws. It is recommended that the Bill should provide for comprehensive hierarchy of plans to include: National Land Use Plan, County Land Use Plan, Sub-County, City and Urban Areas Land Use Plans, Wards and Village Areas Land Use Plans.
- i. Clause 95 of the Bill purports to amend the County Governments Act ostensibly to take away the approval powers of the County assemblies this is against article 185(4) of the Constitution. This is retrogressive as the assemblies are the policy makers of the Counties and are responsible for allocating resources for the implementation of the plans in their respective wards. It is therefore ill advised to take away this crucial responsibility from them.
- j. The Bill is not in line with the land reform agenda as required under Article 60(2) of the Constitution and the Sessional Paper No. 3 of 2009 on the National Land policy paragraphs

delivery of land reforms at the National and County levels.

- k. The Bill is not progressive and does not meet the requirements of the new Constitution of Kenya 2010 and strives to maintain the old order. The proposed Bill is not fundamentally different from the current Physical Planning Act of 1996 that has not been effective and only introduces cosmetic changes to the act.
- l. The proposed Bill fails to be an enabling legislation of the Constitution in respect to Article 66 and the Fifth schedule which provide for Land Use Planning. The Bill therefore does not provide clarity to the Implementation of the Constitution but causes confusion;
- m. The proposed Bill has glaring inconsistencies in structure and content with respect to mixed up usage of terms "Physical Planning" and "Spatial Planning". The content and scope is limited and does not cover new areas of concern like rural areas, marine, mining, oil exploration and development, infrastructure, environmentally fragile areas and trans-National areas.

The Architectural Association of Kenya

- a. The Bill centralizes Physical Planning functions at the National level;
- b. The Bill has bestowed a lot of powers and responsibilities in the preparation of physical development plans to politically appointed persons such as the Cabinet Secretary and the County Executive Committee member in charge of Physical Planning;
- c. There is no clarity in how the two levels of government would relate in executing Physical Planning functions. The National government should be charged with preparation of National Physical development plans and policies only. The County Governments should be left to undertake Planning within their jurisdiction;
- d. The Bill has established too many institutions with excess membership therefore creating unnecessary bureaucracy and likely misuse of resources. Decision making will also likely be ineffective;
- e. The Bill establishes the office of the National Director of Physical Planning and ignoring the need to have the office of the County director of Physical Planning in each County appointed by the County Public Service board to execute Physical Planning matters at County level;
- f. The qualifications of the National Director of Physical Planning and the County director of Physical Planning should be provided for in the Bill to include a first degree in urban or regional Planning or related spatial Planning field, registration as a Physical Planner, experience and integrity;
- g. Development control is mainly a County Government function. The Bill has not been clear on who receives application and grant permission for development. It has only mentioned County Governments and what it calls Planning authority in passing without stating the actual office at the County level. All applications for development permission under the development control section should be addressed to the County director of Physical Planning who should process them in consultations with the relevant authorities and grant /reject approval for development as the main agent of the County Government;
- h. The Bill should clearly define Planning Authorities.

Land Development and Governance Institute (LDGI);

The representatives of the Land Development and Governance Institute submitted as hereunder, that:-

- a. Clause 2 :- Reference to spatial development plans with respect to development control. Definition is provided for “spatial Planning” but the term is not applied in the Bill. Spatial development plans are not provided for. The Bill should remain consistent with use of Physical development plans rather than floating across terminology.
- b. Clause 4:- Principles and norms The Bill should set out specific principles that inform and guide the Physical Planning process, from the spatial stage to development control – and give an indication of how such principles will be applied. For example –
 - i. principle of connectivity
 - ii. principle of sustainable land management and use
 - iii. polluter pays principleThe currently provided principles are generic – and may not assist in the interpretation of the law
- c. Clause 13 :- Functions of the NLC relative to the power of the Cabinet Secretary set out in the Bill, it is unclear what “oversee” and “monitor” means in practice – and could result in conflict and paralysis in Physical Planning;
- d. Clause 14:- Functions of the Cabinet Secretary - It is unclear what “coordinating” Physical Planning by County Planning authorities – legally amounts to;
- e. Clause 15:- Director of Physical Planning - Office is variously referred to as National Director of Physical Planning, National Director of Spatial Planning, and National Director of Planning. - Consistent use of language is necessary;
- f. Clause 17:- Functions of Director of Physical Planning - An additional function should include advising the Cabinet Secretary on procedure for undertaking meaningful public participation in the Physical Planning process at National and County level ; And advising the Cabinet Secretary on strategies for ensuring that National and Physical Planning is consistent with the principles of sustainable development, environmental conservation, and connectivity;
- g. Clause 18:- Functions of County Executive Member:- The section refers to “standards of Physical Planning” but the Bill has no explicit provision for setting of such standards;
- h. Clause 20 :- Purpose of the National Physical Development Plan - On the basis of the Plan in 20(2) – the Bill should add that the Plan should be the Basis for “use of space available in a manner cognizant of National development priorities and sustainable development”;
- i. Clause 22:- Content of the National Physical Development Plan - This should also include:
 - i. environmental conservation;
 - ii. strategies for ensuring sustainable utilization of space and natural resources;
 - ii. principles of ensuring connectivity in Planning across sectors, and at all levels of government.
- j. Clause 23:- Appeal to Cabinet on dissatisfaction with National Physical Plan -An appeal to the Cabinet maybe out of reach for ordinary Kenyans. In any event, this amounts to converting the Cabinet into a Tribunal;

Section should be modified to empower the NLC to consolidate the reports into a single National report and forward to National Assembly and Senate – as part of oversight in development;

- l. Clause 28:- Section 28(2) contemplates creation of a regional Physical Planning committee- Section should be modified to note that this committee is within the meaning of joint authorities contemplated by article 189 of the Constitution;
- m. Clause 29:- Scope of regional physical development plan-The scope should also set out any unique spatial, natural resource, environmental, economic or social circumstances peculiar to the Counties undertaking joint Planning – and analyse how to utilize such circumstances as opportunities, or how to overcome, if challenges-Such a plan should also contain an implementation plan;
- n. Clause 30:- Purpose of a regional physical development plan-Section 30(2) – the purposes should extend to specific Physical Planning concepts, including connectivity (including of peculiar circumstances referred to above) or connectivity in resource Planning and use – such as joint protected areas, or greenbelts for conservation and catchment management;
- o. Clause 36:- Implementation of regional physical development plan-The hierarchy of the National and regional plans, relative to those at County, urban etc. – should be clear;
- p. Clause 38:- County physical development plan-The section should specify how this plan relates to the County Integrated Development Plan, and the spatial plans prepared thereunder;
- q. Clause 46:- Local physical development plans- Section 46(2) cross-applies the term to “local spatial development plans” – consistency in terminology is missing in the Bill
- r. Clause 53-54:- Special Planning area-Special areas are presented as unique stand-alone and as a result, Connectivity is missing between the special Planning area – and the surrounding County/regional physical development plan;
- s. Clause 57:- Development permission- Section should be explicit that permission is sought from the Planning authority of a County Government;
- t. Clause 57(3) may result in demolition of properties built without permission. While this may be desirable in some instances, economic loss maybe extreme in others. In any event, the design of this section opens it up to judicial challenge;
- u. Clause 58:- Application for development permission-Provision should require that the prescribed fees, including the computation formula for the fees should be publicly disclosed;
- v. Clause 62:- Environmental Impact assessment-In this section, EIA is cast as optional. The Bill should be modified to require an applicant for development permission to have obtained an EIA license prior to making an application – or in the absence of an EIA license, to demonstrate the grant of an exemption by the National Environment and Management Authority. This ensures that no development permit application is considered by a Planning authority without a prior mandatory EIA process;
- w. Clause 64:- Development fees- The word “may” should be replaced with shall (in subsection 2) to ensure the publication of fees is mandatory;

requisition notice- A requisition notice issued on a private property to stop its development in the public interest exceeds the police (land use Planning) power of the state and amounts to compulsory acquisition – within the meaning of article 40 (for public purpose or public interest);

y. Clause 76:- Appeal on requisition notice to Liaison committees-The subject matter of such an appeal is mainly on questions of law, not fact, and is therefore suitable for a court of law (Environment and Land) or for arbitration. In addition, functions of the Liaison Committees are now performed by the National forum and as such the liaison committees should be removed from the Bill.

Kenya Land Alliance

The representatives of the Kenya land Alliance submitted as hereunder, that:-

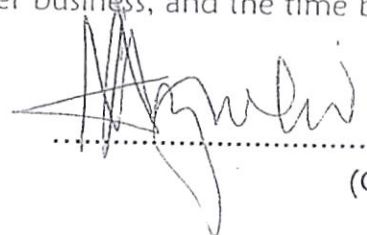
- a. There is need to revise sectoral land use laws in line with Article 68(b) of the Constitution;
- b. Section 101 of the current Physical Planning act- should be retained.
- c. Parts II and VI of the Bill should be combined as they deal with the establishment of institutions.

MINUTE NO. DCL/LN/2015/704

ADJOURNMENT & DATE OF THE NEXT SITTING

There being no any other business, and the time being 17.26 p.m. the meeting was adjourned.

SIGNED



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(CHAIRPERSON)

DATE

12th October 2015



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15, 10

