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Cheng'*



PARLIAMENT

THE SENATE

*Hon. Speaker
You may approve for
tabling.
27/7/16*

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

ELEVENTH PARLIAMENT- FOURTH SESSION

REPORT ON THE PHYSICAL PLANNING BILL, 2015 (NATIONAL
ASSEMBLY BILLS NO. 46 OF 2015)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

Approved

Speaker
27 JULY, 2016

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PREFACE

Mr. Speaker Sir,

On behalf of the Members of the Committee on Land and Natural Resources and as required under the Senate Standing Orders, I hereby present to this House, the Committee's Report on the Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015).

The Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015) originated in the National Assembly and was passed with amendments on 16th December, 2015, and subsequently referred to the Senate. The Bill was sponsored by Sen. Kithure Kindiki, the Leader of Majority in the Senate. The Bill was read a first time in the Senate on 17th February, 2016, and committed to the Standing Committee on Land and Natural Resources pursuant to Standing Order 130(1).

Mr. Speaker Sir,

In deliberating on the issues of the Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015), the committee held a total of four (4) sittings one of which was a public hearing.

Mr. Speaker Sir,

It is significant to mention that the purpose of this report is to provide critical insights to the House in debating this Bill. The Committee in considering this bill met with key stakeholders and subsequently undertook comprehensive deliberations on key issues raised during the public hearing on this Bill. The key recommendations of the committee captured in the committee stage amendments are geared at strengthening this Bill to ensure it secures benefits for all Kenyans through actualizing its objectives.

Mr. Speaker Sir,

The Standing Committee on Land and Natural Resources is established pursuant to Standing Order No. 208 and is mandated, under the Second Schedule of the Senate Standing Orders, *to consider all matters related to lands and settlement, environment, forestry, water resource management and mining.*

Mr. Speaker Sir,

The Standing Committee on Land and Natural Resources was constituted on Thursday 27th February 2014, during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

- | | |
|----------------------------------|---------------------------|
| 1. Sen. Lenny Kivuti | - Chairperson |
| 2. Sen. George Khaniri | - Vice-Chairperson |
| 3. Sen. Christopher Obure | - Member |
| 4. Sen. Dawson Mwazo | - Member |
| 5. Sen. Henry Ndiema | - Member |
| 6. Sen. Boy Juma Boy | - Member |
| 7. Sen. Isaac Melly | - Member |
| 8. Sen. Liza Chelule | - Member |
| 9. Sen. Martha Wangari | - Member |

Committee General Recommendations

Mr. Speaker Sir,

The committee having considered the matters in the petition recommends as follows:

That –

CLAUSE 9

THAT clause 9 be amended-

(a) by deleting paragraph (c) and substituting therefor the following new paragraph-

- (c) approval of national physical development plans on recommendation of Parliament; and
- (b) in paragraph (e) by inserting the words “in consultation with National Land Commission and county governments.” immediately after the words “levels of planning”.

CLAUSE 12

THAT clause 12 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

- (b) advising the Cabinet Secretary on formulating national physical planning policies, guidelines and standards.

CLAUSE 13

THAT clause 13 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

- (b) approving county physical development plans on recommendation of the county assembly;

CLAUSE 22

THAT clause 22 of the Bill be amended by deleting sub-clause (3) and substituting therefore the following new sub-clause-

(3) Upon incorporation of the proposed changes by the National Physical Planning Consultative Forum the plan shall be submitted to the Cabinet Secretary who shall cause it to be laid before Parliament for approval.

CLAUSE 29

THAT clause 29 of the Bill be amended by deleting sub-clause (1) and substituting therefore the following new sub-clause-

(1) The National Director of Physical Planning shall, with the approval of the Cabinet Secretary and in consultation with the county governments prepare regional plans and part development plans for national projects and programmes.

CLAUSE 37

THAT clause 37 of the Bill be amended by deleting sub-clause (2) and substituting therefore the following new sub-clause-

(2) The county executive committee member in charge of physical planning shall submit the completed county physical development plan to the governor who shall cause it to be laid before the county assembly for approval.

CLAUSE 45

THAT the Bill be amended in clause 45 by-

(a) numbering the existing clause to sub-clause (1); and

inserting the following new sub-clause immediately after the new sub-clause (1)-

Approval of
Local
Physical
Development
Plans

The County Executive Committee member in charge of physical planning shall submit a copy of the approved local physical development plan to the national land commission for their record.

CLAUSE 68

THAT clause 68 of the Bill be amended by inserting the following new paragraph immediately after paragraph (l)-

(m)National Director of Physical Planning.

CLAUSE 71

THAT clause 71 of the Bill be amended in paragraph (c) by deleting the words “Kenya Institute of Planners” appearing immediately after the words “physical planner nominated by the” and substituting therefor the words “Physical Planners Registration Board”.

CLAUSE 87

THAT the Bill be amended by deleting clause 87.

FIRST SCHEDULE

THAT the Bill be amended by deleting the First Schedule.

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence-

“amenity” means physical attributes which contribute and enhance quality of the environment and enjoyment of the permitted use;

“base map” means a plan that delineates the planning area that depicts the spatial representation of natural and man made features;

“county physical development plan” means a plan for the area or part thereof of a county and has the same meaning as the County Spatial Plan contemplated under section 107(1) (c) of the County Government Act 2012;

“land” has the meaning assigned to it under Article 260 the Constitution;

“local physical development plan” means a plan for the area or part thereof of a city, municipal, town or urban council and includes a plan with reference to any trading or marketing centre;

“national physical development plans” means a plan prepared to provide a national spatial development framework for the territory of Kenya as defined in Article 5 of the Constitution and includes regional physical development plans;

“regional physical development plan” means a plan prepared to provide spatial development framework for two or more counties and includes part development plans for national projects and programs.

Long title

THAT the Bill be amended by deleting the long title and substituting therefor the following new title-

A Bill for an Act of Parliament to give effect to Article 66(1) and the Fourth Schedule of the Constitution and to make provisions for planning, use, regulation and development of land and for connected purposes.

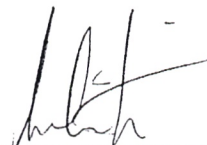
ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee thanks the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conducting of the public hearing on the Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015). The Committee also thanks in particular the Ministry of Land and Physical Planning, the Council of Governors, the Institution of Surveyors of Kenya the Town and County Planners Association of Kenya and members of the public who made submissions, both orally and in writing.

Mr. Speaker Sir,

On behalf of the committee, and pursuant to standing order 203(6), it is my pleasant and honourable duty to present and lay on the table of the house the report of the Committee on Land and Natural Resources on the Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015).

SIGNED..... 

SEN. LENNY KIVUTI, M.P.
CHAIRPERSON, LAND & NATURAL RESOURCES COMMITTEE

DATE..... 27/07/2016

1.0 INTRODUCTION

Mr. Speaker Sir,

The Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015) originated in the National Assembly and was passed with amendments on 16th December, 2015 and subsequently referred to the Senate. The Bill was sponsored by Sen. Kithure Kindiki, the Leader of Majority in the Senate.

The Bill was read a first time in the Senate on 17th February, 2016, and committed to the Standing Committee on Land and Natural Resources pursuant to Standing Order 130(1).

Pursuant to Article 118 of the Constitution and Standing Order No. 130 (4), of the Senate Standing Order, the Standing Committee of the Senate on Land and Natural Resources facilitated a public hearing forum that was held on 6th July, 2016, at the Mini Chamber, County Hall, Parliament Buildings to take into account the views and recommendations of the public while preparing this report.

According to its objects and memoranda, the Bill seeks to give effect to Article 66(1) of the Constitution which provides for regulation of land use and property as follows -

(1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

(2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

The Committee at its meetings held on 12th July, 2016, 19th July, 2016, and 26th July, 2016, considered the submissions from the public hearing and stakeholders and recommended that the Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015) be adopted subject to the amendments contained in **Annex I** to be moved at the Committee Stage.

2.0 OVERVIEW OF THE PHYSICAL PLANNING BILL, 2015 (NATIONAL ASSEMBLY BILLS NO. 46 OF 2015)

The Bill provides for-

Objects of the Bill

The main object of the Bill is to make provisions for:

- (a) preparation and implementation of physical plans at all levels of government;
- (b) administration and management of physical planning in Kenya;
- (c) procedures and standards for development;
- (d) control and regulation of land use and physical planning;
- (e) the co-ordination of physical planning between the two levels of government;
- (f) dispute resolution; and
- (g) the functions of and the relationship among planning authorities.

Physical Planning Institutions

The Bill establishes the following institutions for the purpose of implementing the provisions as set out in the Bill as follows-

(a) National Planning Consultative Forum

The Forum is to be chaired by the Cabinet Secretary responsible for matters related to physical planning and includes members of the national and county levels of government. The main purpose of the Forum is to provide a forum for consultation on national physical development, to promote effective co-ordination and integration of physical development planning and sector planning, to advise on the mobilization of adequate resources for preparation and implementation of physical development and strategies, and to advise on strategic physical development projects of the national, inter-county, county or transnational importance.

(b) National Land Commission

The Bill confers on the National Land Commission, in line with Article 67(2)(h) of the Constitution, a monitoring and oversight role over physical planning in Kenya, the preparation of status reports on the preparation and implementation of physical development plans in Kenya and the development of a monitoring framework and formulation of oversight parameters relating to physical planning.

(c) County Executive Committee

The Bill confers on the county executive committee member responsible for physical planning in each county, the responsibility of formulating county policy on physical planning, approving county physical development plans, monitoring and overseeing planning functions and the promotion of integration of county physical planning functions and sectoral planning levels.

(d) Other offices established under the Bill

The Bill also establishes the office of the National Director of Physical Planning whose function is to advise the government on strategic planning matters that impact on the whole country. At the county levels, the Bill establishes the office of the County Director of Physical Planning and confers on it the role of advising the county government on matters related to physical planning.

Types of Physical Development Plans

(a) National Physical Development Plan

This is meant to define strategic policies for the determination of general direction and trends of physical development and sectoral development in Kenya and to provide a framework for use and development of land. It is meant to cover an implementation period of twenty years and may be reviewed after ten years or on need basis. The Bill prescribes the objects of the Plan, the procedure with respect to its formulation and its contents.

(b) Regional joint physical planning development

This is regional-based and is meant to provide physical planning policies for participating counties in the respective regions. It is therefore required to define the scope of the plan and to define the geographical area in which the plan operates. The Bill requires the Plan to be published in *Gazette Notice* and to be approved by the National Director of Physical Planning, the Cabinet Secretary and to be adopted by the relevant governors of the respective counties.

(c) County physical development plan

This is a ten-year plan prepared by the county government for implementation in that county. Among other objects, this Plan seeks to provide an overall physical development framework for the county, guide rural development and settlement and to provide basis for infrastructural development. The Bill requires this Plan to be informed by both the Regional physical plan and the national physical development plan and to be approved by the county assembly before it can take effect.

(d) Local physical development plan

This is prepared by the county government in respect of a city, municipality, town or classified urban areas. Some of the functions of the local physical development plan set out by the Bill include zoning, urban renewal or redevelopment; regulating land use and land development etc.

Special planning area

The Bill mandates the county government to declare an area a special area planning either on its own initiative or on request by the national government or by the National Physical Planning Consultative Forum if the area in question has unique development and environmental potential or challenges; if the area is suitable for intensive and special development activity; if development of the area affects the immediate locality; if the development in the area raises significant urban design and environmental challenges; or if the development is meant to guide implementation of

strategic national projects. Any development in this area would remain suspended for a period of not more than two years until a physical development plan in respect of that area has been approved.

Development Control

The Bill makes it a requirement that before a developmental project is carried out within an area of planning authority, the proprietor must have sought development permission from the planning authority. The Bill makes it an offence (punishable with a fine not exceeding Kshs. 500,000/= or imprisonment for a term of 2 months or to both) to carry out development projects without obtaining development permission.

Application for development permission is through a prescribed form. The county government is required to give a copy of the application to the relevant authorities for their review and comments before considering the application. There is also a requirement under the Bill that the planning authority shall maintain a register of documents received by an

applicant seeking development permission and where a response with respect to an application is not received within a period of sixty days of the application, such permission shall be deemed to have been granted. Once granted, development permission is valid for two years and lapses thereafter. In addition, the Bill confers on the respective planning authorities the power to impose conditions or a fine, to be prescribed in regulations, on an applicant who fails to complete development works with respect to a permit within a period of five years.

The Bill also imposes a restriction on a licensing authority not to grant a license for commercial use or industrial use or occupation of any building in respect of which the planning authority has not given development permission.

The Bill also confers on the county government, the power to impose an order prohibiting a person from demolishing, altering or extending a building that is of special architectural value or historic interest. In addition,

all physical development plans are required to be taken into account and record all heritage sites declared under the National Museums and Heritage Act, 2006.

Enforcement

The Bill provides that a planning authority may issue an enforcement notice to the owner, occupier, agents or developer of property where development has been commenced without prior permission of the authority or compliance with the provisions of the Bill.

Physical Planning Liaison Committees

The Bill also establishes the following bodies to which any person may appeal against decisions of a national planning authority or a county planning authority respectively.

(a) National Physical Planning Liaison Committee

The Committee consists of: a representative from the National Land Commission, the Director of the National Environment Management Authority, the Director General of Water Resource Management Authority, the Director-General of the Kenya National Highways Authority, the Chairperson of the National Construction Authority, the Chief of the Kenya Defence Forces, a representative of the Council of Governors, a representative of the private sector, a registered architect, a registered physical planner, a registered surveyor and an advocate of the High Court of Kenya.

The Bill assigns the Committee a dual mandate: to advise the Cabinet Secretary on broad planning policies, strategies and standards; and to hear and determine appeals under the Bill.

(b) County Physical Planning Liaison Committee

The membership of this Committee is similar to that of the National Physical Planning Liaison Committee, and is chaired by an advocate of the High Court of Kenya appointed by

the County Executive Committee member in charge of physical planning and may co-opt experts to assist in its deliberations.

The role of the Committee is to hear and determine complaints and claims made in respect of the applications submitted to the planning authority in the county; to hear appeals against decisions of the planning authority; and to hear appeals in respect of the enforcement notices. The Committee is required to meet at least four times a year.

Miscellaneous

(a) Repeal clause

The Bill repeals the Physical Planning Act, 1996.

(b) Transitional provisions

Approvals for developments granted under the current law are deemed as development projects granted under the Bill. Such approvals however lapse if they will not have been commenced within 24 months of commencement of this Bill. Similarly, applications for development under the current law are deemed as applications under the Bill.

c) Pending disputes

All disputes pending before the establishment of the national and county liaison committees are to be heard and determined by Environment and Land Court.

4. Consequences of the Bill

The Bill repeals the Physical Planning Act, 1996 and devolves physical planning from the national level to the county levels in line with the Fourth Schedule to the Constitution, thereby aligning the law on physical planning with the Constitution and existing legislation.

national spatial development framework for the territory of Kenya as defined in Article 5 of the Constitution and includes regional physical development plans;

“regional physical development plan” means a plan prepared to provide spatial development framework for two or more counties and includes part development plans for national projects and programs.

Long title

THAT the Bill be amended by deleting the long title and substituting therefor the following new title-

A Bill for an Act of Parliament to give effect to Article 66(1) and the Fourth Schedule of the Constitution and to make provisions for planning, use, regulation and development of land and for connected purposes.

5.0 ANNEXES

- Annex 1: Proposed Committee Stage Amendments**
- Annex 2: Minutes of the Committee dated 12th July, 2016, 19th July, 2016, 26th July, 2016 and 27th July, 2016**
- Annex 3: Submissions from the Public Hearing Held on 12th July, 2016**
- Annex 4: The Physical Planning Bill, 2015 (National Assembly Bills No. 46 of 2015)**
- Annex 5: Public hearing advert**
- Annex 6: Attendance schedule**