

THE LAND SECTOR NON STATE ACTORS QUICK RESPONSE MPS EXCLUSION OF LAND CLAUSES IN KENYA'S DRAFT CONSTITUTION

Compiled for CLEAR by Linda Mbatha

Press Release 26/10/2010

Parliamentary Select Committee Decision on Land Chapters: A Let Down to Kenyans

We, Professionals, Land Experts, the Land Sector Non State Actors and Stakeholders in the Land Sector find the decision by the Parliamentary Select Committee to delete sections of the Land Chapter in the revised Harmonized Draft Constitution against the spirit of reform, national interest and therefore unacceptable.

Land reform is one of the long term issues identified for resolution in Agenda 4 of the Kenya National Dialogue and Reconciliation Agreement and is seen as key to sustainable peace, security and national economic development after the post election violence of January 2008.

In view of this, the removal of the National Land Commission from the draft Constitution takes the country back to the era of excessive powers vested in the President. Historically, these powers have been grossly abused resulting in inequity, corruption, land resource conflicts and destruction of key national assets. This is not only against the currently sought principles of devolution of power but also against the wishes of Kenyans who made this recommendation to both the Njonjo, Ndung'u Commissions and the CKRC.

The National Land Commission is a governance tool to prevent the Executive from abuse of land administration and management processes. Not entrenching the National Land Commission in the Constitution will expose land to political manipulation that has characterized land administration in the country since independence. It should be noted that the same Committee has consensus on the Presidential system of government.

The removal of all references to Community Land from the draft Constitution exposes Trust land to abuse by County Councils and the Central government. It is common knowledge that the custodians of Trust land have abused their powers and act in total disregard of local residents as there are no structures for participation of communities in decision making. This has resulted in confusion, conflict and degradation of land.

Kenyans gave their views to the Njonjo Commission, the Ndungu Commission and CKRC with regard to the changes in land administration and management that would bring about reform. It is a let down that PSC sees it fit to ignore the wishes of the people they represent. The PSC has also ignored 10 years of work conducted by land sector experts including the late Prof. Okoth Ogendo.

We remind the PSC, and the public that the Committee of Experts in their report on the Harmonized Draft Constitution noted that whilst the issue of access to and control over land has historically been one of concern in Kenya, the Land Chapter was not contentious within the context of the review. They further noted that the Land Chapter remained virtually the same in all three drafts and in doing so remained consistent with the views expressed to the CKRC by the people of Kenya.

Furthermore, the entire Parliament endorsed Sessional Paper No. 3 of 2009 on the National Land Policy on 3rd December 2009 thereby showing their commitment to land reforms. It is a surprise therefore that the PSC should seek to scuttle the process of land reforms by recommending that more Acts be added to the already numerous laws relating to land. The Sessional Paper specifically provides that the National Land Commission be anchored in the Constitution.

The deletion of some of the clauses in the Land Chapter of the revised harmonized draft Constitution will perpetuate political interference, bureaucracy, corruption and excesses currently seen in land administration and management. The decision of the PSC has sounded the death knell to land reforms in this country. It is an indication that the members do not appreciate the emotive nature of land and its ability to create social tension if not well administered and managed.

Kenyans want reforms and the vested interests of a few should not derail the necessary reforms. Kenyans demand that the PSC acts in a manner that facilitates the badly needed reforms in the land sector for the sake of national cohesion and economic development spelt out in Vision 2030.

SIGNED BY THE FOLLOWING REPRESENTATIVES:

Chair, Land Sector Non State Actors (LSNSA)
Chair, Institution of Surveyors of Kenya

National Coordinator, Kenya Land Alliance &
Head of Land Sector Non State Actors Secretariat

Shelter Forum &
Co-chair Land Sector Non State Actors

Expert in Land and Environmental Law



Representative members of LSNSA & stakeholders address the media at Lillian Towers, Nairobi on Tuesday 26/1/2010 10:00AM following Parliamentary Select Committee's (PSC) decision to remove all clauses pertaining to the National Land Commission and Communal Land in Kenya's Draft Constitution. The embodiment of the land into the Constitution was never a contentious issue since the inception of the constitutional process and was in fact a matter agreed upon by the entire Parliament, and as such a PSC of 27 members to decide for such exclusion.

REFORM TALKS

MPs reject land clause in draft constitution

NAIROBI, TUESDAY, JANUARY 26, 2010

Proposal to have land commission will be dealt with under an Act, House team says

by OLIVER MATHENGE

The Parliamentary Select Committee was yesterday reported to have deleted a section in the revised draft establishing a National Lands Commission.

The MPs are said to have taken the action because of the anticipated laws that will follow the National Land Policy, which was passed by Parliament in December.

"There was a feeling that the issues in the draft will be taken care of by the proposed national land policy," an MP told the *Daily Nation*.

Community land

All references to community land are also said to have been removed from the draft. Unconfirmed reports from the meeting indicated that the MPs want the provisions placed in Acts of Parliament.

Sources also indicated that Lands minister James Orengo, who is also a member of the committee, was mandated to table a Bill taking care of the issues raised. The proposed National Land Act is expected to enact the provisions of the policy.

But it was still unclear by last evening which other sections of the chapter on land and the committee had recommended

MPs knock out clauses on land

be removed from the draft.

Under the National Land Policy, all land laws will be consolidated and a National Land Commission set up to be the custodian of public land and to administer all land across the country. The government has also been given the green light to reduce the controversial colonial 999-year leases to 99 years, which has been fiercely opposed by beneficiaries.

Similar provisions are provided for in the draft being reviewed by MPs in Naivasha. The document proposes that the National Land Commission manage public land on behalf of the national and devolved governments.

PSC is also to recommend to the national government a national land policy and investigate disputes about land ownership, occupation and access to public land in any area as provided for by legislation.