

**PARLIAMENT OF KENYA  
THE SENATE**

**SENATE BILLS DIGEST**

**THE LAND LAWS (AMENDMENT) BILL, 2015 (NATIONAL ASSEMBLY  
BILLS NO. 55 OF 2015)**

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**Sponsor:** Hon. Aden Duale  
**Date of Publication:** 18<sup>th</sup> August, 2015  
**Date of First Reading:** 2<sup>nd</sup> June, 2016  
**Committee referred to:** Land and Natural Resources Committee  
**Type of Bill:** Ordinary Bill

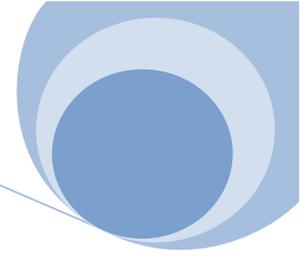
**1. Purpose of the Bill**

The Bill seeks to amend the Land Registration Act, No. 3 of 2012, the National Land Commission Act, No. 5 of 2012 and the Land Act, No. 6 of 2012.

**2. Background**

Following the promulgation of the Constitution of Kenya in 2010, Parliament enacted the the Land Registration Act, the National Land Commission Act, and the Land Act to give effect to Chapter Five of the Constitution on Land and Environment.

The National Land Commission Act provided for the functions and powers of the National Land Commission and gave effect to the objects and principles of devolved government in land management and administration. The Land Act was enacted to give effect to Article 68 of the Constitution by revising, consolidating and rationalizing the land laws in existence before the enactment of the Act and provided for sustainable



administration and management of land and land based resources. The Land Registration Act was enacted to revise, consolidate and rationalize the registration of titles to land and to give effect to the principles and objects of devolved government in land registration.

The Land Laws (Amendment) Bill is a basket amendment law that seeks to effect amendments to various provisions of the three laws. The amendments proposed to these Acts are stated, in the Memorandum of Objects and Reasons of the Bill as published, as being necessary in order to clarify the roles and mandates of the Ministry of Land, Housing and Urban Development by rectifying inconsistencies and overlap of mandates in land laws that have resulted in difficulties in the implementation of the three laws.

### **3. Overview of the Bill**

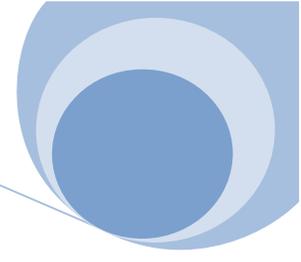
#### **(1) Amendments to the Land Registration Act**

In the Memorandum of Objects and Reasons of the Bill as published, it is stated that the amendments to the Land Registration Act are intended *“to clarify the mandate of the National Land Commission and the Ministry of Land, Housing and Urban Development so as to eliminate the overlap of mandates that has caused a conflict between the Ministry and the Commission in matters relating to the registration of land”*.

The Bill provides for the offices of the Deputy Chief Land Registrar, County Registrars and other Registrars and prescribes their qualifications and powers and the procedure for the constitution of land registration units.

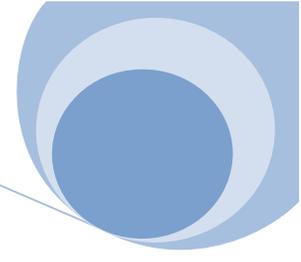
Some of the specific amendments proposed are as follows-

**(1) Clause 3:** Section 6(1) provides for registration units and empowers the National Land Commission, in consultation with national and county governments, by order in the *Gazette* to constitute an area or areas of land to be a land registration unit and to vary the limits of such units. Clause 3 of the Bill seeks to delete all references in section 6 to “the National Land Commission” and to replace these



with “the Cabinet Secretary responsible for matters relating to land”. These amendments extend also to clause 7 which provides for the Land Registry. The net effect of the proposals is that the National Land Commission’s mandate relating to registration units and the Land Registry as provided in the Act would now be vested in the Cabinet Secretary.

- (2) **Clause 6:** Section 12 of the Act provides for appointment of the Chief Land Registrar and other officers. This is amended to also provide specifically for the appointment of a Deputy Chief Land Registrar, County Land Registrars and Land Registrars. The qualifications required for appointment to these offices are set out in clause 7 of the Bill. The powers of the Registrars at various levels is set out at clause 8.
- (3) **Clause 11:** Section 28 of the Act provides for overriding interests over registered land. It is proposed in the Bill to delete some of these interests, in particular-
  - (a) spousal rights over matrimonial property
  - (b) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies.
- (4) **Clause 13:** section 13 of the Act provides for lost or destroyed certificates and registers. The Bill proposes to amend the provision to delete reference to “duplicate” certificates of title or lease and to alter this to “replacement” certificates. A new sub-clause (6) is also introduced to provide that upon the issue of a replacement certificate, no further dealings shall be carried out using the replaced certificate.
- (5) **Clause 14:** This clause seeks to amend section 36 of the Act. Section 36 provides for disposition and dealings affecting land. The amendments extend to the manner of dealing with multiple interests in land and provides for priority in accordance with the order in which the instruments which led to their registration were presented to the registry irrespective of the dates of the instruments and notwithstanding a delay in the actual entry in the register.

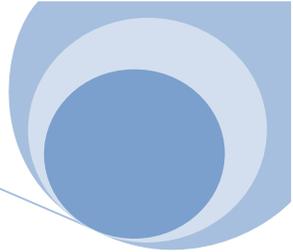


- (6) **Clause 22:** Clause 22 of the Bill seeks to amend section 76 of the Act which provides for restrictions prohibiting or restricting dealings with any particular land, lease or charge. The Bill proposes a new sub-section (2A) that requires that a restriction shall be registered in the register and may prohibit or restrict either all dealings in land or only those dealings which do not comply with specified conditions.
- (7) **Clause 25:** Clause 25 of the Bill proposes to amend section 79 of the Act which provides for rectification of the Register by the Registrar. In addition to the occasions when rectifications may be made under section 79(1), the Bill proposes that rectifications may also be made for purposes of updating the register and for purposes of correcting the name, address or other particulars of the proprietor in a prescribed form.

The proposed new sub-section (2) further provides that no alternation affecting the title of a proprietor may be made without the proprietor's consent unless the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission or where it would for any other reason be unjust for the alteration not to be made. The proprietor is to be give a ninety day notice prior to such alteration.

The proposed new sub-section (3) allows person aggrieved by the decision of the Registrar to apply to the Court for necessary orders.

- (8) **Clause 91:** Clause 28 of the Bill seeks to amend section 91 of the Act which provides for co-tenancy. In particular, the Bill seeks to delete sub-section (8) of the Act which provides that, except with the leave of court, joint tenancy shall only be capable of being created between spouses and any other joint tenancy other than between spouses shall take effect as a tenancy in common.
- (9) **Clause 93:** Clause 94 of the Bill seeks to delete section 94 which provides for co-ownership of property by spouses. The existing provision is replace with a



provision to the effect that “subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the Matrimonial Property Act”.

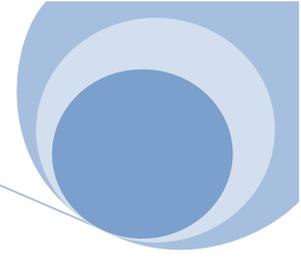
**(2) Amendments to the National Land Commission Act**

In the Memorandum of Objects and Reasons of the Bill as published, it is stated that the amendments to the National Land Commission Act are intended to eliminate the duplication of institutions at the county level and to provide for the manner in which the National Land Commission shall undertake the investigation of historical land injustice complaints pursuant to Article 67(2)(e) of the Constitution. The Bill is also intended to harmonize the mandate of the Commission and that of the Ministry of Land, Housing and Urban Development.

Some of the specific amendments proposed are as follows-

**(1) Clause 36:** Clause 36 of the Bill seeks to amend section 5 of the National Land Commission Act which provides for the functions of the Commission. In particular, the Bill deletes the following functions of the Commission-

- paragraph (c) – to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- paragraph (d) – to conduct research related to land and the use of natural resources and make recommendations to appropriate authorities;
- paragraph (e) - to initiate investigations, on its own initiative or on a complain, into present or historical land injustices, and to recommend appropriate redress; and
- paragraph (f) - to encourage the application of traditional dispute resolution mechanisms in land conflicts.



The additional function of ensuring that land under the management of the designated State agencies is sustainably managed is added.

**(2) Clause 37:** Clause 37 seeks to amend section 15 of the Act so as to provide clear provisions on the receipt, admission and investigation of historical land injustices. The proposed new section 15(2) defines a historical land injustice as a grievance which-

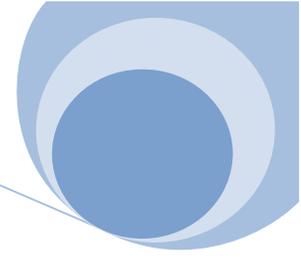
- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual residence;
- (c) occurred between 15<sup>th</sup> June, 1895 when Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> August, 2010;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under set out under subsection (3).

The proposed sub-section (3) sets out criteria that a historical land claim is to meet in order to be admitted, registered and processed by the Commission. The procedure for considering the claims is set out in the proposed new sub-sections (5) to (10). The proposed new subsection (11) provides that the provision on historical land injustices shall stand repealed within ten years.

**(3) Clause 38:** Clause 38 repeals section 18 of the Act which establishes and provides for the composition of county land management boards for purposes of managing public land.

### **(3) Amendments to the Land Act**

In the Memorandum of Objects and Reasons of the Bill as published, it is stated that the amendments to the Land Act are intended to harmonize the Act with the Constitution and eliminate overlap and clarify the mandates of the Ministry of Land, Housing and Urban Development and National Land Commission which resulted in difficulties in



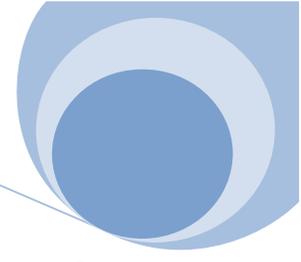
implementation of the Act. The Memorandum further states that the Bill is intended to limit the mandate of the National Land Commission to the management of public land on behalf of the national and county Governments, to limit the policy making powers of the National Land Commission, to limit the powers of the Commission regarding the allocation of public land and to establish a Board of Trustees to manage the Settlement Scheme Fund. The Bill further provides for minimum and maximum private land holding acreages pursuant to Article 68(c)(1) and provides for the manner of undertaking evictions from private, community and public land.

Some of the specific amendments proposed are as follows-

- (1) **Clause 45:** Clause 45 of the Bill seeks to amend section 12 of the Land Act which in sub-section (1) provides that the Commission may, on behalf of the national or county Governments allocate public land. This is amended so as to provide that the Commission shall allocate such land following the submission of a request by the national or county government. Similarly, sub-section (3) is amended to require that the Commission shall set aside land for investment only upon a request of the national or county government.
- (2) **Clause 46:** Clause 46 introduces a new section 12A providing for controlled land which is defined as land in Kenya which is-
  - (a) within a zone of twenty-five kilometres from the inland national boundary of Kenya;
  - (b) within the first or second row from high water mark of the Indian Ocean;\any other land as may be declared controlled land under any law or statute.

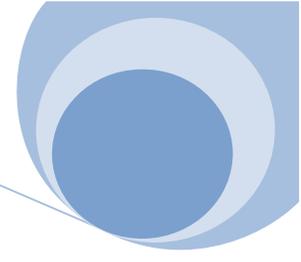
The clause provides that any transactions in controlled land require the prior written approval of the Cabinet Secretary.

- (3) **Clause 47:** Clause 47 amends section 13 of the Act by providing further provisions on expiry of leasehold tenure and in particular notification to the lessee



of the expiry of leasehold tenure by the Commission, application for renewal of a lease and the consequences of non-renewal of a lease.

- (4) **Clause 48:** This clause seeks to amend section 15 of the Act which empowers, in consultation with the national and county governments, to reserve public land for one or more purposes in the public interest. The proposed amendment would now require the Commission, upon the request by the national or county governments, to reserve such land. A similar amendment is proposed in clause 49 to section 16 of the Act which is on placing of care, control and management of reserved public land.
- (5) **Clause 73:** This clause seeks to amend section 98 of the Act. Section 98(1) provides that the Commission shall, on behalf of the national and county Governments, implement settlement programmes to provide access to land for shelter and livelihood. This is proposed to be amended to provide that the national Government, rather than the Commission, shall implement the settlement programmes. Section 98(3) provides that the Commission shall assist the national and county governments in the administration of settlement programmes. It is proposed to amend this to provide that the national Government shall administer the settlement programmes in consultation with the Commission and the respective county Governments. Section 98(4) is amended to re-cast the provision on identification of beneficiaries of settlement programmes to provide for a sub-county selection committee appointed by the Cabinet Secretary. The membership of the Committee is set out.
- (6) **Clause 89:** Clause 89 seeks to amend section 135 of the Act which provides for a Land Settlement Fund. The clause proposes to amend sub-section (1) which vests the administration of the Fund in the National Land Commission to administration by a board of trustees known as the Land Settlement Fund Board of Trustees. The clause then provides for the composition of the Board which is to comprise the Cabinet Secretaries responsible for land matters, the national treasury, agriculture, environment and natural resources, internal security and a representative of the



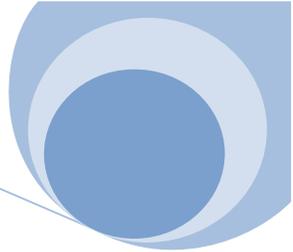
Commission. The Board is to be responsible for the provision of access to land to squatters, displaced persons, development projects, conservation and such other causes that may lead to movement and displacement of persons. The Board is also vested with the responsibility to purchase private land for settlement programmes, coordination of provision of shelter and a livelihood to persons in need of settlement programmes and other functions that may enhance the development and promotion of settlement programmes. The proposed new sub-section (5) requires the Board to consult the relevant county Governments where applicable.

(7) **Clause 97:** Clause 97 provides for various new sections-

- (a) 152A – prohibits the unlawful occupation of private, community or public land by any person;
- (b) 152B – provides for evictions of unlawful occupants of private, community or public land;
- (c) 152C – provides for notification of an eviction notice from public land to unlawful occupiers of land by the Commission;
- (d) 152D – provides for notification of a decision relating to an eviction from unregistered community land to be notified to all affected persons by the county executive committee members responsible for land matters;
- (e) 152E – provides for eviction notices to unlawful occupiers of private land;
- (f) 152F – provides that a person served with a notice under 152C, 152D and 152E may apply to court for relief against the order;
- (g) 152G – provides for the procedures to be followed during evictions;
- (h) 152H – provides for disposal of property left after eviction; and
- (i) 152I – provides for demolition of unauthorized structures.

(8) **Clause 98:** This clause seeks to repeal section 153 of the Act which establishes the Land Compensation Fund.

(9) **Clause 100:** Clause 100 seeks to amend section 159 of the Act by providing that the minimum land holding acreage shall be subject to the provisions of Article 66(1) of the Constitution and the legislation envisaged thereunder. Further, that



the maximum land holding acreage shall be subject to Article 60(1)(a) and (c) of the Constitution. The Cabinet Secretary is to publish guidelines on the penalties for non-compliance with the provisions of section 159.

#### **4. WAY FORWARD**

The Bill was read a First Time in the Senate on 2<sup>nd</sup> June, 2016. The Motion for Second Reading of the Bill was, on 15<sup>th</sup> June, 2016, negative, and the Bill therefore stood rejected by the Senate. Consequently, pursuant to Article 112(1)(a) of the Constitution, the Bill has now been referred for mediation in terms of Article 113 of the Constitution.

It is noteworthy that at the point of rejection of the Bill, the Senate had not conducted public participation on the Bill. It shall therefore be necessary for the Senate to consult with relevant stakeholders on the Bill prior to the mediation process.