KEPSA WEEKLY LEGISLATIVE BULLETIN

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A summary of key Parliamentary legislation

Communities set to get bigger say over public land

The two Houses of Parliament – the Senate and the National Assembly – are set to debate a new law that will guide the management of community land in Kenya. The Community Land Bill seeks to strengthen the legal regime governing land which may be currently be classified either as trust or public land but to which communities have a legitimate stake and claim to.


COMMUNITY LANDRIGHTS

Special newspaper for the conference on

COMMUNITY LAND LAW

Best practices and approach for the protection of community landrights in Kenya

JUNE 2013

Kenya's community land

which way for the country?

Top: Mui Basin in Kitui County. Community land is under threat as the rush to exploit untapped natural resources gains momentum. Above: Delegates follow discussions keenly during the conference on community land law.

The Community land Bill 2013 seeks to give effect to Article 63 (5) of the Constitution which has sought protection in the way in which community land is managed and administered in addition to securing greater clarity on the powers of county governments in relation to unregistered community land.

Once enacted, the new law will provide greater certainty on how such land will be acquired, transferred or disposed besides providing greater space to communities in administering community land than has previously been the case.

Provisions proposed under the new law will make it more difficult to convert community land to private ownership but make it easier to designate public land as community land. In the past, public land has been disposed without much clarity because of the latitude that vested in Local Authorities and in the absence of clear legal guidelines on transfer and disposition. Often, disposition of public land was irregular and arbitrary.

Once the Community Land Bill comes into law, the National Land Commission will have the power to revert illegally acquired public land back to the communities under a process of restitution.

The County governments, through County Assemblies, will have greater say over community land both as trustees of unallocated public land that may be vested in communities but also in converting community land into private land upon an application.

The enactment of the Community Land Act will result in the repeal of several land laws which include: The Land Consolidation Act (CAP 283); The Adjudication Act (CAP 284); The Land (Group Representatives) Act, CAP 287; and, The Trust Lands Act (CAP 288).

While the Community Land Act will affect all parts of the country once and when enacted, it will have significant impact in Mombasa, Kwale, Kilifii, Tana River, Lamu and Taita Taveta where significant parcels of land are earmarked for conversion from public to Community Land. These are areas where land adjudication has been limited due to a variety of historical reasons.

If passed in its current form though, the Community Land law could affect investors setting up business enterprises on community land. It proposes ceding at least 30 per cent of net investment incomes to the payment of royalties or support to community social programmes and infrastructure. This may be seen as “legislating” corporate social responsibility.

Persons leasing community land may also face uncertainty over the term of a deed of leasehold that guarantees grazing rights since under certain extenuating circumstances such as drought, communities may be entitled to move into and occupy such land to graze their animals – notwithstanding existing contractual agreements.

Spotlight on an upcoming Bill

The Fertilizers and Animal Foodstuffs (Amendment) Bill, 2013

The National Assembly is set to consider amendments to the Fertilizers and Animal Foodstuffs Act to create the Fertilizer Board of Kenya. The Board is expected to undertake various roles which include managing the importation, purchase and distribution of fertilizer in Kenya and facilitating the development of manufacture of fertilizer in the country. This would ease the heavy dependence on imported fertilizer and save the country significant foreign exchange.

To make agriculture more affordable, the Board is expected under the proposed amendment to institute and regulate provision of subsidies to farmers in the purchase of fertilizer.

Implications of proposed law to the Private Sector: The Board, as proposed under this amendment, is expected to play an important role in the provision of fertilizer. Depending on the effectiveness with which the subsidy programme is implemented, there will be a reduction in the price of fertilizer. The obligation placed on the Board to oversee the development of fertilizer manufacturing plants is expected to open a window of opportunity for Private Sector investment in fertilizer production.

News on KEPSA legislative engagements

National Tea Policy in the pipeline

The Tea Board of Kenya has initiated a process of developing a National Tea Policy that is expected to augment existing laws governing the tea sub-sector. The process of developing the Policy began in November 2013 and is now at an advanced stage of collecting and collating views from stakeholders before presentation of a draft Policy in March 2014. A detailed National Tea Policy Implementation framework is expected to be finalized by the end of May 2014.

At a recent consultative meeting with a wide range of stakeholders, most of whom are not directly involved in the value chain, the Tea Board of Kenya emphasized the need for a Policy to ensure that the tea sub-sector retained its strategic role as a major foreign exchange earner.

During the consultative meeting with the KTB, a number of issues that require to be addressed under the National Tea Policy were highlighted.

The Competition Authority, which spoke on the need to make the sub-sector more competitive expressed concern over conditions set out by the East Africa Tea Traders Association (EATTA) on the admission of tea stock brokers. The Authority was concerned that the tea brokerage market was concentrated due to a capping on the number of licensed brokers which limited competition.

The Kenya National Federation of Agricultural Producers (KENFAP) highlighted the need to empower local tea factories through increased autonomy to market their tea and engage in value addition. This would require moving away from the current centralized structure within the sub-sector in favour of enhanced autonomy.

KENINVEST which is the government agency charged with promoting investment in Kenya addressed the need for adequate incentives that would motivate enhanced investment within the sub-sector and increased focus on diversification of export markets to reduce dependence on traditional export destinations.

Enhancing value addition, through encouraging development of unique Kenyan tea brands, was viewed as representing potential room for higher earnings. It was noted that such a strategy would help overcome the current trend where most of Kenya's tea was purchased in bulk by multinationals that then used it in blending and packaging. Kenya, thus, benefitted minimally – a fact compounded by the lack of local value addition.

The meeting emphasized the need for innovation in marketing such as making greater use of the Kenyan diaspora in promoting tea exports. Diversification into new products and tea varieties such as purple tea could also be used to enhance earnings. To secure the future of the tea sub-sector, specific measures on environmental management were required including undertaking measures for mitigating climate change.

While it was important to develop investment procedures and guidelines, it was necessary to ensure that such procedures and guidelines did not increase costs and the risk of doing business or constrained the competitiveness of the business competition.

Investment facilitation should be designed to attract domestic and foreign investment and maximize on effectiveness and efficiency at all stages of the investment cycle. Transparency, simplicity and predictability were key principles.

The Kenya Private Sector Alliance (KEPSA) and Kenya Tea Development Authority (KTDA) made a joint presentation which noted that the County governments were burdening the Sector with new levies and charges which impacted on competitiveness.

KEPSA noted that over 70 per cent of small scale tea farmers owned half an acre of tea and below which could not provide full economic benefits in tea farming. The continued subdivision of small holder farms risked making the sub-sector less viable due to reduced productivity and high costs.

It was further proposed that there was need to outlaw leaf hawking due to its exploitative nature and negative effects on the overall quality of Kenyan tea. At the same time, it was proposed that there was need to develop one common standard that Kenyan tea must comply with based on an aggregation of the various standards prescribed by different countries and regions. There should also be an emphasis on fostering the use of marks of origin for Kenyan branded tea.