

**PARLIAMENT OF KENYA
THE SENATE**

SENATE BILLS DIGEST

THE PHYSICAL PLANNING BILL, 2015

Sponsor:	Hon. Aden Duale
Date of Publication:	11 th August, 2015
Date of First Reading:	17 th February, 2016
Committee referred to:	Land and Natural Resources Committee
Type of Bill:	Ordinary Bill

1. Purpose of the Bill

The object of the Bill is to provide for the planning, use, regulation and development of land. The Bill seeks to repeal and replace the Physical Planning Act, Cap 286 of the Laws of Kenya.

2. Background

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

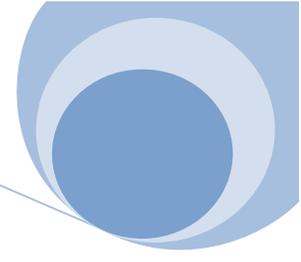
- (1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.*
- (2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.*

3. Overview of the Bill

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.

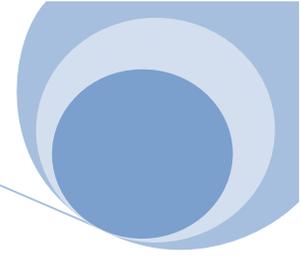
d) Other offices established under the Bill

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.

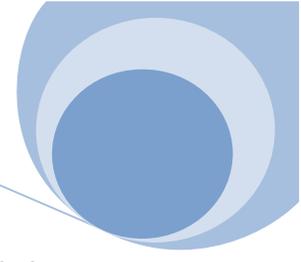
Special planning area

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.

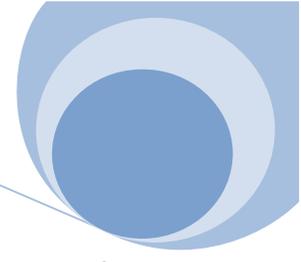
a) National Physical Planning Liaison Committee

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.

Way Forward

The Bill was read a first time on 17th February, 2016 and pursuant to a communication delivered by the Speaker of the Senate on 24th March, 2016, is to be read a second time at the appropriate time.

The Constitution, in the Fifth Schedule, requires the Parliament to enact legislation to implement **Article 66** of the Constitution within five years of the promulgation of the Constitution. The National Assembly by a resolution, however extended by a period of one year, ending 27th August, 2016 and the Bill is therefore required to have been passed by this date.