



Concept for Proposed New County bill for Public Open Spaces

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Definition of Public: Open to Common or General Use

What is Public Open Space? An area or part of land that is available for public use for a designated function or simply for passage of citizens, which according to the Lands Act 2012, is rated as public land by the Act of Parliament and has been held in trust by the Government (National and County Government) for the public.

Public open spaces can be determined by the specific functions and value they extend to the public in terms of its location, aesthetic, recreational and ecological in making them valuable to citizens.

One must understand and assess the merits of public open spaces in urban planning in terms of functional value, citizen benefits, urban population growth, need for essential public infrastructure, future land use, amongst many other functions in line with public benefits.

Public land on property frontage in both commercial and residential areas, form part of the public open spaces and therefore calls for collective interventions by the National and County Government, property owners, Public and private sector organizations and citizens to actively participate in protecting, improving, maintaining, monitoring and reporting on all public open spaces, being a preserved national asset for citizens benefit and for generations to come.

Why this Proposed Bill is Important

- To address past injustices and Government failures with regard to public land and public open spaces in the country. The Colonial and the Kenyan Government had the responsibility as trustees to protect public land for the benefit of the Kenyan people and not for individuals, special groups or communities to benefit from grabbed or allocated public land for political and selfish reasons.

- As long as the Kenyan Government continues to practice irregular allocations of public land and public open spaces, the Kenyan people shall continue to suffer from inadequate land for critical infrastructure developments to address rapid population growth, economic, cultural and social developments, needed for the benefit of our people and growth of the country.
- To address political and judiciary issues affecting the investigation and recovery process for grabbed and illegally allocated public land and public open spaces, where our legal system and processes are currently very slow and complex, making it almost impossible to recover public land through our courts.
- To replace the old outdated council byelaws with new county bills and policies, that will help streamline various matters pertaining to public land and public open spaces at the county level, which after the passing of the new constitution (2010) made both the National and County Government as the trustees for public land and public open spaces.
- To create new legislation and policies that will protect and empower all property owners, thereby giving them legal rights and the opportunity to share in the responsibility of protecting, improving, maintaining, monitoring and reporting on the area around and in front of their property. (herein referred to as property frontage).
- To advocate for the Ministry of Lands, Lands Commission, and the County Governments to work together to identify and mapping out all public land and public open spaces within the 47 counties and country as a whole using a digital data base system. The system will map the location of all public land and open spaces using satellite technology, state land title details and ownership (being Government), allocated public land with titles, title queries and court cases, land with illegal titles and current status of new and old land court cases etc. We would like our courts to quickly resolve the never ending court cases on public land and open public open spaces, so that the Kenyan people can be given back their land and we can move forward as a country.

- To give every County Government the task of surveying and collecting important data to enable them create new designs for all property frontage in residential and commercial areas within their county. The County engineer/planning and environment department must jointly work together to undertake this exercise to evaluate the topography, landscape size, existing infrastructure and the land available on all property frontages touching on public open spaces. This proposed bill will see a standardized design with 3 compulsory developments to be implemented by each property owner on their property frontage, namely: the pedestrian walkway, drainage system and landscape. The pedestrian & drainage system come first in priority and landscape if land is available.
- The county government shall be responsible for providing property owners with the necessary technical drawings, designs and support needed, so they can implement their part with the required technical assistance and supervision.
- To create new legislation and policies for individuals, organizations and contractors, planning to undertake excavation works on public land and public open spaces. Every contractor must first obtain approval or consent from the County Government and other relevant Government agencies i.e (NEMA, KURA, KENha) and in the case of planned excavation on a property frontage consent must also be sought/obtained from the property owners.
- The County Government will be responsible for issuing all excavation approvals, permits and licenses, stating the fees, penalties & fines payable, set the necessary safety standards, rules and regulations, signage required, plus other measures which will safeguard the county government, property owners and citizens. All citizens shall have the right to claim and be compensated if any bodily harm or injury or death took place as a result of negligence by the authorized or unauthorized excavation party, contractor or company. Property owners can also seek compensation for negligence leading to injury or death or where the contractor fails to restore the environment to its original state after excavation works.

- To advocate for legislation which the National and County Governments can repossess public land and public open spaces illegally allocated, grabbed or ownership has been transferred. A special tribunal and special courts needs to be established, under a gazette notice which is solely dedicated to addressing public land and public open spaces cases and recovery of the same to include, land parcels for public schools, public parks, public children's playgrounds, public toilets, public markets, public bus termini's and many other public land that were irregularly allocated or grabbed.
- To create new legislation and policies that protect all public open spaces against political, institutional, foreign, community and citizen influence, exploitation and destruction for selfish reasons or gains. All public land and public open spaces must be kept in the best standards in terms of world environmental standards and for the best interest of all citizens and the country at large.
- To determine the meaning of what is considered as the best public interest may vary from situation to situation and in all cases public involvement is crucial in this debate. Any confusion or conflict arising in a public debate, calls for the intervention of professional experts to advise, give guidance and wisdom and provide legal interpretation (high and supreme court) in clarifying what can be considered as best public interest in respect of public land and public open spaces.
- To allow different experts to share their views, opinions and expertise, by giving their input in drafting this proposed new county bill for public open spaces, together with input from the community and other stakeholders in the country.

Responsibility of the County Government:

The County Government responsibilities are focused on creating new legislation and policies for the smooth running of their counties and county Governments. New bills and policies will need to be developed and passed by the county assembly to give room for new and sustainable developments, which will improve people's lives and grow the county as a whole. If this proposed new bill can be approved and passed by the County Assembly in all the 47 counties within Kenya, there will be a quick transformation on the environment and improved standard of health and life for the people across the country. As for the county Government, it will help reduce the heavy wage bill, staff workload and financial burden, associated with protecting, improving and maintaining public land and public open spaces.

The role and responsibilities of the County Governments on this bill are:

- To identify and map out all public land and public open spaces within their jurisdiction as a county, irrespective of whether they were legally or illegally allocated, transferred or owned.
- To clearly define everybody's functions in terms of protecting, maintaining, developing, recovering, monitoring and reporting with regard to public land and public open spaces. This includes public land with existing developments, such as public schools, public parks, public markets, public children play grounds, public toilets, public sports stadiums and others.
- To allow property owners to share in the responsibility of improving their property frontage on public open spaces, where the designs shall be created by the County Government and the implementation by property owners with 3 compulsory improvements namely, the pedestrian walkways, drainage system and landscape and maintenance of the same. The National and County government shall also be responsible for installing and maintain street lights and CCTV cameras on property frontage.

- To County Government shall survey all roads and streets in residential and commercial areas using their engineers, planners and Environmentalist, who all must work together to create standard property frontage standard designs for each road and street in both residential and commercial areas.
- To intervene and settle any disputes and conflict arising from public land and public open spaces within their county.
- To promote community participation in the planning and decision making process concerning public land and public open spaces.
- To undertake public education and awareness campaigns to enlighten citizens on their roles and responsibilities in protecting, improving, maintaining, monitoring and reporting on public land and public open spaces.
- To County Governments should establish County Courts which shall complement the other courts, in addressing various cases pertaining to disputes, violations, destruction, misuse and others abuses in respect of public land and public open spaces. The county Courts shall also have the powers to determine the penalties, fines and fees to be paid as compensation in rewarding affected victims.
- To improve efficiency and reliability in the County Government management, communication and service delivery, where time is saved in processing and approving documents, issuing of permit/licenses and making payments.
- To install and maintain street lights and CCTV projects in residential and commercial areas and also seek compensation from victims found vandalizing any public infrastructure or facilities on public land and public open spaces.
- The County Government must therefore establish a Public Reporting Center (PRC), where the public can report using different platforms of their choice, such as SMS and Emails. Each County Government must create a public reporting centre with reliable communication equipment and channels that allows for a 24 hour open service line, which any citizen can use to report or share information with the County Government. The County Government must also promptly respond to any inquiries, pending and unresolved issues using this platform.

Citizen and Community Responsibility for public open space

- Citizens and the community shall be responsible for protecting, monitoring and reporting to the County Government on any illegal activities, destruction, acquisition or bad intentions by any persons or institutions with respect to public land and public open spaces. The County Government shall evaluate and assess each case independently, before hearing the case in their county courts or may decide to refer a case or cases to the Magistrate Courts, High Court or the Supreme Court depending on the complexity of the cases.
- This proposed new bill is based on the principle of free and safe passage for all citizens, where every citizen has the right for free movement within public open spaces. They can either walk, ride or drive through any road, street or area without any harassment or discrimination. At times the County Government may temporarily restrict free movement due to reasons such as security or others, which may warrant temporary closure to a road, street or area.
- The new bill will also be based on the principle of reasonable care by all citizens, where every citizen shall be responsible for keeping the environment clean and tidy, totally restricting careless littering or dumping on public open spaces. The law will provide for heavy penalties and fines to the victims and offenders
- Citizens and the community will be responsible for reporting on individuals and companies involved in illegal excavation works or who fail to restore the environment back to its original state after excavation. Citizens can seek compensation through the county courts and other courts in case they obtain bodily harm, injury or death due to negligence by the contractor.
- All citizens and the community must protect the environment or reporting any persons or organizations involved in establishing illegal structures, businesses or undertaking other illegal activities on public open spaces. Any incidences of vandalism, theft or destruction to public infrastructure and facilities must also be reported to the County Government.
- All citizens have the responsibility to participate in the planning and decision making process regarding public open spaces, where they must be free to share their views on what they believe is best for all citizens in respect of public open spaces and best public interest.

County Government will maintain the following rights over public open spaces

- a) Rights to protect the land from illegal allocations or use
- b) Right to create policies and legislation that will protect, improve and maintain public open spaces.
- c) Rights to call for public or community forums regarding public open spaces.
- d) Rights to approve, reject or revoke any application for land excavations or temporary development on public open spaces.
- e) Rights to determine the revenue, penalties, fines and fees to be charged.
- f) Rights to establish arbitration/kangaroo or county courts to address grievances, conflict, invasion, compensation and other cases regarding public open spaces.
- g) Rights to approve, reject or revoke or stop the approvals for works on property frontages, if found not implemented in accordance to the designs, workmanship standards and terms and conditions approved and agreed for property frontage developments.
- f) Legal rights to prosecute and individuals, organization or any persons doing illegal developments/excavations and other illegal activities or works without county approval and to seek compensation for damages incurred for the same.
- g) Rights to intervene and administer justice on any persons who fail to abide to principle of safe and free passage for all and the principle of reasonable care with regard to all public open spaces.
- h) Right to provide public education and awareness education and campaigns geared towards protecting, restoring, maintaining and developing public open spaces.

Obligation, responsibility and rights of Property Owners:

A property owner is an individual or company that has legal rights to possess and use land or building as their own with the responsibility of paying rates or taxes. Ownership can be through inheritance, purchase, gift, shareholding or other legal means to warrant the meaning of ownership with the necessary documents of title.

All property owners are required to submit their development plans and designs for approval by the County Government, before they can embark on developments on their property. We propose that the County government when approving building and property development plans, all property owners must sign an undertaking to develop and maintain their property frontage on public open spaces. All improvements planned on a property frontage must be implemented in accordance to the county government approved standards and designs made for the different roads and streets in residential or commercial areas.

Once this bill has been passed through the County Assembly into law, all property owners will be expected to immediately begin the process for implementing the project and will all be time bound, say 1 year from the time of start to completion of the approved works. The County Government take lead on this initiative, by first improving all their own property frontages for their properties and also providing the necessary technical drawing, designs and support to other property owners in improving the frontage successfully and in time. This must be a collective and collaborative effort between both the county Government and property owners.

All property owners will have the right to seek compensation from the County Government in case of negligence and vice versa, through using any court of their choice. Property owners can also sue a citizen who maliciously destroys their frontage either by excavating, dumping unwanted waste or simply destroying their landscape. There is also the option for out of court settlement, if both parties agree to the same in writing and adhere to the terms and conditions that they agreed upon.

This bill protects all property owners and citizens to the extent of the contents of this bill, where property owners even after developing their property frontage, will have no right to restrict any persons, animal or vehicle from passing through the frontage, as the bill is based on the principle of free and the safe passage for all.

The County Government and property owners must agree to work closely together, free of any sort of harassment, exploitation and corruption to achieve success with the passing of this bill and on passing this bill the implementation of the improvement of the property frontage project.

The property owner's responsibility extends to regular maintenance of their frontage under the agreeable standards, where the pedestrian walkway, drainage system and landscape, must fall within acceptable maintenance standards. All property owners will be liable to fines and monthly maintenance bills, if they fail to meet their obligations for maintenance on their property frontage. The County Government may decide to load an additional charge to a property owners annual property rates bill, if they refuse to pay their fines, penalties or maintenance invoice charges for neglect or services rendered by the County Government for not maintaining ones property frontage.

All Properties whose frontage stand close to a water body, animal reserves, high voltage transmission lines, chemical radiation plants, property owners should take extra precaution and care to avoid potential health and other risks through advocating for warning signs and fencing off any unsafe areas for their safety, their families safety and the safety of all citizens.

All property owners and citizens will have the right to information through community notice boards, emails, SMS and other approved media channels, which shall be used to share and exchange vital information with the general public on public land and public open spaces within the county.

This communication platform must be created by the County Government, allowing for two way communication between the county government, property owners and citizen, with a quick response time on any queries or issues raised by property owners and citizens.

All Property owners must keep records and receipts of any costs they incur on improving and maintaining their property frontage, which will stand as evidence in case any queries are raised and evidence is needed through supporting documents by a court or any other institutions.

The County Government may refuse to issue or revoke a license or permit for excavation works on Urban Public Spaces, due to the following reasons:

- a) Where the organization did not follow all due processes when applying for a license/permit for excavation works.
- b) Where the organization had presented fraudulent documents with their application
- c) Where the due processes were followed, but the courts or government has blacklisted the contractor for whatever reason and the same has come to the notice of the County Government officials.
- d) Where the type of excavation requested does not match the license, license fees and the works being undertaken by the contractor or the permit has been used elsewhere apart from the areas or job it was applied for.
- e) Other reasons which would lead to revoking a license or permit.

The County Courts

The County Courts we are advocating for must be established by the County Governments, to address any injustices or other legal matters and must therefore be independent, nonpartisan or unbiased in handling, hearing and judging cases. Each case presented before the county courts must be dealt with the highest level of integrity and professionalism, free of corruption and favoritism and in administering free and fair judgment for all victims who present themselves before the courts.

The county courts will be responsible for determining the type of cases to handle and those to be transferred to higher courts (High and Supreme Court), due to the limitations of county courts in terms of authority and power. County Courts will determine the allowable fees, penalties and fines in relation to the norm under legal practice for the different cases and offences committed. We propose that County Court be allowed to use their discretion in determining cases, which at times may require an independent investigation to be carried out by the county court and they can present their findings as admissible evidence before the court.

Though the idea of the county court conducting independent investigations and presenting their own findings as evidence to their court may sound and appears far-fetched, but we still believe in the principle of free and fair justice for all. It is right to say that evidence can be corrupted through financial incentives, thus hindering citizens the right to free and fair justice and citizens must give the right to appeal, if they feel that free and fair justice had not been administered or practiced.

The Citizens

Citizens have the right to safe and free passage or movement on public open spaces unless temporary restriction is done by the National or County Government for reasons of security or any and other reasons that are in the best interest of the public and country.

All citizens will have the right and responsibility to protect, develop, monitor and report on public open spaces, as all public land and public open spaces are held in trust for the people of Kenya by the Government of the day. Citizens must therefore be responsible by participating in the planning and decisions making processes through stakeholder meeting organized by the county government and others in calling for citizens representation.

The County Government must create a social platform which can be used to inform, update, collect and share information with the public and the public can also use the same platform to inform the county Government or share any information regarding public land and public open spaces. The platform must provide for two way communication between the county Government and the general public.

This is just a concept paper with guidelines and of which we plan to share with both the National and County Government, before the same can shared with legal and other experts who can now draft the same into a prototype county bill or policy document.

Please feel free to contact us, so together we can move this idea into becoming a new county bill and policy document, as we continue to push our agenda with County Governments and like-minded citizens for the benefit of our society, our children and generations to come.

“Don’t ask what your country has done you, but ask what you done for your country.”

