

28 July 2021

FSD KENYA'S ORAL SUBMISSION ON THE LANDLORD AND TENANT BILL, 2021 TO THE PARLIAMENTARY DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

FSD has recently launched an affordable housing program which supports the Big 4 Agenda, and the Constitutional right of each Kenyan to safe and secure housing.

We commend the drafting of this Bill which seeks to regulate relationships between landlords and tenants in an equitable manner. We note several improvements and attempt to modernise the regulatory framework relative to the current statutes which are set to be repealed. This Bill is extremely important as 82% of Kenyans in urban areas lived in rented dwellings.

We have provided our detailed comments in writing, and are grateful for the opportunity to make oral submissions today. In this regard, I highlight key areas for this esteemed Committee's consideration to enable the effective functioning and implementation of this Bill to meet the intended outcomes. I also provide a written copy of these remarks.

i) Timelines of Dispute Resolution by Tribunal

Section 7 of the Bill states that a Tribunal must determine a dispute within 3 months, failing which the Chairperson shall record the reasons and immediately fix a date.

From past experience, the Tribunal process can take inordinately long to resolve. Even with the best intentions, the dispute resolution processes can be dragged out by parties resulting into losses and inconveniences, and worse partis intentionally breaking the law as the required process is ineffective. FSD's suggestion is to provide a maximum of 45 days within which disputes must be resolved, with the following time frame: An applicant to lodge a dispute together with supporting evidence on Day 1, a respondent to provide its response within 14 days, and Tribunal to make a determination within 14 days (This totals 35 days, and therefore leaves a buffer of an additional 10 days within the maximum prescribed 45 days).

*Similarly there is no defined timeline for provision of a valuation under **section 45** of the Bill, which can lengthen the processes and should be integrated timelines above.*

Given Kenya's leadership in digital platforms, FSD Kenya would encourage the integration of a digital interface, whereby all tribunal applications and determinations will be available on a digital portal. This will assist in promoting strict timelines kept by the Tribunal and promote the availability of data on market rentals – which in itself would promote efficiencies in the Tribunal.

ii) Equitable risk sharing to promote affordable housing provision

Section 25 (1c) states that a landlord can terminate a lease without reference to a tribunal if a tenant has defaulted for 3 consecutive months.

In line with the Making Markets work for the Poor approach, FSD suggests that the period after which a landlord can terminate a lease without reference to the tribunal should be linked to the period of security deposit held by the landlord. So for example, if a landlord holds 2 months' security deposit, then the landlord needs to wait for a 2 months' period of rent default prior to terminating the lease. Even with the security deposit in hand, the landlord is likely to bear some financial expenses in relation to a defaulting tenant including unpaid utilities, repairs and a further agent commission etc. Further, as landlords are required to pay tax on residential income when it is due by the lease – whether it is received or not – the pre-paid tax paid to KRA is very difficult to recover, and in practical sense, a financial loss. Therefore, having too long a period before a landlord can get back its housing unit will disincentivize investment in the sector.

Section 59 and Section 60 of the Bill require the landlord to keep a unit for 60 days in case of a tenant's death or abandonment. This places undue burden/hardship on a landlord for events outside its control.

FSD suggests a period of 30 days in case of death of a tenant and 15 days in case of abandonment of goods by a tenant.

iii) Applicability of the Bill

S 3(1) (iii) states the Bill will not apply to residential premises whose monthly rent does not exceed such amount as the Cabinet Secretary may prescribe.

It is currently not clear whether the act will not apply to informal settlements as it is unknown what the rent floor will be. Hence, extensive stakeholder consultation is required in determining this rent floor, and the same should be adjusted in line with market forces at a minimum of every 5 years.

FSD strongly supports all financial inclusion measures following the making markets work for the poor framework. We would implore upon this esteemed Committee to also give regard to the far-reaching positive measures which can transform the development of affordable housing markets in Kenya in the appropriate legislative framework.

These include:

1. Supporting the creation of positive credit histories for tenants who pay their rent diligently to enable them access credit for their economic empowerment. FSD would also support the implementation of such a law if enacted, given our experience in developing the movable property collateral registry.
2. Providing a modest flat tax of say, 3%, on gross rents for units rented for less than KShs. 15,000 per month gross. This figure can be indexed and the flat tax made applicable no matter the size landlord's portfolio in this income bracket– only then will institutions be incentivized to invest and develop massive housing units needed to cater for those living in informal settlements.

We thank you for the opportunity to provide our comments and remain at your disposal for continuous engagement. FSD's commitment to the development of the rental sector in Kenya is shown by FSDAi's investment of GBP 5 million in International Housing Solutions, a housing offtaker for formal housing in urban areas. We expect this will improve the product offering, management and attract long term funding from domestic capital markets, once the risk reward equation is demonstrated.