

THE CONTRIBUTION OF LAND TO THE RECENT VIOLENCE IN KENYA: IMPLICATIONS FOR THE ONGOING LAND POLICY DIALOGUE

By

Ibrahim Mwathane, Land Development and Governance Institute (LDGI), Nairobi,
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SUMMARY

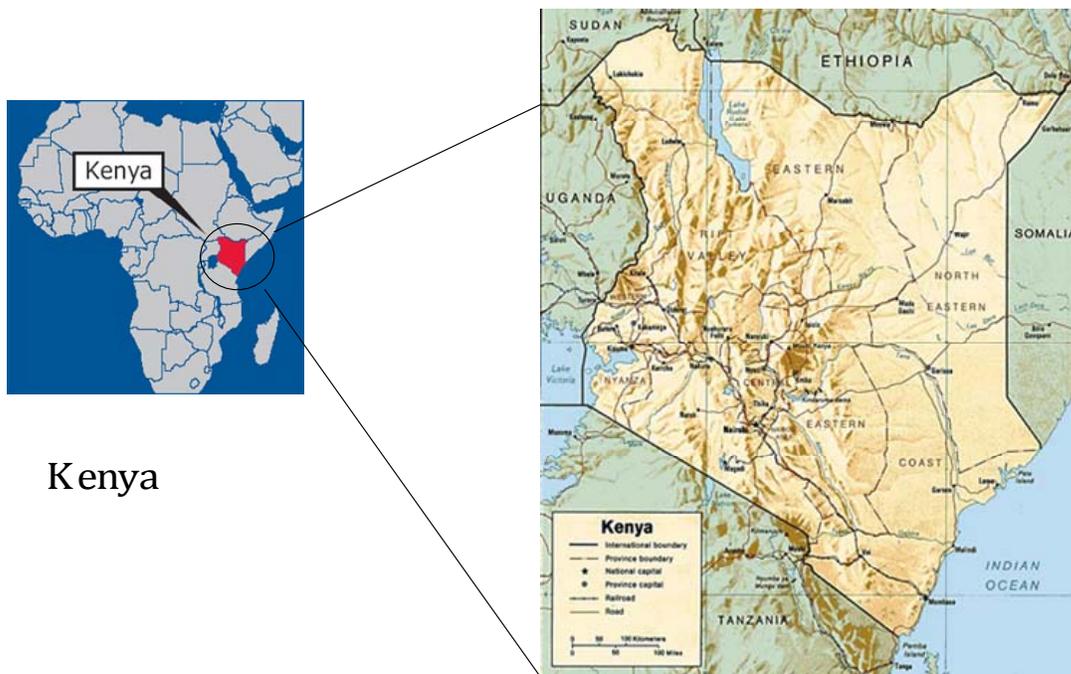
This paper discusses how Kenya's unresolved land question contributed to the 2007 post election violence and the ethnic clashes experienced in the previous 1992, 1997 and 2002 general elections. It details the policy interventions put in place in the last two decades, including the land reform provisions of the February 2008 post election Agreement signed between the two coalition principals, and the land chapter of the proposed new constitution. The paper demonstrates how the interventions converge around the provisions of the recently approved National Land Policy to give Kenya an opportunity to resolve its intractable land question.

1. KENYA: COUNTRY BACKGROUND

1.1 Size and Location

The Republic of Kenya lies along the Equator at the Eastern Coast of Africa. It has an area of approximately 582, 646 square kilometers comprising 97.8% land and 2.2% water surface (Sessional Paper No 3 of 2009, Item 11). To the East, Kenya borders the Indian Ocean with a coastline of approximately 536 kilometers running from Somalia to Tanzania. Somalia borders Kenya to the North East while Ethiopia is to the North. Sudan neighbors Kenya to the North West while Uganda lies to its West. Tanzania is Kenya's Southern neighbor. Nairobi is Kenya's capital City.

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Kenya

Kenya: Source: Kenya Bureau of Statistics website (www.knbs.go.ke)

Kenya is home to Mount Kenya (5199m), Africa's second highest mountain after Mount Kilimanjaro (5895m)¹ in Tanzania. Kenya's favorable tropical climate and its natural diversity including the serene sandy beaches, the scenic Great Rift Valley and the change in height and vegetation from sea level to the snow capped peaks of Mount Kenya render it an ideal tourist destination. Its coastline and strategic location midway between Northern and Southern Africa provide Kenya with an added advantage for regional and global trade.

1.2 Government

Kenya is a Republic under an executive President after obtaining independence from Britain in 1963. Jomo Kenyatta was Kenya's first President. Daniel Moi took over after President Kenyatta's death in 1978 until his retirement in December 2002. The current President Mwai Kibaki is Kenya's third President. Currently, Kenya is under a coalition government following a peace agreement² entered between the two coalition principals Mwai Kibaki and Raila Odinga in February 2008 after the disputed 2007 presidential election.

1.3 Social Economic Indicators

Kenya's population according to the 1999 Population Census was 30.4 million with an annual growth rate of 2.9% and is expected to rise to 55 million by year 2050. The 1999 figures further indicate that 60% of the population was below age 18 years and over

51% was female (Sessional Paper No 3 of 2009, pages 5,6). Though the 2009 Census figures have not yet been released, the population appears to have risen to approximately 38.3 million according to available provisional figures (Kenya Bureau of Statistics: Economic Survey 2009, page 10). The apparent rapid population increase implies higher demand for land and shelter in the rural and urban areas.

The 1999 Census results reflect that about 75% of Kenya's population lives on about 20% of Kenya's land mass categorized as high to medium potential agricultural land while about 25% of the population lives on the rest of the land categorized as Arid and Semi Arid. The rural-urban balance stood at 78% and 22% respectively with the most rapid growth confined to major urban centers and their satellite towns. Absolute poverty in the rural and urban areas stood at 54% and 53% of the population respectively.

2 GENESIS OF KENYA'S LAND QUESTION

2.1 Disruption of Communal tenure

Kenya embraced communal tenure until the advent of colonialism towards the end of the 19th century when the British colonial authorities imposed a parallel formal land regime. Till then, communities had their own mechanisms of managing access to and use of their land. They had their dispute resolution mechanisms too. This changed when a formal regime was imposed to run parallel to customary tenure. The country was divided into provinces and districts and land categorized as government, trust or private. Henceforth, access and transactions in land was governed through the laws and procedures enshrined in the newly enacted legislation and institutions. The institutional framework established was elitist, highly centralized and State driven, largely developed to serve the white settler community. The framework, laws and procedures were complex and confusing for indigenous Kenyans. This alienated and disempowered them in decision making. The State and local authorities assumed the earlier land management role played by community leaders. The historical development of the land question unfolded rather differently for the coast and interior Kenya.

2.2 Coastal Strip

2.2.1 Sultan of Zanzibar Control of "ten nautical mile" Coastal Strip

The Sultan of Zanzibar controlled a ten nautical mile strip parallel to the Indian Ocean prior to British rule. The "Njonjo Report"³ notes that until independence in 1963, this strip was controlled and administered by the colonial authorities on behalf of and as property belonging to the Sultanate of Zanzibar. Under an agreement entered in 1895 between the Sultanate and the Imperial British East Africa Company (IBEAC), all rights to land on this strip, other than private lands with certificates of ownership issued by the Sultanate, were ceded to the company. This had the direct effect of transferring all indigenous land rights to IBEAC and ultimately, the British Colonial Authorities.

The application of the 1908 Land Titles Act required that the indigenous people lay claims to land they considered theirs within six months. Many did not: either because they did not know or were convinced that there was little reason to lay official claim to land they had always traditionally and legitimately occupied. Given their historical concept of communal tenure, they had little appreciation of newly applied formal law. As a result, such land was claimed by the more knowledgeable government clerks, mostly of Arab origin at the time, even though occupied by the indigenous community. All unclaimed land was designated crown/government land.

2.2.2 Absentee Landlords and Squatter Phenomenon

Henceforth, the colonial and thereafter the independent governments proceeded to allocate such land to favored applicants who subsequently regarded the occupying local people as their “tenants” or “squatters”. Moreover, some of the Arab owners later left the country, leaving their parcels of land under the occupation of the locals, now “squatters”, since they held no formal rights to the land. There are also local land owners holding ownership documents to land occupied by such indigenous people. These are the owners regularly referred to as “absentee” land owners in regard to land at the coast of Kenya.

This act of appropriating land rights of the indigenous people along the ten mile coastal strip of Kenya defines part of the land question at the Coast of Kenya. Coast has the largest single concentration of landless indigenous people living as squatters (Sessional Paper No 3, Item 184). This manifests itself through extreme poverty.

2.3 Interior Kenya

2.3.1 Movement of People across Regions to provide Farm Labor

In interior Kenya, the colonial authorities used a series of Orders in Council and new legislation to expropriate land previously occupied by indigenous people. The new allottees, usually British Settlers, held the land under the newly imposed formal laws, hence extinguishing the rights of the indigenous. This is how parts of Central Kenya, the Rift Valley, Eastern and Western Provinces of Kenya became home to foreign land owners, whose primary activity was large scale farming. Such farmers relied on paid local labor, setting stage for the movement of local people across regions in search of opportunities to earn a living. People from Central Kenya for instance moved over to the Rift Valley Province to provide labor in the white settler farms therein.

When the clamor for independence heightened, some of the white farmers began to reconsider their stay in Kenya and offered their farms for sale. Some of the farms in the Rift Valley were sold out to groups of people from Central Kenya. Such farms were later subdivided and the resultant farms allocated to the respective individual group members. At independence, power shifted to a new group of well educated Kenyans. In its early years, President Kenyatta’s government facilitated the sale of land in the Rift Valley to organized groups of people from Central Kenya. Such farms were quickly subdivided and allocated to the group members. The government of the day also facilitated a privileged

purchase of land from the departing white settlers by local elites in government and in politics through loans.

2.3.2 Movement of People owing to displacements occasioned by Mau Mau liberation war

Meanwhile, citizens from Central, Nyanza and Western Kenya continued to purchase land on a “willing seller, willing buyer” basis which had progressively begun to drive a market. Years of stay in the Rift Valley by such people from Central, Nyanza and Western Kenya created a large cosmopolitan community in the Rift Valley. On the other hand, the commercial farms in Central Kenya had, besides local farm labor, attracted scores of farm workers from Western Kenya and Nyanza. Moreover, the Mau Mau war of liberation led to the displacement of many people from Central Kenya who sought land for settlement either as groups or individuals outside Central Kenya.

2.4 Allocation Ratio (“60 : 40”) integrated communities

In addition, Settlement Schemes introduced just before and after independence escalated the movement of people across regions. The internal administrative policy in such settlement schemes gave priority to locals who would be allocated 60% of the land/plots available while the balance of 40% went to Kenyans from other areas. This “60:40” ratio policy saw people from upcountry settle in some of the settlement schemes at the Coast of Kenya. Similarly, there was cross-movement of people between Central, Nyanza and Western Kenya.

By the 1990’s, this complex pattern of land settlement where communities had moved across regions for the reasons discussed above and the confidence they had in the “constitutional protection of property rights” ironically became a source of social and political tensions, providing fodder for exploitation by ethnic and political bigots.

3 ETHNIC CLASHES AND THE 2007 POST ELECTION VIOLENCE

3.1 Political Incitement

Much as it was welcome, the introduction of multi-party politics in Kenya in 1991 following years of single party supremacy by the then ruling party Kenya African National Union (KANU), ushered in some fundamental political challenges. There was perception that opposition to KANU, with strong presence in the Rift Valley and Coast, was spearheaded by leaders from outside these zones. This perception was exploited by local politicians in such areas to successfully incite inter-ethnic violence even prior to the 2007 general elections, peddling claims that “outsiders” had unfairly benefited from their land. This led to the eviction of some of the land owners considered non-indigenous from land they had otherwise been allocated or bought and occupied for long during the 1992 multi-party general election. This marked the beginning of a crisis of confidence in private property rights and the freedom to own land anywhere within the country as provided for in the constitution, a matter that begged urgent State intervention.

This was repeated in the 1997 and 2002 general elections but to varying degrees. By the time Kenya approached the 2007 general elections, it had become routine for politicians to incite inter-ethnic violence on account of perceived or real land injustices by outsiders. This provided fertile environment for the violence that erupted following the disputed results of the 2007 presidential elections. Land related injustices and conflicts in land ownership were cited as catalyst to the resultant violence. As illustrated above, this seed had been planted through Kenya's history of land appropriation and settlement pattern.

3.2 Post Election Violence: Land Owners Evicted and Property Destroyed

Following the violence, scores of people were evicted from land they had been allocated or purchased in accordance with formal procedures. Many people from Central Kenya who had settled in the Rift Valley were for instance evicted while farm workers from Nyanza and Western working in farms in Central Kenya and the Rift Valley faced hostilities and had to leave. People from interior Kenya settled at the Coast also faced hostility and forceful evictions as had happened earlier in 1992 and 1997.

According to the Report of the National Accord Implementation Committee of March 2008⁴, the post election "violence to an estimated loss of 1200 lives, dislocation of about 350, 000 people, destruction of property estimated at 90 billion shillings and general disruption of social and economic life". The Human Rights Watch Report of March 2008⁵ puts the number of internally displaced persons at 500, 000. The final figure may be higher. Government efforts to resettle the displaced people in farms purchased for resettlement are on going.

3.3 Other faces of the land question

Separately, the exclusively State driven land administration system, population growth and unmitigated urbanization precipitated other aspects of Kenya's land question around the country. This includes the illegal/irregular allocation of public land, landlessness and squatting, fragmentation of land holdings to uneconomic units, uncontrolled proliferation of unplanned urban informal settlements, land hoarding for speculation, destruction of forests and water catchments, disinheritance of women and the non protection of land rights of vulnerable and marginalized people and groups. Desertification, environmental degradation and an ever increasing number of unresolved land disputes added to the question (Sessional Paper No 3 of 2009, Items 24-25).

4 POLICY INTERVENTIONS

4.1 Commission of Inquiry into the Legal, Land Policy, Constitutional and Institutional Framework on Land ("Njonjo Commission")

Owing to public pressure for suitable answers to the land question, the government gazetted a Commission of Inquiry to look into the land law system of Kenya. This Commission, popularly referred to as the "Njonjo Commission", collected oral and

written submissions from Kenyans on a wide variety of issues. The Commission Report published in November 2002, just a month before the end of KANU rule and President Moi's retirement, recommended the restructuring of land administration and management in Kenya. The Commission proposed that the restructuring be centered on the principles of a land policy framework, the constitutional position of land and a new institutional framework for land administration. Though the Njonjo Report was never systematically implemented, these recommendations were to later greatly inform the formulation of Kenya's national land policy.

4.2 Commission of Inquiry into Illegal/Irregular Allocation of Public Land (“Ndung’u Commission”)

In line with its publicly stated commitment to audit the grants of public land issued by the previous KANU government, the new NARC government gazetted a Commission to inquire into the illegal/irregular allocation of such land in June 2003, six months after assuming office. The Commission, popularly referred to as the “Ndung’u Commission”⁶, presented its report in June 2004. Besides developing an inventory with the details of over 200,000 parcels of land allegedly illegally/irregularly allocated from public land, the report recommended among other things that:-

- There be established a land titles tribunal to vet and revoke or rectify the titles to the irregularly/illegally allocated parcels.
- The manual records held by the Lands Ministry be computerized and made available for inspection by the public.
- A comprehensive Land Title Insurance Scheme is established for Kenya to enable title holders to be able to rely on title deeds for transactions due to the uncertainty occasioned by illegal allocations.
- There be established a National Land Commission to deal with all land matters in the country including the allocation of public land and supervising the allocation and management of Trust land.
- The allocation of developed public land be made at market value.
- There be established an inventory of all public land
- All land legislation be harmonized to prevent duplication of titles and other abuses.
- The government should upgrade Informal Settlements.
- The government recovers all money unjustly earned through illegal allocation and sale of public land.
- To address the backlog of land related cases, there be established a Land Division of the High Court.
- All complicit public officials and professionals be investigated and prosecuted

Like with the Njonjo Report, the Ndung’u Report has never been systematically implemented. However, most of its recommendations have informed the contents of the national land policy. It is important to note that these two reports were available in good time to inform the national land policy formulation process which commenced in February 2004 and protracted for close to six years.

4.3 Kenya Vision 2030: New Long-Term National Planning Strategy

Kenya's new long-term national planning strategy, officially known as *Vision 2030*⁷, outlines the key pillars necessary to transform Kenya into a newly industrializing middle income country providing a high quality of life to its citizens by year 2030. The three are the economic, social and political pillars. The economic pillar aims to achieve an average Gross Domestic Product (GDP) growth rate of 10% per annum while the social pillar seeks to build a just and cohesive society with social equity. The political pillar aims to realize a democratic political system founded on issue-based politics and the rule of law.

It also seeks to protect the rights and freedoms of every individual in Kenya. Vision 2030 identifies land reform as critical for social-economic and political developments with respect for property rights to land owned by communities, individuals or companies, considered an important driver for rapid economic transformation. The Vision further states the need for:-

- A suitable land use policy,
- Computerization of land registries,
- The establishment of a national spatial data infrastructure and
- The introduction of an enhanced legal framework for faster resolution of land disputes to support the envisaged transformation.

This Vision will be realized through a series of short and medium-term plans. The implementation of Kenya's land reform program will be best fitted into these plans so as to effectively support growth in other sectors and to be able to attract high level policy attention for effective funding.

It is important to note that the above land reform areas identified in Vision 2030 are all provided for in Kenya's national land policy. The appropriate implementation of the national land policy would therefore automatically provide the sectoral support needed for the realization of Vision 2030.

4.4 Formulation and Implementation of the National Land Policy (NLP)

Following the 2002 general elections in Kenya, the KANU government exited and was replaced by the National Rainbow Coalition (NARC) government which was eager to build a track record through good governance. The land sector became a key beneficiary of this goodwill. The government not only wished to audit all irregularly issued grants of public land but also quickly committed to formulating a national land policy as demanded by stakeholders and recommended by the Njonjo Commission. Subsequently, the Njonjo Commission was publicly released in early 2003 and seed preparation for the formulation of a NLP commenced. The process was launched in February 2004. The chronology of process progress and status is illustrated by the milestones highlighted in the table below.

Table 1: Land Policy Formulation Process: Status, Actors & Milestones

Date	Milestone	Key Actor(s)	Remarks
February 2004	Commencement of Process	Stakeholders	Initiative flagged off with stakeholders providing input to the concept paper, creating a more comprehensive inventory of stakeholders for the process and clustering into six groups for detailed work around selected themes
August 2005	Draft Issues & Recommendations Report	NLP Secretariat	This report contains all the issues raised from the six thematic groups namely: <ul style="list-style-type: none"> • Rural land use, environment & informal sector • Urban land use, Environment & informal sector • Land tenure and socio-cultural equity • Land Information Management Systems • Legal framework • Institutional and financial framework
December 2005	1 st Draft NLP	NLP Secretariat	Contains content shaped from the issues report and expert input. The draft was released countrywide in English and Kiswahili languages for countrywide discussion and input.
April 2007	Peer Review Report	Peer Review Team	The first draft of the NLP was subjected to a peer review against the “Framework and Guidelines on Land Policy in Africa”, then in draft form, produced

			under the Continental Land Policy Initiative (LPI). The Framework has since been approved through a resolution of the Summit of African Heads of State and Governments held in Sirte, Libya in July 2009.
April 2007	Adoption by national stakeholders' symposium	Stakeholders	Representatives of stakeholders from the public, private, academic, professional associations, civil society, political and religious constituencies from around the country discussed and improved on the first draft.
May 2007	Final Draft NLP	NLP Secretariat	This was an improved version of the first. It took into account all inputs from public presentations, the national symposium and the peer review report.
June 2009	Approval by Cabinet	Government	This approval, coming over two years after the final draft, was preceded by a lot of public and stakeholder pressure and lobbying.
August 2009	Sessional Paper	Government/Stakeholders	Was prepared from final draft, taking into account last minute concerns raised by stakeholders and leaders.
December 2009	Approval by parliament	Members of Parliament	This approval was preceded by intense public education and lobbying by the local network of Land Sector Non State Actors (LSNSA). The relevant Sessional Paper No 3 of 2009 on the NLP received near unanimous support by the members of parliament who contributed to debate (Kenya National Assembly Official

			Reports: 1-3 rd December 2009)
From January 2010	Implementation	Government & Stakeholders	The Land Reform Transformation Unit (LRTU), charged with driving transition arrangements prior to the establishment of the proposed National Land Commission (NLC) which will drive implementation, has been busy working on implementation modalities from the beginning of 2010. The first Policy Steering Committee meeting to guide implementation was held on 30/03/2010.

4.4.1 Key Provisions & Contentious Issues of the NLP

Whereas the land policy principles, guiding values, methodology and content of Kenya's national land policy can be obtained from the Ministry of Lands website (www.ardhi.go.ke), some key provisions and the contentious issues noted during the process that can inform subsidiary discussion are highlighted below.

4.4.1.1 Key Provisions

These include:-

1. That aspects relating to the protection/regulation of property rights, compulsory acquisition, vesting of root title, classification of land and the establishment of a national land commission should be anchored in the constitution.
2. That existing legislation will be reviewed and harmonized and that there shall be enacted new enabling legislation to implement the policy
3. That there shall be created an inventory of public land
4. That all illegally/irregularly allocated public land will be recovered and a land titles tribunal will be established for the purpose
5. That existing 999 year leases will be converted to 99 years or less
6. That there shall be established a land trust fund and a land bank
7. That public access shall be provided to all beaches, lakes, rivers and fish landing sites
8. That there shall be developed a national land use policy
9. That there shall be developed a land information management system and a complementary national spatial data infrastructure
10. That there shall be established a legal and administrative framework to address among others issues relating to: the coast of Kenya, pastoralists, vulnerable minorities and marginalized groups, refugees, internally displaced persons, children, the youth and women
11. That there shall be established a suitable legal and administrative framework to investigate, document and determine historical land injustices and recommend mechanisms for their resolution
12. That there shall be established a national land commission with offices (district land boards) countrywide
13. That alternative dispute resolution mechanisms and land dispute tribunals will be introduced to complement the courts for faster and cheaper access to justice on land disputes and cases
14. That community and district land boards and district land tribunals will be introduced to improve land governance at the devolved level
15. That there shall be established an appropriate fiscal management system to facilitate efficient revenue collection, utilization and servicing of land and to provide incentives for appropriate land uses and to discourage land speculation. Undeveloped land would accordingly be taxed.

4.4.1.2 Contentious Issues

Some of the issues below were contentious during the formulation and discussion of the land policy for reasons that cannot be exhaustively discussed within the scope of this paper:

1. The conversion of land from 999 to 99 years.
2. The proposal to resolve historical injustices.
3. The removal of sanctity to first registration titles issued under the Registered Land Act (Chapter 300).
4. The inclusion of the concept of “community ownership”.
5. The recovery of illegally/irregularly allocated public land without compensation.
6. The recognition of the rights of squatters/trespassers (coast of Kenya).
7. The prohibition of the ownership of freehold land by non citizens.
8. The removal of the control of Trust Land by County Councils to be replaced by Community Land Boards.
9. The establishment of and the broad mandate of the national land commission.
10. The recognition of secondary rights (spouses and children).

4.4.2 Implementation of NLP

The national land policy was accorded parliamentary approval in December last year. Year 2010 therefore effectively marks the beginning of the implementation phase. A Land Reform Transformation Unit (LRTU) has been established in accordance with Item 265 of the Sessional Paper No 3 of 2009 on the NLP for purposes of implementation, pending the establishment of a National Land Commission (NLC). Activities of the LRTU will be guided by programmes and priorities outlined in a “Land Policy Implementation Framework” prepared under the direction of the LRTU.

Some of the tasks to be undertaken include facilitating:

- The drafting and enactment of legislation necessary to implement the policy
- The establishment of relevant institutions
- The recruitment and training of required personnel
- The mobilization of financial and other resources
- The organization of civic education on land reform
- A smooth transition

A Policy Steering Committee comprising representatives from the Ministry of Lands, other line Ministries which impact on land, Private Sector, Civil Society, Professional Associations, Farmers Associations and Development Partners has been formed to provide policy direction to the reforms. The implementation details will be driven through five Technical Working Groups (TWGs) with experts drawn from the public and private sectors and training institutions. The five TWGs are:

- Legal
- Land Management
- Land Information Management Systems
- Institutional Transformation and
- Public Education and Awareness

4.4.3 Implementation Challenges

The implementation of Kenya's land policy will be a long term programme consisting of a set of phased and parallel activities. It will require very long term financial and political commitment by the government and political leaders countrywide. The implementation will however have to contend with some fundamental challenges, some of which are:-

1. *The development of an appropriate Land Policy Implementation Framework:* This requires the input of all stakeholders and a very good understanding of the policy principles and timelines required to support specific activities. The development of this framework, which spells the implementation road map, will be a fundamental challenge.
2. *Sustained political goodwill:* Land Reforms entail compromises between beneficiaries of the status quo and the rest of the citizenry. Invariably, the key beneficiaries of the status quo in Kenya are largely those who are or have been in political leadership and the executive. Some of these later become key business investors. The details of the Ndung'u report for instance reveal the large extent to which members of the political class and the executive were involved in the irregular allocation of land. Complicit political leaders, and some in the executive, can therefore present subtle barriers to implementation.
3. *Funding:* Item 271 of the sessional paper on the land policy indicates that it is envisaged that 9.6 billion Kenya Shillings will be required over the first six years of implementation. This is a substantial investment. It is however observed in Item 272 of the Sessional Paper that effective implementation of the proposed policy could more than double the current 6.0 billion annual revenue collection of the Lands Ministry. Clearly, there are great gains expected if there is sustained effective implementation. The budgetary process could however address other national priorities. Whereas Kenya's development partners are expected to provide support in some of the implementation components, failure to prioritize budgetary support for the process can be limiting.
4. *Institutional Transformation:* Transiting from the current institutional set up to the proposed where the Lands Ministry is expected to shed its service delivery role to the proposed national land commission while retaining mainly policy formulation and resource mobilization roles may present challenges. Current office holders in the Lands Ministry will be expected to either assist or watch as their enviable statutory mandate is transferred to a different institution. Moreover, the establishment of the proposed local level community land boards could face hostility from the existing local authorities currently hosting such roles. Implementation must address such challenges.
5. *Technical Capacity:* High level technical capacity will be required to review, harmonize and enact new land legislation. Legal experts required must be able to understand and correctly interpret the proposed policy principles into statutes. This capacity is not sufficiently available and may pose a challenge. The development and maintenance of the proposed modern land information management system will also require specialized technical capacity. Again, the local supply of this capacity may prove quite a challenge.

6. *Constitutional Support*: Some of the provisions in the policy, including some of the proposed institutions, will require constitutional anchor. In the event that the new proposed constitution fails in the referendum, this will pose a challenge to the implementation of some aspects of the policy. Only specific constitutional amendments to the current constitution would alternatively help. These too would require a lot of political goodwill.

4.4.4 Key Actors

A discussion on the Kenya NLP process would not be complete without a mention of the key actors. Much as the process was informed by contributions from many institutions and individuals, the input of three main actors who tremendously influenced the process will be highlighted.

4.4.4.1 The Government

The process was State driven. The government, through the line Ministry of Lands, besides providing an institutional home and seed capacity, drove the key State institutions and organs. These include: Line Ministries, the cabinet, the Attorney Generals' Office. The government was also responsible for tabling of the Sessional Paper. The government also facilitated the invitation and coordination of stakeholders and experts to the process and also provided seed finance and logistics for all the meetings and preparation of reports. The government is also tasked with constituting and coordinating a Land Reform Transformation Unit (LRTU) to prepare for the implementation of the Land reform programme.

4.4.4.2 The Development Partners Group on Land (DPGL)

This group comprises of Kenya's development partners currently supporting or interested in supporting the land sector. DPGL currently includes: United Nations Human Settlement Programme (UN Habitat) which provides the chair, Swedish International Development Agency (Sida), United States Agency for International Development (USAID), World Bank, Department for International Development (DfID), Food and Agriculture Organization (FAO), International Fund for Agricultural Development (IFAD), European Union (EU), United Nations Development Programme (UNDP) and Italian Cooperation. Besides providing financial support for the various components of the process through their individual bilateral arrangements, DPGL runs a basket funding arrangement for the process. DPGL has been able to identify and mobilize appropriate technical expertise and global best practices to inform the process. This included the peer review done against the draft Framework and Guidelines on Land Policy in Africa in April 2007 produced through the Continental Land Initiative (LPI). It is expected that the DPGL will continue to support the implementation process and ensure the continued benchmarking against other global processes. To this effect, the implementation of the Kenya land policy may require peer reviewing against the performance of other Africa Union member countries as provided for in the Framework and Guidelines. DPGL could greatly influence such an activity to urge on implementation.

The DPGL also provided and continues to provide support to some of the local stakeholders engaged in the process.

4.4.4.3 The Land Sector Non State Actors (LSNSA) Network

The LSNSA is a coalition of local land sector civil society and professional associations who came together in late 2008 for synergy in order to better influence and impact on the process. Currently, the interim working group of LSNSA includes: Kenya Land Alliance (KLA), Institution of Surveyors of Kenya (ISK), Federation of Women Lawyers (FIDA-Kenya), Shelter Forum, Pamoja Trust, Hakijamii, Groots Kenya, Kenya Human Rights Commission (KHRC) and the Land Development and Governance Institute (LDGI). The Institution of Surveyors of Kenya has provided the chair while Kenya Land Alliance provides the secretariat to the network during the interim phase of the working group. Sida provided the LSNSA with initial financial support and is in the process of considering an application for extended support to help conclude the activities identified at the inception of LSNSA.

Prior to coming together, the individual members of LSNSA were instrumental to lobbying the government to keep the process on track. Individual institutions also provided membership to the thematic groups during the early phase of the process. On coming together LSNSA provided perhaps the strongest and most focused sectoral voice to lobby for the approval of the Kenya land policy. LSNSA helped to prod government to expedite necessary documentation, undertook public education and awareness campaigns for communities and leaders in the country.

In particular, LSNSA lobbied and provided public education to members of parliament from the Coast. LSNSA also provided education and lobbied parliamentary committees which impact on issues contained in the land policy. These were parliamentary committees on: Land & Natural Resources; Justice & Legal Affairs; Local Authorities; Administration & National Security; Agriculture, Livestock & Cooperatives and Transport, Public Works & Housing. LSNSA also organized a high level land reform breakfast event attended by members of the government, development partners, the media, political and religious leaders from around the country to influence the process.

It is perhaps reflective of LSNSA's activities and influence that the process appears to have suddenly gained momentum towards its final phase as opposed to the initial and mid term phases. It may therefore be helpful to keep the LSNSA network well supported during the critical implementation phase of the process entered early this year.

4.5 Land Chapter of the Proposed New Constitution

Kenya has been on a quest to review its current constitution. This constitution, which is largely Kenya's independence constitution save for some amendments, does not sufficiently anchor provisions relating to land and property. This is to be expected

bearing in mind that the independence constitution had to mind property interests from the previous colonial legacy. Experience from over forty years of application has however brought the current provisions into national focus. Therefore, among others, the constitution review process focused on developing a land chapter reflective of Kenya's current realities in the land sector.

The review process began in the 1990's. During public consultations, Kenyans provided views relating to land. Public views were sought by the Njonjo and Ndung'u Commissions too. Reading reports from each of the three initiatives provides the perception that views on the land issue in Kenya have been fairly consistent. Having therefore commenced in 2004 and lasted about six years, it was easy for the land policy formulation process to borrow from the three earlier initiatives and improve content with extra stakeholder and expert input. It is therefore little wonder that the chapter on land in the proposed new constitution converges quite well with the corresponding provisions of the national land policy. This is particularly in regard to: the key principles of land policy, the vesting and classification of land, land holding by non citizens, regulation of land use and property, the establishment of a national land commission and the key legislation required to effectively implement Kenya's land policy.

Importantly for this discussion, the proposed land chapter mandates the national land commission to initiate or receive complaints on present or historical land injustices, investigate and make appropriate recommendations for redress. This is in sync with provisions in the national land policy. It is anticipated that the new constitution, which was passed by Parliament on 1st April 2010, will be passed by the public in the referendum to be held in July. In the event that it isn't, then the implementation of some provisions of the national land policy would be difficult to implement unless parliament moves specific constitutional amendments to the current constitution.

4.6 Land Reforms under the National Accord and Reconciliation Act (NARA) 2008

4.6.1 National Dialogue and Reconciliation Accord: Agenda Item 4

Following the Kenya National Dialogue and Reconciliation initiative of 2008 put in place following Kenya's post election violence, the two principal partners agreed to implement some long term reform measures following the agreement signed under the National Accord and Reconciliation Act 2008. The details of these were spelt out in Agenda Item 4 of the Accord and included undertaking constitutional, legal and institutional reforms and undertaking a land reform, among others.

4.6.2 Land Reforms

The Component for land reforms required:-

- That the constitutional review addresses fundamental issues of land tenure and land use

- That the development and implementation of land policies took into account the linkages between land use, environmental conservation, forestry and water resources
- That the draft national land use policy be finalized
- That land laws be harmonized into one statute to reduce incidences of multiple allocations of title deeds
- That there be established a transparent, decentralized, affordable and efficient GIS-based land information management system and a GIS-based land registry at the Ministry of Lands and in all Local Authorities
- That land ownership documents for owners affected by the post election violence be replaced
- That there be developed a national land use master plan, taking into account environmental considerations
- That the Land Reform Transformation Unit (LRTU) in the Ministry of Lands facilitates implementation of the land reform programme as outlined in the national land use policy
- That local level mechanisms for sustainable land rights administration and management be strengthened
- That the Land Dispute Tribunal Act be finalized

These requirements look like direct extracts from the various sections national land policy. It should be borne in mind that the Accord details were drawn in February 2008; long after the final draft NLP document had been released. This must have influenced the content. Therefore, the fact that progress has been made in approving and commencing implementation of the land policy is evidence that the implementation of this component of the post election Accord is on course. Indeed, the LRTU is currently busy making preparations for a systematic and holistic implementation of the land policy through a “land policy implementation framework” as outlined in the national land policy sessional paper.

5 CONVERGENCE OF LAND REFORM INTERVENTIONS

The discussion above helps to demonstrate that there is convergence of the land reform interventions that Kenya has put in place within the last two decades. It was demonstrated above that the Njonjo and Ndung’u Commissions informed the final content of the national land policy. Indeed, the Njonjo Report provided very good background context to the land policy while the specific recommendations of the Ndung’u Report were incorporated into the land policy.

Vision 2030, which was developed during the land policy formulation process, also borrowed wholly from the land policy document. Similarly, the Chapter on land of the proposed new constitution anchors the very key provisions identified in the land policy while Agenda Item No 4 on land of the post election Agreement Accord signed between the two coalition principals also focuses on items extracted off the broad provisions of Kenya’s national land policy.

6. CONCLUSION AND RECOMMENDATIONS

From the foregoing discussion, one would argue that Kenya only requires focusing on a systematic implementation of its national land policy to be able to realize its land reforms hence improve its social, economic and political environment. Importantly though, effective implementation of some of the provisions will require constitutional support as contained in the chapter on land of the proposed constitution now awaiting a national referendum to be held in July 2010. In the event that the constitution is not passed, specific constitutional amendments would require to be moved separately to provide anchor, failing which there would be a major set back to implementation.

But if Kenya succeeded in obtaining a new constitution, hence providing the much needed constitutional support to a comprehensive implementation of the national land policy, then it would be on course to providing a comprehensive answer to its broad land question as identified above. This would have the effect of stabilizing the land sector and largely deflating the political tensions always associated with general elections. This too would hopefully pre-empt any further land related violence during political contests.

Providing suitable answers to matters relating to land related historical injustices, ensuring fair and equitable access to land rights and ensuring that the land governance institutions are effective, transparent, efficient and more accessible to all Kenyans would contribute largely to social and political stability. Implementation of the land policy would ensure the security of tenure for public, community and private land as enshrined in the proposed constitution. Efficient land management to ensure that there is sufficient and secure land for investments and food production will also enhance economic growth.

While the above provides insight to resolving Kenya's hitherto intractable land question, some of the recommendations below would complement, fast track and cushion the solution.

1. *Punishing Impunity*: People who have been known to incite and openly support violence on account of the real or perceived differences/injustices relating to land must be promptly prosecuted and punished for the offences to deter recurrence. This will provide space for systematic attention to implementing the land policy.
2. *Speedy Resettlement and/or Compensation of Rights of the Displaced*: To re-cultivate confidence in land rights, people displaced from their legitimately acquired land rights must either be resettled or be provided with appropriate compensation. Though this is expensive to the State, it reassures all who wish to invest in and work land now and in future. On going efforts in this respect are commendable and need to be accelerated.
3. *Outlawing and punishing hate speech*: Hate speech did and can continue to inflame real or perceived inter-ethnic differences on land. Those culpable of hate speeches must be swiftly punished as a deterrent.
4. *Promoting communal and inter-ethnic tolerance*: Kenya is multi-ethnic. This cannot be wished away. However, it has embraced an open market in regard to purchasing of property and residence. This cannot be reversed. Indeed, this has been even more strongly spelt in the new constitution and land policy. The State must therefore

proactively devise initiatives to promote inter-ethnic tolerance and acceptance countrywide.

5. *Decentralization*: Effective decentralization of land delivery services should be consistently implemented to ensure ordinary Kenyans begin to experience the gains of the reform programme.
6. *Resolution of Historical Injustices*: Whereas there are fears from some that this could escalate differences, if this matter is not systematically resolved, political leaders would continue to exploit it. Yet, sober systematic attention from which practical recommendations for consideration will be made will deny leaders this potent weapon previously applied during political contests.
7. *Retraining Land Staff*: The current staff in the Lands Ministry will require retraining to cultivate a customer service approach to the public. Unless this is done, they may easily transmit old and corruptible habits to the new institutions and even the modern land information management system during data input and updates. But a well structured and sustained module to help institute a gradual attitude change and commitment to professional ethics would help to deliver the reform principles more effectively.

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