EXPERT ANALYSIS: Land Administration and Land Rights Delivery in Kenya

Contributed by Prof. Washington Olima

The draft national land policy has brought into focus the public debate on land administration and land rights delivery in Kenya. The Kenyan people including the policy makers and other stakeholders are yet to appreciate the importance of a comprehensive approach to land matters. The rational allocation, planning, use and development, management and regulation of land is important to economic growth and poverty reduction in the country. This is more so considering the clearly recognized critical contribution of land to the economic, social and cultural development of Kenya. The resolution of land administration and management problems is not only a requirement for sustainable economic recovery and growth but a vital process for minimizing conflicts and tensions between and among various communities.

Background

Land administration and land rights delivery are processes that have to be understood because nearly half of the main causes of poverty in Kenya that were identified in the PRSP had direct linkage with land issues. Furthermore, the rising levels of poverty has been attributed to lack of capacity to gain access to clearly defined, enforceable and transferable property rights. Poor land tenure systems have been strongly associated with poor access to land by a large proportion of the population that would wish to make use of land to support their livelihoods.

It is both essential and appropriate to understand the meaning of the terms land administration and land rights delivery. This basic understanding would then recognize how the proposed policy recommendations in the draft national land policy are likely to address the problems and challenges that have continued to influence either negatively or otherwise the management of land in Kenya.

Land administration is the process of registration and dissemination of information in relation to land transactions. A good land administration system should provide land title guarantee and land tenure security, supports the process of land taxation and land development, and guides land transactions. A cadastre, defined as a parcel based and up-to-date land information system containing a record of interest in land is the core or basis of a land administration system. On the other hand, land rights delivery is a process, which entails the mobilization of institutional mechanisms and personnel for ascertainment of rights, registration, planning, demarcation and/or survey, and the preparation of cadastres.

{mospagebreak title=Situational Analysis}Situational Analysis

There is no debate that land administration and land rights delivery in Kenya has not met the expectations of the ordinary Kenyan. Reports from the various government commissions, regional workshops that were held in all the provinces of Kenya, and consultative group meetings pointed out that on a general scale there has been a systematic breakdown in the management and land administration and land delivery procedures throughout Kenya over time with structures that are over-centralized at the Ministry of Lands and over-concentration of key functions on the state. The existing land administration and land rights delivery systems are bureaucratic, expensive in terms of transaction costs, undemocratic and prone to abuse, resulting into inordinate delays in the administration of land. This has made the ordinary Kenyan unable to access the relevant information necessary in land transactions and subsequently land ownership. In addition, there is inadequate participation by communities in the governance and management of land causing confusion and conflict especially in trust land areas by allowing the involvement of unauthorized persons in land administration.

{mospagebreak title=Problems Encountered}Problems Encountered

Large parts of Kenya have been or still fall under the category of trust land. Under the Trust Land Act, the county councils are supposed to hold land in trust for the people who are ordinarily resident in the area, with the local residents in turn owning land in accordance with the applicable customary law. The trust land system has been widely abused by the county councils and the Central Government. Instead of acting as the custodians of the land, the councils have facilitated the alienation of such land in favour of individuals and institutions in total disregard of the rights of the local residents. The result is that local residents in the areas under the control and management by local authorities/county councils are faced with land related problems that have influence on rising poverty levels.

The current arrangements of land rights delivery in Kenya based on demarcation, surveying, titling and registration are inappropriate and unable to supply adequate serviced land with security of tenure to the required scale and at an affordable cost. Furthermore the land allocation process is haphazard, expensive, too lengthy, cumbersome, littered with bureaucratic red tape and time consuming and cannot afford the majority of the Kenyans access to land. This unsatisfactory land rights delivery system is caused by land speculation, unprofessional practices by allocation personnel, corruption, political interference, excess powers of those mandated to manage land, and the organization of the land registries, particularly retrieval of necessary information which is an important component in the operation of land market.

{mospagebreak title=Shortcomings and Challenges}Addressing the shortcomings and challenges

A substantial proportion of the Kenyan population, especially the urban dwellers faces the problem of scarcity of land and has no access to land to undertake useful economic activities. The existing land problems are a direct result of failed land management and more particularly, the inability of the land rights delivery system to achieve equitable and fair distribution of the limited land resources. The draft national land policy therefore proposes policy recommendations that are geared towards addressing the identified shortcomings and challenges in the critical matters of land administration and land rights delivery in Kenya. The recommendations cover a wide spectrum in the whole area including land demarcation, surveying, adjudication, registration and allocation with the goal of achieving an efficient land delivery system. The role of human resource development in both land administration and land rights delivery processes is recognized in the draft national land policy and appropriate consideration will be taken. This will involve modernization and capacity building in the surveying, mapping, valuation, town planning and land management processes and departments. In particular, there will be urgent need to institute training and re-training of personnel in land registries and survey offices in order to operate the envisaged modernized infrastructure. The problems that have been identified have to be addressed in the proposed land policy for Kenya.

{mospagebreak title=Draft Land Policy Recommendations & Proposals}The draft land policy recommendations and proposals

The policy proposals are geared towards the improvement of the land administration and land rights delivery processes to enable majority of the Kenyans access land and put such land into productive economic activities.

To streamline Land Survey and Mapping Processes the draft land policy Is Proposing:
(a) Amendment of the Survey Act (Cap 299) to allow for technological advancements and streamlining of the survey authentication procedures, and ensuring that the processes of demarcation and survey are more participatory to avoid land disputes; and
(b) Review of the law related to land adjudication to make the process transparent, accountable and efficient. The process will also recognize existing communal and other overlapping rights, and provide sound dispute resolution systems to protect those concerned.
(c) Amend and merge the Land Adjudication Act (Cap 284) and the Land Consolidation Act (Cap 283) to increase the pace of implementation of land adjudication process in the remaining parts of the country.

In order to make land registration systems efficient in the land administration process, the draft national land policy is proposing
(a)Consolidation and harmonization of all registration statutes relating to land rights creation, and delivery into appropriate Act(s) of Parliament with the aim of ensuring clarity and reducing the bureaucracy and administrative bottlenecks.
(b)Vest all community land in representative community based structures such as community land boards, and adapt the system to recognize customary land rights, understand indigenous land management systems, and respect the rights of the vulnerable groups and women.
In respect to allocation of public and community land, the draft national land policy is proposing:
 (a) Review of land allocation procedures to make them transparent, equitable and efficient;
(b) Enactment of a Public Lands Act in place of the Government Lands Act (Cap 280) to provide for decentralization of land allocation responsibilities of public land to the Local/District Government levels taking into account planning principles and procedures; and
© Prohibition of by law allocation of protected areas reserved for forests, water catchment areas, road reserves, Kayas, wildlife corridors, mountain and hill tops.
(d) Enactment of the Community Lands Act in place of the Trust Land Act (Cap 288) that will vest community land in local/district authorities and establish clear procedures and criteria for the allocation of community land to eliminate incidents of misallocation or multiple allocations.

In conclusion, it should be noted that a properly functioning land administration and land rights delivery process is necessary for the sound management of land resources. And this is what the draft national land policy is intending to achieve.

 Prof. Washington Olima is a Land Economist and Professor in the Department of Real Estate and Construction Management, University of Nairobi currently Dean, School of The Built Environment.