

The Creation A Land Policy Research Centre In Kenya – A Way To Strengthen Land Governance And Administrative Institutions

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Key Words: Land policy, research, management, administration, governance

ABSTRACT

The paper's objective is to identify the importance of the creation of a Land Policy Centre in achieving the objectives of the National Land Policy and the Constitution of Kenya. A key objective of a land policy centre should be to identify the major problems and critical issues relating to land administration, use and development, research on these and inform institutions dealing with land.

With the creation of the National Land Commission in 2012, it was anticipated that the most of the reforms envisaged by the National land Policy and the Constitution of Kenya would implemented as time went on. The Constitution of Kenya Article 67 (2) gives the functions of the National Land Commission. One of the functions of this commission stated in (d) is to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities. The National Land Policy on the other hand states that the Commission has the function of establishing a Land Policy Research Centre (LPRC) in partnership with universities and research institutions to coordinate land policy research.

The National Land Commission was formed in 2012 with its Commissioners have a six year tenure that is not renewable. Currently the Commission has a Directorate in Charge of Research, but has not created a Land Policy Research Centre as envisaged by the National Land Policy, Sessional Paper No 3 of 2009. The Research Directorate in the Commission is responsible for coordination and administration of the Research and Training and Advocacy functions of the Commission. Its key functions and responsibilities include the following: Administration and interpretation of provisions of any laws that affect the work of the commission as a basis for projecting the image of the Commission to the Public, secondly carrying out research for the Commission on matters to do or related to land and finally assisting in the dissemination of research findings on land an related matters.

The paper argues that the Commission would benefit from a Land Policy Research Centre that is set up in collaboration with Universities in Kenya that teach land related courses, like Real Estate and Land Management and Administration, Land Surveying, Land Use Planning etc. The formulation of a National land policy contributes positively to an economy and allows for

land reforms. But because of the changing times, continuous research needs to be done to allow for greater benefits.

The paper has established that the Creation of a Land Policy Research Centre will inform land, natural resources and environment policy making decisions through scientific research, policy evaluation and analysis, education, publications and development of innovative local solutions.

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INTRODUCTION

Land is an important resource and its management has been identified in Kenya as a critical factor in the Constitution and in the National Land Policy and in various Vision 2030 flagship projects. Subsequent legislation, like the Land Act and the Land Registration Act were enacted to facilitate the management and administration of land in Kenya. A critical analysis of the key land management frameworks reveals the need for amplification and evidence based research to be able achieve the constitutional principles of land policy.

1. THE MANDATE OF THE MINISTRY IN CHARGE OF LAND AND THE NATIONAL LAND COMMISSION

The Ministry in charge of land has the following functions as per the National Land Policy, giving policy direction to the National Land Commission, making policies on land and coordinating their implementation. Mobilising additional resources for the land sector, undertaking policy advocacy and providing political leadership. It will facilitate implementation of the land policy reforms. Coordinate the management of the National spatial Data Infrastructure. Rationalization of its functions with a view to privatizing delivery of services such as valuation, surveying, physical planning and revenue collection, setting service standards, regulating providers, ensuring quality control and capacity building. Monitoring and evaluating land sector performance in collaboration with civil society, the private sector and other stakeholders. Finally coordinating and overseeing the statutory bodies established to regulate land planners, surveyors, valuers, estate agents and other land related professionals.

The National Land Commission has the following functions as per the article 67 (1) of the Constitution (GOK, 2010) to manage public land on behalf of the national and county government, to recommend a national land policy to the national government, thirdly to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya; Fourth, to conduct research related to land the use of natural and make recommendations to appropriate authorities. The National Land Policy on the other hand states that the Commission has the function of establishing a Land Policy Research Centre (LPRC) in partnership with universities and research institutions to coordinate land policy research (GOK, 2009). Fifth, to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. The sixth function is to encourage the application of traditional dispute resolution mechanisms in land conflicts. Seventh, to assess tax on land and premiums on immovable property in any area designated by law. Eighth, to monitor and have oversight responsibilities over land use

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planning throughout the country and finally that the commission may perform any other functions prescribed by national government.

2. THE CURRENT STATUS OF A LAND POLICY RESEARCH CENTRE

The Commission currently carries out research through its Research Directorate. It has not created a Land Policy Research Centre as envisaged by the National Land Policy, Sessional Paper No 3 of 2009. The Research Directorate in the Commission is responsible for coordination and administration of the Research and Training and Advocacy functions of the Commission. Its key functions and responsibilities include the following: Administration and interpretation of provisions of any laws that affect the work of the commission as a basis for projecting the image of the Commission to the Public, secondly carrying out research for the Commission on matters to do or related to land and finally assisting in the dissemination of research findings on land and related matters.

3. THE REQUIREMENTS OF LAND POLICY RESEARCH CENTRE

A critical analysis of the mandate of the National Land Commission reveals need for research on;

- A new land policy that reflects lessons learnt and a national land use policy
- How to manage public land on behalf of the two levels of government, this requires an investigation of what has worked in other countries
- A comprehensive programme for registration of title in land in Kenya. It would also look at the impacts of land titling programs on poverty reduction, gender equity and the advancement of indigenous people's rights, especially the hunters and gatherers
- historical injustices, and recommend appropriate redress
- resolution of disputes and conflicts, especially the traditional methods and how they worked before
- land and property tax for national and county government and the need to recommend that property tax if well assessed should be a major source of revenue.
- On how to monitor and have oversight responsibilities over land use planning throughout the country
- All aspects of resettlement in cases of land acquisition etc
- What are these other functions prescribed by national government. These maybe related to the impact of climate change on land resources values, sustainable natural resource benefit sharing mechanisms, natural resource exploitation, land use patterns and regional development. The possibility of advancing land policy reform initiatives at county levels, what capacities do these governments have
- The extent that these policies and the resultant practices are contributing to the sustainable development goals

4. THE ENVISAGED COOPERATION BETWEEN THE UNIVERSITY OF NAIROBI AND THE NATIONAL LAND COMMISSION

The purpose of Land Policy Research Centre (UON, 2013) would then be, to;

1. Identify the major problems and critical issues relating to land administration, use and development; including investigations on constraint to equal access to land, land improvement, economic diversification, and the development of urban centres in rural areas
2. Conduct research and investigations into land, urban development and related problems, and to develop/apply transparent, comprehensive and equitable fiscal incentives mechanisms to stimulate the efficient, accessible and environmentally sound use of land by county governments
3. Conduct programmes to develop urban land information systems for networking, accessing resources in a timely manner and for the exchange, transfer and sharing of experience, expertise, know-how and technology in urban land management and housing development.
4. Promote efficient land markets and environmentally sustainable use of land including monitoring of the land market and publishing land market information in the form of statistics, indicators, and report.
5. Disseminate land and property information for use by professionals, officials, scholars, businessmen, farmers and members of the public through regular working paper series, LAPReC journal and development of a property market index.
6. Partner with the National Land commission and other government policy making agencies on land and natural resources matters.
7. Develop a Training of Trainers (TOTs) to develop national and county capacity for institution strengthening and capacity building on urban development and Housing, Land management and Natural resources management/valuation matters.
8. Collaborate with academic and government institutions both local and international for the purpose of conducting research and organizing seminars, conferences and similar activities.
9. Establish parameters for sustainable environmental management and land use planning within the new governance and climate change context.
10. Mobilise local and regional expertise to promote research, the transfer of technology and education programmes to support the new land administration systems.

Currently the only cooperation the National Land Commission has had is with Dedan Kimathi University. Cooperation with other universities has only been the use of library resources for research purposes. Responses from the real estate industry point to lack of tangible reforms from the land sector. The functions of the Ministry in charge of Land, as envisaged by the National Land Policy were not all feasible. The Ministry functions now with reduced roles. A review of the policy would allow the functions of both the Ministry and the Commission to be streamlined in a more realistic manner.

5. RECOMMENDATIONS

There is a need for a land policy research centre which will benefit both public and private institutions. The following institutions among others have been identified (UON, 2013):

1. Policy makers including National and County governments, National Land Commission, National Construction Authority (NCA), other government policy agencies and East Africa member states.
2. Financial Institutions including Commercial Banks, Mortgage Finance Institutions, Development Financing Institutions, Micro-finance Institutions (MFI's), Credit Management Institutions and Deposit Taking Institutions (DTM's).
3. Multi lateral agencies including African Development Bank, Shelter Afrique, World Bank.
4. Educators, policy analysts, researchers, university staff, librarians and journalists in land management and development, housing, and land based resources management.
5. Private practitioners in land management and administration, real estate, housing development and land based resources management.
6. Civil society networks
7. Postgraduate students in the area of land management and development, housing, and natural resources management and valuation.

6. THAT THE LAND POLICY RESEARCH CENTRE SHOULD HAVE THE FOLLOWING PROGRAMS (UON, 2013)

6.1 Land Reform (LR)

This includes: appropriate land reform approaches for the local context; land reform, access and livelihoods; pro-poor land reform; land tenure reform, land and poverty incidence; impact of land law reform on smallholder agriculture, land tenure reform and food security, land tenure and agrarian structure, approaches to agrarian reform, land policy and innovative land tenure systems.

6.2 Land Use Institutions and Governance (LUIG)

This includes: assessment of land delivery processes effectiveness and efficiency, assessment of the appropriateness and relevance of land administration and management processes and procedures, land management institutions constitution and conceptualization, comparative land use efficiency assessment, and national and county government land management institutions, and community land management institutional frameworks.

6.3 Land Value and Taxation (LVT)

This includes: assessment of land taxation; impact of government policy on land taxation; and land taxation under the new governance structure.

6.4 Natural Resource Valuation and Management (NRVM)

This includes: Natural resource values; natural resources benefit sharing, community participation in natural resource management, natural resource tenure rights, natural resource governance and institutionalism; sustainable natural resource management.

6.5 Devolution and Land Management (DLM)

This includes: National and county government land management institutions, community land management institutions in a devolved land administration.

6.6 Land and Climate Change (LCC)

This includes: Land tenure rights and its influence on climate change, impact of large-scale land acquisitions on land tenure rights and climate change, Impacts of renewable energy and E-waste on land rights, Land tenure rights and Carbon credit, and, urban land tenure systems and adaptation to climate change.

6.7 Land Markets (LM)

This includes: land transaction processes, the concept of land as security, mortgages and its link with the land market, impacts of land law reform on land as a security, secondary mortgages (REITS, Real Estate Bonds), land markets in transition: land disputes in the peri-urban areas, impacts of irregular and illegal land allocations on the land market.

6.8 Land Tenure Rights, Gender and Marginalized Groups (LGMG)

This includes: marginalised groups and access to land, engendering land access, land ownership and vulnerability, land ownership and gender empowerment indices, land tenure insecurity, land tenure rights and management of land based resources, historical land injustices, conflicting and common interests in land use, and access to and control over natural resources.

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