

a news service from transparency international-kenya

Transparency International is a non-governmental organisation solely dedicated to increasing government accountability and curbing international and national corruption. Material from this publication may be reproduced and disseminated free of charge provided TI-Kenya is acknowledged as the source.



CLEANING UP THE MESS AT LANDS?

An exclusive interview with Hon. Amos Kimunya, Minister for Lands and Settlement



What has been the magnitude of corruption in issues relating to land in Kenya?

Since independence, land has been used as a pay-back system for political supporters, though limited to certain groups of people. The last 15 years has seen a rise in allocation of land for political purposes. With the multiparty era that started in

1990, the land allocation problem reached its peak. Fearing that the government would lose in the oncoming 1992 poll, everyone in the government wanted something to go out with and pieces of land started being dished out with express instructions to dispose of that kind of property as soon as it is allocated. The understanding was that this was the only opportunity to make quick money, but not to develop that kind of land. This was the height of corruption in Kenya.

Obviously, a lot of confusion was created within our offices. The overall belief was that, in order to get anything going or to get that piece of land expedited as fast as possible, one had to pay various people. This made everyone in these offices, from the messenger and the gatekeeper all the way up corruptible. This scenario went on up to the end of last year. I believe right now the opportunities for rent seeking have reduced drastically. People are now watching and reporting those not towing the line. That is helping reduce the magnitude of corruption in this ministry.

What policies in the past have tended to create room for corruption and illegal allocation of land and how are you rectifying them?

It is probably the lack of policies rather than the presence of any policies that has catapulted corruption. There are no clear cut policies as to what land is planned for what. If you assess the development taking place in Nairobi, you cannot say that this piece of land is being reserved for this particular activity.

We had forests being allocated despite very clear policies that we shall maintain a certain green belt and forest cover for the environmental balance in Nairobi. But that was all thrown out of the window. People had moved to a parallel way of governance, an attitude of "we don't care what the laws say or what our intentions are, all we want is any space that is available." Nobody was bothered with the decline in

governance, nor in looking at the bigger picture as it were. Rather, everyone wanted to "eat."

Your ministry was ranked 4th and 13th by Transparency International-Kenya's 2001 and 2002 Bribery Index respectively. In view of this, what steps has your ministry taken to address corruption?

Right at the entrance of the building there is a sign that reads "This is a Corruption Free Zone". We have placed such notices in all lifts and corridors to create awareness and act as a deterrent to corruption.

The other thing we have done is to try to find out why people are bribing or why they are being forced to bribe because people always complain that they have had to pay for services. We are removing any barriers for accessing such services. We also open the cash office over lunch time because that is when people have time off from the offices. This prevents a situation where due to time limit, people resort to any means to expedite the situation.

We have also frozen all transactions involving public utility plots and government land. This will slow down transactions and give us time to investigate. We have almost managed to keep away brokers who used to hang around. This has brought a sense of normality and one can now transact business without all the bureaucracies that existed. However, I know corruption is still going on. There are people who have attitudes such as 'I don't care how much it costs me, all I want is my title today; all I want is my valuation today.' It takes quite a while to change people's attitude, but over time, we will catch up with such

pg 2

In this issue...

- ☛ **Cleaning up the mess at lands**
- ☛ **Land: political patronage's greatest weapon**
- ☛ **Corruption thriving in informal settlements**
- ☛ **Land: Kenya's simmering powder keg**
- ☛ **Corruption news**

...Cleaning up the mess at lands?

Cont'd from pg 1

people. According to the feedback I get about service delivery, I believe there has been substantial improvement such as the absence of queues of people seeking services. People also come to see me regarding their transactions and I refer them to the necessary sections and ask them to come back if they encounter problems. Since they don't come back, I presume they get satisfactory services.

We also opened up a complaints centre at the Ministry headquarters. It has been quite busy and people go there and vent their frustrations. It made us realize that most of the complaints are from upcountry. Having received poor services there, they come here as a last resort. Consequently, we reshuffled most of our officers who had stayed at the same station for more than three years so as to try and break that chain at the operational level. So when a client with a continuing case finds a new officer at the station, the officer starts the case afresh offering more efficient services.

The new government has also created public awareness that the government is a people's government and is out to serve them. The fight against corruption has been taken on by the people. They know their rights and entitlement to free services, and they are helping us control corruption by exposing any misconduct. The fight against corruption combines the ministry and the public. The officers have had six months to change and if any of them is still engaging in corruption, we'll get to know about it, then we'll take the necessary action.

Suppose a citizen transacting business at your ministry is asked for a bribe. What action will be taken?

The duration it takes to resolve a complaint depends on its nature. Some are immediate if taken to the right place, while others require some investigation. The unfortunate thing is that if it is an issue of malpractice from this office, chances are that the officer involved is still here and such cases could take a while to resolve. This was the first ministry to set up a complaints office and we want to create a model for providing the government with the basis of setting up the national complaints office.

There are many laws dealing with land in Kenya, and this could have given leeway to corruption. What plans are there to harmonize these laws?

The plans to harmonize these laws are underway. I would not like to think of the acts of parliament as the cause of corruption. It is the confusion caused by the laws on land which people do not seem to understand. We are in the process of passing these issues to the Ministry of Justice and Constitutional Affairs under the recently formed Law Reform Commission for review on a continuous basis. The Minister has accepted to look into them as a priority issue.

We are also looking at a national land policy that is going to create the basis on which we will formulate the laws or review them to ensure the legal and the policy sides of land management are synchronized. In terms of corruption control, computerization will enhance efficiency, for instance in

tracking the transaction process. That speed in processing of the transactions is what we are hoping to achieve. The other thing is access to information and who is in charge of the information. We hope this will reduce the bureaucracy and rent seeking opportunities which cause corruption.

Early in the month the president set up a commission of inquiry to look into land issues. What is its mandate?

The presidential inquiry on land is mandated to help us with the process of re-possessing all the public land that was irregularly allocated. It is such a mammoth task and everyone is doing it their own way. So, to achieve a uniform way of doing things and to create some legal and proper institutional framework for re-possession, the commission was created.

Early in the year, you issued an ultimatum to people who had grabbed public land to surrender it or they would be publicly named. What is the position of this issue?

It was all part of the preparation towards forming the presidential inquiry on land because currently even as the commission goes about its duties, I am still trying to appeal to the good sense of the people to give back the land. If someone is holding on to a piece acquired illegally, they should give it back. Then we will not even go into the question of how they got it. The person should just bring the title deed and the chapter will be closed.

The commission will go deeper because they will look into the mode used to acquire land and what legal and administrative action needs to be taken. So I would say my ultimatum or amnesty is still in force. A number of people have taken this opportunity and 16 titles have been returned voluntarily. I know there are some people still holding on to see what happens next, but with the commission now in place, the writing is on the wall.

The state had large chunks of land for development and research, which were irregularly subdivided and sold to individuals. What recourse will be taken in this case?

This is part of the brief to the commission. Most land like that of Kenya Agricultural Research Institute (KARI) and Agricultural Development Corporation (ADC) were illegally possessed and people have built structures on them. Government houses in Kileleshwa have been brought down and others put up. The commission will review and give us the options available. We will also look at the taxes owed to the government out of such transactions.

The people of Kenya deserve to know what happened and that is why we may have to go for what should have been the fair value for the land. Whatever the case, two questions arise: did the seller declare that land for tax purposes and did they declare the full value for stamp duty purposes? Chances are that you will find people stating that they are selling the land for Ksh1 million yet they have sold it for Ksh10 million so even with the stamp duty there are a lot of irregularities that were created in the rush to do things.

...Cleaning up the mess at lands?

Cont'd from pg 2

Such people should come to us to basically get clean rather than us having to look for them.

What is your ministry doing about illegal occupation of private land by squatters?

The plight of squatters on such land will depend on certain things. I know there were some schemes like in the ADC where farms were sub-divided and passed on to the settlement fund trustees in the department of settlement to actually complete the distribution. That is a government scheme and I would have no problem with it. The issue we are addressing is whether this was an excuse for people to get themselves pieces of land while giving squatters only an acre each and keeping the rest. Secondly, did the people actually pay the assessed value? If one did not, then the land rightfully still belongs to ADC. Regarding KARI land, the land was never for sale so that is basically grabbed land. That will be followed up by the commission.

There are various ministries and key players in the land issue. How do you ensure a coordinated system of controlling corruption?

Each of those parent ministries is looking at the various pieces of land allocated to their ministry or departments, how it was grabbed, and how to get it back if necessary. My ministry is just doing the central coordinating role.

We have realized that as a ministry, we are responsible for all the land in Kenya. For instance, if we gave KARI 10,000 hectares for research, we expect KARI to use it for research. So if KARI then went ahead and sold it to other people, it is not for us to chase such people, it is KARI. The same applies to the councils of all the trust land within their area of jurisdiction. They are the ones responsible for allocating and planning for use, so if they planned wrongly it is up to them to right the wrongs. We can help them in this. That is why there are five permanent secretaries in the commission i.e. Governance and Ethics, Lands and Settlement, Roads and Public Works, Environment, and Justice and Constitutional Affairs.

Since January, each ministry and department has been carrying out an inventory of its stolen land. So we are not starting from zero but from a tangible point. The commission will give us the way forward after six months of operation.

Over the years, many Kenyans have lived on public land as squatters. The land is eventually allocated to influential individuals. How is the government going to settle such disputes and ensure poor Kenyans own a piece of their land?

There are three types of squatters. First, there are people who always believed that the land was theirs, yet somebody came and bought the land so where are they expected to go? Secondly, there are those who have moved onto a land out of despair and are hopeful that they will be compensated when the axe falls. This group includes people who have been working on e.g. a farm, then it changes hands and they don't know where to go. The third category is of professional squatters- people whose job is to look for where there is land, put up some shacks and immediately they are allocated the land and taken through a regularization programme, they move

on to somewhere else. So we are trying to identify and help genuine squatters. There are a number of schemes for genuine squatters which will give them security of tenure. This involves subdividing land into units to settle people, giving them loans to repay over time hoping that they will not sell the land. Even if they sell it, it will not be effective because it will be informal.

A lot remains to be done on the issue of security of tenure. The so-called landlords have no legal documents for the land. If you look at Kibera, there are people who have put up houses on government land so they are actually landlords but we can go and remove them because nobody has any claim on the land. If you look at most of the land in Kenya, you will find that over 50% of it has not been adjudicated. So people are just there, they have a right to the land but have no legal documents. We are not quite sure that when adjudication is carried out such people will be shifted or what will happen. We are working on giving people the papers so that they can access credit from the bank and put up permanent structures as they will then be sure that they own the plots.

What is your dream of Kenya in relation to land?

My immediate objective is to have total efficiency built in all the processes and that is why I thought of the computerization programme. It will also help in enhancing our revenue collection hence ensuring appropriate action is taken against those who have not paid. The other thing is ensuring satisfactory services with regard to land. Land is emotive and if people are assured that nobody will grab their land tomorrow, then they will develop it as necessary.

Thirdly, we know that there is a lot of potential hidden in our land and since people don't have titles, they cannot access credit from banks, and so the full potential of the land is not exploited. Instead, we have people subdividing their land and selling it, which does not fully benefit owners.

There is also the question of whether we should have a limit on how much piece of land one can own, especially those with so much land yet they don't utilize it. What I would like to see within our national policy is that all land is utilized and if one is not utilizing it then they pay tax. This will force people to utilize their land.

Any last comments?

I would like to call upon Kenyans to utilize their land. Those who don't have land should give us time to seek alternatives on how to settle them. Those who are invading people's properties are pulling us back and I urge them to refrain from that as we look at how to settle them.

Those who are holding land and they believe that they should not have been given such land because it was grabbed from the Kenyan public, our doors are open. Let them come and say to us "here is your land back; please I don't want to go down in history as one of the land grabbers who had to be named."

LAND: POLITICAL PATRONAGE'S GREATEST WEAPON

An interview with Odenda Lumumba, National Coordinator, Kenya Land Alliance

What is Kenya Land Alliance and what does it do?

Kenya Land Alliance (KLA) is a network of civil society organizations and individuals advocating for land policy and law reforms in Kenya.

We mobilize the KLA membership fraternity into contributing to the ongoing review like the Njonjo Commission; we mobilize communities to contribute their views to various processes such as the constitutional review process. We also share information and do networking nationally, regionally and globally in matters of land reforms. We have a membership of 50 at the moment, which includes non-governmental organizations and community-based organizations that deal with land issues.

...land registries at the district levels, the Lands Board which is a branch of the land registries but independent of the lands registrars' office, the lands rent collecting offices, the central registry in Nairobi are very prone to corruption

Could you give us an overview of illegal allocation and land grabbing in Kenya?

The picture is very grim in the sense that ever since the privatization agenda began globally, the state has tried to distance itself from any ventures in public land management and administration. Since land is seen in Kenya as a tool of patronage, the previous two regimes embarked on dishing it out generously but Moi's regime of course over did it.

The whole idea of illegal allocation emanates from 1952 when the British declared that they would not follow the colonial land procedure and started giving land without putting it on public auction.

Since then, land has been allocated at the whim of the administrators of this country starting with the governor of Kenya, followed by the two past presidents. Therefore, land has been irregularly allocated because the law gives the governors of this country the mandate to be in charge of allocating land and granting titles. But the whole idea is that they have never followed the procedures since 1952 but have always been in a rush to allocate land. So it is more of irregularity that one would be looking for than illegality.

There are those in the political circles who have been publicly grabbing land and purporting to subdivide it for poor people. What is your view of this?

Illegal land allocation is manifested in two ways. The first is trust land which is communal land, which falls outside townships but by virtue of control and management falls within the domain of the municipal or county councils. The land law allows the commissioner of lands to exercise some administrative powers and therefore this land is the one that has been really illegally allocated.

The second level is the land in townships which is normally put under the custody of the municipalities and county councils within the local administration, which is supposed to manage it on behalf of the public or as the agent of the central government.

What services at the lands offices are most commonly prone to corruption?

All land registries at the district levels, the Lands Board which is a branch of the land registries but independent of the lands registrars' office, the lands rent collecting offices, the central registry in Nairobi are very prone to corruption.

Equally prone to corruption are the offices

of the provincial administration because they are in charge of the executive administration of land within their administrative areas. Others include survey offices and the land tribunal offices right from the chief, District Officer to heads of municipalities. All services offered in these offices are highly prone to corruption.

Apart from bribery, what other malpractices has your network come across in issues of land?

Other malpractices are found in the management of group ranches which have been bedevilled with corruption because the title is vested in the management structure which comprises the chairperson, treasurer and secretary to the ranch. These people have been known to sell land without the members consent.

The other thing is the management of trust land, land which is under the county council for the purposes of nomadic lifestyle and where some leaders have grabbed lands on the river banks. Other areas where malpractice has been encountered are:

- § Communal or customary land under elders.
- § The land adjudication system
- § The management of common land i.e. public utility like the Jevanjee gardens, Mama Ngina drive etc.
- § Failure to comply with the physical planning law e.g. residential buildings
- § Land set aside for research purposes and development
- § Land banks like the ADC and AFC land

Your network works with informal settlements around the country. What key issues are faced in the settlements?

The informal settlements most cardinal problem is the informality itself. Informal settlements are basically



..political patronage's greatest weapon

Cont'd from pg 4

residential areas for the urban poor who stream into urban areas looking for work and end up in funny shanties. The problem is that land which should have been developed for the urban poor in those areas has ended up in the hands of the rich. The rich are maximizing on the fact that the area is informal therefore not an area designated within the urban development plan, and thus practice the absentee landlord scheme. They have perpetuated informality at very handsome costs in terms of the rent they charge residents and tenants.

The government should construct affordable housing for these people because most of them are tenants and don't have time and resources to develop these lands. There is also the fallacy that Kenya follows the principle of willing seller willing buyer, which does not happen with public land anyway.

These rich people are allocated land at premiums anyone can afford. We have had the experience of people being allocated land at a premium of Ksh10,000 and that person shortly sells the same piece of land at Ksh30 million. If it was put in the open market in the first place even the poor of the poor could afford, only such a person may not be able to develop it at the required level in the development plan.

The Minister for Roads, Public Works and Housing is talking about construction of low-cost housing project by foreigners. This is basically giving out land to foreign

investors. They will put up housing units for the poor but it will be foolhardy to cheat people that they will be given houses. The government should manage rent since they will give out the land at a subsidy to the developer. This way they will contain the rent. This does not translate into giving people houses, because they will still not be able to afford this rent.

There is widespread lack of access to information on land rights in Kenya and this can lead to corruption. What role does your organization play to counter this?

As an organization we do advocacy for land rights. We normally don't have all the information at hand so we refer people to the right places. Land information has been kept top secret in Kenya and information is given out very selectively. There are very few people who know which land is where. But there are land barons who have maps and locate where this land is, and then they organize to grab it.

Information at the registries should be easily accessible at the lowest cost possible. In Kenya access to information, even the very basic, has become impossible. For example, we went looking for information on Karura forest and found out that 46 companies had been allocated land but some of their names were missing from the lands registries and registrar of companies. And those found had very awkward names such that they cannot be traced. And up to now, even after pressing the Parliamentary Anti-

...political patronage's greatest weapon

Cont'd from pg 5

corruption Committee for the names behind the scheme, they have never been disclosed.

What are the terms of reference for the Land Commission recently set up by the president?

- § To inquire generally into the allocation of land, in particular allocation to private individuals or corporations of public lands dedicated for public purpose
- § To collect and collate evidence and information relating to unlawful and irregular allocation of such land
- § To prepare lists of all lands unlawfully and irregularly allocated, specifying the lands, the persons allocated, dates of allocation, current ownership and development status
- § Inquire into and ascertain the identity of any persons or corporate bodies, to whom such land was originally allocated unlawfully and the public officials that were involved
- § Investigate any matters incidental to the foregoing in terms of the opinion of the commissioner. This is to help advice the government on how the land can be bought back and what measures the government can take to get paid the taxes on such lands.

There is also limited criminal investigation or prosecution of such people. The commission can recommend:

- § legal administrative measures to restore such land
- § criminal investigation and prosecution against those involved
- § how to tighten the system against future irregular allocations

The tragedy for the commission is that it is dealing with only one system of land in Kenya which is public land. It is basically trying to sanitize the re-possession of lands which had been started by the Minister for Lands and

Settlement, the re-possession of government houses, road reserves and houses that had been started by the Minister for Roads, Public Works and Housing, and the re-possession of county council houses that had been started by the Minister for Local Government.

As a member of the commission, how far back in history will the commission go and why?

The irregular allocation started in 1952 with the governors at the declaration

of emergency. It continued through to the Kenyatta regime when he ignored the government Lands Act, and this was also continued in the Moi regime.

Action against the colonial government will be hard because the British will not listen to us, yet according to the people who lost their land, which is now deemed as public land, the claim goes as far back.

But how far back may depend on how much information we can get from the government repository on public land. We don't know whether the colonial records would form part of the independence records if at all they are available, so it would perhaps be limited to the independence period.

If land changed hands before 1963 or after, we will go back to available records we have and see who has it and from where we will find out if the land was developed or if sold, at how much and whether tax was declared and if the person who bought it pays tax.

Land allocated to individuals still remains government land in terms of leaseholds either as urban or agricultural lease. Whichever the case one would want to know how much rent is being paid on this land given the development put up especially since people are still paying very low rent on some properties.

In essence, the focus will not be on recovering the physical structure but the income that ought to have accrued to the public coffers. We could get billions of shillings out of this and do other pressing things.

Is the government doing enough in terms of addressing corruption with regard to land issues?

The government is at crossroads. We are looking at a scenario where the government is failing its first acid-test which is the declaration of wealth. If civil servants declared their wealth in public then from there we would be able to know who has been doing what and the next step to take.

The general goodwill that the public has given the government may wither away in many ways. People will reach a point where they will say "*business is continuing as usual. We are looking at the new minister acquiring various properties in so short a time and we are wondering if this is how you curb corruption by removing something from one hand and giving it to the other*". These are pertinent concerns that should be dealt with very fast. There are a lot of good intentions, but we are yet to see results.

land which should have been developed for the urban poor... has ended up in the hands of the rich.

CORRUPTION THRIVING IN INFORMAL SETTLEMENTS

An interview with Jane Weru, Executive Director, Pamoja Trust

What is Pamoja Trust and what does it do?

Pamoja Trust is a not-for-profit organization that works with the urban poor in the slum areas, in the field of land and housing. We assist these communities to sufficiently organize themselves to approach the government to recognize informal settlements as formal settlements, develop low-income housing, provide social amenities and allocate land to squatters.

In your opinion, what makes the land sector prone to corruption?

Land is an asset that for long has been controlled by the state. But the state disregards even the statutes that govern land and for many years has acted like it is not a trustee of this land. It sees land as an asset that it can use to buy political favours, mileage and patronage. The government has always considered this land as its own, and can do whatever it pleases with it. This has been the main cause of corruption in the sector. The people themselves are also to blame because in many instances they feel that they don't have a stake in matters of land. This has given leeway to the state to do whatever it wants without any checks and balances from the people unless there is influence from outside or from our development partners.

... informal market is run by chiefs and District Officers (DOs) and it is basically a market that thrives on bribery

What are the particular problems that people in the informal settlements face?

The most challenging issue is access to land. Currently, urban communities can access land in two ways: by buying from the market, or through a grant from the state. These two ways are beyond the reach of the slum dwellers. That means the only way they can access land is through the informal way, i.e. the informal market which is anyway an illegal market. This informal market is run by chiefs and District Officers (DOs) and it is basically a market that thrives on bribery. What you buy does not have any security. Thus you can be thrown out or evicted whenever somebody pleases. In that case you have absolutely no incentives to develop it. You can live on that land even for 20 years but you know one day you will have to leave.

The other one is the issue of services and planning. If you are staying somewhere illegally, it means you are on transit even if it is a government agent who has allowed you to settle there. It means that you cannot get essential services as these services are not availed to temporary structures. As a result of lack of access to essential services, people pay much higher for everything. The absence of piped water, for example, creates a market for water vendors who supply it at a higher price than the other residents in high class estates.

If we can define the city in terms of the percentages of formal or informal settlements, then Nairobi is an informal city. More than 55% of the residents live in informal settlements. Therefore, informality is more the norm than the formality. Formality is the exception because of the smaller percentage of those who

live in formal settlements. Consequently, a substantial amount of human resources in the city are in the informal settlements. Like any other sector, the informal settlement sector is not a homogeneous one. There are people who are richer than others and some are indeed very rich. For such rich persons it means they are poor in terms of services not in terms of money. So they are service poor, not money poor.

What are your experiences in land grabbing and illegal allocation of public land amongst the communities you deal with, and among the haves and have-nots?

The government should come up with a formula for retrieving grabbed land from the grabbers and returning it to the people who had settled on it initially. This is what public interest advocates for. They have prior right to the piece of land. It is an injustice to throw 1000 people out of a piece of land and allocate it to one person. After all, even if the grabber is given a title deed, that title deed is worth just the value of the paper, because it is an illegal allocation. Three quarters of the value of a title is possession and since you don't have that possession, then you have a paper title that is worth nothing.

Another problem is the forceful eviction of squatters by a combination of the council and the police, which used to be so bad that people lost their lives. This was a common scenario especially in 1995, but the situation has substantially reduced now. In such eventualities we have assisted people by guiding them regarding legal approaches to solving their problems. We have encouraged them not to give in to pressure. We have helped them organize demonstrations and such other activities.

What civic education programmes does your organisation have for enlightening people on their land rights?

Our approach is from a community angle, where we try to create a structure within a community from which we can address these issues. We want the community to create the capacity and develop a mechanism of dealing with the issues as an alternative governance structure amongst themselves. We also organize savings groups which create a forum to meet and discuss how to handle issues. This approach is socio-economic as well as political because people get to know each other's problems and provide communal solutions to individual problems. This provides a forum for the community, including the public administration in the community at that level, to find ways of solving their problems.

We also get involved in national matters appertaining to their interest. The cases of the Njonjo commission and constitutional review commission are examples where we organized forums and discussed what we could present to them. But first we educate them on these issues before we

...Corruption thriving in informal settlements

Cont'd from pg 7

can ask them to air their views. We have also helped them know their legal positions regarding eviction. We have had very aggressive awareness campaigns to this effect.

Now that the tide has changed, eviction is not an issue. What people are grappling with is how to get the goodies the NARC government promised. We are trying to see how we can translate policy positions into goodies. We are trying to develop methods that can enable them get access to resources. In Dagoretti's 27 informal settlements, for instance, we are doing a door-to-door campaign; counting, enumerating, preparing reports, doing research on land ownership, identifying which land is free so as to make a presentation to government. In the previous government, carrying out such research was very difficult because of the hostile political system.

Squatters have suffered under the hands of unscrupulous people purporting to have bought the land on which the squatters have settled. What are your experiences regarding this?

Let us look at the land purportedly for the poor. This land is not for the poor at all because an investor can buy land anywhere. The issue of land allocation and generally management in the informal settlements is well coordinated right from the DO to the local elders' committee. So the provincial administration (the chief and the DO) and the elders can dispose of or sell land at a small fee (around Ksh5,000) to any prospective buyer, who then constructs a shanty and rents it out if he is not staying in it. Then since it is a temporary structure it does not last long and eventually comes down. When it comes down, the owner has to pay some amount of money to be allowed to re-construct or repair it. This is one way through which money is extorted. If you are poor and are unable to pay, then you are kicked out and the piece re-sold to another buyer.

Maintenance of these shanties by the owners is also a complex issue. If you want to repair your shanties you must be allowed by the cartel concerned and this means you have to part with some money. Up to what level the provincial administration is involved can only be a matter of speculation. This scenario shows how petty corruption thrives in the informal settlements. And because the landlords will throw you out if you don't pay the rent, and you have nowhere else to go, results in a tussle between the landlord and tenant. This is the scenario that has escalated in the battles between landlords and tenants in Nairobi.

Most of these informal settlers are on public land, yet they pay rent to "landlords" who have no legal ownership of the land. In what way can the government ensure security of tenure for squatters?

The NARC policies are very accommodative of the informal settlers' problems. These policies will make it even more difficult to politically evict people especially if you don't have an alternative place to accommodate them. The

housing policy, the Njonjo commission report, the draft constitution, the economic recovery strategy and most other policy documents refer to the recognition of informal settlements, re-constructing and upgrading them. It is these informal settlements that will provide a portion of the 150,000 housing units that the Minister for Roads, Public Works and Housing is looking for in his housing policy.

Squatters should also join hands and declare they have a common problem. The landlords in these settlements are actually illegal landlords because this land belongs to the government and they do not pay the necessary taxes. The settlers should bring a stop to rents. This rational can ensure that the land resource available for them is distributed evenly amongst the bona fide squatters. Nobody should be allowed to become the landlord of the other.

The government is re-looking at the national housing policy which among other things will address adequate and affordable shelter for the poor. What role should the policy play and how will your organization contribute to it?

We are supportive of the national housing policy and it's a noble idea. But some issues like the informal settlements may not be adequately addressed by the national policy, but if we are going to build low-cost houses in these areas, then these are issues that should be addressed by specific-issue policies. The way to go about it is basically negotiations, because this process is more of a political than policy or legislative one.

There are various elements of a policy development-formulation, implementation, monitoring and evaluation. In the first six months the government has done a wonderful job in policy formulation though we were not involved, but we are happy with it. We may be involved in the implementation and monitoring stage.

The best policy is the one that develops from practice because from there we only codify what people already know and is accepted. The problem with policy formulation from the top is that it may be a policy that cannot be implemented because nobody has accepted that contested position. When implementation is political and becomes contested it becomes very difficult for the government to implement. The government prefers implementing policies that have popular mandate.

Last comments?

I would like to say that the issue of squatters is a difficult one but not impossible to solve. Solutions can be found by increasing the number of stakeholders at all levels of society to address these issues. As the government formulates the policies, it needs to have inclusiveness in the policy formulation and implementation processes.

LAND: KENYA'S SIMMERING POWDER KEG

By Odindo Opiata, Kituo cha Sheria

Over 100 years ago, imperial European countries, in a historic act of arrogance associated only with those drunk with power, met in Berlin and proceeded to systematically partition the African continent amongst themselves. What is now known as Kenya was given to the British who wasted no time in establishing their hegemony over the land and people of Kenya using all and any methods at their disposal.

One of the very first acts that the British undertook was to come up with various mechanisms through which they could be able to dispossess Kenyans of their most prized natural resource and means of livelihood: land. What followed, as they say, is history. Suffice to say that by the time the colonial system was beating a tactical retreat in the early sixties, the land question had firmly entrenched itself as the most contentious and explosive amongst all the anti-colonial issues. Forty years after independence we are still haunted by this history. Attempts by the current government to come up with measures to cast this ghost into the dustbins of history must therefore be seen in this context. The main question is: will this government succeed where all others have miserably failed? Six months is a very short time in a country's history and to that extent it may be too early to pass any judgment. The jury, so to say, is still out.

It is not however too early to try and put these current attempts into perspective so that we may begin to debate whether we are going in the right direction. So much has been said and written about land grabbing and the rampant corruption in the management and administration of land in this country as to make it a rather boring undertaking. Indeed, in the majority of cases it is made to look as if the so-called grabbing and corruption in land matters are aberrations perpetrated by thoroughly unscrupulous, if not downright unpatriotic, Kenyans all of whom deserve nothing better than the gallows. That may well be so but the fact of the matter is that these two vices were more or less given legitimacy by our *own government*.

On attaining independence the people of Kenya expected, and were entitled to expect, that the new post-colonial state would move with haste to address and redress the most critical issue relating to land namely the redressing of the historical wrongs perpetrated by the colonial system. In one of those most perplexing ironies of history the post-colonial state instead promptly acceded to a constitutional order, which provided an almost watertight protection for the so-called private property. The independence constitution refused to acknowledge the colonial plunder of our land and on the contrary decided to give legal legitimacy to the plunder. Whatever the explanation was for this, there is no doubt that this was betrayal, clear and simple.

By granting comprehensive protection of private property, section 75 of the Constitution provided the basis upon which corruption in the administration of land flourished for there was absolutely no attempt to inquire into how such property

was acquired. The main intention was in fact to provide constitutional legitimacy to the land that had clearly been acquired through fraud, deception if not outright theft. Additional provisions in the legislation further buttressed this constitutional position. For example, under both the Registration of Titles Act and Registered Land Acts, a title deed is more or less considered sacrosanct. The upshot of the aforesaid is that the postcolonial state adopted constitutional and legislative frameworks that were clearly geared towards institutionalizing corruption in the management and administration of land. It did not take long for the new bureaucrats to begin a ruthless, no-holds-barred plunder of our most precious resource- land.

The replication, hook, line and sinker, of the colonial centralized executive-based institutional framework that vested the radical title in the President, further compounded the situation. This gave rise to a system in which transparency and accountability were considered to be the kind of practices to be avoided at all costs. The President and Commissioner of Lands began to treat public land as if it were private property and indeed the constitution and the other relevant laws seemed to give credence to this blatant abuse of power. The fact that there are no in-built checks and balances in the exercise of these powers has resulted to a situation where land is allocated on the whims of individuals with absolutely no regard to public interest. In a number of instances, public land is given out for absolutely nothing only to be sold to third parties at hundreds of millions of shillings and yet there is hardly much the public can do for is not a title deed sacrosanct?

Those who thought they would find solace in the judiciary were soon to become bitterly disappointed as time and again our courts, including the highest court in the land, consistently and with alacrity continued to rule that "a certificate title is conclusive evidence that the person named therein is the absolute and indefeasible owner thereof". The absurdity of this position is that even where there is proof that such title was obtained through fraud but the holder was not party to that fraud then such title would be held to be valid. What this means is that we have a legal system that explicitly approves of fraud! Is it therefore any wonder that we have such blatant corruption in the Lands office? All that one needed and probably still needs is to get a title deed and thereafter is only required to wave it around and the courts of law will, as day follows night, validate it. This is what may appropriately be called legalized corruption.

Indeed, there are a number of cases that have been in the public domain. One such case is the unresolved saga of the city council Woodley (Joseph Kangethe) estate. In one instance, the son of a prominent personality in the city council was granted one of the houses at the price of Kshs.1.1million. Even before the formal transfer was completed, and without paying a single cent, he "sold" the

....Kenya's simmering powder keg

Cont'd from pg 9

house to a third party at around Kshs.3 million which means that he made almost Kshs.2 million without using any money at all. In another instance, a church group requested for and was granted a temporary occupancy licence but proceeded to secure a certificate of title and to date the group has constructed a huge permanent structure on the land. The fact that all these cases have yet to be conclusively determined, even with such corruption going on, is clear testimony of the kind of legal maze our current land laws have plunged us into.

There is another case in an upmarket area in Nairobi where an individual was given land at the laughable sum of Kshs.5,000 and promptly proceeded to take a loan using the land as security. The amazing thing is that at the time when the transaction was being carried out the land was fully occupied by a charitable organization that had put a school and other facilities for the destitute. Since the matter is still in court it cannot be discussed in detail but what is amazing is how land in such prime area can be given out at Kshs.5,000. All the parties involved must have been aware of the law relating to the sanctity of title, and the several ridiculous court cases affirming the same, so they were secure in the knowledge that their transaction would get full legal protection. At this rate, these are also the kind of transactions that create a very strong suspicion that money must have changed hands between the title holder and the lands office. This money never went to the exchequer but proving the same would almost be impossible.

Another interesting case involves a parcel of land next to Wilson Airport that was allocated to two individuals by the Commissioner of Lands at Kshs.70, 000 in 1996. They

never took possession as it was being used as nursery school by residents of the adjacent slum village. Two years later they sold the land to the a third party at Ksh. 3,600,000. In other words, in a period of two years, the two were able to walk away with a cool Kshs.3, 500,000 without doing anything at all.

These are of course very minor cases compared to the mega cases that are to be found in the lands offices if only the records would be opened to the public. The point being made here is that, besides the obviously lethargic political system that condoned these clear cases of theft of public property, we also (unfortunately) have a legal system that was purposely designed to validate these practices.

It is precisely because of the above that the recently established Commission to enquire into such practices clearly has its work cut out. How for instance will it go around the constitutional protection of private property as read together with the colonial-inspired legislation on land? Clearly the establishment Commission can be said to be an unmistakable signal to those still in public service who would be tempted to proceed as if it is business as usual that their time is up. But to comprehensively address the past abuse of political office demands that we move fast to enact appropriate constitutional provisions, adopt a national land policy that would once and for all vest land in the people of Kenya and at the same time overhaul the relevant laws to democratize land administration and management. In the absence of the above, we shall merely be addressing the symptoms and not the disease.

LAND RIGHTS FOR POOR PEOPLE KEY TO POVERTY REDUCTION, GROWTH – WORLD BANK REPORT

Strengthening poor people's land rights and easing barriers to land transactions can set in motion a wide range of social and economic benefits including improved governance, empowerment of women and other marginalized people, increased private investment, and more rapid economic growth and poverty reduction, according to a new World Bank report.

Land policies are at the root of social conflicts in countries as diverse as Cambodia and Colombia, Zimbabwe and Cote d'Ivoire. Political controversies, the complexity of land issues, and the fact that benefits of policy improvements accrue to people who are politically weak all hinder reform. As a result, festering land issues slow poverty reduction in many developing countries and sometimes lead to bloodshed, the report says.

Yet a growing number of countries are successfully addressing land policy issues. The report, *Land Policies for Growth and Poverty Reduction*¹, shows that countries as diverse as China, Mexico, Thailand, Uganda, and some transition countries in Eastern Europe, have begun to

address land policy issues in ways that benefit everybody. Although approaches vary, providing poor people secure tenure and facilitating land transactions are key.

"Development is fundamentally a process of change. Central to this is the increasing productivity and intensity of agriculture, of people shifting from farms to industry and services, and from the countryside to towns and cities, says World Bank Chief Economist Nicholas Stern, who oversaw preparation of the report. "Secure land tenure, especially for poor people and for women, whose land rights are very often ignored, is a key precondition for this, as is the ability to exchange land rights at low-cost," he says.

Stern adds that governments have an important role to play in providing the legal and regulatory support needed to strengthen poor people's land rights and reduce the cost of land transactions, for example, boundary demarcation, conflict resolution mechanisms, and land

CORRUPTION NEWS

SURVEY FINDS FRAUD

Companies aren't doing enough to protect themselves from accounting fraud, asset theft and other economic crimes, which affect a third of businesses, according to PricewaterhouseCoopers.

Fraud occurred in the past two years at 37 percent of the 3,623 companies surveyed by PricewaterhouseCoopers. Businesses reported that the average loss caused by the crime was \$2.2 million, the survey showed. "The \$2.2 million is certainly just the tip of an iceberg," said Rick Helsby, who heads PricewaterhouseCooper's investigations and forensic services division. "We're surprised that people seem relatively sanguine about economic crime."

Banking and insurance companies reported the greatest occurrences of fraud, which was identified as having a long-standing impact on the share price of nearly half of companies that had experienced economic crime. Theft of assets, the most easily detectable form of fraud, accounted for 60 percent of cases and was the most commonly reported illegal activity, the firm said. Financial misrepresentation, which includes inflation of earnings, was reported by one in 10 companies.

Many economic crimes go unnoticed or may be underreported. None of the businesses questioned in Russia, for example, admitted any experience of economic crime in the past two years, he said.

PricewaterhouseCoopers this year expanded its survey to include companies outside Europe. Two years ago, 29 percent of Western European companies said they had suffered from fraud in the previous 24 months. This year that number had risen to 34 percent. Helsby said the results did not mean that "economic crime is necessarily increasing, it may reflect better reporting." "There is a greater willingness to address economic crime," he said. The risk of economic crime will increase during the next five years, according to a third of companies surveyed, compared with 24 percent who expect the risk to decrease. PricewaterhouseCoopers recommends that to prevent fraud companies assess their risks and vulnerabilities, develop a plan to respond to crimes and encourage employees to report suspicions.

Bloomberg, July 12, 2003

Land rights for poor people...

Cont'd from pg 10

registries. "Effective land policy fosters investment and enhances productivity, and helps to empower poor people to participate in economic opportunities and in society more generally," he says.

In many developing countries governments own much of the land that poor people work and occupy. Land also may be held under traditional systems that are not legally recognized, or the legal status of the land may be otherwise unclear. Virtually everywhere land tenure systems discriminate heavily against women, with negative consequences for the entire society.

In all these situations, lack of secure tenure undermines incentives for poor people to invest in their land, for example, for small farmers to build terraces or irrigation, or for slum dwellers to lay a cement floor or put on a new roof. In addition, poor people with insecure land tenure are often afraid to criticize corruption or other abuses of power because they fear that officials will take away their land access, the report found.

Governments can address these problems by recognizing poor people's rights to the land that they legitimately occupy, the report says. In cases where the government itself owns the land, this requires giving secure leases or transferring ownership to the occupants. In other cases, it will mean clarifying the rules, granting legal rights and establishing ways to resolve conflicts and defend rights against challenges.

The study shows that increased tenure security increases the value of land and can greatly increase poor people's wealth, in some cases almost doubling it. Poor people with secure land tenure are more likely to invest in the land. They are also more likely to speak out against corruption and to demand basic services, such as health, education, roads and water.

Where credit markets function, formal land rights can make it easier for poor people to borrow money, for example to start a new businesses.

Many of these benefits are evident in Mexico. Starting in 1992, Mexico transferred rights to 50-million hectares of state land to local communities known as ejidos. The transfer was supported by new laws, agrarian courts, a massive education campaign, systematic boundary demarcation, and award of land certificates to communities and individuals. The program raised incomes, improved governance, and stimulated growth of the rural non-farm economy.

"Formally recognizing the land rights of poor people is a clear win-win policy," says Klaus Deininger, the author of the report. "Perhaps surprisingly, we also found that land rentals make a tremendous contribution poor people's well-being. Land rentals make it easier for poor or landless people with the necessary skills to use land productively, and to gain land access or to expand their holdings. This benefits everybody."

Many developing countries, such as Bangladesh, India, and Ethiopia, impose restrictions on land rentals in an effort to limit the exploitation of landless people. The study finds that such policies often backfire. Instead of protecting poor people, they reduce poor people's access to land, foster petty corruption and red tape, and discourage the investment that is needed for jobs and poverty-reducing growth. The long-term effect of such problems can be substantial. One study cited in the report estimates that tenure insecurity and restrictions on land

Upcoming Events

July 22: Civil Society Stakeholders' Forum on Management of Kenya's Economy
Organisers: The National Council of NGOs
Venue: Nairobi Safari Club, Lilian Towers
Contact: (254-020) 574657 /2
Email:ngocouncil@bidii.com

July 23: Kenyan National Anti-Corruption Workshop on "Achievements and Challenges after the Transition in Kenya"
Organisers: Government of Kenya, World Bank-Kenya & Transparency International-Kenya
Venue: Intercontinental Hotel, Nairobi

July 25: Seminar on Money Laundering Alerts
Venue: Chicago, USA
Contact: Alert Global Media
Fax: (305) 530 0500
Website: www.moneylaundering.com

Think about it...

"Individuals should be made to carry their own crosses over past economic crimes committed against Kenya and the law will apply to everybody irrespective of his or her social status".

Hon. Kiraitu Murungi

Minister for Justice and Constitutional Affairs

On a lighter note

Attending a wedding for the first time, a little girl whispered to her mother, "Why is the bride dressed in white?"

"Because white is the color of happiness, and today is the happiest day of her life," her mother explained, keeping it simple.

The child thought for a moment and said, "So why is the groom wearing black?"

Land rights for poor people...

Cont'd from pg 11

markets in India have reduced annual per capita growth by 1.3 percentage points. Had these problems been addressed ten years ago, the resulting higher economic growth would have made it possible for millions of additional people to escape from poverty.

The report shows that land rentals can facilitate development and increase productivity in ways that benefit poor people. In China, studies show that rentals raise the income of former farmers who take off-farm jobs and rent out their land, as well as the people who obtain land access through rentals. In Uganda the share of households renting land from others increased three-fold from 1992-1999, to one-out-of-three families. The increase in rentals coincided with a period of rapid growth and poverty reduction. Similar trends are also evident in Latin America, the report says.

While secure tenure and rentals overwhelmingly benefit poor people, the report found that sales rarely improve land access for the poor. Poor people faced with crop failures, a serious family illness or other economic shock are often unable to borrow and may be forced to sell their land at distress prices. This can result in speculators amassing large land holdings and depriving poor people of land access. Land sales restrictions and ownership ceilings are meant to protect poor people in such circumstances. But the study found that the restrictions often merely force the sales underground, to the detriment of everybody. The report suggests that a more effective

response would be to improve social safety nets, for example, by offering food for work programs. History has left some countries with a highly unequal distribution of land and other assets. High levels of inequality inhibit growth and make it very difficult for poor people to share in whatever growth occurs. In this case, the report says, government intervention to redistribute assets, including but not limited to land, can be a worthwhile investment in a country's future.

While there is agreement that the post-World War II land reform programs in Japan, South Korea, and Taiwan (China) were highly successful, the results of land reform efforts in other countries have been mixed, despite significant efforts.

Based on a large number of studies on the subject, the report concludes that in order to be successful, reform efforts need to be backed by political commitment, integrated into a broader approach to development, and implemented transparently and in partnership with civil society. Objective evaluation of land reform initiatives in a number of countries where land issues have recently received fresh attention would be of great value.

"There is no 'one size fits all' approach to land policy," says Deininger. "Adapting to local conditions and involving all stakeholders is essential to the design and implementation of effective land policies."

DevNews Media Center

www.web.worldbank.org/WBSITE/EXTERNAL/NEWS