



Kenya Land Alliance

# Policy Brief

## INSTITUTIONAL FRAMEWORK FOR LAND ADMINISTRATION AND MANAGEMENT IN KENYA



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### Introduction

Institutional framework for land administration and management being a whole set of services that make the land tenure system within Kenya socially, ecologically and economically relevant and operational has generally failed to operationalise the general functional components of land administration i.e. juridical, regulatory, fiscal, cadastral and adjudicative, efficiently. This is because land administration structures and infrastructures are perceived as factors external to the land tenure system itself. Consequently, institutional arrangements for land administration and management have been made a means of land accumulation. Thus, its capture and control by the ruling elite in a predominantly land-based economy has created a general reluctance to reform, privatize or re-engineer land administration structures and infrastructure to conform to the public good.

Worse still, Kenya lacks the technology and expertise to operationalise many of the functional components relevant for land administration. For instance despite our attempt to build capacity, we have not fully developed an operational Land Information System (LIS) or a dynamic adjudicative mechanism. The effect of this situation is that the land administration and management system in Kenya is plagued by:

- Substantial disuse
- Bureaucratic complexity
- Managerial opacity
- General inefficiency
- High transaction cost

All reform review processes i.e. the Commission of Inquiry into the Land Law System of Kenya ('Njonjo Commission'), the Constitution of Kenya Review Commission (CKRC), the Commission of Inquiry into Illegal and /or Irregular Allocations of Public Land ('Ndung'u Commission') and the National Land Policy Formulation Process (NLPFP) have concluded that the land administration and management system in Kenya lacks transparency and effective institutional arrangements to deal with public land and customary/community land. The general public perception is that the institutional management and land administration arrangement currently in place are corrupt, over-centralized and remote from the land and resource users. Given the chaotic manner in which land is managed by various sectors due to legal overlaps and ambiguity, institutional rivalries and operational overloads the national mood is that institutional arrangements must be overhauled as it is responsible for many ails afflicting the Land and Natural resource sector today.

### The Rationale and Operational Principles for the New Institutional Framework for Land Administration and Management

The proposed new institutional arrangements are based on the recommendations of the CKRC, the 'Njonjo Commission', the 'Ndung'u Commission' and indeed the NLPFP, all of which recommended the radical re-structuring of the land administration and management system as part of an overall land reform process that is urgent and long overdue. They all stress the need for an integrated institutional arrangement for a delivery system that includes a wide range of service providers, with a mainstreamed monitoring and evaluation system. The new institutional framework proposed is to be based on the following principles:

- Coordination of land delivery system within the envisaged devolved levels of government and devolved land administration and management system to the success of the land policy
- Government, where appropriate, must enter into partnership with the private sector, and the Civil Society as a sure way of facilitating cooperation in the implementation of the land policy
- A monitoring and evaluation system to track the progress of implementation of land policy measures and to provide timely feedback to new institutional framework operatives and the public is a key element in ensuring that policy measures are able to achieve their intended goals.

The goal of the new institutional framework is to ensure that the land administration and management system, however structured, is organized, operated and maintained to:

- Guarantee the security of all categories of tenure
- Keep all categories of land rights (whether individual, communal or public) clear and unambiguous
- Provide a robust framework for the marketability (transfer and transmission) of different species of land rights, in specific cultural and economic contexts

- Facilitate the sustainable regulation and management of all categories of land (public, private, community and commons)
- Provide an accurate and easily accessible land information system.
- Avail socially acceptable mechanisms for the expeditious and cost-effective resolution of land disputes.

The design of the new institutional framework for land administration and management envisages a new structure or structures that are:

- Founded on the principle of stakeholder participation
- Legally autonomous
- Fully devolved to the lowest levels of public/community administration
- Accessible and accountable to the public
- Transparent and devoid of bureaucratic malaise
- Able to acquire, manage and process the technologies required for an up-to-date land administration system.

## Key Policy Concerns and Recommendations

### 1. Establishment of a National Land Commission

In line with recommendations of the Presidential Commission of Inquiry into the Land Law System of Kenya ('Njonjo Commission'), the Constitution of Kenya Review Commission (CKRC) and attendant new constitutional dispensation thereof, the Presidential Commission of Inquiry into Illegal and /or Irregular Allocation of Public Land ('Ndung'u Commission') and the policy provisions of the Draft National Land Policy for the establishment and the functions of the National Land Commission, NLC) as a lead agency in land administration and management is well laid out. However, the functions to be assigned at each level to which the institution will be devolved depend on the system of public administration envisaged in the new constitutional dispensation yet to be agreed upon. Therefore, the Draft National Land Policy recognition of the decentralization of the functions and authority of the NLC as a necessity for the efficient and effective delivery of land reform will only be practical with a devolved and democratic constitutional system in place.

The efficient and effective delivery required of the NLC will be possible if the land reform agenda empowers it to create the widest possible land reform implementation capacity through funding, contracting and building capacity of service providers at devolved levels, the private sector, and the Civil Society sector

### Transformation of the Ministry of Lands

Achieving the goal of the new institutional framework for land administration and management requires the transformation of the Ministry of Lands from a traditional public service entity to one that is responsive to the land reform environment, service oriented and adequately staffed with skilled personnel. The proposed Land Reform Transformation Unit which is supposed to serve as a catalyst for the transformation process would require a new approach that is reform and service oriented. Beyond giving the Land Reform Transformation Unit autonomy, the transformation of the Ministry of Lands requires:

- Redesigning of systems and style to meet the needs of users of the services of the new institutional arrangements
- Developing service standards which clearly define outputs, targets and performance indicators, as a new integral outfit within the organizational structure and service delivery framework.
- Establish a regular monitoring and evaluation system to improve service delivery in line with the provisions of the National Land Policy once finalized.

The new institutional framework for land administration and management aims to transform the Ministry of Lands by improving the capacity of its staff so as to have committed and sensitive personnel to the needs of Kenyans, as well as having a strong sense of purpose and contribution to land reform.

### Organizational Structure

The proposed organizational structure for land administration and management is an effort to overhaul the Ministry of Lands for the massive task of implementing the National Land Policy and the resultant land reforms. The three tier devolved structure of the new institutional arrangement is meant to enhance the functions of land delivery system. However, there are incoherent links which need to be streamlined such as the link of NLC to Parliament. While the

text of the Draft National Land Policy captures it clearly, it is not well laid out in the organogram. Equally, the linkage with other National Agencies like National Environmental Management Authority, NEMA, the Private sector the Civil Society and even UN Agencies, is not clearly laid out.

### **Delivery of Land Reforms**

There are a number of measures required to address the institutional problems and constraints towards the implementation of the proposed new institutional framework for land administration and management. The following are some of the key ones:

- Rationalization of legislations
- Human resource development in the government and non-governmental sector
- Capacity building at community level
- Inter-sectoral and inter-governmental collaboration in National Land Policy implementation.

While it is important to envision working with a wide range of service providing agencies, it is necessary to take cognizance of the other national agencies in land related sector such as NEMA as well as international agencies. With the National Land Policy being a guide towards national competency in land sector, it is the responsibility of the central government to ensure a more equitable distribution of land and to support the NLC in ensuring that land tenure and land administration reform is implemented. In general the role that the NLC should take in land taxation matters as that of a co-ordinating body, with clear mandate and authority otherwise its core mandate in land reform would be lost.

The long-term success and sustainability of the land administration and management system is to a large extent dependent on the ability of the potential beneficiaries to access the new institutional arrangements. Providing services close to the local level, where delivery can most effectively take place, requires the strengthening and development of local-level land administration structures.

### **Conclusion**

The government must show a commitment to ensuring the provision of an adequate supply of land and enhancing accessibility to land by enacting and implementing a comprehensive land policy. The establishment of the National Land Commission as a lead agency to administer and manage land matters in Kenya will provide efficient and effective land administration and management structures which are a must for attainment of peace, reconciliation and stability. This institution is also crucial for economic growth, poverty reduction and securing livelihoods for the Kenyan people.

The policy should provide mechanisms for inter ministerial coordination of land resource management. The linkages between the National Land Commission and other statutory bodies should also be established for sustainable and effective land administration. The National Land Commission should focus on cost effective ways of meeting the needs of land users and owners.

Mechanisms for involving the private sector should be put in place to ensure competence of practitioners and assure quality of their work. There should be clear definition of those parts of the total land administration that must be undertaken by government offices and those activities that should be left to the private sector. Mechanisms for joint ventures should also be put in place.

The balance of responsibilities between the public and private sectors ultimately depends on:

- The political objectives with regard to privatization;
- The distinction between juridical and technical work;
- The nature and traditions of the particular jurisdiction;
- The available funding;
- Questions of access to certain types of data and the need for privacy and
- The strengths of the private sector

Generally, those operating within the land management agencies should be charged with meeting established targets for revenues and expenditure and be held accountable for the outcome in terms of service. This should be the

guiding theme in setting up the internal operational structures.

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