

RECONCILE

Resources Conflict Institute

TOWARDS EFFECTIVE LAND POLICY ADVOCACY:

CONSULTATION ON THE WAY FORWARD IN LAND POLICY

REFORM IN KENYA

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TOWARDS EFFECTIVE LAND POLICY ADVOCACY: CONSULTATION ON THE WAY FORWARD IN LAND POLICY REFORM IN KENYA

INTRODUCTION

The Resources Conflict Institute (RECONCILE), with the support of Oxfam Kenya Country Office, hosted a one day consultation on land policy advocacy in Kenya at Lenana Mount Hotel in Nairobi on 18th May, 1999. The consultation brought together a variety of participants from Kenyan Non-Governmental Organizations (NGOs) involved in the land issue in different ways whether as advocates, researchers or activists. It was also attended by representatives of the donor community in an observer capacity. The idea behind the consultation was to move forward the process of land policy advocacy in Kenya. The need to do this arose from the fact that while a lot has been said and written about the land question in Kenya; and while it is almost universally now appreciated that the policy and legal regime governing land in Kenya is inadequate to the task, little real progress appears to be made in moving beyond the lamentation about what is wrong with the system. The scandals involving the allocation of public land to private individuals, and the frustrations suffered by those who have tried to intervene in these scandals whether through court processes or other mass action initiatives clearly show that there is something lacking in the framework.

The policy, legal and institutional framework created more than 50 years ago has been rendered inadequate by the tremendous changes in the social, political, economic and cultural circumstances of the country over this period. The increase in population has resulted in a heightened competition for access to land and other natural resources. In addition the changes in the global environment brought about by the globalization of economies and politics have combined to create a reality that is significantly different from the one conceptualized when the existing framework was created in the 1950's. This reality calls for a whole new approach to natural resource governance.

It is in any case an opportune moment to reconsider the land policy and law of Kenya, as the country discusses the possibility of a far reaching constitutional review process. While a lot of politics is being played with the constitutional review discussion, there is no denying that the idea has put on the national agenda all aspects of governance; and that a major portion of that discussion will of necessity concern access to land and other natural resources. The experience of Uganda in this regard is instructive. There, the new constitution provided for a time frame within which a new land tenure legislation had to be passed. The same has now been passed, and the country is now addressing the implementation process.

In Tanzania, a Presidential Commission looked into the land question and made recommendation on a new land tenure policy, law and institutional framework. Even though the recommendations of the Commission did not entirely inform the subsequent process, a new set of land laws have been passed that seek to create some order in the tenure system. In all these initiatives, the countries in the region have sought to bring their land tenure systems in line with developments that have occurred over the period since the attainment of political independence.

Other countries of Sub-Saharan Africa, including Malawi, Zimbabwe, Mozambique and even Eritrea, are at different stages in addressing the land tenure question. It is indeed the time to

seize the opportunity to do something about the land issue in Kenya. In so doing this country shall be able to build on a long history of land administration within its borders, and to learn from the experiences of all these countries that have formulated policies and laws in the recent past. This fusion of Kenya's historical experiences with land and the new thinking that has informed policy and law formulation in other countries has the potential to result in a policy and legal framework that shall ensure sustainable management of land and other natural resources.

Yet in Kenya, perhaps more than in any other country in the region, the momentum for land policy reform shall have to be built by civil society. The government has acknowledged the need for a thoroughgoing reform of land policy and law for a long time now, but it has proved singularly incapable of initiating the process. This is probably because of the political sensitivities involved in the land question in Kenya; and the fact that most of the people in government who would be expected to initiate and implement the process of land reform are themselves compromised on the land question. In this sense at least, government is part of the problem with respect to the land issue. As such the process shall only move forward as a result of pressure from civil society organizations.

It was in appreciation of this reality that this consultation was organized. Oxfam works on various aspects of poverty alleviation in the country. It has through this work come to appreciate the significance of access to land and other natural resources in addressing poverty in Kenya. It is thus interested in the formulation of a land policy and law framework that is sensitive to the poor and their needs. In this regard, it has tried in collaboration with other civil society organizations and individuals interested in the land issue, to initiate a process that would mobilize and coalesce public opinion and the political process to move forward on this issue. A number of consultations have been held in this regard with a select group of people; and it was now deemed necessary to widen the consultation to a larger group and to involve other institutions.

RECONCILE is an environmental and natural resources policy research Institute based in Nakuru. It uses natural resource conflicts as the basis for understanding and articulating the natural resource needs of resource dependent communities. The Institute seeks the empowerment of resource dependent communities to give them a say and control over the decisions that impact on their access rights. It believes that for these communities to participate fully in the management of natural resources, the policy, legal and institutional framework for resource management must integrate their traditional knowledge, systems and institutions of resource management; and that only thus can the resources be managed sustainably. The Institute had been involved in the discussions hosted by Oxfam, and was thus asked by Oxfam to facilitate the holding of this consultation.

The attendance at the consultation comprised mainly of persons drawn from advocacy, research and activist NGOs based in Nairobi. The membership of the NGOs is nevertheless spread across the country; and in fact one of the organizations, the Kenya Pastoralists Forum was able to bring to the workshop participants from as far away as Isiolo and Kajiado.

Session One: Introductory

The introductory session was chaired by Githu Muigai, who welcomed the participants to the consultation, and facilitated the introductions and the adoption of the Agenda for the day.

Following introductions and the adoption of the Agenda, the Executive Director of RECONCILE outlined the purpose of the meeting and what was expected from it. The idea of this consultation was to brainstorm on the way forward in land policy advocacy. It was time to consolidate the gains made so far, identify the shortcomings of the process and what is holding it back, and design an agenda and course of action that would move the process forward. The problems with the existing policy, legal and institutional framework have been discussed for a long time. They are generally known to all the major players. Indeed even what needs to be done is fairly well known. The problem is one of actual action to ensure that the ideas that have been discussed are translated into policy and legal formulations that will ensure a democratic and pro-poor land management and administration system.

After the introductions and preliminaries, the participants were divided into two groups which met separately for the remainder of the morning to discuss their specific subjects, with a view to reporting back to plenary in the afternoon. One group discussed policy and law, while the other group discussed the process of advocacy and activism. The idea was that in this way, the consultation would address both the substantive issues that need to be focused on, and the process by which this is to be done.

Session Two: Group Discussions

Group One: Advocacy

The discussion in Group One was organized around three themes/questions, thus:

- the status of land policy advocacy in Kenya
- what is clogging the process of land policy advocacy?
- what is the way forward for effective land policy advocacy and reform?

The participants agreed that although there was hue and cry about the land problem in the country, there was no organized framework for effective advocacy for change and reform of the policy and the law. Such efforts as existed were sporadic and not focused in any programmatic sense. As a result, they do not last long, and have little impact on the actual policy and legal situation. Where, for instance in the case of Karura Forest, the major players in the appropriation of the land are put on a spot by such activism, they merely retreat strategically and reorganize themselves to continue appropriating the land using less obvious methods. Once the media interest in the case abates, it is business as usual.

As a result, it is not as if there is any meaningful land policy advocacy in the country. Sectoral activism by specific groups like the Greenbelt Movement, East African Wildlife Society and Kenya Human Rights Commission among others, have not translated into a coordinated programme of advocacy for meaningful change. The impact of these initiatives on the overall policy and even practice of land and natural resource management has been minimal by reason of this approach.

In discussing the second question and trying to identify what is clogging the process of land policy advocacy, the participants in effect were considering in further detail what is wrong with the current practice and status of land policy advocacy. The problems identified as causing the impasse are set out in Box 1, below.

Box 1: Problems/Shortcomings of Land Policy Advocacy in Kenya

- fragmented approach both in substance and process
- limited networking both within the country and in the region; thus failure to learn from good practices of land policy advocacy elsewhere
- inadequate flow of information and mobilization within civil society organizations and with stakeholders
- tendency to focus on the interests of agriculture and urban dwellers, thus marginalising other stakeholders like pastoralists and fishermen
- hostile land and natural resources governance policy and legal environment at the national level

To address these problems and put land policy advocacy on track, the group suggested that it was necessary to establish an umbrella body to coordinate the activities of the various civil society organizations towards a specific objective of an all embracing, participatory and thoroughgoing policy and law reform process. The recommendations of the group on the agenda for the envisaged umbrella organization are set out in Box 2, below

Box 2: Agenda for an Umbrella Land Policy /Advocacy Organization

- facilitate networking and information sharing locally, regionally and at the international level
- coordinate the efforts of diverse groups towards the specific objective of introducing a new land policy and legal framework
- organize civil society groups to formulate a draft land policy for presentation to government
- mobilize public opinion and political leaders for reform of land policy and law

Group Two: Policy and Law

The Policy and Law group identified a number of issues that need to be addressed in a new land policy and law regime. These issues are either addressed inadequately or not at all by the existing policy and legal framework. The group felt that these issues should inform any meaningful advocacy for reform of the policy and law. The issues so identified and discussed by the group are set out in Box 3, below.

Box 3: Issues for reform in Land Policy and Law

- governance issues over land (powers (and decision making processes) of the President, Commissioner of Lands, Land Control Boards, Country Councils relative to trust lands, etc.
- communal tenure versus privatization, individualization, titling and registration
- management of common property resources
- gender equity in access to and control of land

- commercialization/commoditization of land
- land in the constitutional order
- legal/judicial protection of land rights

Session Three: Designing a Framework for Effective Land Policy Advocacy

In the afternoon, the groups presented the results of their respective discussions in plenary. The results were then discussed further and adopted where appropriate. The reports then formed the basis for a participatory exercise of designing a framework for effective policy advocacy. In designing the framework, the participants considered and discussed in turn the following issues:

- objectives of the framework
- nature of the framework (institutional arrangement, membership, etc.)
- location of framework
- functions of the framework (coordination, implementation, networking, information gathering and sharing, etc.)
- reconciliation of initiatives between the framework and the member institutions
- follow up process (what next?)

The participants agreed that the objective of the framework was to put land on the national agenda for debate and action, with a view to ensuring the formulation of a land policy, legal and institutional framework that was democratic, transparent, accountable and equitable. To realize this objective the participants agreed to the formation of an institutional framework to be known as the Kenya Land Alliance to spearhead a series of activities aimed at coordinating the efforts of the various organizations towards a common objective and purpose, to wit, the formulation of a new land policy and law in Kenya.

The participants were particularly concerned that the new framework should not become a competing organization as against the potential membership. In this connection it was important that this initiative is not seen as leading to the creation of yet another NGO on land policy advocacy, but rather as facilitating the coalescence of existing efforts for maximum impact. It was suggested that the major failing of networking initiatives was the tendency to end up in being just additional organizations on the same area of concern. Once a network became an operational institution, it then faced the risk of appearing to be competing with its member organizations for funding and programme support, with the result that the members then lose interest, and the network loses its original focus and relevance. It was agreed that one way to avoid these problems is to ensure that there is optimal participation in the creation and running of the umbrella organization.

It was decided that for the time being RECONCILE shall act as the secretariat for the activities relative to the establishment of the umbrella organization, until such time that the members shall determine otherwise. In this connection, RECONCILE would coordinate efforts and organize meetings for the preliminary work leading to the establishment of a functional framework. A Steering Committee was formed, comprising all the organizations and individuals that attended

this consultation (See Interim Organization, Box 4, below). They were mandated to oversee the preparatory process and operate as the policy organ to which RECONCILE shall report. They shall remain in this capacity until the organization is able to elect an appropriate leadership.

Box 4: Interim Organization of Framework

Steering Committee

- OXFAM *Chair*
- RECONCILE *Secretary/Secretariat*
- Robert Shaw *Organizing Secretary*

Members

- Forest Action Network (FAN)
- Public Law Institute (PLI)
- Kenya Pastoralists Forum (KPF)
- Kenya Freedom from Hunger Council (KFFHC)
- African Centre for Technology Studies (ACTS)
- Centre for Environmental Policy and Law in Africa (CEPLA)
- Kenya Human Rights Commission (KHRC)
- Mazingira Institute

The participants agreed that other details including the functions of the umbrella organization as well as the reconciliation of those functions with the activities of member institutions would be determined in the formation process that had now been initiated. What was important was to agree on a follow up process that would ensure that the momentum created by the consultation was built upon.

Follow up Process

The immediate concern of the participants is to enlarge the membership of this Alliance, as a way of creating legitimacy and building capacity and confidence. In this connection, the participants identified a number of institutions and mandated the Secretariat to get them informed about this process and invite them to participate in it (See Potential Stakeholders, Appendix 4).

The participants also sought to consider how the opportunity provided by the constitutional review process can be useful in harnessing public opinion and generating discussions on land policy reform. In the end it was agreed that while the constitutional review process does provide an opportunity, it should not be seen as the only entry point for putting the discussion on land policy reform in the national agenda. The process initiated by this consultation should proceed regardless of what happens with the constitutional review process. Thus the constitutional discussion should be seen as but one entry point that could be used. In this connection it was noted that other entry points exist in the form of the Presidential Land Commission, the National Food Policy formulation process, the ongoing discussions on decentralization/devolution, democratization and liberalization.

More specifically, it was agreed that the Secretariat would work on a proposal setting out the strategies for achieving the objectives of the Alliance in the medium and long term. A second

meeting of the group will be called in two months. The nature of that meeting and the level of participation shall be determined by the Steering Committee on the basis of the progress made by the Secretariat in raising funds. In this connection, DFID intimated their willingness to consider providing some funding for animating the process of establishing the umbrella organization.

Pending the convening of the second meeting, the following organizations agreed to write each a two page write up spelling out on the basis of their institutional experiences, the issues that the umbrella organization should address in order to be relevant and useful to their respective constituencies/stakeholders.

Box 6: Interim Activities for Follow up	
Organization	Subject Area
Forest Action Network	forest dependent communities
Public Law Institute	public land
Kenya Freedom from Hunger Council	food policy
African Centre for Technology Studies	policy making process
Centre for Environmental Policy and Law	existing legal framework
Kenya Human Rights Commission	land in the context of human rights