

Urban-Rural Relationship in Land Management and Access to Land – Kenyan Experiences

Wafula NABUTOLA, Kenya

Key words:

SUMMARY

In a globalized economy with its widening income gaps and escalating land prices, land management and formal land development processes tend to serve the middle and upper income strata leaving the poor to obtain land informally, often through illegal occupancy. Few land management policies in developing countries have been favorable to the poor.

Matters related to land evoke the emotion of most Kenyans whether child, man or woman. This goes back to the days before the white man arrived. In those days, the various communities used land the best way they knew how. For instance, the communities in Central Kenya and in the West cultivated their land using shifting cultivation systems. Similarly, the communities around the Lake left their land fallow and concentrated on fishing. The pastoralists; Maasai, Samburu communities who occupy most of the rest of the land used it strictly for pasture for their domestic animals. There was harmony and each community recognized the rights of the individual and those of the community, the individual was expected to reciprocate. Methods were devised and employed to use the land to the best advantage.

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1. POPULATION EXPLOSION, WESTERN TECHNOLOGY & WILDLIFE CONVERSATION

At the turn of 19th Century, a land problem emerged due to several factors that interfered with the harmonious existence e.g. missionary railway, Indian skilled labour, colonial settlers, and western technology arrived, affecting the way the indigenous people lived. Needless to say that prior to this epoch, wildlife conservation and management and activities related thereto like tourism was practiced differently. There were no national parks or reserves to emphasize demarcation and hunting was strictly for food not sport (game). Further more, there was an increase in population movement of labour from supply to demand areas, and all these factors affected land use administration, creating new challenges some of which have not been resolved to date despite numerous statutes passed in response to new challenges.

Rapid growth of population against a fixed supply of land in the developing world is the most striking feature of the land management scenario.

2. RURAL – URBAN MIGRATION

For the urban areas, increasing urbanization implies that a significant part of the population in the developing world will soon be living in and around urban areas where the Government mainly owns land. Most of these countries have urbanization rates of upward of 8%, the fastest in the world. Most of the people who will be living in urban areas are the rural-urban migrants who either do not own land at their place of origin or were laborers in the rural setting and are out for the bright lights in town.. The migration of able bodied skilled and semi-skilled labour force will thus have an adverse impact on the productivity of the rural land, on which many countries still depend for economic activities most of which are agrarian based, raw material producers.

On the other hand this migration will put significant pressure on land at their points of destination (urban areas), a scenario that has witnessed the mushrooming of some of the biggest slums and with them environmental, social and economic problems of monumental proportions. For example in Kenya, 45% of the population of the city of Nairobi comprises of squatters. One slum alone on a five-kilometer square area carries over 700,000 people. The human problem that this mass of humanity carries with it can only be described in catastrophic terms. Here, urban land has found itself as the main arena for both the generation of wealth and the locus of poverty.

One of the main tasks facing land management here is to ensure that while urban land retains and expands its capacity for development, poverty and its effects must be contained. Nairobi has experienced one of the largest concentrations of organizations that work in the area of

health, social welfare and sanitation, all focusing their attention on the population on the illegally occupied land.

The way this land is managed and administered has a direct bearing on the ability of the country to support economic development and mitigate poverty. Therefore all those concerned with either economic or with social development of the country should be concerned with urban land management.

Due to poor productivity of the rural sector, urban land management poses the biggest challenge to Kenya and many developing countries where the population growth is felt most. For rural land, the challenge is to maintain the productivity levels that would provide both employment and food for the growing population. In both cases, there is need for sound policy now constrained by numerous factors. In some of these countries, land is concentrated in the hands of government and speculators, imposing further bottlenecks on its management. There are also lengthy procedures and inappropriate institutional structures, out of date cadastral systems, inappropriate land use regulations and adjudication processes, inequitable or poorly developed valuation and tax systems.

3. LAND MANAGEMENT IN KENYA

Over 80% of Kenya's landmass belongs to the Arid or Semi-arid lands (ASAL). This leaves only 20% of the landmass as arable land, which is projected that 22.5 million Kenyans struggle to share. That is the beginning of the challenge for sound land management practice. Kenya's economy is basically agrarian.

In most parts of Kenya, customary land systems still prevail and are considered to be an obstacle to the profitable utilization of the land as customary land rights are related to social rather than commercial value. Maybe adopted / modified to reflect and address emerging challenges.

Land management here has a common problem. That is, a historical mis-application of land policy. For the urban areas, the result has been uncoordinated and uncontrolled development, which has been both inefficient and ineffective. At the very least, the result has been conflict in planning standards and negative impact on the environment.

Unplanned land development here has created difficulties and added costs associated with obtaining and maintaining rights of way and access for infrastructure that has to be provided post-hoc to unplanned settlements. Road reserves have been encroached.

For the rural areas, the result has been individual, communal and ethnic conflicts that have adversely affected productivity levels leading to low, if any economic development.

4. SUPPLY OF LAND

4.1 Urban Setting

In Kenya's urban settling, a multiplicity of land delivery mechanisms exists, which have not generally been acknowledged by Government. This has led to the emergence of large irregular settlements, which do not access basic municipal services, water, sanitation, sewerage and power.

Management of information on land, which has been a monopoly of the local Councils and Government through the land boards, has opened the society to monumental scandals commonly known as land grabbing. Honest central government intervention in the land market has thus been ineffective and wasteful and often viewed with suspicion. In consequence, the public land delivery system has not been responsive to the people's needs particularly women and the poor. The effect in an urban setting is a rapid growth of informal settlements, an escalating number of street families and the urban poor. It is estimated that 59% of the urban population in Kenya live in absolute poverty (below poverty line.)

Regional Macro-economic Indicators	Uganda	Tanzania	Kenya
Gross Domestic Product (US \$ Million)	5,630,000,000.00	8,637,000,000.00	10,910,000,000.00
Population (Million)	24,600,000	33,600,000	31,500,000
GDP Growth (%)	4.9	6.2	1.1
Population Growth (%)	3.4	2.9	2.3
Inflation (%)	5.9	4.3	3.7
Treasury Bill Rate (% for 91 days)	14.5	5.2	6.3
Debt (US \$ Million)	3,900.00	8,900	4,865
Trade Deficit (US \$ Million)	623	629	286
Foreign Exchange Reserves (US \$ Million)	965	1,529	1,187
Overall Deficit as % of GDP	11.2	12.2	15
Income Per capita	228.86	257.05	346.35
Income Per capita/day	0.63	0.70	0.95

4.2 Rural Setting

The land delivery mechanism has been marred by the colonial history, which has misplaced land from its ancestral owners to settlers. There is also the tradition which prevents certain sections of the citizenry (i.e. women) from inheriting property. AS a result Kenya has seen regular land-related bloody conflicts that have negatively impacted on the national economic development.

In both rural and urban cases, access to land is a major bottleneck preventing citizens (rural) and residents (urban) in participating meaningfully in economic development. Where privately owned land is predominant, market transactions are constrained by unclear, complex and often contradictory, government rules and regulations. The government has in

essence attempted a multi-sector approach of resolving land management issues through appointment of public land commissions.

5. RATIONALISING LAND MANAGEMENT

The Government of Kenya has now recognized the serious consequences of Land Management system and has put in place mechanisms to help rationalize land issues.

Like most African countries, agriculture and rural development plays a central role in the economy. Agriculture was ranked as the first priority sector during the poverty reduction consultative process.

The Government is committed to agriculture and rural development that provides linkage with industrialization strategy and the development of infrastructure and other sectors. This is important because Kenya is predominantly rural and agricultural economy. Hence land management practices must be streamlined in trying to maximize output from land.

Best rural land management will secure food supply, increase income and create a favorable environment for better living standards.

Kenya needs an agricultural sector that grows at about 4% - 6% per annum to contribute to national growth and have a positive impact on poverty reduction.

6. WILDLIFE CONSERVATION & TOURISM: HUMAN - WILDLIFE CONFLICT

Wildlife conservation and management is seen as a key part of a sustainable environment. It is part of the ecosystem that contributes to the wholesomeness of human habitat. On its own wildlife conservation is expensive, especially in Kenya where game hunting is prohibited by law.

However, wildlife tourism safari has made Kenya famous from the turn of the 20th Century. Tourism is classified as a “soft” industry because it is labour intensive and its pollution can be controlled if there is enough incentive, information and education.

This calls for the development of new tourism products and the enhancement of existing ones, provided they meet environmental and socio – cultural standards. The challenge is the ever – expanding population that leads to human – wildlife conflict, especially in dispersal areas. If there is sufficient incentive, and the communities are involved in conservation, we could achieve a high turnover of tourists of the right calibre, that is to say those who are environmentally aware, espouse good eco-friendly practices and have sufficient disposable income that go toward discretionary spend while visiting.

For the urban land, which is mainly under the Local Government (Local Authorities); its ownership can provide local authorities with opportunity to leverage investments, encourage certain types of development or target areas to catalyze further growth.

However, there is need to ensure compliance with national legislation. Currently, lack of compliance has led to significant abuse of available space, building on reserved land, mushrooming of slums; all factors that have led to constrained planned development. The result of which has been environmental abuse and social decay of communities.

Urban land management can also be streamlined through improved land legislation, removal of a confusing institutional framework, ineffective costly land registration procedures and systems that have opened the doors for corruption.

7. MODERN DEVELOPMENTS: UTILIZATION & LEGISLATION

Land tenure refers to the terms and conditions under which access to land rights are acquired, retained, used, disposed of or transmitted. Security of tenure therefore, is the security, which gives one a right to indemnify from the government. It is the security of the transferee, the chargee, mortgagee and the lessee.

The government guarantees security of tenure by ways of guarantees and indemnity. Anybody who has been deprived of any land estate or interest in land as a consequence of error or misdescription in any registered certificate of title or in any entry in the register book may bring and prosecute an action for the recovery of damages against the person who acquired title to estate or interest through fraud, error or mis-description.

It should however be noted that for such benefits to accrue, transactions in land must be registrable. These include conveyance or transferees, mortgage, charges and leases of long duration. Certain legal incidents flow from the registration of transactions that can be registered. Registration gives priority to a registered proprietor of an interest is capable of being registered. These rights are enjoyed together with all privileges but subject to any encumbrances that have been registered.

Section 100 – 102 of the Government Lands Act stipulates that no evidence shall be receivable in any civil court of the sale, lease, mortgage, charge or transfer thereof, unless the transaction is effected in writing and such instrument has been registered under the Act. Similar stipulations are found in Registration of Documents Act, Land Titles Act, Registration Tittles Act, Registered Lands Act and Indian Transfer of Property Act. As a result therefore, unregistered instruments are unenforceable, invalid or void. Among other things, registration of title accrues benefits such as:

- Certainty of ownership
- Security of tenure
- Reduction in land disputes
- Improved conveyancing
- Stimulation of the land market
- Security for credit
- Monitoring of the land market
- Facilitating of land reform
- Management of state land

- Support for land taxation
- Improvement of physical planning
- Recording of land resources information
- Prevention of refragmentation of land into uneconomical parcels.

Even with that though, all land held under any tenure may be compulsorily acquired by the state for public purposes or if public interest requires it but subject to prompt payment of full compensation prior to occupation of such land.

The regime of law governing land tenure is complex and virtually inseparable. In essence, there are over twenty land related statutes, which lead to different tenure systems that in turn work against a harmonized land tenure system. This in turn impacts on the way land can be used in the most natural and original intent.

8. ACCESS TO LAND

Land refers to the soil, the subsoil, any sub-terrenean deposits beneath it, any body of water wholly contained within or beneath any land and the airspace immediately above it. According to the constitution, all land in Kenya belongs to the people of Kenya collectively as communities and as individuals.

Land being Kenya's primary resource and the basis of livelihood for the people, should be held, used and managed in a manner which is equitable, efficient, productive and sustainable. Constitutionally, land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights in respect to the land in question.

It has been long conceded that a number of problems will need to be addressed if Kenyans are to have an equitable access to land. These may include: -

8.1 The Status of Women

Women constitute over half of the Kenyan population yet they own less than 10% of the available land. Lack of ownership of property by women reduces production incentives, retards development and contributes to poverty and low self-esteem.

8.2 Pastoral Communities

Today the concept of pastoralist land is less understood and even less respected. The result has been the overriding of customary pastoral land systems to great disadvantage of pastoral peoples. Lands once used sustainably have been alienated and have often become degraded.

8.3 The Needs of the Urban Poor

Of Nairobi's population of about 3.5 Million, about 60% live in slums. Poor, landless and homeless people continue to move to the City from the rural areas in search of the elusive "comforts of the city" that are displayed and sometimes overplayed by the city dweller.

Improvements must hence involve local people in a meaningful way, and necessarily must be twofold, one initiative for the urban peoples and another targeting the rural folk.

8.4 The Status of “Squatters”

Squatters often live on land owned by others. Landowners often infringe squatters’ basic human rights e.g. human dignity, freedom and security protection from servitude and forced labour. Due to spontaneous settlement, poor people are frequently without title deeds and are subject to eviction as landowners (often absentees) seek to assert proprietary control over their land.

8.5 Past Land Grievances:

The Coastal Strip: At the attainment of Kenya’s political independence the whole of the Kenyan Coast stretching to a ten-mile strip, were annexed and declared property of Kenyans of Arab origin. Other Kenyans could not own land in that area except as squatters. Some of these Kenyans [of Arab origin] could not readily identify with and wholly embrace the new government leadership.

Maasai Land: Further inland there was the massive expropriation of Maasai land under the guise of “ agreements” signed with colonial authorities in 1804 and 1911.

The White Highlands: This was the most arable land in Kenya suitable for farming. The white settlers quickly displaced the people already on the land and fenced off large tracts of land. At the same time the indigenous people were sent to reserves from which they provided labour to the settlers. After independence the educated and other well to do Africans replaced the whites and continued to practice the same. In between there was the war for land etc.

8.6 Present Grievances

The Phenomenon Of “Land Grabbing”: Land intended for research and /or public use was annexed and sold or handed out to individuals by the state leadership as part of the political patronage of the last regime.

Ethnic Clashes: In more recent times [before the elections of 1992 and 1997], expropriations have occurred as a result of ethnic clashes in the Rift Valley, Coast and parts of Western and Nyanza Province. The Kenyan nation lost at least 5,000 of its citizens, about 20,000 were displaced, and property worth an estimated Kes. 5 Billion destroyed. A Commission of Inquiry into the Clashes declared government leadership culpable.

The challenge now is to reverse the process of Land dispossession and return of the original land to the descendants of previous users.

Issues Relating To Land Administration: Land administration embraces all activities relating to procedures for the delivery of land rights, systems of land rights, security; including

demarcation, survey and registration, regulation and control of land use, land use planning, land market regulation and the processing of land disputes.

The current administration is characterized by lack of transparent and effective institutions dealing with public land and customary land, the administration of which is perceived to be corrupt, highly over-centralized and remote from the resource users. This situation needs to be reversed and the system be made nationally uniform and sustainable.

9. SECURITY OF TENURE

Different forms of land tenure with corresponding property rights such as private or public ownership, leasehold and common, communal, religious or customary land tenure system exist. With rapid urbanization and commercialization, customary tenure concepts have proved unable to meet the needs of people with low incomes, limited savings or without collateral. Urban areas generally embody a wider range of tenure options, thus making the land issue more politically contentious than in rural areas.

Significant sections of the population in Kenya lack security of land tenure, which denies them collateral for financing diversified investment development or improvement. In squatter settlements, frequent harassment and evictions often accompany this lack of security. In urban areas, these trends stultify residents' investments in housing. Limited access to land also negatively impacts on the development and expansion potential of micro-enterprises, particularly where there are strict zoning regulations.

In urban areas high land prices have resulted in increased difficulties for the urban poor. Evictions now target land that was of little value previously.

In general both rural and urban land management needs good policy on Tenure, which would play a crucial role in both the supply of and demand for land. Responsibility for formulating and enforcing rules of tenure and use of land rests ultimately with the government, which implies the following;

- New systems of land tenure can improve the efficiency of land management within cultural and legal systems acceptable to all sections of the population;
- Tenure Policy – comprehensively addressing rural and urban situations – has to be seen as part of a package of policy measures, not a freestanding measure;
- The essential element of tenure policy should be to protect people from forced evictions where due legal process and workable alternatives have not been provided;
- National land policy and law should clarify the rights and obligations of landowners and other interested parties and provide protection of vulnerable groups such as the poor, the elderly and women;

- Security of tenure is increased if policy changes are gradual and give people time to adjust. Major changes increase insecurity – incremental change is best;
- A wide range of tenure options – formal, semi-formal and non-formal – is the best approach to ensuring affordable access to land for the poor;
- Simple and affordable conflict resolution procedures can resolve disputes over land and property;
- In highly regressive environments, measures should protect the poor from being evicted from high value locations as well as facilitating access to land and housing.
- There is need to harmonize the various land-related statutes. At the moment there are at least two commissions set up by government in a quest to address and harmonize the laws relating to land.
- Suitable land data banks should be developed to ensure easy access to required information by users.
- A new land policy should be designed to take into account the reasonable expectations of existing owners and occupiers.

10. CONCLUSION

Reform of land management towards more accessible and affordable systems is a prerequisite for security of tenure and property rights. Due to the need to provide protection for investment, there is need to encourage investment in real estate through the establishment of modern land and administration systems with an adequate regulatory environment for private sector activities – because land is money. In a setting like Kenya's, land values rise 5 per cent annually and investment in land, notably in urban areas, is a sound investment, but some form of control (management) is desirable. There should also be a multi-stakeholder approach in land management.

CONTACTS

Wafula Nabutola
 Executive Manager
 Investments and Properties
 The Jubilee Insurance Co. Ltd
 Mama Ngina Street
 P. O. Box 30376
 Nairobi
 KENYA
 Tel. + 254 3208 1011
 Fax + 254 3208 1150
 Email: Nabutola@Jubileekenya.com