

# Formulating a Sectoral Approach to Urban Land Policy: The Case of Kenya

**Robin McLaren, United Kingdom**

**Key words:** Kenya; Urban Land Policy; Millennium Development Goals; Slums; Informal Settlements; Land Information Management; Land Governance; Monitoring Urban Change; Political Support.

## **SUMMARY**

Kenya has not had a single and clearly defined and codified National Land Policy since independence (Ministry of Lands, 2007). In the interim, a complex set of land laws has evolved, some of which are conflicting, resulting in an overly complex and inefficient land administration and management system. This land governance legacy is no longer appropriate for Kenya and land issues have raised themselves in many forms; deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilisation and abandonment of agricultural land, tenure insecurity and most recently conflict following the national elections in December 2007.

In May 2007 a draft National Land Policy was published following widespread participation of stakeholders and the policy will most likely to be presented before Parliament for approval in 2009. The policy promises sustainable and productive management of land based resources, transparent and cost effective administration of land, sound conservation and protection of ecologically sensitive areas, discouraging land practices discriminatory to women, encouraging communities to settle land disputes through recognised local community initiatives consistent with the constitution, and sensitivity to those affected by the HIV/AIDS pandemic. This is an ambitious policy to generate sustainable socio-economic development and significantly supports the MDGs 1, 3, 7 and 8.

Although the National Land Policy has still to be approved by Parliament, the preparation for the transition to a new Land Governance arrangement under a National Land Commission has been initiated for a two year period, including the creation of a Land Information Management System. Key challenges in the implementation of the policy include: gaining approval of Parliament; affordability and a sustainable funding model; reduction in corruption; a lack of comprehensive information to support implementation planning; scalable solutions for slums and informal settlements; capacity in decentralised administrations; multi-sectoral co-operation across government; managing cities and their regions holistically; and empowering and engaging the citizen and communities in land governance.

Land professionals potentially have a pivotal role to play in implementing the urban land policy in Kenya, including: the development of a business case for the New Land Policy; supporting and reviewing a new legal framework; the provision of affordable land tenure security; a low cost, Free Open Source Software based LIMS solution that can manage formal, customary and informal land rights; innovative data capture solutions to provide up-to-date urban change information; standards and professional ethics; the application M-government service to the delivery of land administration and management services for all stakeholders.

Key lessons learned from the Kenyan National Land Policy experience include:

#### Policy Formulation:

- Ensure that the policy formulation process is inclusive, transparent and is widely participatory, especially with civil society.
- Judge carefully just how radical the improvements to the lands policy will be and ensure that any radical changes will be accepted by the politicians.
- Formulate a corresponding business case, with tangible economic benefits, to support the arguments to adopt the land policy.
- A multi-sectoral approach is essential in formulating a policy framework to generate sustainable urban environments.
- Ensure that the outcome of the policy change will strengthen the relationship between citizens and the land.
- Design strong land governance arrangements that provide transparency, accountability and provide true security of tenure that can be trusted by the citizens, business and the financial institutions.
- The influence of cities reaches far beyond their boundaries into peri-urban and rural regions. The policy must ensure that there is governance / mechanisms to integrate urban planning and development control across Local Government administered areas, leading to a more holistic approach.
- Continually build trust between Land Governance arrangements and the financial institutions to ensure their serious involvement in the land market. Create a dialogue with the financial services sector to design and implement innovative approaches to funding through group savings and cooperatives, for example.
- Create and sustain land information in a Land Information Management System that is comprehensive, transparent and easily accessed by all stakeholders. This is essential for well functioning land management and administration services and will contribute significantly towards a reduction in land based corruption.
- Only implement solutions to slums and informal settlements that are truly affordable, scalable and quick. The size of the problem needs very effective solutions. Where possible, introduce the concept of applying a continuum of tenure types that can be incrementally upgraded over time.

#### Policy Implementation

- Careful planning of the transition in implementing the new land policy is required and may take several years to achieve. Be open about the implementation costs and ensure that the implementation option selected is affordable and sustainable.
- A strong and committed communication strategy is required in the early years of implementation to inform and educate all stakeholders.
- Continually build trust between Land Governance arrangements and the financial institutions to ensure their serious involvement in the land market.
- Ensure that the decentralisation of governance arrangements goes hand in hand with democratisation and don't underestimate the level of capacity building required at the local level.
- Decentralisation of land administration and management will impact on the roles and responsibilities of Local Government. This may require institutional reform.

- New or modified land policies require new legal frameworks. This takes significant time to formulate and pass through Parliament. Work closely with Law Societies to achieve their crucial support.
- Create and sustain land information in a Land Information Management System that is comprehensive, transparent and easily accessed by all stakeholders. This is essential for well functioning land management and administration services and will contribute significantly towards a reduction in land based corruption.
- Create national land information inventories, e.g. public land and land use, as early as possible to support policy formulation and impact monitoring.
- Develop new techniques, e.g. by engaging citizens in crowdsourcing, to capture and maintain urban change information. This valuable up-to-date information will support the more effective management of the urban environment.
- Urban planning and development control needs to be participatory.
- Only implement solutions to slums and informal settlements that are truly affordable, scalable and quick. The size of the problem needs very effective solutions. Where possible, introduce the concept of applying a continuum of tenure types that can be incrementally upgraded over time.
- Create a robust and fair, formal land market in which all want to and can participate.

# Formulating a Sectoral Approach to Urban Land Policy: The Case of Kenya

**Robin McLaren, United Kingdom**

## **1. INTRODUCTION**

Land lies at the heart of the challenge of economic growth and poverty reduction in every country. The importance of good land governance has long been recognised by the people of Kenya as a critical issue for sustainable socio-economic development.

Kenya has not had a single and clearly defined and codified National Land Policy since independence (Ministry of Lands, 2007). Instead, a complex set of land laws has evolved, some of which are conflicting, resulting in an overly complex and inefficient land administration and management system. Without a clear and robust land policy framework and strong institutions to implement the policy, land issues have raised themselves in many forms throughout Kenya; fragmentation, breakdown in land administration, disparities in land ownership and poverty. This has resulted in environmental, social, economic and political problems, including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilisation and abandonment of agricultural land, tenure insecurity and most recently conflict following the general elections in December 2007.

In May 2007 a draft National Land Policy was published following widespread participation of stakeholders and is most likely to be presented before Parliament for approval in 2009. This policy is designed to ensure the principles of equitable access to land and associated resources, as well as the security of land rights for all land holders, users and occupiers in good faith, including slum dwellers. The policy also promises sustainable and productive management of land based resources, transparent and cost effective administration of land, sound conservation and protection of ecologically sensitive areas, discouraging land practices discriminatory to women, encouraging communities to settle land disputes through recognised local community initiatives consistent with the constitution, and sensitivity to those affected by the HIV/AIDS pandemic – an ambitious policy.

This paper reviews the current issues in the urban land sector in Kenya arising from rapid urbanisation in a National Land Policy vacuum, reviews the aims of the new National Land Policy and how it will deliver against the Millennium Development Goals (MDGs), identifies key challenges associated with the implementation of the National Land Policy and finally identifies the role of the Land Professional in supporting the transformation of the urban environment under the National Land Policy.

## 2. OVERVIEW OF URBAN LAND SECTOR IN KENYA

### 2.1 National Land Characteristics

Kenya has an area of roughly 586,646 km<sup>2</sup> of which 97.8% is land and 2.2% water surfaces. Most of the land (80%) can be classified as arid and semi-arid. Forests and woodlands occupy about 7% (37 km<sup>2</sup>), while national reserves and game parks together account for 10% of the country's area. Only 15% of the land is fit for agricultural production and 100% of this is under cultivation (Commission of Legal Empowerment of the Poor, 2006).

In 2007 (World Bank, 2009) the country's population stood at approximately 37.5 million at an overall growth rate of 2.6%. Approximately 75% of the country's population live within the medium to high potential areas, while the rest live in the vast arid and semi-arid lands. The density of population ranges from two persons per km<sup>2</sup> in the arid and semi-arid lands to over 2,000 per km<sup>2</sup> in high potential areas, i.e. Kisii, Kiambu and eastern slopes of Mount Kenya.

The rural-urban population balance stands at 79% and 21%, respectively (World Bank, 2009). Poverty statistics indicate that its prevalence at the national level stands at 52.2%, which means that this proportion of Kenyans cannot achieve the minimum expenditure needed to acquire basic food and non-food items. Absolute poverty in the rural areas now stands at 53.9 % and 49% in urban areas. In the case of rural Kenya, the incidence of rural poverty remains intricately linked to the state of the land economy (Commission of Legal Empowerment of the Poor, 2006).

Major land uses include agricultural and pastoral land uses on which the majority of Kenyans depend for their livelihood, harvesting of forest products for timber and wood fuel, tourism, mining, fisheries and infrastructure. These together define the environment in which Kenya's land economy functions.

The land distribution pattern in Kenya is very much skewed. In Nairobi, for example, 5% of the land is currently housing 75% of the city's population. In the rural areas, three prominent families, i.e. extended families of the current and past Presidents, are holding a significant portion of the agricultural productive land in Kenya (Commission of Legal Empowerment of the Poor, 2006).

Land is critical to the economic, social and cultural development of Kenya. It is crucial to the attainment of economic growth, poverty reduction and gender equity. Its importance has been clearly recognised by various Government initiatives including the initial *Poverty Reduction Strategy Programme*, the *NARC Manifesto* and the subsequent *Economic Recovery Strategy for Wealth and Employment Creation Programme 2003-2007*, *Vision 2030* and now the *National Land Policy*. Land was a key reason for the struggle for independence and land issues remain politically sensitive and culturally complex.

### 2.2 Urban Land Characteristics

One of the most significant dynamics impacting on Kenyan society is rapid urbanisation, mainly due to rural-urban migration and high urban growth rate. Kenya's population shows remarkable trends in levels of urbanisation having

---

Robin McLaren

5/27

Formulating a Sectoral Approach to Urban Land Policy: The Case of Kenya

increased from 8% at independence to 19% in 1989, 19.4% in 1999 (Population and Housing Census-CBS 1999) and is projected to account for over 50% of the total population by the year 2015. Some of these urban centres, Nairobi in particular, have doubled in population over the past decade. However, urbanisation on its own is neither good nor bad because it is often a response to economic growth. There is a clear relationship between a country's level of development and the proportion of the national population that is urbanised (Republic of Kenya, 2008).

In addition, Kenya is host to thousands of refugees from Sudan, Somalia, Ethiopia, Rwanda, Uganda and Burundi. These migrants are victims of civil strife, wars and ethnic cleansing. Currently thousands of people are displaced due to political instability in the country. Demographic factors leading to migration are mainly because of the rapid pace of population growth leading to overcrowding in farmlands and the youthful population leading to many people in the young adult age bracket. The change of residence not only affects the sizes of the population, but also their respective characteristics and compositions that can lead to social tensions.

Services have not grown concurrently with the growth of the population in the existing urban centres that are characterised by spontaneous growth and haphazard development, which has mainly taken place outside urban planning intervention. This has led to constraints in provision of water, sanitation, security infrastructure, housing and transportation. As a consequence, major urban centres in the country are facing increasing housing shortages, high unemployment, poverty, crime and slums and informal settlements. In Nairobi, for example, over half the population live in slums and informal settlements.

### 2.3 Origins of the Land Question

It was expected that the transfer of power from colonial authorities to indigenous elites would lead to fundamental restructuring of the legacy on land. This did not materialise and the result was a general re-entrenchment and continuity of colonial land policies, laws and administrative infrastructure. This was because the decolonisation process of the country represented an adaptive, co-optive and pre-emptive process which gave the new power elites access to the European economy.

Property rights protection was deemed imperative for the conclusion of the independence talks held in Lancaster House from 1960-1962. Having worked out an acceptable bargain, the new rulers set about consolidating their power in the new State. The issue of the landless natives proved a thorny one for this new Government prompting it to institute measures to appease the vocal Africans still clamouring for the land taken from them. Within a few years into the independence period, small holders in Kenya had become the main driving force behind agricultural production.

Since independence Kenya has had two land tenure systems, namely Customary and Statutory (based on principles of English property law) land tenure systems. The net effect of these tenure systems on land administration was to perpetuate a dual system of economic relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry.

The impact of this legacy is that important issues relating to land are currently inadequately addressed in substantive law, policies and procedures. These include

land administration, access to land, land use planning, restitution of historical injustices, the institutional framework, land information management systems, environmental concerns, conflict/dispute resolution, public land allocations and the informal sector. Moreover, land administration and management operates on the basis of a complex and often conflicting legal framework, requiring significant change, and there is no comprehensive strategy to manage emerging informal urban settlements.

### **3. IMPACT OF INADEQUATE URBAN LAND POLICIES AND RAPID URBANISATION IN KENYA**

#### **3.1 Urban Planning**

The majority of developments within the Kenyan urban centres are haphazard and have mainly taken place outside urban planning intervention. This is to some extent a result of the limited capacity in terms of the requisite technology, human resources and financial outlay, to prepare timely and sustainable physical development plans by the planning agencies. However, physical planning is beset nationally by a complex institutional arrangement; plan formulation is undertaken by central government whereas implementation is the responsibility of local government. This has led to physical development plans not being informed by the local needs and therefore do not address local realities, resulting in apathy during implementation.

Planning for infrastructure and other services in urban centres needs to involve the beneficiary communities and other interest parties to ensure acceptance, ownership, responsibility and hence sustainability of planned developments. This will also ensure that policies and programs are appropriate to the poor and not just to the politically powerful. Therefore, communities need to be equipped with appropriate knowledge and skills as well as resources as a basis on which they can make decisions; Planning should be both participatory and empowering.

There is an initiative to correct these issues through the formation of metropolitan regions of Nairobi, Mombasa, Kisumu-Kakamega, Kitui-Mwingi-Meru, Wajir-Garissa-Mandera and Nakuru-Eldoret (Republic Of Kenya, 2008). This will lead to the establishment of the Metropolitan Area Authority whose task will be to assist the central government and local authorities to undertake comprehensive physical planning and zoning for the six metropolitan regions, as well as to develop and enforce standards for urban development.

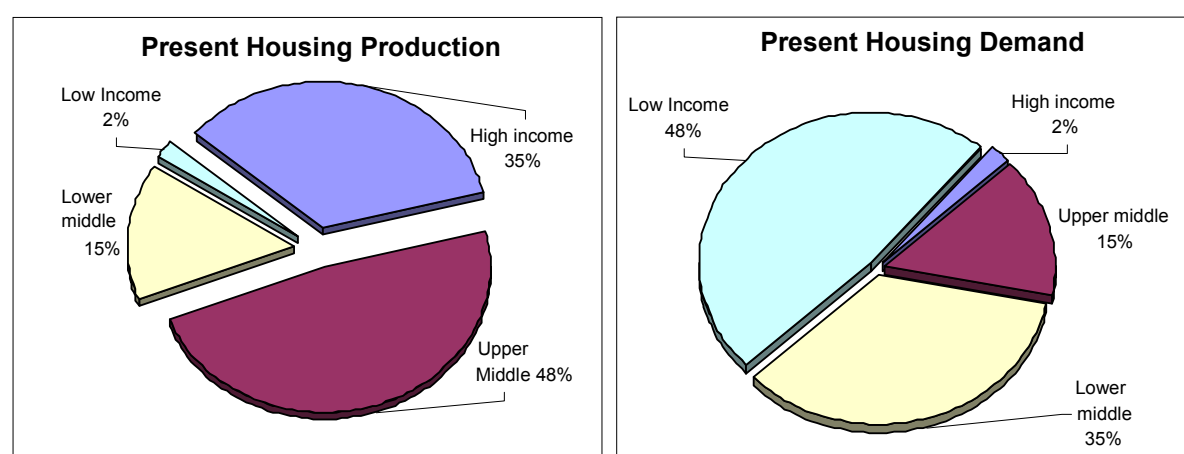
This situation is exacerbated by the glaring disconnect between national economic planning process and physical planning. Consequently, the physical development plans have not been recognised as essential instruments for the development of urban centres, which are engines of growth. It is imperative to bridge this disconnect by purposely integrating urban planning and economic planning.

Land, its use and physical development must remain central to the overall planning of Kenya. However, there is no national land use plan to guide, not only the urbanisation process, but also the pattern and use of land in the country. The creation of this national land use inventory and plan is essential.

#### **3.2 Housing Provision**

The Kenyan housing sector is characterised by inadequate affordable and decent housing, low-level of urban home ownership (16%) and extensive and inappropriate dwelling units, including slums and squatter settlements.

The demand for new housing units in urban areas currently stands at 150,000 units annually and only 23 per cent of this demand is being met. (Republic of Kenya, 2008). As illustrated in Figure 1, the shortfall is most acute among low-income households whose present demand is about 48 per cent of total new houses required in Kenya whilst more than 80 per cent of new houses produced are for high and upper middle-income earners. The housing shortage is both for owner-occupier and rental housing. This is attributed to: under-investment in low and middle-cost housing by both the public and private sectors; an outdated legal and regulatory framework; uncoordinated policy implementation; and the high cost of finance for housing both to long term developers and the end users (buyers).



**Figure 1: Housing Production and Demand by Income Categories**

[Source: Department of Housing, Government of Kenya, 2006]

Housing stock for high and middle income earners is supported by a number of government agencies, including:

- the Civil Servants Housing Scheme;
- The Office of the President (housing for the disciplined forces);
- The National Housing Corporation; and
- Local Authorities – although less in recent years.

The private sector, responsible for the provision of the majority of houses in Kenya in recent years, has largely concentrated in the provision of houses for the high and middle income segments.

It is projected that to adequately provide shelter for the projected population of 60 million by 2030, and assuming the household size of 5 members per household, the estimated housing demand for the country would be more than 12 million quality dwelling units by the year 2030.

Investments in the housing sector since independence have been minimal and sporadic. Further, high rates of urbanisation, increasing poverty and escalation of



housing costs and prices have made the provision of housing, infrastructure and community facilities one of the daunting challenges in the country's socio-economic development. Research on low cost building materials and construction techniques has been limited thus not providing viable guidance to the development of the low cost housing in the sector. Moreover, stringent planning regulations, expensive provision of tenure and high infrastructural standards have been an impediment in the housing delivery system, resulting in slow pace of production and high cost of housing.

The housing sector was negatively affected by the 2007 post election skirmishes that led to the destruction of housing, leaving many Kenyans without this basic right to housing. The impacts of these skirmishes were worse in slums and informal settlements and in some urban and rural areas of the Rift Valley Province. Some remedial planning and implementation of recovery projects to mitigate these effects have been instituted.

### 3.3 Slums and Informal Settlements

The worst aspect of urbanisation has been the burgeoning of slums and informal settlements which are unplanned. Even though Kenya's informal settlements house the majority of the country's urban population, the residents of these settlements are treated as if they were invisible. The settlements in Nairobi, such as Kibera, Mathare and Mukuru, provide vital labour for the city's economy, but the residents are denied access to basic rights like water, sanitation, garbage disposal, free primary school education and healthcare. These areas are also hotbeds of social unrest and disorder as evidenced in the recent post-election skirmishes.

There is currently no national policy and associated guidelines that comply with international human rights standards for the eviction of residents of these slums and informal settlements. Therefore, the residents live in constant fear of eviction. In the past, these evictions have involved a considerable number of people. For example, an eviction in Mau Forest in June 2005 involved approximately 50,000 persons (Commission of Legal Empowerment of the Poor, 2006).

The Ministry of Housing and the KENSUP programme maintain a policy of non-eviction. Even where physical infrastructure, such as roads, has to be provided, the departmental policy requires that any owners affected be provided with alternatives. This has been largely observed. However, local authorities have continued to forcefully evict people settled on informal settlements (on local authority and private land) and on road reserves without providing alternative options. In Nairobi, Kisumu and Mombasa cities this is a frequent exercise. However, in other urban areas it's infrequent since the scale of the problem is much lower.

The current government housing policy pivoted on the Millennium Development Goals (MDGs) is to improve the living conditions of slum dwellers and is anchored in the on-going Kenya Slum Upgrading Programme (KENSUP). KENSUP's main goal is to improve the lives and livelihoods of an estimated 5.4 million people living and working in slums and informal settlements in urban areas of Kenya by year 2020 (Ministry of Housing, 2007).

This has led to implementing slum upgrading initiatives in various towns in Nairobi, Kisumu and Mombasa and is being extended to other towns in the country. However,

the performance of KENSUP's programmes has been particularly poor due to the high cost of upgrading schemes, limited access to finance and the non-scalability of solutions. For example, their current schemes only include:

- Kibera Nairobi : 600 three roomed units for low income earners;
- Mavoko (Machakos District and approx 30kms from Nairobi) : 432 Units for low, middle and higher middle income earners (in the ratio 4:3:1)
- Kisumu: improvement of physical infrastructure and social facilities (schools, social halls etc) in the slums.

### 3.4 Land Market

The land and property market is most active around cities and municipalities. However, quite a lot of buying and selling takes place within the arable rural zones too, such as the Central Province, parts of the Rift Valley, South Nyaza and Western Provinces. In Eastern Province, the land market is active in the productive parts of Machakos, Embu and Meru Districts. It should be noted that the rural buying and selling has also resulted in the subdivision of agricultural land into non-viable units in many cases. It is estimated (Mwathane, 2009) that around 30% of the land and property transactions occur in the informal market.

## 4. A NEW NATIONAL LAND POLICY FOR KENYA

The creation of sustainable urban environments in Kenya will not just be achieved through solutions limited to security of tenure and provision of housing. Sustainable solutions will require the implementation of a wide range of integrated social, economic and environmental policies. This level of service provision is challenging when there is such a rapid population growth. For example, the number of primary-school age population (6-13 years) is currently estimated at 7.9 million (Republic of Kenya, 2008) and is projected to increase to 9.3 million in 2012. This continued rapid increase in population calls for increased investment in new schools, health facilities, teachers, medical personnel, and other provisions for the health and education sectors.

This paper recognises and endorses the need for a multi-sectoral approach to generating sustainable urban environments. However, the rest of the paper focuses on the need and contribution of a land policy in achieving this aim.

### 4.1 Creating the National Land Policy

Kenya has not had a single and clearly defined and codified National Land Policy since independence (Ministry of Lands, 2007). Instead, a complex set of land laws has evolved, some of which are incompatible, resulting in an overly complex and inefficient land management and administration system. Without a clear and robust land policy framework and strong institutions to implement the policy, land issues have raised themselves in many forms throughout Kenya; fragmentation, breakdown in land administration, disparities in land ownership and poverty. This has resulted in environmental, social, economic and political problems, including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilisation and abandonment of agricultural land, tenure

insecurity and most recently conflict following the general elections in December 2007.

To address these problems, the Government embarked on the formulation of a National Land Policy through a widely consultative process with the aim of producing a policy whose vision is *"To guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity"* (Ministry of Lands, 2007). This process was called the National Land Policy Formulation Process (NLPFP) and was sponsored by the Permanent Secretary of Lands. It was launched at a Stakeholders' Workshop in February 2004, with a wide range of participants drawn from public and private sectors and civil society. An important outcome of this workshop was consensus on a 'Concept Paper' to guide the NLPFP and six thematic groups were formed to inform on six broad themes:

- Rural Land Use, Environment & Informal Sector;
- Urban Land Use, Environment & Informal Sector;
- Land Tenure and Social Cultural Equity;
- Land Information Management Systems;
- Legal Framework; and
- Institutional and Financial Framework.

Significant stakeholder participation from public, private and civil society contributed towards the policy formulation through these thematic groups based discussions as well as regional workshops and written submissions. Past initiatives such as the Presidential Commission of Inquiry into the Land Law System of Kenya, the Constitution of Kenya Review Commission and the Presidential Commission of Inquiry into the Illegal/Irregular Allocation of Public Land also informed the formulation process. Further guidance was gained from the African Union Commission (AUC), Economic Commission for Africa (ECA) and African Development Bank (ADB) sponsored process to formulate a land policy framework and guidelines for Africa.

A first draft of the National Land Policy was produced in December 2005 and after review by politicians and key stakeholders, it was released to the public in September 2006. This first official draft of the National Land Policy was debated and reviewed by key groups (public, private and civic) and a final draft (Ministry of Lands, 2007) was adopted at a National Stakeholders meeting in April 2007. This version was approved by the Cabinet in September 2008, but was not approved by Parliament prior to the national elections in December 2008. Despite widespread recognition that land issues contributed significantly to the violence surrounding the 2008 election, the current Kenyan government still hasn't approved the National Land Policy.

The draft National Land Policy (NLP) is in the process of being submitted to the current Cabinet, after which a Sessional Paper will be prepared for discussion and adoption by Parliament.

The process of formulating the National Land Policy has been significantly supported by the Development Partners Group on Land (DPGL)<sup>1</sup> that has included SIDA, DFID,

---

<sup>1</sup> The Group is composed of *three* different categories of Development Partners, i) Development Partners that provide un-earmarked funds through a joint funding arrangement, i.e. Basket Fund, managed by a Financial Management Agent (FMA), ii) Development

DCI, USAID and JICA and, until recently, has been chaired by UN-HABITAT. The DPGL was initiated in July 2003 and acknowledges that secure land rights are critical to increasing productive investments in urban and rural Kenya. The lessons learned from this policy formulation process have been used by UN-HABITAT, along with their experiences in the Global Land Tool Network, to produce a publication 'How to Establish an Effective Land Sector (UN-HABITAT, 2008) that provides guidance on the viable approaches to the institutional harmonisation process.

#### 4.2 Preparing to Implement the National Land Policy

Among the key institutional changes recommended by the National Land Policy is the creation of a National Land Commission to provide land administration and management services and the conversion of the existing Ministry of Lands into a policy co-ordination unit. In the interim, a Land Reform Transformation Unit (LRTU) was formed in March 2008 and is preparing the ground for the intended changes to institutional structures. The LRTU will be operational until the National Land Commission is created and takes over the management of the reform process; most likely in two years. The key purpose of establishing the LRTU was to ensure that changes will be implemented in a co-ordinated and systematic manner, within set time-lines to reflect the priorities and circumstances of the Ministry of Lands and other stakeholders.

Not all activities related to the land sector are dependent on the passing of the National Land Policy. A two year Land Reform Support Programme of work for the LRTU has been agreed and funded. The programme of work embraces and aligns itself with key principles and values that underpin Kenya's National Land Policy Formulation Process, the draft National Land Policy, the Poverty Reduction Strategy Paper and the Land Policy Framework for Africa developed under the leadership of the African Union Commission in March 2006.

This has once again been significantly supported and funded by the Development Partners Group on Land. Work has already started on the development of the Land Information Management System (LIMS/GIS) that will underpin the implementation of the National Land Policy. This also draws together activities related to the Kenya National Spatial Data Infrastructure (KNSDI), that JICA has been funding, the Land Information for Informal Settlements (LIIS) and other urban related initiatives being funded by Sida (such as KENSUP) and the Ndungu Commission<sup>2</sup> implementation which is currently being negotiated.

Successful programme implementation will ensure that all land is put to productive use on a sustainable basis by implementing key principles on land use, productivity targets and guidelines as well as conservation. It will encourage a multi-sectoral approach to land use, provide social and other incentives and put in place an enabling environment for investment, agriculture, livestock development and the

---

Partners that provide earmarked funding with specific accounts of tracking mechanisms for their contribution, and iii) Development Partners subscribing to the general principles agreed to by the group and the Ministry of Lands (MoL).

<sup>2</sup> The *Commission of Inquiry into the Illegal/ Irregular Allocation of Public Land* (i.e. Ndungu Commission) was appointed by President Mwai Kibaki in June 2003 to investigate the widespread corrupt practices in allocation of public land and properties in Kenya.

exploitation of natural resources. This will enable the country to realise key components of its Vision 2030.

#### 4.3 Key Changes to the Land Sector to be Introduced by the National Land Policy

This National Land Policy has thus been formulated to provide an overall framework and define the key measures required to address the critical issues of land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management. It also addresses constitutional issues, such as compulsory acquisition and development control as well as tenure. It recognises the need for security of tenure for all Kenyans; all socio-economic groups, women, pastoral communities, informal settlement residents and other marginalised groups (Ministry of Lands, 2007).

The key changes that the National Land Policy introduces are summarised below:

- **Radical Title:** The proposal to vest radical title in the people of Kenya collectively as a nation, as communities and as individuals represents a truly dramatic democratisation of land governance and creates a new stronger relationship between Kenyans and the land.
- **Land Governance:** The recognition that the land question is related to the administrative controls of the economy that use land as leverage for political support is critical. This establishes a new and stronger economic relationship between the government and the land sector leading to more effective stewardship.
- **Decentralised Administration:** A democratic and decentralised land governance system will be established where the Ministry of Lands will shed its traditional land administration functions, to be taken up by a reformed National Land Commission and a set of decentralised District Land Boards and Community Land Boards. This will increase transparency and accountability to the public and hopefully less interference by politicians.
- **Clearer Land Categories:** All land in Kenya will be designated more clearly as Public Land, Community Land and Private Land. The Government shall enact a "Land Act" to govern all categories of land, vesting ultimate ownership of community land in the community, and investing in capacity building for communal land governance institutions.
- **Rationalised Land Laws:** The existing range of land laws will be reviewed and rationalised, removing any conflicts.
- **Community Land:** The policy clearly recognises communal ownership of land and re-establishes the standing of customary land rights.
- **Stewardship of Public Lands:** An inventory of all public land will be created and placed under the National Land Commission (NLC) to hold and manage in trust for the people of Kenya.
- **Land Use Planning and Management:** The policy sets out a sound overall framework for dealing with land use planning, development control and environmental management issues. Proper planning will provide for well coordinated development of urban and peri-urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities.

- **Environmental Management:** Kenya's rapid urbanisation has infringed on environmentally sensitive areas such as wetlands, hilltops, water bodies and the coastline. The policy will reduce the poor management of solid and liquid waste, gaseous emissions and unsafe quarries that are some of the common urban environmental problems.
- **Land Information Management:** The creation of a National Land Information Management System that supports the land administration and management activities, including the management of community lands and associated customary rights.
- **Informal Sector Support:** Informal sector activities are a key feature in many parts of Kenya both in planned and unplanned areas and form a crucial part of the economy as a source of livelihood. The policy will facilitate the provision of land and land use planning to enable the development of informal commercial activities in a more ordered and sustainable manner.
- **Settlement Schemes:** Equitable and accountable allocation of land in settlement schemes for landless people.
- **Land Rental Markets:** Support the development of land rental markets that have the potential to provide access to land to those who are productive, but own little or no land.
- **Tax Collection:** Improve the capacity of public institutions including local authorities to assess and collect taxes to provide a stable fund for land banking, land servicing and facilitating efficient utilisation of land.
- **Restitution:** Historical injustices are land grievances which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities of their land. The policy will establish mechanisms to resolve historical land claims arising in 1895 or thereafter.
- **Displaced People:** A significant number of Kenyans have been displaced from their land as a result of tribal and land clashes. These people are currently hosted in camps for internally displaced persons, roadside settlements, market centres and colonial villages established as community concentration centres. The policy will establish legal, policy and institutional frameworks for the resettlement, as appropriate, of all internally displaced persons.
- **Squatters & Informal Settlements:** Many Kenyans live as squatters, in slums and other squalid places. The policy outlines legislation and procedures for addressing this major challenge.
- **Multi-sectoral Approach:** Effective land management requires coordination and cooperation among different sectors. The policy supports implementation taking into account all related sectors such as agriculture, livestock, water, energy, human settlement, industry, tourism, wildlife, forestry and fisheries.

The participatory approach to the formulation of the National Land Policy has been successful and has ensured that the majority of stakeholders across Kenya have enthusiastically endorsed the policy. However, the real challenge, once passed by Parliament, is managing and financing its effective implementation.

## 5. HOW DOES THE NATIONAL LAND POLICY SUPPORT THE MDGS?

The outcomes from the implementation of the National Land Policy either directly support or contribute to the majority of the MDGs. However, the major contributions are in the following areas:

### 5.1 Goal 1: Eradicate extreme poverty and hunger

- Target 1a: Reduce by half the proportion of people living on less than a dollar a day
- Target 1b: Achieve full and productive employment and decent work for all, including women and young people

The land sector is central to poverty reduction, in both rural and urban Kenya. The policy contains commitment to ensuring that there will be land redistribution, restitution and compensation to ensure good access to land for all for enhanced production.

The policy also aims to provide market access to all that is built on transparency, low transaction costs and good access to reliable property information as well as property financing. The aim is to facilitate efficient land markets and effective land-use management to generate sustainable urbanisation.

### 5.2 Goal 3: Promote gender equality and empower women

- Target 3a: Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015

The policy is positive in bringing the impacts of HIV / AIDS and the land rights of those affected by the pandemic within its scope and provides interventions to protect land rights of those affected by HIV / AIDS.

The policy states that the Law of Succession Act was supposed to harmonise inheritance laws, but in practice the transmission of land rights is largely carried out within customary law, which discriminates against women and children. It is not clear how the policy could “expedite the application of the Law of Succession Act”. Awareness raising and campaigning will be required to bring customary practice closer into line with constitutional principles and accepted international standards.

### 5.3 Goal 7: Ensure environmental sustainability

- Target 7a: Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources
- Target 7d: Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020

Kenya’s rapid urbanisation has infringed on environmentally sensitive areas such as wetlands, hilltops, water bodies and the coastline. The policy will reduce the poor management of solid and liquid waste, gaseous emissions and unsafe quarries that are some of the common urban environmental problems.

Many Kenyans live as squatters, in slums and other squalid places. The policy outlines legislation and procedures for addressing this major challenge.

### 5.4 Goal 8: Develop a global partnership for development

- |   |
|---|
| <ul style="list-style-type: none"><li>• Target 8f: In cooperation with the private sector, make available the benefits of new technologies, especially information and communications</li></ul> |
|---|

The National Land Policy will require a National Land Information Management System (LIMS) to be created to provide a secure repository for land information and support transparency and ease of access to land information. This is an ideal opportunity to leverage finance and expertise from private sector partnerships to invest in ICT infrastructure and provide land information services as part of the wider e-government initiatives. The adoption of open standards, common data models and the growing acceptance of Free and Open Source Software (FOSS) provide opportunities for the development of more generic, low cost LIMS solutions.

## **6. KEY CHALLENGES IN IMPLEMENTING THE NATIONAL LAND POLICY IN KENYA**

The National Land Policy provides effective legal, policy and administrative frameworks and the opportunity to significantly improve Land Governance across the urban environments in Kenya, leading to more effective sustainable development and a better quality of life for city dwellers. However, there are daunting challenges to be faced in the implementation of this wide ranging policy. Not all recommendations in the policy can and should be implemented in the short term. Therefore, care must be taken in devising a programme that accommodates quick wins that deliver benefits in non-contentious areas, while still allowing longer term, more difficult objectives involving cultural change to proceed. The most significant of these challenges are discussed below.

### **6.1 Political Support**

The first hurdle to be faced by the National Land Policy is its approval by Parliament. In the past politicians have used land as political favours and used their powers to acquire land. In the rural areas, three prominent families, i.e. extended families of the past Presidents, are holding 11.5% of the 15% agricultural productive land in Kenya. Acceptance of this behavioural change by politicians and the subsequent reduction in administrative interference in land for political ends must be achieved if the National Land Policy is to be approved and implemented. There are three areas within the proposed policy that are considered contentious:

- The taxation of undeveloped land;
- The conversion of 999 year leases to 99years; and
- The resolution of land and land-related injustices.

Some members of the cabinet and Parliament with some reasonable influence are opposed to these proposals. Therefore, the policy may face amendments.

### **6.2 Funding Implementation**

The costs of fully implementing the National Land Policy are challenging for a country with a GDP in 2006 of US\$22.8 billion and a total debt/GDP of US\$28.7 (World Bank, 2009).



The cost estimates for implementation of the National Land Policy over an initial six year period are US\$130 million (DFID, 2005). This does not include the Land Development Fund for affordable housing and the National Land Trust Fund for restitution and compensatory redress. In addition it does not include the Land Information Management System data capture and maintenance costs estimated to be at least US\$120 million over this initial six year period.

The current land administration system suffers from a lack of sustainable funding. It is therefore imperative that the implementation of the National Land Policy is supported by an effective business model with realistic levels of cost recovery that can leverage funds from donors and banks and can support partnerships with the private sector. Trust between the land governance arrangements and the financial services sector, forged through the robustness of the resulting tenure, will firstly have to be created (Angote, 2008).

Financing for housing has until now revolved around housing finance institutions and government financing prevalently for the private sector and government driven schemes. However, many people have developed their own occupied houses from loans borrowed from their Institutional Savings Cooperative Societies (SACCOS) whose repayment is indexed against their salaries. This is available for employees in both the public and private sectors.

Another growing source of funding is through group savings and cooperatives that also represent promising solutions (Tibaijuka, 2008). Savings schemes are established amongst groups of slums dwellers – mainly by women – who wish to improve their living conditions through a specific project. They establish themselves as a legal entity, which enables them to consider taking a loan. The size of the loan will be determined by their ability to repay. This becomes the basis for designing a bankable project. Financial institutions become interested because the loan size is large and the transaction costs are low. From this model, and others that are out there, the Kenyan poor are starting to provide their own housing solutions.

### 6.3 Reduction in Corruption

The Kenya Bribery Index 2005 showed that 65.7% of the people visiting the Ministry of Lands might be asked for a bribe. 36.3% of declinations resulted in service denial (van der Molen & Tuladhar, 2007). The Ndungu Report (December 2004) gives a detailed overview about land and graft in Kenya. It talks about ‘unbridled plunder’ of urban, state and ministerial lands, of settlement schemes and trust lands, of forestlands, national parks, game reserves, wetlands, riparian reserves and protected areas, facilitated by the extensive complexity of professionals (lawyers, surveyors, valuers, land registrars, etc.) (Southall, 2005).

The re-engineering of the land governance arrangements under the new National Land Commission, supported by a well administered land information systems, will help to ensure transparency and accountability and reduce and eliminate cases of missing files, double allocations and delayed transactions. It is essential that the new National Land Commission is fully accountable, autonomous and independent.

### 6.4 Understanding the Problem – Lack of Land Information

It is difficult to effectively manage land as a national asset and set implementation programme priorities, especially in dynamic urban environments, when there is no comprehensive information available about land (ownership, rights, value, condition and use). A priority under the National Land Policy is to create and maintain national inventories, including public lands, community lands and land used by genuine squatters and people who live in informal settlements.

#### 6.5 Solutions to Informal Settlements

With around 60% of the citizens of Nairobi living in informal settlements, there is a need to find fast and affordable solutions to this urban squalor across Kenya.

Too often the solution has been eviction. The government agreed in 2005 that they would work towards the development of *Guidelines on Evictions for Kenya*. Once completed, the policy would have to be passed through Parliament as a bill and the guidelines mainstreamed across government. Since then a workshop has been held in 2006 to start the process, held under the auspices of the **Kenya National Human Rights Commission**. However, these guidelines have still not been produced.

Current solutions to informal settlements include a Land Information for Informal Settlements (LIIS) solution (procedural and computerised solution). However, this is a complex and resource intensive solution leading to individualised tenure. In 2007 the government only managed to process two informal settlements of about 400 people with this approach. Given the overwhelming number of informal settlements in the country, this methodology needs to be revised to allow it to be scaled up.

#### 6.6 Capacity Building of Decentralised Institutions

The land administration and management governance arrangements proposed by the National Land Policy involve decentralisation and the creation of District Land Boards and Community Land Boards at the local level. These boards will have democratically elected community representatives who will require considerable levels of capacity building. It is also essential that their activities are closely monitored and audited to ensure that they are aligned with the National Land Policy and of appropriate quality. There is always a danger that decentralisation can be achieved in the absence of democratisation.

#### 6.7 Multi-sectoral Approach

Effective land management requires coordination and cooperation among different sector such as agriculture, livestock, water, energy, human settlement, industry, tourism, wildlife, forestry and fisheries. This requires strong relationships at the central government level to co-ordinate policies as well at the local level to co-ordinate implementation. This level of cooperation is challenging for any government and may require institutional reforms to allow it to happen more effectively.

#### 6.8 Gender Equality and Social Justice

Culture and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws. There is conflict between constitutional and international provisions on gender equality vis-à-vis customary practices that

discriminate against women in relation to land ownership and inheritance. Women are not sufficiently represented in institutions that deal with land. Their rights under communal ownership and group ranches are also not defined and this allows men to dispose of family land without consulting women. The policy seeks to remedy this situation, but it will take considerable cultural change to achieve.

#### 6.9 Managing Cities and Regions Holistically

The influence of cities reaches far beyond their boundaries into peri-urban and rural regions. Urban planning and development control tends to be administered by Local Government areas, leading to a fragmentation of planning across this wider area of city influence. A more holistic approach to planning and development control is required. Other challenging issues in these city regions are:

- Measures to tackle the dichotomy in the current land ownership systems, i.e. cheap and unregulated freehold land outside the town in relation to the expensive controlled and leasehold land in the gazetted towns;
- Definition and protection of agricultural land since agriculture contributes 22.7% of GDP (World Bank, 2009); and
- Establish comprehensive and effective subdivision and infrastructural plans, to ensure that new settlements do not continuously become large slums.

#### 6.10 Engaging Citizens in Land and Land Use Management

The approach to the administration and management of land in Kenya has until now been a top down, centralised approach. The National Land Policy is rightly empowering and engaging the citizen and communities to be involved in the process at a local level. The transition to this participatory approach will again require a significant cultural change on both sides and building of trust as capacity grows.

#### 6.11 Access to Land Information

The proposed development of the National Land Information Management System (LIMS) is a substantial undertaking in a country where the ICT infrastructure, where it exists, is limited to the major urban areas. In addition there is a large digital divide (chasm) that excludes the majority of the population from gaining electronic access to land information and associated e-services. Therefore the provision of land administration and management services must accommodate both electronic and more traditional access channels to land information.

### **7. THE ROLE OF LAND PROFESSIONALS IN TRANSFORMING THE URBAN ENVIRONMENT IN KENYA**

Land professionals have a pivotal role to play in implementing the urban land policy in Kenya, but will have to change their traditional mindset and approaches and collaborate more effectively with other sectors and professionals to collectively solve Kenya's urban problems. This will involve considerable capacity building within the profession to support these proposed activities. Here are several areas where land professionals could make a significant contribution:

## 7.1 Business Case for Land Governance Solution

The cost of implementing the National Land Policy and re-engineering the land administration and management system is estimated to be over US\$250 million during the first 6 years. Although this will result in a more efficient land administration and management system that is intrinsically linked to the economic performance of Kenya and its social and environmental fabric, this proposed investment has not been supported by a corresponding business case, outlining the benefits to all stakeholders. The land professionals should work with other sectors to develop a robust business case that can be used to prioritise the implementation of the policy to maximise the return on investment. The business case is also a critical tool to convince politicians and senior civil servants of the policy's role in the structural development and transformation of the economy, leading to growth and poverty reduction. Land needs to be located in heart of the national development framework.

## 7.2 Support in Creating an Effective Legal Framework for Land Administration

The legacy of applying piecemeal changes to the legislative framework that regulates land administration and management activities in Kenya is a complex set of laws that often conflict. There is an acute need to rationalise the current set of laws and generate a new legal framework that effectively supports the National Land Policy. Land Professionals have a pivotal role in this exercise to ensure that the resulting legal framework can be practically applied and is sequentially implemented to gain maximum benefits in the short term.

## 7.3 Affordability of Land Tenure Solutions

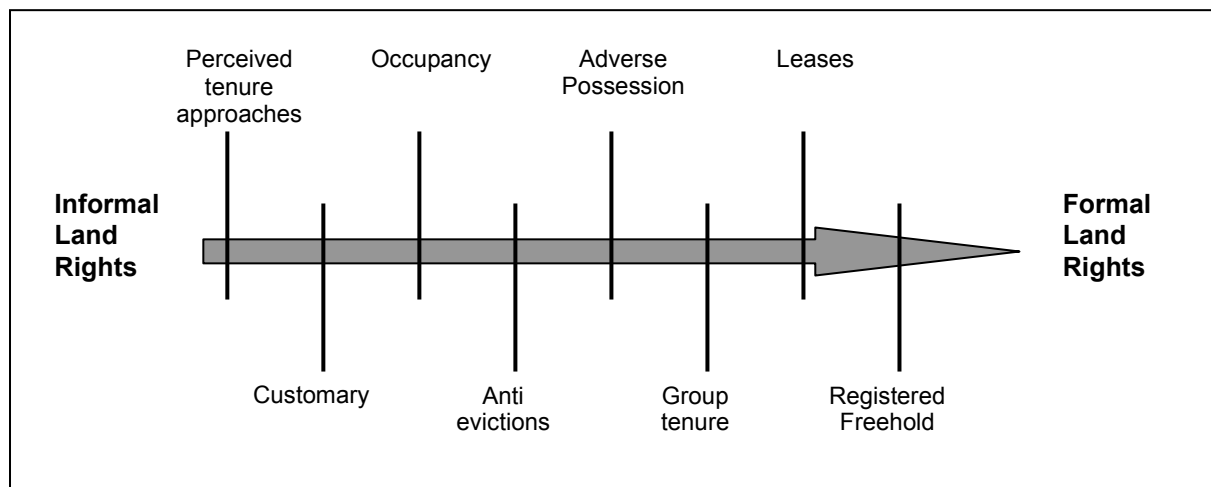
Many land professionals within Kenya visualise a country where each citizen and business will benefit from the high security of tenure provided by freehold tenure. This ideal is difficult to achieve on two key counts: availability of land; and the cost and institutional capacity required to provide tenure.

There is insufficient, high quality, public land (including any land that will be re-acquired through the Ndung'u Commission) to provide every citizen with their own piece of land that is economically or environmentally viable. Therefore, the leasing land market will have to be encouraged to provide access to land rather than the provision of freehold land.

The approach of one set of land tenure / property rights fits all, needs to be reconsidered and the wider and incremental options for improving land access and tenure security need to be reviewed by the policy makers. Different types of land, e.g. urban vs. rural, high vs. low value, can have different levels of tenure rights and forms of registration. In fact this dichotomy currently exists in Kenya today where the 'general boundary' approach is prevalent in rural areas.

Informal settlements do not all have the same characteristics and problems. Therefore, solutions for informal settlements should consider the range of possible solutions; a toolbox approach. These variations in solutions should consider the forms of tenure that can be applied and when they should be applied. The continuum of sets of rights, degrees of security and responsibilities illustrated in Figure 2 (UN-HABITAT, 2008[2]), provides an opportunity to incrementally apply levels of formal

land rights over time. This approach can provide inhabitants of informal settlements with an initial, appropriate level of security of tenure at much lower cost.



**Figure 2: Continuum of Tenure Types**

#### 7.4 Cheaper, Faster Forms of Survey and Registration to Support Initial Security of Tenure

Traditional forms of land adjudication, surveying and registration in Kenya are resource intensive and costly. This has either inhibited citizens from registering their land and property or has made the wide scale registration of land and properties unaffordable for government. In the context of rural land and informal settlements, new media could be used to record evidence of ownership rather than a traditional boundary survey, e.g. recordings of verbal description of boundary or video of boundary. These elementary forms of land rights are more inclusive and can be upgraded when appropriate.

Citizens are increasingly volunteering as information providers through crowdsourcing (McLaren, 2009). This valuable source of information should be used to accelerate the provision and maintenance of urban information.

#### 7.5 Land Information Management Systems (LIMS)

LIMS are normally designed to manage information about formal land rights. However, this model needs to be expanded to manage customary and informal land rights that can more effectively support community lands and informal settlements. FIG and UN-HABITAT are sponsoring an ISO standard for a 'Social Tenure Domain Model' (STDM) as a specialisation of the Land Administration Domain Model (Augustinus et al, 2007), specifically for developing countries, countries with very little cadastral coverage in urban and/or rural areas, for post conflict areas and countries with large scale informal settlement and/or large scale customary areas. A plan is under way to trial the STDM in Ethiopia over the next two years.

The LIMS should not just be an internal tool for Land Administration, but the land information should be available to a much wider set of land stakeholders through integration with a National Spatial Data Infrastructure (NSDI). This wider integration and access would allow extents of land ownership and rights to be directly used in

the planning process and support the sharing of property addresses with utility companies to maximise tax and rent revenues, for example.

#### 7.6 Monitoring Urban Change to Support Decision Making

In countries where land administration institutions are mature and functioning effectively, urban change information associated with the ownership, value, use and condition of land and property can normally be obtained from the operational level; where services such as Land Registration and Cadastre, taxation and development control are provided. This assumes that there is the means to technically and institutionally integrate these component themes of land and property information from a variety of agencies and local authorities into a truly city wide information resource that can then be disseminated to decision makers; this is rarely the case even in the western world. In this ideal situation, information is available to formulate robust land policies, quickly monitor the effect of these policies and support the day to day management of the cities through disaster management and recovery, for example.

However, in the context of Kenya, this steady state, information management paradigm does not exist. The explosive urban growth and the fact that a large proportion of development takes place outside the formal land management and administration process does not support the luxury of change information being fed through from operational services. In addition, the participation of citizens in the decision making process is severely limited since 'communities' are informal and not integrated into the Municipal structures. Therefore, these traditional sources of information to support sustainable development decisions do not exist (McLaren, 2009). Robust land administration and management institutional structures will not be introduced into the majority of Kenya's cities in the short term. Therefore, new and innovative sources of information and its management must be found. Land Professionals have a role in designing new information capture and management solutions from 'urban sensing' technology that uses cellular phones, m-government services, sensor technologies, GIS related technologies, Web 2.0 and crowdsourcing (mass collaboration using Web 2.0) to generate up-to-date urban change information for decision and policy makers. The role of the citizen volunteer will increase in importance.

#### 7.7 Enforcement of Standards and Professional Ethics

The understanding and application of professional standards and ethics by Land Professionals varies widely across the public and private sectors in Kenya. Land Professional institutions have a fundamental role in the introduction, enforcement and monitoring of professional standards in Kenya. This role is even more essential in the context of decentralised land administration where significant capacity building will be required.

#### 7.8 M-government

Mobile(M)-government is an extension or supplement to e-government, providing information and services through mobile devices, i.e. cellular phones, laptops and is mobile and wireless. For developing countries with no infrastructures of wired Internet technology, this is the only low cost infrastructure option available and opens

up new channels for communication with citizens. M-government has the following advantages (Enemark & McLaren, 2008):

- It avoids the digital divide since the use of cellular phones is becoming ubiquitous and is evenly distributed across society;
- Use of cellular phones is fastest growing in developing countries (in 2007, 90% of phone subscriptions in Africa were cellular phones);
- Services are available anywhere, anytime;
- Cellular phones are increasingly being spatially enabled;
- Supports 2-way communication, including real-time alerts to citizens, e.g. terror and severe weather alerts;
- Can be used for e-payments for services. This can reduce the potential of corruption; and
- Cellular phones are single user devices, allowing services to be personalised, e.g. license renewal reminders.

Land Professionals should take advantage of M-government service opportunities and apply it to the delivery of land administration and management services for all stakeholders. Perhaps cellular phones could even be used to directly hold users' land ownership and rights just as cellular phones are being used as passports.

## **8. LESSONS LEARNED & RECOMMENDATIONS IN IMPROVING URBAN LAND POLICY**

### **8.1 Formulating Improvements to Urban Land Policies**

1. Ensure that the policy formulation process is inclusive, transparent and is widely participatory, especially with civil society. Be flexible in the approach taken and consider the best practice highlighted in the UN-HABITAT publication "How to Establish an Effective Land Sector (UN-HABITAT, 2008 [1]).
2. Judge carefully just how radical the improvements to the lands policy will be and ensure that any radical changes will be accepted by the politicians. Radical changes may well be annulled by politicians who have the most to lose with the new land policy.
3. Don't under-estimate the effort and level of communication required to convince politicians and other key stakeholders. Start lobbying as early as possible and plan to seek Parliamentary approval of the new land policy within one term of government.
4. Formulate a corresponding business case, with tangible economic benefits, to support the arguments to adopt the land policy. Use the evidence that effective land policies support the MGDs to leverage support.
5. A multi-sectoral approach is essential in formulating a policy framework to generate sustainable urban environments. This will require coordination and cooperation among different sectors such as economic development, transportation, security, agriculture, water, energy, human settlement, industry, tourism and environment. This requires strong relationships at the central government level to co-ordinate policies as well at the local level to co-ordinate

implementation. This level of cooperation is challenging for any government and may require institutional reforms to allow it to happen more effectively.

6. Ensure that the outcome of the policy change will strengthen the relationship between citizens and the land; by allowing people to own and govern their lands and vesting ultimate ownership of community land with the community or, where land is limited, ensuring that people have access rights to land through rental agreements.
7. Design strong land governance arrangements that provide transparency, accountability and provide true security of tenure that can be trusted by the citizens, business and the financial institutions. This governance should be decentralised to empower and engage the citizens and communities at a local level. This transition from a top down to a participatory approach will require a significant cultural change on both sides and time to build trust as local capacity grows.
8. Ensure the policy sets out a sound overall framework for dealing with land use planning, development control and environmental management issues. Proper planning will provide for well coordinated development of urban and peri-urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities. It is imperative to bridge any disconnects in planning and integrate urban planning, economic planning and planning of local social services.
9. The influence of cities reaches far beyond their boundaries into peri-urban and rural regions. The policy must ensure that there is governance / mechanisms to integrate urban planning and development control across Local Government administered areas, leading to a more holistic approach.

## 8.2 Implementing Improvements to Urban Land Policies

1. Careful planning of the transition in implementing the new land policy is required and may take several years to achieve. Ensure that quick wins are delivered as well as implementation of the longer term and more sensitive aspects of the policy. Be open about the implementation costs and ensure that the implementation option selected is affordable and sustainable.
2. A strong and committed communication strategy is required in the early years of implementation to inform and educate all stakeholders.
3. Continually build trust between Land Governance arrangements and the financial institutions to ensure their serious involvement in the land market. Create a dialogue with the financial services sector to design and implement innovative approaches to funding through group savings and cooperatives, for example.
4. Ensure that the decentralisation of governance arrangements goes hand in hand with democratisation and don't underestimate the level of capacity building required at the local level. This is a combination of fundamental overhaul of the education system to include management skills and the ability to understand and implement good governance as well as training to effectively use new technology.



5. Decentralisation of land administration and management will impact on the roles and responsibilities of Local Government. This may require institutional reform.
6. New or modified land policies require new legal frameworks. This takes significant time to formulate and pass through Parliament. Work closely with Law Societies to achieve their crucial support.
7. Create and sustain land information in a Land Information Management System that is comprehensive, transparent and easily accessed by all stakeholders. This is essential for well functioning land management and administration services and will contribute significantly towards a reduction in land based corruption.
8. Create national land information inventories, e.g. public land and land use, as early as possible to support policy formulation and impact monitoring.
9. Develop new techniques, e.g. by engaging citizens in crowdsourcing, to capture and maintain urban change information. This valuable up-to-date information will support the more effective management of the urban environment.
10. Urban planning and development control needs to be participatory.
11. Only implement solutions to slums and informal settlements that are truly affordable, scalable and quick. The size of the problem needs very effective solutions. Where possible, introduce the concept of applying a continuum of tenure types that can be incrementally upgraded over time.
12. Create a robust and fair, formal land market in which all want to and can participate.

## REFERENCES

- Angote, D., (2008). "Development of Land Administration and Links to the Financial Markets," Proceedings of Improving Slums Through Innovative Financing, FIG / UN-HABITAT Seminar, FIG Publication 44. Accessed 27<sup>th</sup> January 2009 from <http://www.fig.net/pub/figpub/pub44/figpub44.htm>
- Augustinus C., Lemmen C. and van Oosterom P., (2007). "Social Tenure Domain Model Requirements from the Perspective of Pro-Poor Land Management," Accessed 26 January 2009 from [http://www.fig.net/pub/fig2007/papers/ts\\_1a/TS01A\\_01\\_lemmen\\_augustinus\\_oostero\\_m\\_molen\\_1373.pdf](http://www.fig.net/pub/fig2007/papers/ts_1a/TS01A_01_lemmen_augustinus_oostero_m_molen_1373.pdf)
- Commission of Legal Empowerment of the Poor, (2006). "Briefing Paper on Consultation on Legal Empowerment of the Poor in Kenya," Commission of Legal Empowerment of the Poor, November 2006.
- DFID, (2005). "Kenya National Land Policy Formulation Process, Budgetary Implications and Feasibility Assessment," DFID, October 2005.

Enemark, S. and McLaren, R. (2008) "Preventing Informal Development – through means of sustainable land use control", FIG Working Week Proceedings, Stockholm, June 2008,

McLaren, R., (2009). "The Role of Urban Sensing in Managing Megacities," Proceedings of FIG Commission 3 International Workshop on Spatial Information for Sustainable Management of Urban Areas, Mainz, February 2009

Ministry of Housing, (2007). "Strategic Plan 2006 - 2011," Ministry of Housing, Republic of Kenya, 2007.

Ministry of Lands, (2007). "Draft National Land Policy," Ministry of Lands, Republic of Kenya, May 2007.

UN-HABITAT, (2008) [1]. "How to Establish an Effective Land Sector," United Nations Settlement Programme (UN-HABITAT), 2008, ISBN: 978-92-1-131969-9.

UN-HABITAT, (2008) [2]. "Secure Rights for All," United Nations Settlement Programme (UN-HABITAT), 2008, ISBN: 978-92-1-131961-3.

Republic of Kenya, (2008). "Vision 2030, Medium Term Plan 2008-2012 for Population, Urbanization and Housing Sector", Republic Of Kenya Government, March 2008.

Southall, (2005). "The Ndungu Report: Land and Graft in Kenya," Review of African Political Economy, 103 March 2005 pp 142-151

Tibaijuka, A. (2008). "Development of Land Administration and Links to the Financial Markets," Proceedings of Improving Slums Through Innovative Financing, FIG / UN-HABITAT Seminar, FIG Publication 44. Accessed 27<sup>th</sup> January 2009 from <http://www.fig.net/pub/figpub/pub44/figpub44.htm>

World Bank, (2009). "Kenya at a Glance", (statistics produced from Development Economics LDB database), Accessed 22 January 2009 from <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/KENYAEXTN/0,,menuPK:356536~pagePK:141132~piPK:141109~theSitePK:356509,00.html>

P. van der Molen and A.Tuladhar, (2007). "Corruption and Land Administration", International Federation of Surveyors, Article of the Month, March 2007.

## **BIOGRAPHICAL NOTES**

Robin McLaren is currently director of Know Edge Ltd a UK based, independent management consulting company formed in 1986 specialising in Geographic Information Systems and their application. Robin has been at the forefront of the GIS revolution and is recognised as a world expert in Land Information Management and has worked extensively in Eastern Europe and world-wide to strengthen land tenure to support economic reforms. He has recently supported the UK government in formulating a UK Location Strategy and is planning the implementation of a new Land Policy in Kenya.

## **CONTACTS**

Robin McLaren  
Director  
Know Edge Ltd  
33 Lockharton Ave  
Edinburgh EH12 1AY  
Scotland, UK  
Tel: +44 (0) 131 443 1872  
E-mail: [robin.mclaren@knowedge.com](mailto:robin.mclaren@knowedge.com)  
Web: [www.knowedge.com](http://www.knowedge.com)