

Land reforms have come a long way; let's support major players in the effort

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By IBRAHIM MWATHANE:

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In Summary

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- Interestingly, the development of this framework greatly benefitted from the input of one of Kenya's finest scholars in land law and reforms, Prof Hastings Okoth-Ogendo, who was chairman of the continental task force in April 2009 at the time of his death.
- When the history of land reforms is written, it is Lands Minister James Orengo who will receive accolades.

Kenya entered the history books as one of the few African countries to formulate a land policy, then quickly embed its key provisions in the Constitution.

Lately, after quite some acrimonious debate and compromises, Kenya enacted the first raft of enabling laws — the Environment and Land Court Act 2011, the National Land Commission Act 2012, the Land Act 2012, and the Land Registration Act 2012.

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When the history of land reforms is written, it is Lands Minister James Orengo who will receive accolades.

He oversaw the final phase of formulating the policy and made presentations to Cabinet and Parliament. He also oversaw the emotive referendum discussions on land in Cabinet and Parliament.

His fingerprints are on all recent reform documents. History quickly relegated the immense efforts of former Lands Minister Amos Kimunya.

However, it cannot minimise efforts by a previous minister, Prof Kivutha Kibwana, to ensure the adoption of the final draft either.

Pushed by some to halt the process to await the constitutional review during the national stakeholder forum held in early 2007, Prof Kibwana fell back on his knowledge of constitutional law to advise that the best anchor to thematic issues like land would be best informed by clear policy.

The National Land Commission will soon assume office once the pending court cases are resolved. The chairman and members will hold office for a single six-year term. Under the Constitution, they aren't eligible for re-appointment, something that may pose a threat to historical memory and continuity.

Public expectations on this commission are very high. Yet, it assumes office in fairly challenged circumstances.

Speaking in Parliament during the motion to approve the Commission's nominees, Mr Orengo said his ministry had made arrangements for the Land Commission to be allocated offices within the ministry since "nearly all the staff members in the ministry will now fall under the National Land Commission".

He said the responsibilities of the Commissioner of Lands and the entire Department of Lands and the Department of Settlement now fall under the jurisdiction of the Land Commission.

In addition, Mr Orengo noted that the Commission will look into historical injustices and come up with recommendations as well as review all title deed issued from the year 1910 to determine whether they were regularly issued.

A good read of the Land Commission Act and the Land Act indicates that the commission has powers to employ staff who, before the commencement of the Act, worked under the ministry in departments whose functions have been transferred to the commission provided they apply for employment to the commission and are vetted to ensure suitability. This process will be intricate and contentious.

Moreover, the review of grants of public land previously issued and addressing historical injustices will be contentious and political.

Quick-fix approaches won't help and the sensitivity with which staff recruitment, repossession and historical injustices are addressed will define the success or failure of the Commission.

Furthermore, the process compromises saw land registries retained by the Ministry of Lands and not the commission as the national land policy proposes.

This means the registration of titles and other land transactions, including issuance of searches, will be done by the ministry.

In trying to review land irregularly allocated land under the ministry, the commission will have to contend with this rather limiting technicality.

But the laws are in operation. Let us, therefore, support both the Land Commission and the ministry the best way we can.

What won't work well should be documented and used to inform amendments to the policy, the Constitution and the respective laws.

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