

A Synopsis For Formulation Of National Land Policy To Guide The Management And Administration Of Land: A Case For Somalia

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Abstract: The aim of this exploratory paper is to review land administration and management towards guiding Somalians in formulating an inclusive and holistic national land policy as they emerge from civil war. There are national and international efforts to resolve Somali's conflict and which has tremendously borne fruits especially with the establishment of a substantive government in Mogadishu. As the gains in conflict resolution increase, resettlement and ultimately ownership of land as a source of livelihood are in tandem. As such, the administration needs to seriously consider formulating a national land policy that will go through the various adoptive processes and hopefully guide land management and administration post conflict. There is an urgent need for this especially with the on-going repatriation of refugees from Kenya and other neighboring countries.

The paper methodology involves a review of the Somali land administration and management literature that has been undertaken whilst noting the key issues identified as well as a review of best practices for land policy formulation towards recommendation of a substantive policy. This paper reviews formulation of land policies post conflict to provide a mechanism for land administration and management especially since such systems were destroyed during conflict. As such, there will be cases of original land owners with no proof, land grabbers and internally displaced persons amongst other issues that are beyond the scope of contemporary land policy frameworks. It should prove useful to land administration and management personnel working in a post conflict environment. The paper is limited as pertains the content of the proposed land policy to the extent that it proposes a policy framework. Detailed field research has to be carried out to categorize land use, inform planning, set-off adjudication and document disputes towards registration of land.

I. INTRODUCTION

Somalia is at war right now since collapse of President Siad Barre government in 1992. Much progress has been made towards peace and more importantly there is an existing Federal Government which came into power in 2012. The Federal Government of Somalia is the first permanent governing entity since the civil war broke 25 years ago. As it moves towards peace especially with the support of neighboring countries like Kenya, formulation of a national land policy will be critical to drive its redevelopment as a country much scarred by war. This is because fundamental entity where the existence resides is land. Obviously being the

basis of life and then source of wealth and power, land has been observed as a focal entity of social conflict and disorder, FAO (2010). Somali's conflict has in fact largely been on control of land based resources and hence a source of power for the various warring clans. As discussed above, the issue of major concern would be property restitution to returning refugees and internally displaced persons within the atmosphere of complete lack of administrative structures and armed control of the land resource in some areas. The restitution has to provide certainty in land ownership in order to enable investment, Fitzpatrick (2002).

Prior to the conflict, land legislation passed in 1975 officially transferred control of tenure rights on all Somali

lands from traditional authorities to the Government of Somalia Democratic Republic (GSDR) with the effect of landholders being allowed to register limited amounts of land as state leaseholds, with usufructuary rights for 50 years, and renewable, Roth (1988). Land in Somalia is a mix of cultivated land under cultivation and pastoral lands. Both types represent fundamental administrative and management concerns especially in a post conflict situation like this one. On one hand, land under cultivation requires management by cadastre while pastoral use is unrestricted thereby working well within community based tenure systems. This is largely due to the migratory lifestyle of pastoral communities in search of greener pastures. Pastoral land use sometimes spills into land under cultivation and it could be another source of land use conflicts.

The centralization of land administrative and management structures had a negative effect on development and opened up land for grabbing through access to a privileged few. According to Norton (2008), Somali politics at many levels – local, regional and national – were closely tied up with land allocation and use whereby the GSDR above used land legislation as part of a strategy to consolidate the regime's control over the countryside. As such many of the 'warlords' who emerged in the post GSDR years engaged in rural land grabbing as a way of building up their own regional power. A new land policy therefore has to address this major instance of land grabbing amongst the other pertinent issues of internally displaced persons and repatriated refugees. Indeed, despite the 1975 land reforms intention of supporting land investment, less than 5 % of land area had been registered by 1986, Roth (1988). In a nutshell, land policy formulation has to address the core aspects of adjudication, registration, management and administration.

To benchmark on best practices, formulation of national land policies in Africa have been a state guided intervention mostly through the cabinet and special intra-governmental committees. More importantly, for post conflict situations an assertive administrative structure for land has to be setup as noted by Fitzpatrick (2002) in reviewing land policy post conflict in East Timor. Somalia does not have a substantive Ministry of lands. This paper assumes that the mandate of land policy formulation will therefore fall under Ministry of Public Works and Resettlement under the Federal Government of Somalia. It will further assume that a cabinet committee will be formed to drive the mandate and it will consist of the main ministry here and other ministries touching on land substantively. The committee is expected to appoint professionals from real estate, legal and administrative backgrounds both within and outside Somali. The Federal Government Constitution 2012 provides for formulation of a national land policy under Article 43 which covers land, environment and Natural resources.

II. LAND POLICY FORMULATION BASIS; CONTEXTUAL ASPECTS

In formulation of a national land policy, it is important to consider key elements that would emanate from economic, social, legal, technical and political dispensations in Somalia.

It has to be holistic in this sense to ensure its success in guiding the administration and management of land in Somalia so as to guide land reform. Land policy can be defined as the aims to achieve certain objectives relating to the security of and distribution of land rights, land use and management, access to land including the forms of tenure, conditions under which land use development can take place, its administration and specifies the structures in charge of implementing legislation, land management and arbitration of conflicts, Herpele et al (2017). As such land policy touches on many aspects of human life primarily access to land resource as a source of living. It therefore follows that more than a policy being an instrument of administration and therefore government, it has to be desirable to its subjects.

This brings the role of the policy subjects being consulted in its formulation and this is done through a participatory process. This is very important in that the policy would have legal implications that have to be implemented against the people of Somalia and therefore without their participation in formulation there shall be opposition hence it shall be ineffective in guiding management and administration of land. Henry George (1839-1897) observed that land is the basis of man's existence he says, "take away from man all that belongs to land and he is but disembodied spirit." Land policy has to appeal to the basic core of humanity and seeing that the society is dynamic it cannot be a one-time occurrence. This cannot be overemphasized considering that competition over the control and ownership of land has long been acknowledged as a driving force behind violent conflict in Somalia, Rift Valley Institute (2017).

Land management ensures efficient utilization of land resources while land administration is concerned with matters pertaining to proper managing of land tenure aspects. Land management and administration in Somalia as it will be seen later have been fraught with many challenges. Indeed according to Unruh and Williams (2013), land tenure is central to Somali conflict in that the land law reforms circa 1975 that abolished traditional clan and lineage rights to the use of and access to land and water resources led to significant grievances and ultimately contributed to the civil war. Therefore a land policy has to give effect to these tools through existing legal and institutional framework. A review of this frameworks would be the first step towards policy formulation before going into the participatory element in order to most importantly reveal their inadequacies in ensuring proper land management and administration.

It would be important to review existing legal and institutional both on a current and historical context. The reasoning behind the historical view is that, in as much as we would want to develop an accommodative land policy, there has been informal land management and administration systems especially amongst the Somali community. This is because the land resource is scarce and therefore access to it has always been controlled despite the lack of written down laws or formulation of institutions. For instance in Kenya it was key to note the customary land practices that were in existence before colonization influenced to a great extent the current land policy. Indeed, the policy had to take care of indigenous communities' way of life and historical injustices both before and after colonialism. Somali as it is in many

African countries, was also colonized and this involved subjugation of existing land tenures to fit the colonialist needs.

The vision of this policy will be to ensure an efficient, sustainable and equitable use of land for prosperity and posterity. Somalia is a signatory to various international instruments that protect human rights especially as they relate to land and property, Norton (2008). As such, the proposed land policy has to take cognizance of these international instruments as pertains to human rights and especially displaced persons. Somalia is coming off a very difficult period where the country was actually divided into regions controlled by warlords. Sectarian violence is continuing through insurgency by the al-shabbab terrorist group. Before this insurgency, the war was largely on access to land based resources. Somali is homogeneous country divided into clans. Demographically, the civil war has altered the clan settlement patterns. Strong clans have occupied valuable urban and agricultural real estate by force. The patterns of clan settlements have changed mainly in the urban and arable areas such as Lower Shabelle, Juba Valley, and Mogadishu, World Bank (2005)-refer to the map below for area details.



Figure 1

Therefore equitable land use coming off this war background will be a huge undertaking while formulating this policy. So many Somali's have been displaced by the civil war. However, since an attempt on self-governance was done back in 2012 there has been resettling albeit gradually. The mission of the proposed policy would be the improvement of Somali's livelihoods through establishment of accountable and transparent institutions dealing with land. At the very first instance, it is recommended a substantive ministry for lands be formed.

III. REVIEW OF EXISTING LEGAL, ADMINISTRATIVE AND MANAGEMENT FRAMEWORK

Land tenure in contemporary Somalia is in a state of transition. Most cultivated land and nearly all pastoral land were governed by customary land tenure arrangements prior conflict. However, land legislation passed in 1975 officially transferred control of tenure rights on all Somali lands from traditional authorities to the Government of Somalia Democratic Republic (GSDR). Land registration procedures

allowed landholders to register limited amounts of land as state leaseholds, with usufructuary rights for 50 years, and renewable. By 1986, less than 5 percent of Somalia's land area had been registered, Roth (1988). This is the period prior to the civil war which can be presumed to be the prevailing situation now. Indeed, this compounds the problem of land management and administration because over and above the poor state of registration and the eventual loss of documents during the war, we now have displaced persons and land grabbers. This calls for effective dispute resolution mechanisms to be an integral part of the policy.

According to Article 11 of the Somali Constitution, all citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law. This in the first instance sets a good basis for the adjudication of land rights in the context of post conflict. Violence, displacement, the destruction of property, battlefield victory and loss and food insecurity as well as the breakdown of property related institutions and norms alter land use, settlement patterns and production systems with the effect of reconfiguring the network of social relations upon which all land and property rights systems depend, Unruh and Williams (2013). As such, recognition of basic human rights as espoused in Article 11 above is an important step in repairing such social relations. More importantly, this has to be done in the context of Islamic law since Somali Constitution recognizes Islam as the only religion under Article 2 subsequently providing that all laws must be compliant with Shari'ah law.

Somali's constitution under Article 26 provides that every person has the right to own, use, enjoy, sell, and transfer property. A major omission is the right to own property anywhere in Somalia. This would have been important coming a background of both internal and external displaced persons due to the civil war as espoused above. In order, to provide all Somali citizens with opportunity to access and beneficially occupy and use land, it is important to note that access is largely compromised with much of the population displaced and armed. Assuming an end or reduced conflict, this objective shall be achieved through adjudication, demarcation and registration of land to give effect to this article. However, this has to be done within the framework of the prevailing economic activity because in pastoralist areas it is uneconomical and even dangerous to have largely individual titles to land.

The Federal Government Constitution 2012 provides for formulation of a national land policy under Article 43 which covers land, environment and Natural resources. There seems to be no substantive land law regime except the Land Law of 1975 widely cited in various papers, Roth (1988), Norton (2008) and Unruh and Williams (2013). However, under Article 43(4), the Federal Parliament shall enact a law regulating the size, timeline and conditions of permits of land use. Article 43 also gives instruments for land management structure which is to ensure equitable access to land, dispute resolution, land ceilings for both individuals and companies and envisaging an efficient property market. Federal states are expected to formulate land policies at their level. The Federal Government, in consultation with the Federal Member States and other stakeholders, shall regulate land policy, and land

control and use measures. The specific objectives of the national land policy shall be to give effect to Article 43(3) of the Somali constitution as follows; The Federal Government shall develop a national land policy that shall be subject to constant review. That policy shall ensure:

- ✓ Equity in land allocation and the use of its resources;
- ✓ The guarantee of land ownership and registration;
- ✓ That land is used without causing harm to the land;
- ✓ That any land and property dispute is resolved promptly and satisfactorily for all;
- ✓ That the amount of land that a person or a company can own is specified;
- ✓ That the land and property market is regulated in a manner that prevents violations of the rights of small land owners;
- ✓ That the Federal Member States may formulate land policies

IV. CONCLUSION AND WAY FORWARD

While the land question has been acknowledged in successive peace agreements in Somalia, the political sensitivity and complexity of the subject means there has been limited progress in developing concrete policies to address the issue, Rift Valley Institute (2017). Therefore, with land having been identified as being central to Somali conflict, the government needs to move with speed in formulating the national land policy. Land is one of the major factors of production that underpins national development especially through the agrarian sector. In order to ensure increased contribution of land to economic productivity, and commercial competitiveness, the national land policy will have to design and execute a paradigm shift from emphasis on land ownership to land development. This is because concentration on ownership in this conflict situation will be counter-productive. In as much as the new land policy will seek resolution of injustices, it will have to go beyond tenure issues and address development so as to rebuild Somalia. Minimum and maximum land sizes will be determined scientifically on the basis of carrying capacity especially since this is both an agricultural and pastoralist community.

To achieve this, the government will have to promote equitable access to the land resource in a sustainable manner. The typical objective of land policy is to ensure equitable and secure access to land, FAO (2011). Equitable access is a primary in land policy formulation found in various national land policies for instance, Kenya and Myanmar. The National Land Policy of Somalia shall carry out land reforms within the government policies of decentralization, divestiture, and empowerment of the people including the private sector. This is expected to be done through the Federal Member states in a just and equitable manner. The Federal Government should guide the process through provision of resources both economic, social and political. Policy needs to address development control, land holding by both citizens and foreigners through proposed land acts.

In order to restore stability in land relations, and the resumption of sustainable livelihood activities, the national policy of Somalia will seek to address all the root historical

and current causes of conflict driven by competition over unregistered land masses. Specific courts for land and environment matters will be set up to sufficiently deal with these issues. The policy should propose review of all legislations relating to land for purposes of harmonization and enactment of new laws as appropriate. This will ensure equity in land allocation and the use of its resources and the guarantee of land ownership and registration. Laws will also state tenure forms along private, public and community instruments including duration either absolute or periodical as well as institutional trustees especially for community lands. It will ensure it captures the culture of the Somali which largely prevails as pertains land ownership, inheritance and management.

The policy should also propose land management and administration be divested from the Federal state to ensure equitable access to land based resources through formation of a National Land Commission. The commission will be representative of the Somali people based on the socio-cultural structures taking cognizance of clanism. It will be devolved to the Federal states as per the constitution to ensure its services are available at the grassroots. The commission is expected to work in conjunction with the proposed Ministry of Lands as well as other executive and legislative arms of the federal Government of Somalia. Its formulation, composition and operation will be provided for by an act of parliament.

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