

Governing Land In Kenya: The Problem Just Refuses To Go Away.

The primary mandate of a modern state is to ensure good governance which in turn ensures harmonious relationships among its populace; enabling people to work together united in building the nation. In the same vein, a key tenet of good governance is equitable distribution of national resources such as land which for many African people is a key means to their livelihood. Looking at history, one can say without fear of contradiction that to a large extent; the Kenyan state has failed its people in governing land. The consequences have been immense the most important one being what the country witnessed at the end of last year following the disputed presidential election.

For long famed as an island of peace, Kenya was transformed into a battlefield in January 2008 and was soon fast sliding into the list of the failed states had the international community not moved fast to broker a peace deal. Following the disputed presidential elections, Kenyans turned against each other, butchered each other, burned each other's houses, razed down school buildings, pulled apart railway lines and dug up highways crippling transport. An economic collapse affecting not only Kenya but the larger Eastern Africa region was feared especially following the disruptions of the transport sector.

In two long months, more than 500,000 Kenyans were displaced from their homes. Over 1,200 were killed. Life came to a stand still. A crisis of a magnitude never witnessed before in independent Kenya played itself out. In the end, a peace deal mid-wived by the former UN Secretary General Koffi Annan was brokered leading to the formation of a Grand Coalition government bringing together the opposition and the ruling parties to share government. Until today, the government is still grappling with internally displaced people (IDPs) living in camps among other challenges arising from the conflict.

The question that very many Kenyans are grappling with at the moment is how we could turn against each other so voraciously. On its own, could a disputed presidential election really lead to the blood letting that we witnessed? Or were the elections just a trigger towards some underlying tensions caused by something else? An emerging consensus is pointing towards the land question. Various independent investigations for instance by the United Nations Office of the Commissioner for Human Rights released in February 2008 point towards a conclusion that last year's disputed presidential vote only triggered long running land disputes that snowballed into a national crisis.

There is a feeling that the failure by successive post independence Kenyan governments to address the so called historical injustices in land distribution has allowed grievances to fester and the problem to ferment into a national crisis. The history of Kenya is one in which a majority of the population has always stood disposed of their livelihood, land. This dates back to the colonial times when huge chunks of land were annexed from among the African population and given to settler European farmers. The Crown Lands Ordinance of 1902 provided that empty land or any land vacated by a 'native' could be sold or rented to Europeans. It also stated that land had to be developed or else forfeited. This marked the genesis of massive dispossession of land from the 'natives' being given to European farmers. It is instructive to note that the struggle for independence in Kenya was largely informed by a struggle to acquire back land that had been taken away from the natives.

How has the government failed in addressing the land question? At independence in the early 1960s, the government embarked on a land reform process that among other things was meant to redistribute previously settler farmland among the Kenyan population in need who had been relegated to 'native' reserves by the colonial government. This process has however been slow, ineffective, and most importantly, ridden with political interests and has failed to address the equity question. In a recent media interview, the newly appointed lands minister, James Orengo, acknowledges that the land adjudication process that was began in 1956 has only been able to

accomplish 30% of its work! Three regimes down the line, the land question remains unresolved and in the process, it fuels political tensions leading to tribal clashes the most ferocious being those of 1992 and 2007. Conflicts aside, most Kenyans remain food poor largely attributed to lack of access to land for farming. Currently an estimated 17 million people live below the poverty line and about 10 million Kenyans especially those in the medium and high potential areas are chronically food insecure. This in spite of the fact that Kenya has large tracts of unregistered trust land, 380,000 square kilometers or 65% of land earmarked for registration.

Do we have any solution in sight? Is there any light at the end of the tunnel? Perhaps there is, and the solution could be in the *Draft National Lands Policy* which is currently being debated in readiness for presentation to the cabinet to start the process towards adoption and subsequent implementation. The policy proposes to address among other things the historical land injustices by providing a framework and direction for dealing with issues of land ownership, security of tenure, land use and development, and environmental conservation on a sustainable basis. The policy explains historical injustices as land grievances, which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities that have long been ignored by successive regimes. The draft policy is being debated among stakeholders and Kenyans wait with baited breath to know if this government shall move beyond the rhetoric, pressure from interest groups who hold huge tracts of idle land for speculative purposes, and address the land question once and for all for the posterity of all Kenya. The jury is out.

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