

Agricultural Land Management for Sustainable Development in Rural Kenya

*Mary Kimani

Received on 18th January 2007; received in a revised form 15th February 2008; accepted 9th April 2008

Abstract

Land is one of the most important natural resources for the creation of wealth in many societies. Its ownership and control brings economic power, which in turn, is often the basis for social and political power. Unlike other factors of production such as labour and capital, land is in fixed supply. Of the total land area of Kenya of 56.9 million hectares, more than 90 percent is agricultural land. Over 80 percent of this land is categorized as Arid and Semiarid land where about 25 percent of the total population resides and over 50 percent of the total livestock is produced. Only 17 percent of the total arable land is considered to be of medium to high potential areas. This is where about 75 percent of the total population is found as well as the remaining forests. About 80 percent of the total population lives in rural areas and depend on agriculture for their livelihoods. The objective of the paper is to review the existing policies, laws and regulations that guide the use and management of agricultural land clearly examining their effectiveness in enhancing sustainable rural development. Through a desk review of the multiple policies, laws and regulations that govern the utilization and management of agricultural land in Kenya, various problems were identified. The individualization of tenure through land registration has led to the subdivision of agricultural land to uneconomic units that are unsuitable for agricultural activities especially in pastoral areas. There is an absence of comprehensive and clear policies and laws on how to gain access to land for agricultural uses by the landless, who are mainly squatters on huge tracks of land owned by absentee landlords. This has led to conflicts and the degradation of agricultural land due to lack of effective integrated environmental management. The fragmented land management system has resulted into uncoordinated actions by the many actors. However, land registration resulting to the conversion of land into a commodity has enabled farmers' access credit on the security of registered title. This credit has led to improvement of land and soil conservation through the development of agro-forestry and other soil and water conservation measures. For agricultural land to continue playing the key roles of food production for the country's ever-increasing population, creating employment and contributing to the foreign exchange earning there is need to urgently implement the new land policy, review and consolidate the existing multiple policies, laws and regulations in order to enhance good management and use of agricultural land. Land carrying capacity determination must precede any subdivision of agricultural land activity. There is need to harmonize and coordinate the institutions and agencies that deal with agricultural land use management with an aim of improving the management and control of agricultural lands. A clear law that stipulates how to deal with absentee landlordism and neglected land must be put in place if soil erosion and degradation of such land is to be avoided.

Key words: agricultural land; agricultural policies, laws and regulations; sustainable agricultural land development.

INTRODUCTION

Kenya has since independence relied heavily on the agricultural sector as the base for economic growth, employment creation and foreign exchange generation. The sector is also a major source of the country's food security both at the local and national level and a stimulant to growth of off-farm employment, both of which are of primary concern to the Government. These are obvious considerations given that approximately 80 per cent of the country's population live in rural areas and depend on agriculture for their livelihood.

According to the Agriculture Act, (Cap 318, 1967), "agriculture" means cultivation of land and the use of land for any purpose of husbandry, and includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, market gardens or nursery gardens and the use of land for woodlands when that

use is ancillary to the use of land for other agricultural purposes (as in agro-forestry). The act further defines "agricultural land" as all land which is used for the purpose of agriculture, not being land which, under any law relating to town and country planning, is proposed for use for purposes other than agriculture" The Land Control Act (Cap 302 of 1981, revised 1989), on the other hand defines "agricultural land" as land that is not within:

- A municipality or a township or, an area which was, on or at any time after 1st July 1952, a township under the Townships Ordinance (now repealed).
- And area which was, on or at any time after 1st July 1952, a trading centre under the Trading Centres Ordinance (now repealed)
- A market
- Land in the Nairobi area or in any municipality, township or urban centre that is declared by the minister, by notice in the gazette, to be agricultural

*Dr. Mary Wambui Kimani, Lecturer, Dept of Real Estate and Construction Management, Univeristy of Nairobi P.O.Box 30197-00100 E-mail: mwkimani65@yahoo.com

land for the purposes of this act.

Kenya has a land area of roughly 581,751 square kilometres (44.6 million hectares) of which 97.8 percent is land and 2.2 percent is water surfaces. Only 17 percent of this land can be classified as medium to high potential land while the rest 80 percent is arid and semi-arid land. Approximately 75 percent of the country's population live within the medium to high potential areas and the rest 25 percent live in the vast arid and semi-arid areas. The majority of these people are smallholder farmers producing about 70 percent of the total output and 50 percent of the gross marketed output.

Kenya's economy is and will for a long time remain primarily dependent on agricultural and pastoral land uses. Current estimates indicate that agriculture and pastoralism not only provide livelihoods for over 75 percent of the country's population but also support 70 percent of all wage employment and contribute over 80 percent of export earnings (Republic of Kenya, 2007). According to the Economic Survey of 2007, the gross marketed production has been rising steadily as indicated in Table 1.

Much of the production emanates from small farms which over the years have had a total share of over 70 percent gross marketed production as illustrated in Table 2.

The majority of agricultural activities in the country include grain production, coffee, tea, sugarcane, pyrethrum, cotton, cashewnuts, coconuts and horticulture. These are carried out in the various agro-ecological zones in the country. Livestock activities including dairy and beef production are carried out in all agro-ecological zones. However, over 50 percent of the country's livestock is reared in arid and semi-arid areas.

Since independence, Kenya has endeavoured to improve the standards of living of her people through increased and equally distributed per capita incomes among the citizens. To improve the living standards of Kenyans and create employment opportunities for the rapidly increasing labour force, there is need for rapid and sustained economic growth over a long period of time as well as rapid and sustained reduction in the population growth rate.

While there have been attempts over the years to introduce fragmented policies, laws and regulations to deal with specific problems in the sector as they arise, there has been no overall co-ordinated policy for the development, use and administration of

rural or agricultural land.

In view of the difficulties faced in increasing land area under agriculture, sustainable agricultural output will only result from more intensified production and rising productivity. This requires judicious management of agricultural land.

LAND TENURE SYSTEMS

Land tenure types and policies tend to determine the nature of agriculture practised. Current approaches to agricultural development increasingly focus on constraints imposed by land tenure systems. The system of land tenure sets the context in which all efforts to raise agricultural output must operate. Land tenure will influence farming systems, social equity and agricultural productivity. The tenure regimes affect the welfare of the farming family. Land tenure provides the legal and normative framework within which all agricultural activities are conducted.

Kenya has experienced different land tenure systems and land-use policies under different governance systems. Before colonialism, land in Kenya was owned and governed by customary law. Since the advent of colonialism land rights have undergone remarkable transformations, which have influenced numerous legislative developments (Syagga, 2002). Radical changes that have been deliberately initiated in tenure arrangements prior to and after independence in African states have been justified on the basis of the expected improvement in productivity, land-use planning and decision-making (Ogolla and Mugabe, 1996).

A complex mixture of English land laws and Kenyan traditional or customary law governs all land tenure in Kenya. These laws generally give rise to three types of land tenure in Kenya namely:

- Customary (Trust) Land Tenure
- "Modern" (Private) Land Tenure and
- Public (Government) Land Tenure

These systems of land tenure have a direct effect either individually or in articulation, on land-use and the management and conservation of agricultural land.

Trust/customary land tenure

This land is found in areas that have not yet been transformed through adjudication, consolidation and registration. Upon independence, all lands designated as "Native reserves" or "Special Areas" during colonial times were categorised as Trust Lands. All Trust Land is vested in county councils or respective local authorities that hold the Trust Land within their area of jurisdiction for the benefit of the residents on that land.

TABLE 1
 Gross Marketed Production at current prices, 2002-2006 by commodity (million Kshs)

	2002	2003	2004	2005	2006*
Cereals	6,398.3	5,676.3	10,799.8	11,904.2	13,086.7
Horticulture	26,722.0	28,840.0	32,591.0	38,838.1	43,120.8
Temporary industrial crops	11,017.8	9,225.2	9,340.1	10,186.7	10,675.5
Permanent crops	39,794.0	41,648.6	102,502.9	108,877.2	123,296.8
Livestock and products	19,339.7	19,432.4	20,766.7	24,258.9	26,375.8
Total	103,271.9	104,822.5	123,269.6	133,136.1	149,672.6

Source: Economic Survey 2007

TABLE 2
 Gross Marketed Production from Large Farms and Small Farms, 2001-2006 (million Kshs)

Year	Large Farms	Small Farms	Total	Percentage share of Small Farms
2001	27,921	71,511	99,404	71.94
2002	26,985	76,287	103,272	73.87
2003	27,211	77,612	104,823	74.04
2004	32,879	89,604	122,483	73.16
2005	34,572	97,568	132,139	73.84
2006*	38,600	110,073	148,674	74.04

Source: Statistical Abstract 2007

Under customary tenure systems, individuals or groups have guaranteed rights of access to land by virtue of their membership in some social unit of production, for example pastoralists or in the political/administrative community.

The rights of control are vested in the political authority of the unit or community. Rights analogous to private property rights accrue to individuals out of their investment of labour in harnessing, utilizing and maintaining the land. Their rights transcend mere usufruct and encompass transmission of land, and in certain communities, transfer. The breakdown in traditional authority engendered by the systematic imposition of the institutions of the modern state has undermined the capacity of the political units that regulated land use to effectively fulfill its regulatory functions.

In addition to the Constitution and the Trust Land Act, this Land is also affected by the Land Consolidation Act Cap 283 of 1959 (revised 1977), Land Adjudication Act Cap 284 of 1968 (revised 1977) and the Land (Group Representatives) Act Cap 287 of 1968 (revised 1977). These laws regulate registration of individual or group titles to plots of land within Trust Land.

Under the Land Consolidation Act, owners were made to surrender their plot, through exchange of land with other owners with the same acreage of land. Land consolidation was often undertaken in favour of

landholders with larger plots. The substituted land had to be of equal value not just in terms of acreage but also allocation of land that was as fertile as the one relinquished. The Land consolidation Act is no longer in practice.

The Land Adjudication Act has been applied in areas where Land Consolidation Act did not apply, no longer applies or was not fully implemented. The Act provides for individual and joint ownership, ownership in common and group ownership. If a group under customary law has exercised rights over land, which according to the Act is recognized as ownership, the group is declared the owner of the land.

When a group is recorded as the owner of land or as entitled to an interest not amounting to ownership of land, they can apply for registration as group representatives under the Land (Group Representatives) Act. This Act provides for registration of members and representatives of group ranches owned by pastoralists. All persons who are recorded in the Adjudication register, as having an interest in the group land, are entitled to become members of the group. This system provides for all group members to have access to water for their animals. The land registered in this way is effectively still trust land. Notwithstanding the implementation of the modernization programme of land tenure, customary land tenure remains the most widespread and dominant tenure system in Kenya.

Private/Individual Land Tenure

Private land also known as individual tenure is a consequence of the colonial regime of English notions of land ownership through law. It confers upon the individual or corporate entity an indefeasible and exclusive title to a specified estate in land. Individual ownership of land is based on both freehold and leasehold systems. To transform land to individual ownership it must go through adjudication, consolidation and registration. Freehold land is owned privately in perpetuity, while leases and licenses are forms of land ownership limited to a specified period of time.

The exclusive property rights over parcels of land were conferred to individuals and corporate entities through a process of land tenure reform in the native reserves initiated by the colonial government in 1956. The process involved land adjudication, consolidation and registration. Land registration in the native Trust Land areas started in central province, which is high potential, in the same year. With regard to the lower agricultural potential areas, mostly arid and semi-arid areas dominated by pastoralism as a land use, registration of group ranches was instituted in 1968 under the Land (Group Representatives) Act. Under this system "communal lands" are divided into smaller units (ranches), which are then registered in the names of group representatives elected by the members of the group. The members of the group have rights in the ownership of the group land in undivided shares. They are entitled to reside therein free of charge with their family and dependants. The group representatives are empowered to mortgage or lease the property or part thereof for the benefits of the members.

The important legislation governing this type of land tenure is the Registered Land Act Cap 300 of 1963, Land Registration (Special Areas) Act of 1959 and the Registration of Titles Act Cap 281 of 1920.

Government/Public Land Tenure

This land refers to landholding and land use of unalienated government land. It refers to the phenomenon of the government as a private landowner. It originated from the Crown Lands Ordinance of 1902, which declared all "waste and unoccupied" land in the protectorate "crown land". The concept of crown land was redefined by the 1915 Crown Lands Ordinance to include land in actual occupation by "native". In 1938 the Crown Lands (Amendment) Ordinance excised native reserves from crown lands, which were subsequently vested in an independent Native Trust Lands Board by the Native Lands Trust ordinance of 1938. At independence, land

in native lands became trust land and was vested in the respective county councils, which hold the land for the benefit of the residents. This included land reserved for the use of the government and the land within forest reserves outside Trust Land areas. This land is reserved for public services or purposes unless and until it has been privatised to an individual or corporate entity through a presidential grant of freehold or leasehold. Upon adjudication and registration such land ceases to be trust land.

The Government holds public land in trust for all people while the local authorities hold "trust land" in trust for the residents in the area of the local authority (UNCHS, 2002). The Government Land Act Cap 280 of 1970 (Revised 1980) governs this type of land tenure. Under this Act, Government land is vested in the president who has the power to make grants and dispositions of any estates, interests or rights in or over this land. The commissioner of land administers the Act and may execute any conveyance, lease, licenses or other act on behalf of the president.

AGRICULTURAL LAND MANAGEMENT

Land management is about setting goals and objectives that help to improve land use and management. The goals and objectives may differ as many parties are involved in the use and management of that land. There are also many existing and proposed laws and regulations making the management of land in Kenya a complex issue.

Land is one of the major factors of agricultural production. It is not only a fundamental factor of production but also fixed in size. It therefore requires proper management for optimal utilization. There are no specific agricultural land management policies, laws and regulations. Agricultural land management is guided by the general land use policy and economic policies for the country.

The concept of land management refers to a comprehensive expression for activities that fulfil established goals for the use of land resources. The activities may aim at promoting efficient land use within an existing pattern (administrative controls) or at developing the land through substantial investment or changing existing land use. In both cases the starting point is to set goals to determine what is to be done. The resources and attributes of land need be carefully managed if they are to be

properly used and if waste is to be avoided.

Land management is thus the process of allocating land resources over space and time according to the needs, aspirations and due desires of humankind within a framework of technological inventiveness, socio-political and legal arrangement (Dale and McLaughlin, 1988). Agricultural land management can thus be seen as all the activities that ensure most efficient allocation and utilization of agricultural land. The objective of any land development would thus be to see that it is used in ways that provide the greatest sustainable benefits.

Kenya has had not a single and clearly defined National Land Policy since independence. This together with the existence of many land laws has resulted in a complex land management and administration system that has led to many problems including fragmentation of land, breakdown in land administration and disparities in land ownership and poverty.

To address these issues the Kenya Government embarked on the formulation of a National Land Policy to guide the country towards efficient, sustainable and equitable use of land for prosperity. This policy has yet to be implemented in so far as agricultural land which is rural in nature is concerned. The policy envisages the review of current laws related to planning to provide for rural land use planning recognizing rural settlement as a tool for sustainable resource management.

Legal requirements and procedures for the development and use of agricultural land are found in various Acts of parliament and government regulations. Agricultural development has been of high priority. The state is by law the ultimate authority in of control and management of land (Okoth-Ogendo, 1999).

Agricultural Development Policy

The agricultural system of a country cannot improve and increase its production without deliberate efforts by the government to develop the system. It is the responsibility of the government to ensure adequate supplies of food, fibre, shelter and other social amenities for its people. Agriculture engages the greater proportion of people and plays a vital role in the country's development. Thus the government should evolve systems for promoting agricultural development. Any development of agricultural land of a country should be guided by that country's agricultural policy for efficient allocation of the land resources to agricultural activities with an aim to fulfilling the established goals for the use of that land.

Land use policy relates to a system of laws,

rules, regulations and practices that govern the rights and obligations of landowners together with appropriate guidelines to ensure optimal utilization of available land in both rural and urban areas. The government's strategies towards this end has been to ensure that all land is planned, surveyed, adjudicated (where applicable) and registered with a view of issuing title deeds (Republic of Kenya, 1994-1996). This has been as a way of providing security of tenure and encouraging people to invest in and develop their land. This is expected to lead to higher incomes, increased productivity, general rise in economic growth and improved standard of living.

In Kenya for example, the agricultural policy is geared towards sustainable food production and security, increased private sector participation and improved farm production through:

- Improved farming systems
- Agricultural land resource planning
- Management of water
- Integrated pest management and control

The primary objectives of the policy as enunciated in the sessional paper No. 4 of 1981 on National Food Policy (revised in 1993), Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth, Sessional Paper No. 1 of 1992 on Development and Employment in Kenya are to:

- Achieve internal self-sufficiency in basic food products.
- Maintain strategic reserves for various agricultural commodities.
- Encourage the production of crops such as coffee, tea, pyrethrum, sisal, vegetables, fruits and cut flowers for export.
- Conduct systematic agricultural research activities.
- Acknowledge age and gender as factors in agricultural production.
- Support relevant international action on environmental matters relating to climate change.
- As a signatory of the biodiversity conservation convention, identify, protect and ensure the sustainable use of genetic resources.

In view of the difficulties faced in increasing the land area under agriculture, sustained agricultural output requires more intensified production and rising productivity. This calls for the judicious management of agricultural land.

Agricultural Land acquisition and Registration

Land for agricultural purposes can either be acquired from the government through allocation of previous government land or through the purchase of such land from individual owners. The main legislation that is applied in the acquisition of Government land for agricultural land is the Government Land Act Cap 280 of 1970 (Revised 1980) while the Land control Act governs the procedure of Purchase of agricultural land from individual owners.

This Government Land Act stipulates the procedure to be followed when converting government land into agricultural land. Subject to any general or special directions of the president, the commissioner of lands may cause land available for alienation for agricultural services to be surveyed and divided into farms. The leases of such farms are sold by auction. Their auction should be put in a gazette notice stating the situation of farms, approximate area and time and place where the plan of each farm may be seen. The upset price of the lease, any special covenant or condition inserted in any lease to be granted, annual rent to be paid for each farm under the lease and the capital sum to be paid for a grant of freehold of the land as well as the survey fees and cost of the deeds in respect to each farm should be indicated in the notice. The farm should be given to the highest bidder. The highest bidder pays a 10 percent deposit and commits to pay the balance in full or in instalments on the first day of the month after the month of the sale so long as it is not a Sunday or a public holiday. In case she/he defaults payment for the lease, she/he forfeits the deposit and lays no more claims on the farm.

Once the land is acquired it needs to be registered. The legislation that has been put in place to regulate land registration and ownership in Kenya include:

- The Registration of Documents Act (Cap 285 of 1901, revised 1980)
- The Land Titles Act (Cap 282)
- The Government lands Act (Cap 280 of 1970 Revised 1980).
- The Registration of Titles Act (Cap 281 of 1920)
- The Land Registration (Special Areas) Act, 1959
- The Registered Land Act, Cap 300 of 1963 revised 1989

The Registration of Documents Act is the oldest Act originating in 1901. It was enacted to regulate the registry documents especially those pertaining to land in towns or highlands granted by the Government. The Act

provides for both compulsory and optional registration and requires that all documents purporting to confer, limit or extinguish any right, interest or title in immovable property must be registered within one month after their execution. The purpose of this Act is to provide a safe record in the case the holder's documents gets lost.

The Land Titles Act was passed in 1908 and was originally applied in Kenya's coastal areas to protect landowners' title claims. It created a Land Registration court to which all claims for land were directed. Once a claim is rightfully proved, a certificate of title is issued to the claimant and registered in the court. The effect of registering such certificate becomes conclusive evidence against all persons (including the Government) for all particulars of the piece of land and the developments on it at the date when the certificate was issued.

The Government lands Act, enacted in 1915, largely provides for deed plans and improved registration of Government land grants and subsequent dealings thereupon. Prior to this act, all Government land transactions thereof had to be registered under the Registration of Documents Act. As the system of registry under this Act was defective in that it identified boundaries of registered land by trees, valleys or rivers, the new government Lands Act provided for deed plans and a registration in a new and improved manner. The Act also laid down procedures of leasing, regulating and disposing of Government land.

The Registration of Titles Act, enacted in 1920, provides for the transfer of land by registration of "titles". Contrary to the earlier Acts, which foresaw the recording of documents without conferring any additional benefit, this Act conferred on the landowner a " indefeasible title guaranteed by the state". It was expected that registration under the earlier Acts would be phased out so that all land in the country would come under the umbrella of one Act. Although registration would have given the landowners the benefit of the state guarantee of title, it was not made compulsory and landowners chose not to seek re-registration. Consequently, land registration under these Acts continued side by side.

The Land Registration (Special Areas) Act was passed in 1960 to ease the procedures of registration under the Acts that were already in force and required a detailed surveys and the preparation of deed plans for each single piece of land. The Act provides for the issuance of titles to Africans for land in the Native Reserves, or "special areas", without the need for accurate surveys and separated deed plans. Accordingly, Kenya experienced the existence of four different legal systems of land

registration since 1960, in addition to the compulsory entry of land documents in the Registration of Documents Act.

The Registered Land Act, passed in 1963, was adopted in an attempt to bring all Kenyan land registration under one and replace all other land registration law. It provided for the registration of all land that was consolidated or adjudicated in the African Reserves (or special areas) and offered to Africans. It also made provisions that all land previously registered under earlier Acts is re-registered under the new Act.

The Act introduced the use of Registry Index Map (map showing all parcels of land and their respective numbers in one area) as well as the new register with ledger cards for each parcel of land. It further provided the legal basis for the regulation of issues important for planning purposes for example, the enactment of restrictions to the land; attachment of wayleave or easement rights; the positioning, marking and maintenance of parcel boundaries and settlement of boundary disputes.

Agricultural Land Use and Development Control

Kenya's policy documents do recognize the centrality of land-use planning in the country's overall development strategy. Land-use planning and zoning are important tools in contemporary national policies. The basic components consist of evaluation of land, the alternative patterns of land-use and other physical, social and economic parameters and the selection and adoption of land-use types compatible with sustainable resource utilisation (Ogolla and Mugabe, 1996). Although relevant legislation such as the Land planning Act and the Town Planning Act (Now Physical Planning Act) exist for the purposes of land-use planning, they are primarily concerned with planning urban centres and development of such physical facilities as roads, buildings and factory location.

Notable control over agricultural land came towards the end of the eighteenth century when need arose to protect the Africans, who were considered as unsophisticated, from exploitation by Europeans. In 1940 a Land Control Bill was introduced to give the governor control over land to ensure proper use of land. The control mechanism was introduced to ensure maximum land utilization, to stimulate agricultural production as well as to prevent speculative dealings in land. The Ordinance empowered the governor to make wide rules over the preservation of agricultural land.

The responsibility of planning and implementation of agricultural development is vested in

the various departments and parastatals of the Ministry of Agriculture and Livestock Development. Through the various National development plans and policy papers, the Government sets the targets for agricultural production.

Currently, the primary instrument of state regulation of agricultural land use is the Agriculture Act (Cap 318 of 1967). The Act gives the Minister the power to make orders for proper management of agricultural land and to cause the same to be compulsorily acquired and sold in default thereof. The Act further controls agricultural operations right down to the stipulation of what crops and livestock species are suitable to be grown or reared in specific areas.

The objectives of the Agriculture Act are to promote and sustain agricultural production, provide for conservation of the soil and its fertility and stimulate the development of agricultural land in accordance with the accepted practices of good land husbandry and management. Discretionary powers are vested in the Minister responsible for agriculture concerning the preservation, utilization and development of agricultural land. This Act empowers the Minister to make rules regarding the conservation of soil or the prevention of the adverse effects of soil erosion on any land she/he with the concurrence of the Central Agricultural Board.

The Act contemplates the promulgation of land development orders and schemes in those circumstances where it is considered necessary for proper husbandry.

Regulations made under the provisions of the Act proceed by way of prohibitions regarding land usage and practices inconsistent with the objective of good husbandry. Authorised officers are empowered to: Prohibit, regulate or control:-

- The breaking or clearing of land for the purposes of cultivation
- The grazing or watering of livestock
- The firing, clearing or destruction of vegetation including stubble.

These rules are intended to protect the land against storms, winds, rolling stones, floods as well as landslides. It is also envisaged that these rules would preserve soil on ridges, slopes or in valleys preventing the formation of gullies. They would also help in maintaining water resources as well as protecting roads, bridges or railway lines in the prescribed areas.

Further the officers are required to regulate or control:

- The afforestation or re-afforestation of land
- The protection of slopes and catchment areas
- The drainage of land including the construction, maintenance or repair of artificial or natural drains, gullies, contour banks, terraces and diversion ditches.
- The uprooting or destruction, without payment of any compensation, of any vegetation that has been planted in contravention of a land preservation order.
- The supervision of unoccupied land.

The officers also prohibit, restrict and control the use of land for any agricultural purposes including depasturing of stock.

The Act also empowers the Minister to make land development orders requiring the execution in respect of any agricultural land by the owners or occupiers thereof of development programmes to be carried out at such rate and to be completed within such period as may be specified in the orders. Whenever the District Agricultural committee (established under this act) considers that it is in the interest of good land management or good husbandry or the proper development of the land for agricultural purposes, it may serve an owner or occupier with a notice requiring her/him to submit a development programme to the Central Agricultural board through the Provincial Agricultural Board (both of which are established by the Act). The development programme should contain cost estimates of the programme. If the owner or occupier fails to submit a development programme within the time specified in a notice duly served on her/him, the Central Agricultural Board is supposed to prepare a development programme for the land to which the notice relates.

This Act empowers the Minister to make rules regarding the conservation of soil or the prevention of the adverse effects of soil erosion on any land she/he with the concurrence of the Central Agricultural Board.

Other Acts that control the use of land include:

- The Land Control Act Cap 302 of 1981 (revised 1989)
- The Physical Planning Act Cap 286 of 1996.
- The Environmental Management and Co-ordination Act, 1999.

The Land Control Act provides for the control of dealings in

agricultural land. The Act controls transactions such as:

- The sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land, which is situated within a land control area. A Land control area is one, which has been declared so by the Minister by notice in the gazette as provided in section 3 of the act.
- The division of any such agricultural land in two or more parcels to be held under separate titles, other than the division of an area of less than 20 acres into plots in an area which the development and use of land (planning) Regulations of 1961 for the time being apply.
- The issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land within a land control area.

These transactions are considered void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given consent in respect of that transaction in accordance with the Land Control Act. Application for consent in respect to the controlled transaction is made in a prescribed form to the Land Control Board within six months of the making of the agreement for the controlled transaction. This period can however be extended by the high court.

The decision to grant or refuse consent is guided by the effect the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of good husbandry within the land control area. Consent is supposed to be refused where:

- The person to whom the land is to be disposed of is:
 - Unlikely to farm the land well or to develop it adequately.
 - Unlikely to be able to use land profitably for the intended purpose owing to its nature.
 - Already has sufficient agricultural land.
- The person to whom the share is to be disposed of has already sufficient shares in a private company or co-operative society owning agricultural land or would by acquiring the share, be likely to bring about the transfer of the control of the company or society.
- From one person to another and the transfer would likely

to lower the standards of good husbandry on the land.

- The terms and conditions of the transaction are markedly unfair or disadvantageous to one of the parties to the transaction.

In the case of the division of land into two or more parcels, the division would be likely to reduce the productivity of the land. According to the Land Control Regulations every application for approval of a subdivision must be accompanied by:

- A suitable plan showing the manner of subdivision, the means of access to each sub-division and any existing permanent development.
- A statement in writing of the water supply which is available for the subdivisions and the use to which the subdivisions are proposed to be put.
- In any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not:
 - A citizen of Kenya.
 - A private company or co-operative society all of whose members are citizens of Kenya.
 - Group representatives incorporated under the Land (Group Representatives) Act.
 - A state corporation within the meaning of the State Corporation Act.
- A person refused consent can appeal to the Land Control Board appeals board.

On the other hand, the Physical Planning Act deals with the material change in the use or density of any buildings, land or the subdivision of any land. It empowers local authorities to among other things :

- Prohibit or control use and development of land and buildings in the interest of proper and orderly development of its area.
- To control or prohibit the subdivision of land or existing plots into smaller units.

The Environmental Management and Co-ordination Act govern the overall environmental quality in Kenya. It requires that any agricultural programme/project file Environmental Impact Assessment Statements before commencement in order to mitigate for impacts such as:

- Loss of vegetation cover
- Destruction of wildlife habitat through encroachment
- Loss of biodiversity

- Soil erosion
- Desertification
- Increased climate variability
- Change and loss of aesthetic value
- Soil, water and air pollution
- Changes in hydrology
- Salinization
- Waterlogging
- Damage on historical artifacts and landforms
- Water use conflicts
- Accumulation of non-degradable materials
- Eutrophication

On-going agricultural programmes/projects should also file Environmental Audit reports to show they have impacted the environment and how they have mitigated these impacts.

CRITICAL EVALUATION OF THE POLICIES, LAWS AND REGULATIONS

All the above Legislative provisions notwithstanding, a number of problems peculiar to agricultural land use remain. There has been uncontrolled subdivision of agricultural land to uneconomical units, overstocking in rangelands, mismanagement of water resources and destruction of catchment areas.

Historically, agricultural land has not benefited from the various planning regulations. This is probably explained by the fact that much of the agricultural land in Kenya is held under freehold tenure. Freehold tenure connotes the largest quantity of land rights conferring unlimited use, abuse and disposition through the Land Titles Act and the Government Lands Act. A similar quantity of land rights is conferred by the "absolute proprietorship" through the Registered Land Act. The policies, laws and regulations have failed to address the issue of carrying capacity of agricultural land leading to the subdivision of the land into uneconomic units.

Noble as the Agriculture Act appears in terms of the use and management of agricultural land the implementation of the provision is ineffective. Some of the hindrances to the implementation are that the extension workers are not aware of these provisions. And for those who are aware, they have not been given the powers to enforce them and can only persuade the farmers to implement. There are no penalties set for those who do not adhere to the provisions.

The policies, laws and regulations set a myriad of institutions and agencies to deal with agricultural land use management. These institutions and agencies lack co-ordination with each other.

The policy around pastoral areas is not very clear. Official political rhetoric has tended to encourage individualization of tenure. This has led to subdivision of pastoral land to units not suitable for pastoral activities. The thrust of official policy since mid 1950s has been to systematically replace customary of traditional systems with a "modern" tenure through the process of adjudication of individual or group rights under customary law and their registration. From 1990, the operative government policy has been to subdivide the existing ranches into individual holdings, issue title deeds to individuals and stop further adjudication and registration of group ranches. These subdivisions pose economic, ecological and a cultural disaster for pastoral communities. From a practical point of view, the Maasai people are unlikely to benefit from or respect the sanctity of private land holdings given the adverse climatic and ecological conditions they face. There is considerable movement across ranch boundaries as a response to the dry conditions. Most ordinary Maasai do not observe land boundaries and will settle with their herds in ranches in which they have no membership. This raises many disputes. Given the level of existing land-use technology, nature of ecological factors and cultural context in pastoral areas, restricting access rights will not only imperil the existing pastoral economy but also adversely affect the cultural practices and tradition of the Maasai people.

THE WAY FORWARD

The concept of land as a direct source of food is so deeply entrenched in people that the Government has encouraged increased food production and agriculture as a land-use practice even in arid locations and among pastoral communities. These lands have been subdivided to units that are not sustainable for the kind of use they are put in.

For agricultural land to continue playing its great role of food production for the country's ever-increasing population, create employment and contribute to the foreign exchange earning, more needs to be done in terms of:

- Review and consolidation of the existing multiple policies, laws and regulations in order to enhance good management and use of agricultural land.
- Institutional mechanisms that induce landowners to put their agricultural land into proper and productive use must be designed as a matter of urgency.
- There is need to harmonize and coordinate the institutions and agencies that deal with

agricultural land use management with an aim of improving the management and control of agricultural lands.

- Land carrying capacity determination must precede any subdivision of agricultural land activity.
- A clear law that stipulates how to deal with absentee landlordism and neglected land must be put in place if soil erosion and degradation of such land is to be avoided.

CONCLUSIONS

Sustainable agricultural development is critically linked to questions of access, utilization and husbandry of land resources. The rules governing access to land resources and the manner of their current use will affect not only the welfare needs of present and future generations but also the ecological status of the natural systems of which land is part.

In recognition of the need to use and develop rural land resources in a more sustainable manner it is important to improve and enforce laws and regulations that support the sustainable use of land and restrict the transfer of arable land to other uses. Continuous agricultural development can only be expected to occur under conditions of an agrarian structure that advocates for the implementation of effective agricultural land management policies, laws and regulations.

CITED REFERENCES

- Dale, P. F. and Mclaughlin J. D. (1988) Land Information Management: An Introduction with special reference to cadastral problems in Third World Countries. Oxford University Press.
- Ogolla B. D. and Mugabe J. (1996) Land tenure systems in Calesstous Juma and Ojwang J. B. (Eds) In Land We Trust. Initiatives Publishers, London, UK.
- Okoth-Ogendo H. W. O. (1999) Land Policy Development in East Africa: A Survey of Recent Trends. A Paper Presented in the " Land Rights and Sustainable Development in Sub-Saharan Africa" Workshop held at Sunnigdale Park Conference Centre, Berkshire England, 16th – 19th February, 1999.
- Republic of Kenya: Sessional paper No. 4 of 1981

on National Food Policy (revised in 1993), Government Printers.

Republic of Kenya: Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth, Government Printers.

Republic of Kenya: Sessional Paper No. 1 of 1992 on Development and Employment in Kenya, Government Printers.

Republic of Kenya Land (Group Representatives) Act Cap 287 of 1968 (revised 1977), Government Printers.

Republic of Kenya: Land Adjudication Act Cap 284 of 1968 (revised 1977), Government Printers.

Republic of Kenya Land Consolidation Act Cap 283 of 1959 (revised 1977), Government Printers.

Republic of Kenya: Government lands Act (Cap 280 of 1970 Revised 1980). Government Printers.

Republic of Kenya: Land Control Act Cap 302 of 1981 (revised 1989), Government Printers.

Republic of Kenya: Land Registration (Special Areas) Act of 1959, Government Printers.

Republic of Kenya: Registration of Documents Act (Cap 285 of 1901, revised 1980), Government Printers.

Republic of Kenya: Registered Land Act Cap 300 of 1963, Government Printers.

Republic of Kenya: Registration of Titles Act Cap 281 of 1920, Government Printers.

Republic of Kenya: The Agricultural Act Cap 318 of 1967, Government Printers.

Republic of Kenya: Environmental Management and Co-ordination Act 1999, Government Printers.

Republic of Kenya: The Land Control Act Cap 302 of 1981 (revised 1989), Government Printers.

Republic of Kenya: The Physical Planning Act Cap 286 of 1996, Government Printers.

Republic of Kenya, 1994-1996: National Development Plan for the period 1994-1996, Government Printers.

Republic of Kenya, 1997-2001: National Development Plan for the period 1997 – 2001, Government Printers.

Republic of Kenya: Economic Survey 2007, Government Printers.

Republic of Kenya 2007: Statistical Abstract 2007, Government Printers.

Syagga, P. M. (2002): Informal Urban Land Management in Kribich, V and Olima W. H. A (Eds) Urban Land Management in Africa. Dortmund (Spring Research Series 40).