



NATIONAL LAND POLICY
THE FORMULATION PROCESS

MINISTRY OF LANDS AND HOUSING

*ISSUES AND
RECOMMENDATIONS REPORT*

NATIONAL LAND POLICY SECRETARIAT

P. O. BOX 45025, NAIROBI

Fax: 2725700

E-mail: info@landpolicy.com

Website: www.landpolicy.or.ke

*ISSUES AND RECOMMENDATIONS REPORT OF THE
NATIONAL LAND POLICY*

CONTENTS

FOREWORD.....	vii
ACKNOWLEDGEMENT.....	ix
EXECUTIVE SUMMARY.....	xi
LIST OF ABBREVIATIONS AND ACRONYMS.....	xiii
PART 1: INTRODUCTION.....	1
1.1 Background.....	1
1.2 Introduction to the National Land Policy Formulation Process.....	1
1.2.1 Inception of the Process.....	1
1.2.2 Vision.....	2
1.2.3 Mission.....	2
1.2.4 Rationale for National Land Policy.....	2
1.2.5 Land Policy Principles.....	2
1.2.6 Guiding Values of the Process.....	3
1.3 Organization Structure for NLPFP.....	3
1.3.1 The Minister.....	3
1.3.2 The Steering Committee:.....	3
1.3.3 Thematic Groups.....	4
1.3.4 Advisory Services.....	4
1.3.5 Coordinating Unit.....	4
1.4 Terms of Reference.....	4
1.4.1 Steering Committee.....	4
1.4.2 Coordinating Unit.....	4
1.4.3 Thematic Groups.....	5
1.4.4 Technical Advisor/ Technical Advisory Council (TAC).....	8
1.5 Thematic Group Activities.....	9
1.6 Regional Workshops.....	9
1.6.1 Regional Workshops Outcome.....	10
1.7 Public Views from Past Initiatives.....	10
PART TWO: LAND ISSUES FRAMEWORK.....	12
2.0 KENYA: COUNTRY BACKGROUND.....	12
2.1 Geographical Features and Ecological Zones.....	12
2.1.1 Population and Human Settlements Pattern.....	13
2.1.2 Land Use and Population Distribution.....	14
2.2 Land in Socio-Economic Development.....	15
2.2.1 Diversity of Land Uses for Economic Development.....	15
2.2.2 The Socio- Cultural Aspects of Land.....	15
2.2.3 Mainstreaming Pastoralism in Economic Development.....	16
2.2.4 The Land Connection to Poverty.....	17
2.2.5 Land Tenure and Unsustainable Natural Resource Management.....	17
2.2.6 Land, Livelihoods, Employment Creation and Incomes Generation.....	17
2.3 Land Question and Justification for Reforms.....	18

2.3.1	<i>Historical Background</i>	18
2.3.2	<i>Objectives of Colonial Land Policies and Laws</i>	18
2.3.3	<i>Importance of the Land Question</i>	20
2.3.4	<i>Legal Basis of the Land Administration System</i>	20
2.3.5	<i>Public Interest Vs Privatization of Public Land through Illegal Allocation</i>	21
2.3.6	<i>Land Policy Reform Justification</i>	21
	3.0 LAND POLICY ISSUES AND RECOMMENDATIONS	23
3.1	RURAL LAND USE, ENVIRONMENT AND INFORMAL SECTOR	23
3.1.1	<i>Sustainable Conservation and Management of Natural Resources</i>	23
3.1.2	<i>Management of Communal and Trust Lands</i>	25
3.1.3	<i>Framework for Land and Resource Use Conflict Management</i>	26
3.1.4	<i>Human Wildlife Conflicts</i>	27
3.1.5	<i>Rural Land Use Planning, Zoning, Settlement and Infrastructure</i>	28
3.1.6	<i>Historical wrongs and injustices</i>	29
3.1.7	<i>Land Tenure in Pastoral Areas and Group Ranches</i>	31
3.1.8	<i>Productive utilisation of rural land</i>	32
3.1.9	<i>Security of Tenure</i>	35
3.1.10	<i>Land Rights Delivery</i>	36
3.1.11	<i>Informal and Spontaneous Settlers on Public and Private Lands</i>	37
3.1.12	<i>Alienation and Use of Public Land</i>	39
3.1.13	<i>Management and Protection of Fragile Ecosystems</i>	40
3.1.14	<i>Land Rights of Hunters and Gatherers</i>	41
3.1.15	<i>Environmental Concerns Around Refugee Camps and Internally Displaced Persons in Kenya</i>	42
3.2	URBAN LAND USE ENVIRONMENT AND INFORMAL SECTOR	44
3.2.1	<i>Urbanization, Governance and Institutional Arrangement</i>	44
3.2.2	<i>Current Arrangements for Urban Land Rights Delivery</i>	45
3.2.3	<i>Contents of Rights and Insecurity of Tenure for Urban Population</i>	46
3.2.4	<i>Urban Land Markets</i>	48
3.2.5	<i>Urban Land Use Planning, Implementation and Control</i>	49
3.2.6	<i>Productive Utilization of Urban Land</i>	51
3.2.7	<i>Informal Sector Activities</i>	52
3.2.8	<i>Urban Agriculture</i>	53
3.2.9	<i>Allocation and use of Public Land</i>	55
3.2.10	<i>Growth of Informal and Spontaneous Settlements</i>	56
3.2.11	<i>Peri-Urban Development and Urban Sprawl</i>	58
3.2.12	<i>Serviced Land for Housing</i>	59
3.2.13	<i>Urban Environmental Concerns</i>	60
3.3	LAND TENURE AND SOCIO-CULTURAL EQUITY	63
3.3.1	<i>Customary Land Tenure Systems</i>	63
3.3.2	<i>Statutory Rights to Natural Resources and their Implications for Customary Tenure</i>	64
3.3.3	<i>Causes and Trends of Rural-Rural, Rural-Urban and Cross-Border Migrations and their Impacts on Land</i>	65

3.3.4 Livelihood Strategies of Forest Dwellers / Hunter-Gatherer Communities, their Access, Use and Control of Land and other Resources...	66
3.3.5 Pastoralists' Livelihood Strategies, Access and Control of Land	67
3.3.6 Historical Injustices against Pastoralists and Hunters and Gatherers.	69
3.3.7 Use Conflicts between Pastoralists and Other Land Users.....	70
3.3.8 Nature, Causes and Impacts of Conflicts over Natural Resources in Kenya	72
3.3.9 Women, Land and Socio-Cultural Equity	73
3.3.10 Perceptions of Communities on Land as Heritage and an Identity	75
3.3.11 Historical Settlement Patterns and Land Claims	76
3.3.12 Impact of HIV/AIDS on Land Rights, Access, Ownership and Use.....	78
3.3.13 Rights of Access and Use of Land and Related Resources for Vulnerable Groups	79
3.4 LAND INFORMATION MANAGEMENT SYSTEMS	81
Background.....	81
The Problem.....	81
Land Policy Recommendations	82
3.4.1 Standards.....	82
3.4.2 Geo-referencing Systems	83
3.4.3 Alternative Land Information Management Systems	83
3.4.4 Requirements for the Establishment of a LIMS.....	83
3.4.5 Impact of Existing Legal Instruments and Institutional Arrangements.	84
3.4.6 Security Issues in LIMS.....	84
3.4.7 Ownership and Intellectual Property Rights as Related to LIMS.....	84
3.4.8 Methods of Land Information Dissemination and Sharing	84
3.4.9 Data and Information Pricing.....	85
3.5 LEGAL FRAMEWORK.....	86
3.5.1 Historical Injustices	86
3.5.2 Security of Tenure.....	88
3.5.3 Statutory Tenure Regimes	89
3.5.4 Customary Land Rights	92
3.5.5 Land Markets	94
3.5.6 Management of Public Land.....	95
3.5.7 Environmental and Natural Resources Management.....	96
3.5.8 Disaster Management.....	99
3.5.10 Land Rights Delivery	100
3.5.11 Compulsory Acquisition	101
3.5.12 Dispute Resolution Mechanisms	102
3.6 INSTITUTIONAL AND FINANCING FRAMEWORK.....	103
Background.....	103
Problem Statement.....	103
3.6.1 Devolution of Power and Authority	104
3.6.2 Community / Stakeholder Participation and Representation.....	104
3.6.3 Operational Efficiency and Resource Autonomy.....	104
3.6.4 Performance Monitoring Systems	104
3.6.5 Redress of Injustices, Inequity and Gender Imbalances.....	105

3.6.6 <i>Ecological Balance / Long-term Sustainability</i>	105
3.6.7 <i>Smooth Transition from MoLH to the New Organizations</i>	105
3.6.8 <i>Expansion of Knowledge on Land Matters</i>	105
3.6.9 <i>Proposed Change to the Organizational Structure</i>	105
4.0 CONCLUSION	113
ANNEX 1: INSTITUTIONAL FUNCTIONS	114
Agency: The National Land Commission	114
Agency: Community Land Boards.....	117
Agency: District Land Boards	118
ANNEX 2: LIST OF STATUTES.....	119
ANNEX 3: LIST OF GOK PUBLICATIONS AND REPORTS	121
ANNEX 4: LIST OF LAND POLICIES/REPORTS/INTERNATIONAL CONVENTIONS	122
ANNEX 5: INTERNATIONAL INSTRUMENTS ON EQUAL RIGHTS OF MEN AND WOMEN WHICH AFFECT LAND & PROPERTY OWNERSHIP.....	123
ANNEX 6: GLOSSARY OF TERMINOLOGIES USED IN THE REPORT	124
ANNEX 7: LIST OF THEMATIC GROUP PARTICIPANTS.....	132

FOREWORD

The Draft Issues and Recommendations Report marks the second critical milestone in the National Land Policy Formulation Process after the completion of the Integrated Inception Report. The Report presents an outline of topical issues, problems that underline the identified issues and preferred policy recommendations. It is a product of the many concerted efforts and initiatives undertaken over time by different individuals and organizations both in public and private sectors, civil society and community based organizations.

The Report is based on views and expert opinions collected and collated through a structured all inclusive and consultative process that brought together participants drawn from stakeholder organizations involved in the process. The broad based process of consultations was carried out around six Thematic Groups and regional workshops as the nuclei of stakeholder engagement and consensus building. The various sectoral policies and strategic plans that have been developed by other Government Ministries and agencies were widely consulted to ensure that the ensuing land policy recommendations are relevant and roundly consistent with other policy standpoints.

In a large measure, the Report has also benefited a great deal from the Report of the Commission of Inquiry into the Land Law System of Kenya (Njonjo), Report of the Constitution of Kenya Review Commission, the Report of the Proceedings of the National Civil Society Conference on Land Reform and the Land Question and the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u). Further, the preparation of the Report has been informed by the various key Government policy standpoints as expressed in the Poverty Reduction Strategy Paper, the National Environmental Management and Coordination Policy, the Economic Recovery Strategy Paper for Wealth and Employment Creation and the 9th National Development Plan.

The principle objective of preparing this Report is to present the documentation of issues and policy recommendations that have been commonly identified, analyzed and agreed upon by the stakeholders. It is a hall mark of the rare sense of dialogue and collaboration between the Government and the citizenry in tackling, arguably, the most emotive and culturally sensitive issue in Kenya. In this respect therefore, it forms the foundation upon which the actual policy formulation is to be built.

As we release this Report to the stakeholders and the wider public, we take cognizance of the fact that the development of a policy on such an issue as land is a process rather than an event. Its mere completion does not mark an end in itself. Rather, it is expected to stimulate sustained public debate to inform the process further and therefore enhance consensus building. It is my expectation that our stakeholders will find time to objectively analyze the Report and give their responses to the National Land Policy Formulation Process Secretariat within the framework of the vision, mission, objectives, values and principles that guide the process as outlined in the Concept Paper.

I invite all Kenyans and development partners to make their contributions in ensuring that we succeed in formulating a National Land Policy that will make it possible to attain the beneficial, equitable and sustainable use of land as an anchor for our country's development.

It is my hope that since most of the issues that underlie Land Policy Formulation have been identified, clarified and consensus built on suitable policy recommendations, the Process will now proceed with expedition and confidence to the next stage of drafting the actual Land Policy Document.

A handwritten signature in black ink, appearing to read 'Amos M. Kimunya', written in a cursive style.

**HON. AMOS M. KIMUNYA, E.G.H., M.P.
MINISTER FOR LANDS AND HOUSING
AUGUST, 2005**

ACKNOWLEDGEMENT

The completion of this Report is a culmination of a long but fruitful process of research and consultations amongst individuals and organizations from all walks of life. This report marks one of the critical milestones of the process after the Integrated Inception Report by the Thematic Groups. It is a product of the concerted efforts by many people who have worked together from the public and private sectors, communities and civil society organizations to which we owe a lot of gratitude.

First and foremost, we would like to express our gratitude to the Government of Kenya through the Ministry of Lands and Housing whose decision to initiate the Process and provide it with the enabling environment to progress this far has given Kenyans fresh impetus to tackle the land question. In particular, we thank Hon. Amos M. Kimunya, the Minister for Lands and Housing and Mr. Kiriinya Mukira, Permanent Secretary under whose guidance the process was initiated, and Eng. E. K. Mwongera, Permanent Secretary whose exemplary commitment and support has greatly motivated all participants in the process.

Besides, the active role the individual members of the Steering Committee have played in giving the Process executive policy direction is highly appreciated.

The realization of the vision and goals of this Process as an all inclusive, consultative, participatory and transparent exercise would not have been possible without the commitment and enthusiasm by various individuals and organizations.

We extend our sincere thanks to the esteemed individuals whose performance as members of the six Thematic Groups has greatly contributed to the success of the Process. In this regard, we would like to thank the many Government Ministries/Departments, Regional Development Authorities, Local Authorities, State Corporations and Public Universities for their keen involvement. From the private sector and civil society organizations, we record our sincere gratitude for the contributions made by the Kenya Land Alliance affiliated groups, the Law Society of Kenya, Institute of Surveyors of Kenya, Institute of Engineers of Kenya, Kenya Institute of Planners, Architectural Association of Kenya, Kenya Association of Agricultural Professionals and the Institute of Certified Public Accountants of Kenya.

The Process has greatly benefited from the wisdom and technical knowledge of a few experts who deserve special mention. In this regard we do recognize the enormous contribution to the success of the Process by our Technical Advisors, starting with Mr. Martin Adams during the formative stages, and Prof. H. W. O. Okoth-Ogendo, Prof. Paul M. Syagga and Dr. Naomi Kipuri, who are currently guiding the Process.

Equally, we acknowledge the invaluable guidance the Thematic Groups have benefited from the team of Resource Persons viz Prof. Washington Olima, Dr. Galcano Mulaku, Mr. Bosire Ogero, Dr. Patricia Kameri-Mbote, Mr. Simon M. Macharia and Dr. Migai Aketch.

In terms of resource mobilization, we do acknowledge with gratitude the material and financial support the Process has received from the Land Sector Development Partners, notably the DFID, USAID, SIDA, DCI and UN-HABITAT. The generous contribution made by the African Wildlife Foundation in funding field trips to human-wildlife conflict prone areas is also acknowledged with gratitude.

We do register our profound gratitude to the Chairpersons of the six Thematic Groups for ably leading the groups and ensuring that the expected outputs are realized within the set timelines. In this regard the special mention is made of Prof. Saad Yahya, Mr. Ambrose D. O. Rachier, Dr. Akinyi Nzioki, Dr. Wilbur Ottichilo, Mr. Eric K. Makokha and Mr. Gathiru Kimaru.

Last but not least, our sincere gratitude go to the Secretariat staff whose rare dedication and single mindedness has given the NLFPF the bedrock upon which the Process has progressed. Ms Rosemary Wachira, the National Coordinator and her team of Rapporteurs and administrative staff deserve special mention. There are many others whose names may not be mentioned individually, but we are still profoundly grateful to them for their contribution to the Process.

EXECUTIVE SUMMARY

The initiative to formulate a National Land Policy for Kenya is the first attempt to address the land question holistically. Past attempts to address the land question have always been largely sectoral in focus, incremental in objectives and problem specific. The net effect of such attempts has been the noted failure to mount the requisite land reforms. Against this background, the Policy Formulation Process has proceeded along the principles that relate to various concerns and issues that underlie the land question. These principles, and the issues that underlie them, have been summarized generally as:

- (i) access to land
- (ii) land ownership
- (iii) control of land
- (iv) land use
- (v) management of land and
- (vi) land markets.

As outlined in the Concept Paper, the Formulation Process was carried out in a well thought out consultative, inclusive and participative manner within the meaning and spirit of the land policy principles and guiding values that were determined by the stakeholders.

This report marks the accomplishment of the first two major milestones for the process as an engagement since its commencement. The report presents the various land issues that were identified by the six Thematic Groups and for each issue identified, suitable recommendations suggested for policy formulation. For purposes of clarity and consistency, the presentation of the issues and recommendations has followed a simple format patterned on background, problem statement and policy recommendations for each one of the issues identified.

The Report is organized into three parts covering the following areas:

Part 1: Introduction

- Introduction to the process
- Terms of Reference
- Thematic Group activities
- Collection of views from the public in the past initiatives viz the Njonjo Commission, the Constitution of Kenya Review commission and the Ndungu Commission
- Visits to the Regions by the Thematic Groups

Part 2: Land Issues Framework

- Country background
- Population and human settlement
- Land in social and economic development
- The land question

Part 3: Land Policy Issues and Recommendations

- Rural Land Use, Environment and Informal Sector
- Urban Land Use, Environment and Informal Sector
- Land Tenure and Socio-Cultural Equity
- Land Information Management Systems
- Legal Framework
- Institutional and Financing Framework for Implementation

The presentation of land policy issues and recommendations under part three of the Report has succinctly covered the salient aspects of the land question as seen from the perspectives of:

- The need for an effective and coherent framework for the ownership and administration of land;
- The need for an efficient and equitable land tenure system;
- The need for an efficient and beneficial framework for management and use of land and land based resources;
- The need to develop a simple, harmonized and cost effective legal regime;
- The need to put in place reliable and efficient mechanisms and framework for dispute resolution;
- The need to develop a functional land information management system;
- The need to develop mechanisms that ensures security of tenure and the right of access to land by women and underprivileged groups;
- The need for mechanisms for sound conservation and sustainable exploitation of the environment and natural resources, and
- The need to develop mechanisms for sustainable implementation of the policy through the creation of sound institutional and financing framework.

The policy recommendations proposed throughout the Report are all geared towards creating a National Land Policy that meets the criteria of equity, efficiency, consistency and general compliance with the constitutional, legal, national economic policy framework, socio-cultural and international/regional geo-political dynamics.

LIST OF ABBREVIATIONS AND ACRONYMS

ADC: Agricultural Development Corporation

AFREF: African Reference Frame

ASALs: Arid and Semi-Arid Lands

CKRC: Constitution of Kenya Review Commission

CLA: Community Land Act

CLB: Community Land Board

CLTs: Community Land Tribunals

DCI: Development Cooperation of Ireland

DLT: District Land Tribunals

DFID: Department for International Development

DLB: District Land Board

DRM: Dispute Resolution Mechanisms

DTM: Digital Terrain Model

ECK: Electoral Commission of Kenya

EMCA: Environmental Management and Coordination Act

FGDC: Federal Geographic Data Committee (of US Geological Survey)

GDP: Gross Domestic Product

GIS: Geographical Information Systems

GPS: Global Positioning Systems

HG: Hunter /Gatherer (Communities)

ISO/TC: International Organisation for Standardization/Technical Committee

ITRF: International Terrestrial Reference Frame

LAM: Land Administration and Management

LAs: Local Authorities

LDRB: Land Disputes Resolution Board

LIMS: Land Information Management System

LPRC: Land Policy Research Centre

LRMU: Land Reform Management Unit

LTTs: Land Titles Tribunals

MoLH: Ministry of Lands and Housing

NARC: National Rainbow Coalition
NLC: National Land Commission
NLP: National Land Policy
NLPFP: National Land Policy Formulation Process
NLTF: National Land Trust Fund
NSDI: National Spatial Data Infrastructure
NWTF: National Water Trust Fund
OGC: Open GeoSpatial Consortium
PAS: Protected Area Systems
PRSP: Poverty Reduction Strategy Paper
SIDA: Swedish International Development Agency
USAID: United States Agency for International Development

PART 1: INTRODUCTION

1.1 Background

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 recognized by various Government initiatives including the initial *Poverty Reduction Strategy Programme* (PRSP), the NARC Manifesto and the subsequent *Economic Recovery Strategy for Wealth and Employment Creation Programme – 2003-2007*. Land was a key reason for the struggle for independence and Land issues remain politically sensitive and culturally complex.

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 an outdated legal framework and there is no comprehensive strategy to manage emerging informal urban settlements.

The resolution of land administration and management problems is a critical requirement for sustainable economic recovery and growth. It is also vital for minimizing conflicts and tensions between and among various communities and for contributing to national unity in diversity. Recognizing the serious problems facing land administration and management and the contribution that effective land administration can make to the economic development process, the Government appointed a commission of inquiry into existing land law and tenure systems (the 'Njonjo Commission') with a view to making recommendations to improve land administration and management, the report of which was published in November 2002. One of its main recommendations was the need to formulate a national land policy.

1.2 Introduction to the National Land Policy Formulation Process

1.2.1 Inception of the Process

The National Land Policy Formulation Process (NLFPF) was launched at the Stakeholders' Workshop held at the Kenya School of Monetary Studies (KSMS) on 10th – 11th February, 2004. The participants were drawn from public and private sectors and civil society. An important outcome of this workshop was the consensus on and production of the Concept Paper to guide the NLFPF. Thematic groups based on six broad themes were also formed. These themes were:

- 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.

An inception workshop was held on 4th – 6th August, 2004 at which all the six Thematic Groups developed their individual reports out of which an integrated inception report was compiled. In the inception report, key issues in respect of each theme were identified.

1.2.2 Vision

The vision of the National Land Policy Process is to develop **“A National Land Policy that will guide the country towards a sustainable and equitable use of land”**

1.2.3 Mission

It is the mission of the Land Policy formulation process to **“Conduct an all inclusive and participatory process that ensures positive land reforms through land accessibility and beneficial use of land”**

1.2.4 Rationale for National Land Policy

Kenya does not have a clearly defined or codified National Land Policy hence important issues related to land have not been adequately addressed. These include:

- Land administration;
- Access to land;
- Land use planning;
- Restitution for historical injustices;
- The institutional framework;
- Land information management system;
- Environmental concerns;
- Conflict/dispute resolution;
- Outdated legal framework; and
- Unplanned proliferation of informal urban settlements.

1.2.5 Land Policy Principles

Land Policy Principles address the essential values, which the society seeks to promote or preserve. The principles have been drawn from the deliberations of the CKRC, the report on the Commission of Inquiry into the Land Law System in Kenya (the ‘Njonjo Commission’) and the proceedings of the National Civil Society Conference on Land Reform and the Land Question.

The various concerns that relate to the land reform process include among others:-

- Access to land;
- Land ownership;
- Control of land;
- Land use;
- Management of land; and
- Land markets.

1.2.6 Guiding Values of the Process

In view of the emotive nature of the land question in Kenya, the national land policy formulation process was guided by the following values:

- Consultative;
- Participatory;
- Interactive;
- Inclusive;
- Consensus building;
- Timely and professional;
- Transparent;
- Gender sensitive; and
- Innovative.

1.3 Organization Structure for NLPFP

The National Land Policy Formulation Process had a three tier management structure namely: the Minister, the Steering Committee, and the Thematic Groups.

1.3.1 The Minister

The Minister for Lands and Housing, being responsible to Parliament for the overall formulation of the National Land Policy, oversaw the process and is responsible for the final drafting of the policy for submission to Parliament.

1.3.2 The Steering Committee:

The National Land Policy Steering Committee consisted of the Permanent Secretaries of the line Ministries, Chairpersons of the six Thematic Groups, who are all from the Civil Society and the private sector, the Departmental Heads within the Ministry of Lands and Housing, the National Coordinator and the Technical Advisory Council. The Committee was chaired by the Permanent Secretary of the Ministry of Lands and Housing and was mandated to set the goals and guidelines for the process and to ensure that the process was linked to national and other sectoral policies.

1.3.3 Thematic Groups

Land policy issues were grouped into six broad themes, each of which was reviewed and analysed by a Thematic Group. Each group was made up of state and non-state actors from the public sector, private sector, the civil society and the communities. The groups are as follows:

- 1) Rural Land use, Environment and Informal Sector
- 2) Urban Land use, Environment and Informal Sector
- 3) Land Tenure and Social Cultural Equity
- 4) The Legal Framework
- 5) Land Information Management System
- 6) Institutional and Financing Framework for Implementation

1.3.4 Advisory Services

The technical advisory services were initially provided by a technical advisor and later by a Technical Advisory Council (TAC) comprising of three experts on land issues. In addition, there were resource persons attached to each thematic group to provide technical input to the process.

1.3.5 Coordinating Unit

A coordinating unit, headed by the National Coordinator, formed the link between the Steering Committee and the Thematic Groups. It also provided technical and administrative services to the other operational levels.

1.4 Terms of Reference

Each operational level had specific terms of reference as follows:

1.4.1 Steering Committee

- Direct, facilitate and oversee the NLP process
- Advise on the preparation of the Cabinet Paper on NLP
- Guide on publicity and sensitization of the citizens on NLP
- Ensure NLP is linked to national and other sectoral policies
- Participate in all the National Forum on NLP
- Oversee the management of the available resources for the process

1.4.2 Coordinating Unit

- ◆ Provide the linkages between and amongst the working committees within the NLP process
- ◆ Provide technical and administrative leadership to the NLP process
- ◆ Be responsible to the steering committee for effective and timely performance of tasks in the NLP process
- ◆ Ensure that required facilities, equipment and other logistics are availed in time

- ◆ In consultation with the Thematic Groups draw and ensure TOR on research topics are met
- ◆ Source and acquire relevant data and material to facilitate the operations of the Thematic Group
- ◆ Provide secretariat to the entire NLP process
- ◆ Ensure all records of NLP process are accurate and easily retrievable

1.4.3 Thematic Groups

1.4.3.1 Rural Land Use, Environment and Informal Sector

- Review sectoral policies of land and identify policies related to land and environment
- Review and analyze the impact of subdivision in rural areas (e.g. ADC firms, research land, group ranches and cooperative farms) and recommend solution for posterity
- Review existing land use practices towards sustainable land management (use, care and improvement)
- Identify and analyze areas of land use conflicts for enhanced and optimum land utilizations
- Develop the best approaches to integrated rural development and review threats to stability and resilience of land as an environmental resource
- Review the national environment plan in relation to land
- Review land use guidelines for sensitive fragile areas and ecosystems
- Review guidelines for management and use of water bodies, underground water sources, ASAL areas and wetlands
- Review guidelines for management and use of mineral resources
- Identify and operationalize effective ways of knowledge dissemination to the community
- Identify areas for research and preparation of reports
- Review existing rural land ownership and recommend on the best way forward
- Address the issue of landlessness
- Review ownership and access to conservation areas
- Develop guidelines on development and management of coastal sea/land interface.
- Identify areas for research and preparation of topical papers by line stakeholders
- Address water and soil degradation and conservation issues
- Address the problem of human /wildlife conflict (imbalanced eco systems)
- Develop recommendations for the issues identified.

1.4.3.2 Urban Land Use, Environment and Informal Sector

- Identify the principles and values that should guide the urban land use and environmental management
- Identify and review all sectoral policies that relate to urban land use and environmental management
- Re-examine the current principles and practices and their impact on the development of our towns for purposes of effective urban management and practice
- Review the existing land and property taxation regimes for optimum utilization of land
- Review the existing land valuation system and give appropriate recommendations.
- Examine how re-zoning can be linked to land development values and charges/principles
- Review existing land markets to ensure a favourable climate for investment and equity in land accessibility by all.
- Develop guidelines for provision of secure tenure.
- Develop guidelines and standards for upgrading of informal settlements
- Review waste and water management guidelines, practices and development of environmentally fragile areas in urban areas with a view to enhancing sustainable land use.
- Establish urban and peri-urban agriculture/ forestry as a productive and essential component of sustainable urban areas
- Identify areas for research and preparation of topical papers by line stakeholders
- Develop guidelines for development of urban agriculture /forestry with a view of enhancing food security and conservation
- Develop recommendations for the issues identified.

1.4.3.3 Land Tenure and Socio Cultural Equity

- Examine the existing customary rights.
- Develop guidelines on joint ownership and proprietorship in common.
- Address rural/urban and rural –rural migration.
- Address attachment to land (“land complex syndrome”).
- Address land productivity in Kenya.
- Address impact of AIDS pandemic on property rights.
- Review social injustices, historical injustices and human rights on land (including the modern land law)
- Examine the impact of social/cultural factors on land holding and productivity.
- Identify areas for research and preparation of topical papers by line stakeholders.
- Develop recommendations for the issues identified.

1.4.3.4 Land Information Management System

- Examine and review the current management of land information
- Examine and review the current state of technology in acquisition, processing and dissemination of land based information
- Develop appropriate structures and formats of managing land based information
- Examine and review the existing intellectual property rights in relation to land information
- Develop appropriate guidelines on land information system
- Identify areas for research and preparation of topical papers by line stakeholders
- Develop recommendations for the issues identified.

1.4.3.5 Legal Framework

- Analyse the materials/reports of the Njonjo, CKRC and Ndungu Commissions.
- Review existing land laws and sectoral policies for the purpose of rationalization and consolidation: -
- Review current land delivery systems for purposes of transparency and public participation and recommend appropriate changes on the following issues: -
 - ◆ Compulsory acquisition.
 - ◆ Informal sales of land in slum areas.
 - ◆ Allocation
 - ◆ Development control
 - ◆ Registration
 - ◆ Valuation
 - ◆ Physical planning
 - ◆ Land surveying
 - ◆ Land adjudication
 - ◆ Settlement of landless
 - ◆ Access to land records
 - ◆ Security of land records
 - ◆ Land control
 - ◆ Customary law on land rights
- Examine and recommend faster conversion of title registration into RLA
- Examine land ownership rights and equity in land access.
- Examine the existing land tenure systems and their impact on natural justice and injustices
- Examine causes of current land disputes and advice on appropriate remedies
- Identify areas for research and preparation of topical papers by line stakeholders.
- Examine current constraints to investments on land and fixed property.

- Develop recommendations for the issues identified.

1.4.3.6 Institutional and Financing Framework for Implementation

- Review proposed institutional framework proposals (Njonjo, CKRC, etc).
- Develop institutional framework for implementation of National Land Policy.
- Develop budgetary allocation criteria
- Develop monitoring and evaluation mechanisms.
- Develop public awareness guidelines and tools for the proposed framework.
- Develop framework for capacity building for all the actors for the implementation of National Land Policy
- Identify areas for research and preparation of topical papers by line stakeholders
- Develop recommendations for the issues identified.

1.4.4 Technical Advisor/ Technical Advisory Council (TAC)

- Be responsible, with the Land Policy Formulation Process Project Coordinator, to the Steering Committee, for the technical direction and co-ordination of the land policy formulation process up to completion of the policy document
- Provide technical advice to both the Steering Committee and the Project Secretariat on all issues pertaining to the process
- Ensure that the process pays due attention to cross cutting issues of poverty reduction, HIV/AIDS and gender
- Assist the Coordinator to ensure the effective supervision and co-ordination of the Thematic Groups and other experts involved in the process
- Assist the Coordinator, to ensure the effective and timely completion of all project activities and performance of all groups and persons involved in the process
- Facilitate disbursement of funds provided by DFID and other donors in support of the land policy formulation process in close collaboration with the MoLH Coordinator, and according to the systems and procedures established by MoLH with interested parties. It is envisaged that such funds would be required for procurement of research and consultancy inputs, workshops, public awareness, and best practice
- With the coordinator, establish and manage a draw down facility for accessing and procuring national and international expertise to support the land policy process
- Co-ordinate the Thematic Groups in conjunction with the MoLH appointed Coordinator in the identification of areas requiring specialized research, timing and preparation of research reports
- Assist the MoLH appointed Coordinator, in ensuring that drawing up of terms of reference, identification, and supervision of researchers required

for identified areas is carried out in timely fashion and that high quality inputs are delivered

- Assist the Coordinator in drawing up a strategy to strengthen human resource development within the MoLH in relation to the land policy process

1.5 Thematic Group Activities

Land policy issues covered six themes that were assigned to Thematic Groups. The six Thematic Groups, under the direction of their chairpersons, were empowered to undertake the following: -

- Identify issues related to their theme about which policy recommendations needed to be made;
- Produce research/ topical issues papers on each issue identified;
- Facilitate and participate in thematic group meetings, joint group workshops and regional workshops and institutional visits;
- Integrate the issue papers into one issues and recommendation report taking into account inputs from workshops and institutional visits.

1.6 Regional Workshops

Workshops were organized in all the eight provinces in the country to collect views from selected stakeholders who represented various interest groups. They included members of the provincial administration, heads of government departments, mayors, town clerks, chairpersons of urban and county councils, civic offices and representatives of various organizations and community based groups.

The main objective of the workshops was to sensitize the stakeholders on the process and accord them an opportunity to participate in the identification of policy gaps in the past initiatives, and to highlight new and emerging critical issues that ought to be addressed in the formulation of a National Land Policy. The stakeholders were reminded that as they deliberated and discussed the regional and local issues that concern them, they should appreciate the fact that their suggestions and recommendations must bear in mind the overall national goals and framework.

In total there were 14 regional workshops. The following were the venues and dates of the workshops:

1. Rift Valley Province

- Nakuru 14-15th March 2005
- Eldoret 17-18th March 2005
- Kitale 21-22nd March 2005

2. Central Province

- Nyeri 14-15th March 2005

3. Eastern Province

- Embu 14-15th March 2005
- Machakos 17-18th March 2005
- Isiolo 17-18th March 2005

4. Nyanza Province

- Kisumu 14-15th March 2005
- Kisii 17-18th March 2005

5. Western Province

- Kakamega 21- 22nd March 2005

6. Coast Province

- Malindi 14-15th March 2005
- Mombasa 17-18th March 2005

7. North Eastern

- Garisaa 14-15th March 2005

8. Nairobi Province

- Kenya School of Monetary Studies 10-11th May 2005

1.6.1 Regional Workshops Outcome

The identified issues and respective recommendations from the regional workshops provided an input into the integrated issues and recommendations report which forms the basis for the writing of the National Land Policy document.

1.7 Public Views from Past Initiatives

Since the colonial times to-date, land has been the subject of many commissions of inquiry and public debate. In the recent past, the land issues have been addressed in the following:

- The Presidential Commission of Inquiry into the Land Law System of Kenya, popularly known as the Njonjo Commission.
- The Constitution of Kenya Review Commission (CKRC).
- The Presidential Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, popularly referred to as the Ndungu Report.

In all these, there was vibrant participation of members of the public and other interested actors. The discussions and debates concluded that the land question in Kenya is defined by a number of parameters namely:

- The centrality of land in the economy;

- The political sensitivity of land (historical/pre-independence dimensions, and post-independence perspectives);
- The socio and cultural complexity/dynamism of the land question (emotive and strong attachment to land/community land relations/social complex relationships between people). and
- The overall governance framework in which land issues are handled including legal and institutional as well as administrative procedures.

In all the reports, land is recognized as being Kenya's primary resource and the basis of livelihood for the people. It should therefore be held, used/developed and managed in a manner which is equitable, efficient, productive and sustainable. It has been pointed out that the management of land is of crucial importance to the political stability, social cohesion, economic development, poverty reduction, and good governance of this nation.

PART TWO: LAND ISSUES FRAMEWORK

2.0 KENYA: COUNTRY BACKGROUND

2.1 Geographical Features and Ecological Zones

The Republic of Kenya has an area of approximately 582,646 sq. km. comprising 97.8% land and 2.2% water surface (National Atlas, 2004). Only 20% of the land area can be classified as medium to high potential land and the rest of the land is mainly arid or semi-arid. Forests and woodlands occupy about 37,000 sq. km. (6.35%). Some of these form part of national reserves and game parks which together account for 10% of the country's area.

Topographically, the country may be divided into four distinct geographical and ecological regions or zones with different patterns of land use, namely; the coastal plain, the arid low plateau, the highlands, and the Lake Victoria basin. The rainfall patterns are extremely varied but generally follow those regions, with the Lake Victoria basin receiving the heaviest and most consistent rainfall. The different ecological / climatic zones and their general land uses are briefly discussed below:

- The tropical marine coastal climates with the ocean, forested islands and sandy beaches that are ideal for deep sea fishing, prawn farming, horticulture and tourism. The inland lakes basins provide similar opportunities for subsistence and commercial fishing, irrigation, transport, communication, water sports and tourism;
- The wild and expansive savannah grasslands that host a rich diversity of flora and fauna providing scope for traditional livestock rearing by pastoral communities and safari adventure for tourists;
- The rolling countryside interspersed by small hills with deep volcanic soils that support crop and animal production using seasonal rains and micro irrigation along the major river basins. This zone hosts low to medium density human settlements with 50-300 people per sq. km;
- The highlands around the mountains with rich agricultural land that support food production by large and small scale farmers mainly using the rain fed system of agriculture. This zone hosts the largest concentration of human settlements with densities ranging between 300-800 persons per sq. km;
- The mountainous parts of the highlands with equatorial type of forests hosting the remaining forest cover which provides the only water catchments for the East Africa region and wildlife sanctuaries and, therefore suitable for conservation. They were out of bounds for human activity until recently, but have now been seriously encroached by small scale farmers resulting in wanton destruction of forest cover (Ndungu Commission Report, 2004);

- The temperate mountain tops mostly covered by tundra type vegetation and snowy weather around the year that are very attractive to mountain climbers and tourists looking for outdoor adventure and are also suitable for conservation; and
- The arid and semi-arid lands that cover more than sixty percent of the country's land mass where nomadic communities practice pastoralism raising over fifty percent (50%) of the livestock in the country and hosting a considerable proportion of the country's wildlife. The scarcity of water in these areas has a security aspect as people and animals compete for access to it and very often conflicts arise (Njonjo Commission Report, 2002).

2.1.1 Population and Human Settlements Pattern

Kenya's population is now estimated at approximately 30.4 million at an overall growth rate of 2.4% (Population Census Report, 1999). At this rate of growth the population is expected to rise to 55 million by 2050. In the 1999 Census, the North-Eastern Province registered tremendous growth due to the under-enumeration which was experienced in the 1989 census and the refugee influx from neighbouring countries. Rates of growth declined in all other Provinces. In terms of demographic characteristics, the population remains relatively young with 60% being below the age of 18 years, and over 51% being female (National Development Plan 2002-08).

The decline in population growth rates in the last ten years was the result of both increased mortality and a steady decline in total fertility levels. Mortality levels remain high as a result of the persistence of tropical diseases such as malaria and nutrition deficiency, as well as poverty related causes including widespread food shortages in major parts of the country.

More recently, the rapid spread of HIV/Aids has accelerated mortality levels in both urban and rural areas. Estimates in the National Development Plan (2002-08) indicate that HIV/AIDS prevalence in most parts of the country now stands at about 16% of the adult population (NDP *ibid*). This has led to reduction of gains achieved earlier in health standards, life expectancy, mortality and child survival. It has also increased the dependency ratio and put the traditional care structures under strain in most parts of the country. Although considerable progress has been achieved in controlling this pandemic, mortality due to HIV/AIDS is yet to peak. The HIV/AIDS pandemic has significant impacts on total economic productivity and specifically on land utilization and production from land based resources as it has tended to affect mostly the most productive age bracket. The total cost of HIV/AIDS to the country was projected to grow from KShs. 2 billion in year 2000 to KShs. 5.5 billion in 2005.

2.1.2 Land Use and Population Distribution

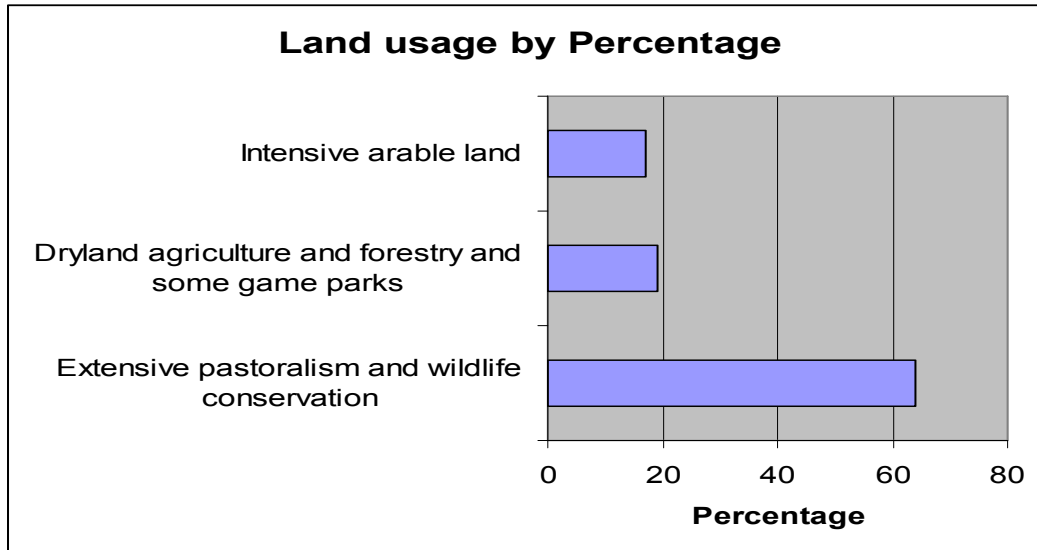
Approximately seventy five per cent (75%) of the country's population lives within the medium to high potential (20% of land area) and the rest in the vast Arid and Semi-Arid Lands (ASALs). One consequence of this is that size and distribution of land varies quite widely as does population density which ranges from as low as 2 persons per sq. km. in the ASALs to a high of over 2000 in parts of Kisii, Vihiga, Kiambu and the Eastern slopes of Mount Kenya. The rural-urban balance stands at 78% and 22% respectively with the most rapid urban growth centres still confined to Nairobi, Mombasa, Kisumu, Nakuru, Eldoret, Kakamega and their satellite extensions. According to the 1999 census, the overall growth rate of Kenya's urban population now stands at 6% implying a very rapid rural-urban migration pattern. This is further reflected in the country's poverty statistics which indicate that absolute poverty in the rural and urban areas now stands at 50.1% and 53.1% of the population respectively.

In the rural areas, the high to medium potential zones are dominated by millions of small farm holdings (3.5 million). In some cases, insecure land-tenure systems have led to low investment in land improvement and productivity. Many smallholder areas are suffering continuous fragmentation of holdings into uneconomic sizes, and farms are getting smaller in the high rainfall areas and in the drier zones. In addition, many large farms that used to produce seed and breeding stock have been sub-divided and transferred from state to private ownership. The current Development Plan (2002-2008) has proposed the formulation of a National Land Use Policy that would facilitate the preparation and implementation of land use plans for all urban and rural areas.

Population Distribution and Density

Province	Population	Land Area (Sq.km)	Density (Person per Sq.km)
Nairobi	2,143,254	696	3,079
Central Province	3,724,159	13,220	282
Coast	2,487,264	82,816	30
Eastern Province	4,631,779	153,473	30
North-Eastern Province	962,143	128,124	8
Nyanza	4,392,196	12,547	350
Rift Valley Province	6,987,036	182,539	38
Western Province	3,358,776	8,264	406
KENYA	28,686,607	581,676	49

Source: Population Census Report, 1999



Source: Compiled from National Atlas, 2004

2.2 Land in Socio-Economic Development

2.2.1 Diversity of Land Uses for Economic Development

The link between culture and environment is clear among indigenous people. They share a spiritual, cultural, social and economic relationship with their traditional lands. Access to and control over land resources has frequently determined their socio-political structures. Traditional laws, customs and practices reflect both an attachment to land and responsibility for preserving traditional lands for use by future generations. Land is perceived as a means of livelihood which can be seen from the perspective that property rights can operate as a social support, bringing with them security, confidence, incentives, group and status identity. Therefore the physical and cultural survival of indigenous people is dependent upon the protection of their land and related resources.

Land is at the centre of the social, cultural and economic life of the various communities that constitute the Kenyan society. It provides a means of livelihood for the communities that have settled in the various zones over the years as commercial / subsistence farmers, ranchers, traditional herders and fishing communities, hunters and gatherers, miners, loggers and wildlife conservationists. Kenya has nearly all tropical ecological zones and they have been put to different uses and have potential for development into even more diverse uses to support the welfare of the people.

2.2.2 The Socio- Cultural Aspects of Land

All the ecological zones provide a means of livelihood for the communities that have settled there over the years. Communities have attachment to the land which they consider to be a cultural inheritance from previous generations and

they tend to be highly protective of their spatial jurisdictions from potential migrants. The spiritual life of the different communities is closely connected to land and local geological formations such as mountains, hills, valleys, forests and caves have traditionally been used as religious shrines, burial grounds and places of worship. The Njonjo Commission Report cited one of the fundamental aspects regarding the African and the sociology of land in human relations, which is worth quoting:

“For indigenous Kenyans, land has an important spiritual value, for it is not merely a factor of production; it is first and foremost the medium which defines and binds together social and spiritual relations within and across generations. Land belongs to a vast family of which many are dead, few are living and countless members are still unborn” (Njonjo Commission Report 2002:19).

The physical and cultural survival of indigenous people is dependent upon the protection of their land and its resources. However, the relationship between the indigenous people and their environment has been eroded because of dispossession or forced removal from traditional lands and sacred sites. Land rights, land use and resource management remain critical issues for indigenous peoples around the world. Development projects, mining, forestry activities and agricultural programmes continue to displace indigenous people.

Modern approaches on land use and management as evidenced in government policy interventions have challenged or contradicted the traditional perception to land resulting in many obstacles in policy and project implementation. Land privatization while positive in its intentions, affects the concept of shared access to land, interferes with people’s livelihoods and introduces competition on already scarce resources. The Constitution provides for freedom of movement but this can result in “invasion and encroachment by intruders” to land which is attached to another community resulting in conflicts. Introduction of projects and implementation of policies without local peoples’ consultation may result in conflicts with their perceptions of land, tenure structures and land use, leading to low productivity, destruction of biodiversity, sacred and historical sites. On the other hand, disaster management is usually hindered by strong attachment to land especially in relocation proposals while land planning and development are subject to traditional perceptions that each person must own a piece of land.

2.2.3 Mainstreaming Pastoralism in Economic Development

Commercial farming, small scale subsistence agriculture and large-scale ranches have enjoyed the benefits of sustained land use planning and support by the State through extension services, market outlets and access to credit by financial institutions. This has not been the case for livestock development by pastoral communities which has not been recognised as an economic activity.

This area is currently commanding a lot of public interest due to the challenges facing these communities during times of drought and the vulnerability of these communities to poverty and food insecurity (PRSP, 2001).

2.2.4 The Land Connection to Poverty

Among the ten main causes of poverty in Kenya that were identified in the PRSP, nearly half of them had direct linkage with land issues. Low productivity in crop farming and livestock farming, lack of access to land, rural unemployment, general insecurity couched in ethnic animosity, inadequate access to infrastructure and social services, gender imbalance and the high incidence of HIV/AIDS were identified as direct causes of poverty (PSRP 2001:21).

Poor land tenure systems have been associated with the poor access to land by a large proportion of the population that would wish to make use of land to support their livelihoods. It has been observed that forty per cent (40%) of the large scale farms in the high potential areas are not being optimally utilized as the elite who own them are doing so mainly for social rather than economic reasons. The frequent conflicts over access to water and grazing lands around pastoral communities has affected the utilization of land for food production in large areas raising the spectre of widespread hunger and food insecurity. Gender imbalance in the control of productive assets such as land has resulted in women being more vulnerable to poverty among farming communities.

2.2.5 Land Tenure and Unsustainable Natural Resource Management.

The prevalence of inappropriate land tenure systems coupled with the high population growth in the high potential areas has pushed a significant part of the population among farming communities away from their traditional areas to less productive lands and forest areas which have been alienated for crop production. This has eaten into the traditional forest areas with resulting deforestation and destruction of indigenous forests and water-towers. It has severely reduced the volume of water that is available in the country and changed the pattern of rain distribution. Unsustainable farming methods in these sensitive areas has resulted in severe soil erosion and degradation which has reduced the overall capacity for sustainable food production in the country.

2.2.6 Land, Livelihoods, Employment Creation and Incomes Generation

The manner of utilization land determines the volume of food that is available and the volume of commodity exports. Agriculture and forestry contributed 21% of the Gross Domestic Product (GDP) in 2004 up from 14.1% in 2003. The share of agriculture and forestry in total employment was 18.2% during 2004 which was marginally lower than the 18.3% in 2003 (Economic Survey 2005).

Gross Domestic Product by Activity			prices – Ksh million		
Industry	2000	2001	2002	2003	2004
Agriculture and Forestry	250,965	277,498	268,918	275,961	279,709
Growing crops and horticulture	172,543	193,959	186,200	193,653	194,444
Farming of animals	63,319	68,778	67,965	67,406	70,342
Agricultural land and animal husbandry services	4,289	4,075	4,050	4,012	3,977
Forestry and logging	10,815	10,686	10,703	10,889	10,945
Fishing	7,995	6,532	5,119	4,765	4,961
Mining and quarrying	4,423	4,915	5,002	5,147	5,267
Manufacturing	99,485	99,777	100,387	105,284	109,571
Manufacture of food, beverages, tobacco	28,812	28,519	28,872	29,721	31,873
All other manufacturing	70,763	71,259	71,515	75,563	77,698
Total (all industries at basic prices)	869,725	912,770	917,367	944,425	980,663

Source: Economic Survey, 2005

2.3 Land Question and Justification for Reforms

2.3.1 Historical Background

The Njonjo Commission Report traces the genesis of the land question from the colonial times when the objective was to entrench a dominant settler economy while subjugating the African economy through administrative and legal mechanisms. It also discusses the problem of the ten-mile coastal strip and the land related issues affecting the entire country. The land question has been shaped by economic, political, social and legal parameters during the last century. These include the dependency of the economy on land, making the issues of tenure, access, distribution and regulation critical. The political aspect of the land question is related to the administrative controls of the economy that use land as leverage for political support. The social aspect of land is discernible in the fact that the economies of nearly all Kenyan communities remain largely dependent on land for livelihoods. The function of the legal system in respect of land has been to secure the dominant actors' interests to entrench and give them legitimacy. The process of land tenure reform, introduced the alien concept of property relations in Kenya, where the state or the protectorate as a political entity came to own land and grant to property users subsidiary rights (Okoth Ogenjo; Tenants of the Crown: 1991).

2.3.2 Objectives of Colonial Land Policies and Laws

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 (Wasserman: *The Independence Bargain* 1973). It had to be moulded, firstly, in a way that allowed the settlers to adapt to the changed economic and political situation by identifying new centres of influence that were not overtly political. Secondly, it had to achieve the aim of socialising the new elite into the colonial political, economic and social patterns to ensure that the elite was able to rule functionally on an inherited political structure and co-operate with the outgoing rulers. Finally, the process was geared towards preventing the mobilisation of a nationalist base that would be opposed to continuation of colonial policies after independence (Wasserman: *ibid*). 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 (Segal; *Politics of Land in East Africa*: 1967).

The alienation of customary African lands formed part of a larger pattern of restructuring African land use systems. The introduction of tenure reform in Kenya leading to individual rights to land was not informed by the needs of agricultural production or ecosystem sustainability. It was informed by a perceived need by the colonial authorities to entrench themselves firmly in Kenya and maintain the rights they had to land without having to give back any of them to the natives. The African landed gentry, a small and very powerful minority, proved invaluable and ensured that property rights systems introduced during colonialism continued operating even after power was passed on to the new government at independence. Thus the granting of property rights to the ordinary Kenyans was more in a bid to justify the rights already granted to the settlers and the elite. The content of these rights was only co-extensive with the latitude the State permitted the property holder given the insulation of these ordinary Kenyans from the effects of property rights to prevent massive landlessness. The saying that a privilege or liberty is valueless if its holder does not have the economic or physical strength to use it rings very true for ordinary Kenyan property rights holders. Indeed most African communities whose entire existence was predicated on land and environmental resources perceived colonial policies as a direct interference in the relationship between them and their means of subsistence and production.

2.3.3 Importance of the Land Question

The land question in Kenya is still alive and vexatious due to the following factors:

- Rapid population growth, particularly in the trust land areas resulting in severe land pressure and fragmentation of land holdings into sub-economic holdings especially in Central, Eastern slopes of Mount Kenya and Western Kenya;
- The persistence and spread of HIV/AIDS has negatively impacted on productivity as the labour force deals with the scourge, there is declining food production and land productivity;
- There is systematic breakdown in land administration and land delivery procedures with structures that over-concentrate the key functions on the state. The management and administration of land is over-centralized at the MoLH with inadequate participation by communities in the governance of land and natural resources;
- There is rapid urbanization leading to uncontrolled developments and general disregard for planning regulations;
- The escalation of the desertification in the arid and semi-arid lands due to global climate change, leading to declining land carrying capacity for a rising population;
- The rise in the level of poverty due to lack of capacity to gain access to clearly defined, enforceable and transferable property rights;
- The multiplicity of legal regimes that relate to land and the confusion caused by involvement of unauthorized persons in land administration matters;
- Emergence of environmental management legislation which require the development of land to be carried out sustainably and demand a positive environment impact assessment study;
- The gross disparities in land ownership with regard to gender and generational discrimination in succession, transfer of land and the exclusion of women and the youth in land decision-making processes;
- The poor management of essential infrastructure that inhibits sustainable development of rural areas, particularly roads, communications, power and water supplies; and
- The privatization of public land through wanton and illegal allocation of such land to private individuals and corporations in total disregard of the public interest in the post-independence period, popularly known as land-grabbing.

2.3.4 Legal Basis of the Land Administration System

During the early 1960s, Kenya had three substantive regimes in property law and five registration systems supported by administrative institutions to achieve the objectives of the post independence regimes. These property laws included

1. Registration of Documents Act (Cap. 285),
2. Registration of Titles Act (Cap 281),
3. Government Lands Act (Cap. 280),
4. Land Titles Act (Cap.282) and
5. Registered Land Act (Cap. 300).

The net effect of this system of 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 duality was manifest in:

- Systems of land tenure based, in the one case, on principles of English property law and, in the other, on a largely neglected regime of customary property law,
- A structure of land distribution characterized by large holdings of high potential land, on the one hand, and a highly degraded and fragmented small holdings on the other;
- An autonomous and producer controlled legal and administrative structure for the management of the European sector, as opposed to a coercive control structure for the African areas; and
- A policy environment designed to facilitate the development of the European sector of the economy by under-developing its African counterpart.

2.3.5 Public Interest Vs Privatization of Public Land through Illegal Allocation

The Report of the Presidential Commission of Inquiry into Illegal/Irregular Allocation of Public Land appointed to look specifically at this issue made recommendations on how to deal with this phenomenon. These recommendations are largely unimplemented and remain at the core of the land question in Kenya.

2.3.6 Land Policy Reform Justification

The impact of the foregoing on land have been many, varied and include the following:

- Severe land pressure manifested in terms of fragmentation and sub-economic 'parcellation' of land particularly in the high potential areas of the small farm sector and changes in land use patterns;
- Deterioration in land quality as a result of poor land use practices;
- Twin issues of squatters and landlessness;
- Unproductive and speculative land holding especially, by the elite;
- Disinheritance of women and vulnerable members of the community and at times, biased decisions by land tribunals, committees and boards;

- Under-utilization and abandonment of agricultural land especially in areas severely ravaged by HIV/AIDS pandemic;
- Poor health, malnutrition, non-productive labour force leading to low economic growth and productivity;
- Uncontrolled urban squalor and environmental pollution as a result of lack of proper solid waste and effluents disposal;
- Severe tenure insecurity due to the existence of overlapping rights especially at the interface between rural and urban areas;
- Wanton destruction of forest, catchment areas and areas of unique biodiversity;
- Severe competition between wildlife's needs and those of human settlements;
- Inter-ethnic resource conflicts especially in areas originally expropriated for resettlement; and
- Confusion of the public by the many and complex land statutes.

On account of the above factors that perversely affect the welfare of society in Kenya, immediate, holistic and systematic policy attention to the land question is needed from a historical as well as contemporary context to address the economic, social, cultural and political ramifications of the land issue.

3.0 LAND POLICY ISSUES AND RECOMMENDATIONS

This chapter contains an analysis of land issues identified by stakeholders who participated in the six Thematic Groups (TGs). For each issue identified we provide a background, problem statement and land policy recommendations. The issues are presented following the themes identified at the inception phase and that provided a basis of forming the thematic groups.

Efforts have been made to harmonize and edit the report to avoid overlaps between the various themes. To the extent that the integrated draft issues and recommendations report is based on issues as identified by TORs of each TG, some degree of repetitions and overlaps in terms of recommendations are still noticeable. These will be dealt with during the next stage of this process.

3.1 RURAL LAND USE, ENVIRONMENT AND INFORMAL SECTOR

3.1.1 Sustainable Conservation and Management of Natural Resources

Background statement

Kenya is endowed with diverse land based natural resources, which contribute directly or indirectly to the socio-economic well being of its people and Kenyans at large. These resources include: wildlife, forests, water, minerals, marine, and the land itself. Other resources include biodiversity, cultural heritage, palaeontology, archaeology, and indigenous knowledge.

Sustainable management of these natural resources depends in large part on the governance systems, which defines the relationship between people and between people and the resources. This relationship is important due to the fact that those with tenure rights have a certain status vis-à-vis natural resources in comparison to those without tenure rights to those resources.

Problem Statement

The core problem in natural resources conservation and management is their unsustainable exploitation arising from land shortage and high population pressure, use of poor technology, poor infrastructure, and lack of utilization of local knowledge. This is linked to the competing land related goals for agricultural, infrastructural and settlement development, and demands of a rapid growing population. The public is of the common view that the Protected Area System (PAS) is idle land, part of which should be set aside for settlement. The results of these are extreme high demands on the resources that contribute to their degradation and continue to cause serious negative effects on social economic and environmental conservation. This neglect and

mismanagement, lack of community participation, coupled with weak policies makes sustainable conservation ineffective.

Land Policy Recommendations

- There is need to develop a comprehensive resource tenure policy as part of an overall land use policy for the country. The formulation process should draw value from customary tenure principles relating to the common utilization, protection and development of land based resources.
- Community principles regarding the utilization of forests and wetlands should be strengthened.
- Environmental impact assessment by independent persons should be carried out before commencement of any exploitation or utilization of land based resources.
- The principle governing the protection of forests, wildlife, embodied in the concept of gazettement and national parks should be re-examined. These resources should be protected by reason of their intrinsic value to the nation and not through physical exclusion by human beings.
- All natural resources should be vested in the citizens of Kenya and where such ownership is vested in any other person or corporation they shall only hold such natural resource as managers in trust for the people of Kenya.
- The protection and exploitation of such natural resources should take into account and pay special regard to the interests of and confer benefits on the communities affected by virtue of their occupation of and historical connections with the area involved. (Njonjo Commission, 2002; Chapter 6, page 99);
- All land in the protected area system (PAS) illegally allocated should be revoked and title deeds should be cancelled.
- An information data bank on natural resources inventories and mapping should be maintained to support investment planning and coordination on these resources.
- Critical wildlife migration dispersal areas and corridors should be identified, mapped and gazetted. Affected parties in these areas should be compensated; and as much as possible, they should be provided with incentives to invest in income generating conservation programmes to enable them to bear the burden of tolerating wildlife in their areas.
- Recognise wildlife as a land use system.
- Provide incentives that would encourage farm forestry
- Provide public access to beaches, lakes and rivers as well as landing sites for fishing.
- Government should domesticate international conventions dealing with national resource, management and conservation

3.1.2 Management of Communal and Trust Lands

Background

Large parts of the country have been or still fall under the category of trust land. Under the Constitution and the Trust Land Act, the County Councils are supposed to hold land in trust for the people ordinarily resident in the area. The local residents in turn own the land in accordance with the applicable customary law.

Problem Statement

The trust land system has been widely abused by the County Councils and the Central Government. Instead of acting as the custodians of the land, the councils have facilitated the alienation of such land in favour of individuals and institutions in total disregard of the rights of the local residents. On a general scale there has been a systematic breakdown in land administration and delivery procedures through-out the country over time. The over centralization of land administration and lack of participation by communities in the governance and management of land and other natural resources has resulted in confusion, conflict and environmental degradation, especially in communal/trust land areas.

Land Policy Recommendations

- Develop a clear land use policy for communal and trust land areas which will promote prudent management of natural resources.
- Put in place participatory monitoring and evaluation mechanisms for preparation and implementations of communal land use plans.
- Recognize existing communal rights through appropriate legislative backing and sound dispute resolution systems to protect those concerned.
- Devolve allocation and management of land and other natural resources and review of land sales to accountable and representative local structures, which have sufficient legal safeguards.
- Make land administration accessible and affordable to all. In this connection, adapt the system to recognize customary land rights, to understand indigenous land management systems, and to respect the rights of the vulnerable groups, including women.
- Ensure that all land uses and practices under communal/trust lands tenure conform to regional land use plans and the principles of environmental protection and sustainable development and ensure that appropriate environmental impact assessment is conducted before any land is set aside for projects.

- Protect communal land from dumping of hazardous waste and other environmentally damaging practices.

3.1.3 Framework for Land and Resource Use Conflict Management

Background

The incidence of land use conflicts within and across our borders is now a worrying phenomenon. These conflicts can generally be categorized as human-wildlife conflicts, livestock-crop farming conflicts, competition over water sources conflicts, territorial conflicts. Human settlement-environment conflicts, mining-rural settlement conflicts, historical injustices conflicts, squatter land use conflicts, land clash conflicts, etc.

Problem Statement

In a nutshell, land use conflicts have persisted because of lack of policies and mechanisms that would adequately address causes and resolve them. Some of the key causes of conflicts include a) lack of an integrated approach to land use planning which would delineate land uses in terms of their appropriateness on beneficial exploitation of land and natural resources; b) the unresolved community grievances over historical or customary injustices which have existed since the colonial times; c) the exclusion of communities from land resources which were customarily owned by them e.g. forests, national parks; d) the scarcity and or lack of access to water resources; e) lack of recognition of community conflict resolution mechanisms- traditional institutions are not recognized by law hence weakening their effectiveness.

Land Policy Recommendations

- Undertake participatory and integrated regional (land use) physical development planning for each district/region in the country.
- Put in place a land use monitoring and evaluation mechanism (audit) to monitor implementation of land use plans in the rural areas of the country.
- Victims of land clashes should be resettled.
- Outlaw human settlement in forests, but recognize and protect the rights of forest dependent or other natural resources dependent communities gain access, co-manage and benefit from the resources. The current trend of resource user community associations should be encouraged and protected by law.

3.1.4 Human Wildlife Conflicts

Background

Wildlife use and management in Kenya today perhaps portrays the single highest incidence of user right conflict in the management of natural resources. Spatially, Human-wildlife conflict in Kenya currently affects communities in Narok, Kajiado, West Pokot, Baringo, Laikipia, Ijara, Trans Mara, Taita-Taveta, Nakuru, Baringo, Nyandarua, and the Coast, etc.

Problem Statement

Rapid population increase and increased demand for land for agriculture and human settlements has led to encroachment into wildlife dispersal areas and migratory routes. This has resulted into human wildlife conflicts. There is no land use policy and an overall framework to guide benefit sharing between the government and communities contiguous to wildlife areas. As a result, the attitude towards wildlife has been generally negative in many areas. Further, wildlife spread diseases, destroys crops, kill human beings, kill livestock, disrupt social life by imposing curfews, compete for pasture with livestock, dominate water sources, and destroy habitats without any benefit accruing to contiguous communities.

The current Wildlife Conservation and Management Act (Cap.376) is limiting in several respects; a) while the government owns all the wildlife, as envisioned in the Act, 70% of wildlife is found in community and private land yet these land owners have no right to use or benefit from the wildlife, b) emphasis is laid on protecting wildlife as opposed to the protection of human life; c) the Act is clearly out of tune with the new paradigms of governance and participation of communities in natural resource management; d) the new amendment Bill (G. G. KARIUKI BILL) though an improvement does not adequately address the needs, aspirations, and rights of the wildlife communities especially as regards the inalienable right to compensation for death, injury and material loss and derivation of direct benefits from the wildlife within their respective areas.

Land Policy Recommendations

- Encourage the development of wildlife sanctuaries and conservancies and involve local communities.
- Identify suitable areas and gazetted forests that could be used for wild life related activities such as bird viewing and fish farming to promote community and local tourism.
- Institute co-management of parks through introduction of appropriate incentives to communities contiguous to the parks and protected areas.

- Provide mechanisms for resolving grievances of communities arising from human wildlife conflict.
- Zoning of land uses should take into account wildlife habitat and ecology to avoid conflicts.
- There is need for new legislation that addresses the land issues posed by the human wild life conflict.

3.1.5 Rural Land Use Planning, Zoning, Settlement and Infrastructure

Background

Planning as an activity is germane to human life. Consciously or unconsciously everyone engages in some form of planning i.e. identifying in advance what to do and how to do it. The new Physical Planning Act (PPA) provides a framework for the preparation of national, regional and local area development plans which should provide a framework for orderly development of human settlement and provision of critical services as well as infrastructure. It gives important responsibilities to local authorities in the preparation and implementation of plans. County Councils should therefore play a critical role in regional Planning.

Problem Statement

In dealing with location in space, Regional Physical Development (land use) Plans are the integrating factor between various sectoral socio-economic activities in the rural areas. However, this integration has not been realized yet because rural land use is currently approached by each sector independently viewing the entire territory as a platform for its activities. Thus, departments of Agriculture, Transport, Roads, Forests, Wildlife, Water, etc have covered the entire country for their respective activity on the basis of their own criteria. This, coupled with lack of a comprehensive and synchronized rural land use policy and zoning guidelines has led to land use conflict, natural resource degradation and low level of land utilization.

In spite of clear provisions in the Physical Planning Act (PPA) and clear benefits that would arise from integrated rural planning, regional physical development plans to cover all regions in the country have not been prepared.

Land Policy Recommendations

- Develop a comprehensive land use policy to guide rural development for all sectors.
- Conduct an assessment/survey of all land in Kenya to obtain a clear and accurate mapping of existing land uses and determine land use potentials for each area. This will provide a basis for preparation of a national land use plan

- Integrated Regional Physical Development plans shall be prepared for all regions in the country (i.e. for both regional development authority areas and districts or such other appropriate unit as will be identified in the new Constitution). These plans will provide a framework for rural land use management, human settlement development and infrastructure provision.
- The district land authorities in consultation with affected communities shall approve all development applications based on approved land use plans.
- Any change of user must be thoroughly scrutinized by communities and all concerned stakeholders for its compatibility with the prevailing land use and environmental impacts as established by an environmental impact assessment.
- All processes for initiation, development, approval and implementation of plans must be participatory.
- There shall be separation of powers between those who make plans and those who approve the plans, for purpose of checks and balances and apolitical land use planning.
- Develop guidelines that will be used by all planning authorities throughout the country to guide the preparation and implementation of Regional Physical Development Plans.
- Establish clear linkages between environmental issues and physical development plans to check unplanned developments which impact negatively on the environment.
- Necessary infrastructure will be provided in the areas designated in the national land use plan and regional physical development plans to facilitate exploitation of natural resources for the benefit of society.
- All regional physical development plans shall be prepared in a participatory process that involves all affected stakeholders and community groups.
- Review the current laws related to planning to facilitate provision for the implementation of cluster settlements for easier provision of infrastructure

3.1.6 Historical wrongs and injustices

Background

We define historical injustices related to land as land grievances that stretch back to the colonial policies and laws and which resulted in the disinheritance of communities, clans and individuals of their ancestral lands. These injustices arose from dispossession of land resources by one group from another, either by force, trickery, or lopsided and uninformed 'voluntary' exchange. Many such cases involve minority groups and have become subject of political and civil society agitation for redress.

Problem Statement

A key omission of the government since independence has been its failure to address the historical and group claims that arose from colonialism. Instead, the independence governments have through both action and inaction presided over the creation of new forms of group injustices and wrongs, such as those that resulted from the land clashes of the early 1990s. Yet this is clearly an issue that cannot be wished away, as the experience of other governments in other parts of the world, (Canada, Australia, South Africa) have demonstrated.

It is therefore imperative that historical claims be addressed, if the country is to deal with tenure insecurity, landlessness, squatting, sustainable environmental protection and poverty eradication among its people.

Land Policy Recommendations

- The earliest cut off date for addressing land related historical wrongs and injustices will be set as 1895.
- Declare a commitment to address historical injustices and wrongs and specify a time frame for enactment of legislation to set out the framework for doing so. Such legislation shall address such issues as the cut off date and set up an appropriate institutional framework for dealing with the problem.
- Put in place legal and institutional framework to investigate, identify and resolve the issue of historical injustices and wrongs in relation to land and related natural resources, whilst taking cognizance of the legal rights of other communities which have benefited from the said land.
- Undertake an audit of the Kenya Government Resettlement Programme with a view to determining whether and to what extent it has served the purposes that were intended, in order to remedy the situation as appropriate.
- Implement the Ndungu Report in a structured and comprehensive way; and consider using some of the repossessed land to settle the landless.
- Establish a strong legal framework, including Constitutional amendment to repossess all idle land and land owned by absentee landlords in the Coast and elsewhere and reallocate such land to the landless from the affected communities.
- Resettle as appropriate all internally displaced persons who are victims of the land clashes

3.1.7 Land Tenure in Pastoral Areas and Group Ranches

Background

In this document, we use the term ‘pastoralism’ to denote a way of life, which is well suited to the dry lands, having been adapted from generation to generation. Pastoralism has survived as a livelihood and land use system despite deliberate efforts from successive governments to replace it with supposedly ‘more civilized’ livelihood and land use systems. This tenacity of pastoralism testifies to its appropriateness to the dry lands. As a productive system, pastoralism depends on livestock and livestock products.

Problem Statement

The problems of pastoral land tenure relations have their roots in the dispossession of pastoralist communities of their land and the denial of rights to access, own, control and utilize land resources. Access to and utilization of land dramatically changed because of various legislations to apportion land to the white settlers with total disregard to the needs of the local communities.

Post-colonial land administration in the pastoralist areas led to the removal of land management from traditional institutions thereby creating uncertainty on the access, control and exploitation of natural resources including grazing, water, saltlick etc. The Trust Land and the Land (Group Representatives) Acts were enacted to provide a framework of transition from customary pastoral land tenure to individual tenure in pastoral areas. While the central government and county councils have mismanaged the trust land in total exclusion of communities, the government decision of converting group ranches to individual titles has had far reaching negative implications on pastoral livelihoods. This is also applicable to cooperative farms and farms owned by land buying companies.

Land Policy Recommendations

- Provide a legal framework that defines and recognises pastoral land and related natural resource rights.
- Recognise pastoralism as a legitimate land use system with legal backing.
- Ensure security and equity in access to and use of land based resources in pastoral areas.
- Due to migratory nature of pastoralists, provide for a flexible and negotiated cross boundary access among clans, groups, communities for mutual benefit.

- Develop a clear pastoral land use policy which recognizes land and promotes pastoralism as a viable economic activity with adequate linkages with other sector of the economy.
- Individualised tenure system should be discouraged for pastoralist areas in favour of community based systems with adequate legal backing. Highly priced public water points, wetlands and Riverine valleys may be demarcated in the name of the government for controlled access and use.
- The radical title to all Trust land in the country be vested in a National Land Commission with the day-today management of Trust Land and related natural resources being vested in legally established community Trusts under district authorities.
- Review the Group Ranch System in areas where it still applies and where individualization has not taken place with a view to a) determining the extent to which the system remains viable and sustainable b) putting a stop to subdivision of land in those areas c) reforming the group ranch system with a view to preventing fraudulent individualization by the group representatives.
- Land management in cooperative and company owned farms be regulated by law to discourage subdivision to uneconomical sizes and ensure adherence to planning requirements.
- Ensure that all land uses and practices under pastoral tenure conform to the principles of environmental protection and sustainable development and ensure appropriate environmental impact assessment is conducted before any land is set aside for projects.
- Establish appropriate local community institutions for land dispute resolution and access to justice within the pastoral communities.
- Illegally acquired title within group ranches and elsewhere in the country should be revoked.

3.1.8 Productive utilisation of rural land

Background

Rural land use practices and regime in Kenya are largely a colonial legacy. The Crown Lands Ordinances of 1902 and 1905 transferred all land to the British Crown and allocated 75% of all “high Potential” land to white settlers for commercial agriculture while leaving only 25% for Africans to subsist on in “Native Reserves”. In 1954 through the Swynerton plan the colonial government introduced individualisation of African land holdings and implicitly an African land market. This was a complete shift from the African concept where emphasis was more on access and use rather than individual ownership of the land. After Independence more land became available to Africans in the form of settlement schemes, for the “Landless” as well as squatters.

In many parts of the country particularly in the former native reserves and areas of high potential agricultural land, families continue to subdivide land to small unproductive units. Land grabbing has also been a cause of fragmentation particularly in former ADC and other state farms and lands e.g. holding grounds, agricultural research stations and other public use areas where individuals who had influence managed to parcel out such land among themselves for speculative or social investment reasons.

Problem Statement

Despite the institution of private property, productivity of rural land has continued to decline due to factors like lack of a comprehensive land use policy, inadequate planning and zoning, poor infrastructure, negative impact of HIV/AIDS pandemic, land use conflicts, drought, poor producer prices and excessive fragmentation of holdings to uneconomical units. In addition there are some persons (individuals or corporate) who own large tracts of idle land while fellow Kenyans are squatters or landless. On average, not more than 40% of all the land in the large farm sector is under productive use (Njonjo Report, 2002). The encroachment on previous dry season grazing lands for pastoralists by private owners has also resulted in low productivity of Arid and Semi-Arid lands.

The subdivision of land into smaller and smaller units encourages overuse and degradation. This development causes a) decline in agricultural productivity, b) decline in investment in land (it is difficult for small holdings to attract adequate financial resources) among other negative factors c) destruction of research capacity, etc

Land Policy recommendations

- Develop a clear land use policy to guide all development in rural areas to avoid land use conflicts, and spur productivity.
- Put in place a framework for orderly, productive and sustainable use of land, and exploitation of land-based natural resources.
- Develop guidelines to be used by all planning authorities throughout the country on matters of land use planning and zoning
- Institute a framework for rehabilitation of degraded lands in rural areas to make it productive.
- Institutionalize mechanisms that will induce land owners to put their land to productive use.
- Introduce tax incentives on land to discourage speculation and encourage productive use of privately held land.
- Provide secure tenure to ensure access to land by rural poor for production purposes.

- Intensify land use in high potential, densely populated areas through the application of efficient technology.
- The government should explore ways and possibilities of reducing the land related transaction costs.
- Institute a regulatory framework for land rental markets to spur development of rural agricultural land. This will formalize it and enable the capital deficient and poor, who are otherwise unable to work on land to access it.
- Mechanisms should be put in place to facilitate renting of land by the landless while protecting the rights of both landlords and tenants.
- Introduce a legal framework for a periodic review of land use practices with the provision for reorganization of rural settlements, to control excessive parcellation into sub-economic units, and for provision of infrastructure.
- Land ceilings should be used in certain specific localities where ecology and fragility of the land permit as a temporary measure to break-up unfair large holdings for the purpose of achieving either land or historical justice for a transitional period.
- The government to revert to pro-active direction of investment choices that channel finance to productive land use i.e. revitalize AFC and make it relevant to current land holdings, concepts and utilization models.
- ADC farms, regional development authority and other research land should be secured against further invasion and alienation to individuals
- As part of the Regional Physical and Land Use Planning Process, engage local communities to evolve local solutions to the land fragmentation problem. This may involve agreeing on frameworks for community based voluntary re-organization of rural settlements and land consolidation.
- Institute public education to demystify the emotiveness associated with land ownership in Kenya, and create opportunities for alternative livelihoods other than just agriculture to absorb excess rural population.
- Develop a legal framework for a periodic review of land use practices with the provision for reorganization of rural settlements, to control excessive parcellation into sub-economic units, and for provision of infrastructure.
- Develop a policy on land consolidation in order to correct the effect of land fragmentation.
- As part of land use policy, make an assessment of optimal land holding capacities in the densely populated rural areas and provide incentives and options to relocate excess population to other areas.
- Upper and lower land ceilings should be employed to break up large land holdings that are not effectively utilized and provide possibilities for relocating people from densely populated rural areas.
- Review the law, including the Sectional Proprietors Act, so as to encourage concurrent proprietorship of land rights as an alternative to individual proprietorship.

3.1.9 Security of Tenure

Background

Generally, secure tenure is a right or mode of holding. It defines the social relations between people in respect of the object of tenure, in this case land. Land tenure also defines the methods by which individuals or groups acquire, hold, transfer or transmit property rights in land. Property rights may include a variety of different rights or interests e.g. to use, to transfer, to build on, to mine and so on. These rights (a bundle of rights) may be transferred or transmitted either individually or together at the discretion of the holder with or without limitations depending on the system of tenure

Problem Statement

The land question in Kenya remains the single most contentious issue in the search for more just society. In the last five decades a number of land policy reforms have been initiated with the major objective of converting the hitherto mainly customary land tenure to statutory tenure. These changes, it was assumed would result in an efficient land management and administration regime that would lead to sustainable socio-economic growth. Instead, the changes raise serious efficiency, equity, compatibility and continuity issues that need to be addressed.

Land Policy Recommendations

- Devolve allocation and management of land and other natural resources and review of land sales to accountable and representative local structures.
- Recognize and protect the land rights of all Kenyans to land, regardless of gender or marital status and expand their enforceable legal rights of access, control, ownership and inheritance, access to credit and co-registration in all tenure systems.
- Recognize existing communal rights and ownership through appropriate legislative backing and sound dispute resolution systems to protect those concerned.
- Make land delivery systems accessible and affordable to all. In this connection, adapt a system to recognize customary land rights, to understand indigenous land management systems, and to respect the rights of the vulnerable groups, including women.
- Establish an independent, accountable, representative and expeditious system for adjudication of land disputes that is as much as possible devolved to the local levels and backed by law.

- Enact legislation for the taxation or repossess all un-utilized or underutilized agricultural land to promote optimal utilization of land for productive purposes.
- Enforce the Land Control Act to discourage un-economical sub-division of land. In this connection, legislation should be introduced setting the minimum size of land according to the land use of a given ecological zone and with due regard to the imperatives of land-use planning.
- Secure the land rights of all land users regardless of type of tenure.
- Vest all trust land in representative community based structures such as district land authorities which would be answerable to a national body.
- Examine ownership and physical developments along the whole Kenyan coastline in respect to security and crime prevention with a view to a) revoke foreign ownership of strategic coastal zone, b) intensify security surveillance c) register such land under as public land under KWS or Kenya Navy.

3.1.10 Land Rights Delivery

Background

Land rights delivery is a process, which entails the mobilization of institutional mechanisms and personnel for ascertainment of rights, registration, planning, demarcation and /or survey, the preparation of cadastres and land market regulation among others. In Kenya these processes are run as part and parcel of public administration and have not worked well.

Problem Statement

The current legal and institutional framework of vesting land rights in Kenya is primarily a relic of the colonial era. Post independence governments have done little to change the situation for the good of the people. Several problems arise: a) The land adjudication process provided for under the land adjudication Act (cap.284) has not proceeded well leading to unnecessary disputes and subsequent delay in registration of title; b) procedures provided for in the Government Lands Act for allocation of public land have been routinely ignored or by passed by public officers in the commissioner's office; c) private land is administered by the proprietors themselves but under the supervision of a disabling and complex bureaucracy consisting of staff from central government, line ministries, local political functionaries and local or traditional administrators; d) allocation procedures for settlement schemes created by the Government under the Agriculture Act are not defined, leading to manipulation of the lists of allottees, the result of which are that the landless and the poor are marginalized.

Land Policy Recommendations

- A strict verification process to be put in place to ensure that only squatters, the landless and deserving cases are settled in settlement schemes.
- Review the law related to land adjudication to make the process transparent and efficient and provide for setting aside of land for public utility.
- Recognize existing communal rights through appropriate legislative backing and sound dispute resolution systems to protect those concerned.
- Make land administration accessible and affordable to all. In this connection, adapt the system to recognize customary land rights, to understand indigenous land management systems, and to respect the rights of the vulnerable groups, including women.
- Secure the land rights of all land users regardless of type of tenure.
- Vest trust land in representative community based structures such as district land commission.
- Devolve allocation and management of land and other natural resources and review of land sales to accountable and representative local structures such as district land authorities

3.1.11 Informal and Spontaneous Settlers on Public and Private Lands

Background

The Squatter issue can be traced back to the colonial displacement of indigenous people from their ancestral lands through administrative coercion and alien laws. Consequently an estimated over half a million people were at independence, technically landless in the sense that they could neither produce nor obtain evidence of permanent ownership to the land they were in fact cultivating, or already residing on as labourers.

Efforts by the independence governments have not been successful to the extent that to date, a substantial number of citizens and their families do not have a place they can call a home. This is the situation in both the urban and rural areas. It is estimated that 12 million people out of 31.5 million Kenyans have no decent homes and live as squatters or in slums and other squalid places.

Problem Statement

The final effect of the independence Constitutional agreement on the issue of squatters and landlessness was based on wider economic concerns. The most important was that land redistribution should not be made at the expense of

economic (mainly agricultural) stability. This was incorporated into the independence Constitution through an article (now Act 75) which provided that all existing land irrespective of the manner in which they were acquired be confirmed and guaranteed.

While deliberate efforts have been made to solve the squatter problem, a lot remains to be done, especially at the Coast, Central and parts of Rift Valley provinces. The whole process of selection of allottees in settlement schemes is riddled with nepotism. This has caused more distress in those areas creating more squatters/landless.

Land Policy Recommendations

- The Constitution and the relevant law should be amended to facilitate taking over of idle land and land belonging to absentee landlords and allocate the same to 'squatters' and landless.
- Review the law to enable the National Land Commission to play the supervisory role for implementation of land management orders over idle and underutilized land, currently implemented by the Minister, for the time being, responsible for Agriculture
- Review the law to enable the National Land Commission to make reservation, development and or management orders over idle and unutilized land, for repossession and redistribution.
- All land delivery functions should be placed in a National Land Commission with powers to create and supervise a decentralized system of land administration drawing on community level structures and organs of the government.
- Land delivery systems should be insulated from politics so that land can be appreciated as property and not as political service.
- A strict verification process to be put in place to ensure that only squatters, the landless and deserving cases are settled. In this respect a data bank for all allocated land is established to expose cheats.
- The National Land Commission should be empowered by legislation to inspect, co-ordinate and direct the development and use of idle land and if necessary to repossess such land.
- Make an assessment of the current squatter problem and develop recommendations and a programme for resettlement of existing squatters with specific attention being paid to conferring legal rights and how to prevent this problem from occurring in the future. In the meantime no more new squatting should be allowed

3.1.12 Alienation and Use of Public Land

Background Statement

Land in Kenya is territorially classified into two broad categories by virtue of the radical title. This classification is a relic of the colonial era and splits land into: a) Government land, where the radical title is vested in the government and b) Trust land, where the title is vested in the county councils.

Currently the administration of public land is a sole responsibility of the Commissioner of Lands through the delegated powers of the Heads of State as set out in the Government Lands Act (Cap. 280). This Act has no legal requirement for the government to respond to any public obligation or issues regarding the stewardship or utilization of such land. This loophole in the statutes governing the administration of the public land has adversely affected the quality and quantity of the land in question.

Problem statement

The current legal and institutional framework in the public land administration is primarily a relic of the colonial era. The post-independence governments have done little to change the situation for the good of the people. The authoritarian state-controlled and centralized model which characterised the colonial and post-independence land tenure system has become bogged down. This is reflected in the systematic breakdown in land administration and delivery procedures through out the country over time, over centralization of land administration and lack of participation by communities in the governance and management of land and other natural resources.

Land Policy recommendations

- Amend the Government Lands Act (Cap. 280) to divest the powers of alienation and allocation of public land from the President to the District Land Commissions.
- Vest the radical title to all public land in a National Land Commission.
- Strengthen institutional, legal and financial frameworks for management of public lands in the country.
- Put in place mechanisms for sound conservation, protection of and access to public lands.
- Establish clear legislative framework and procedures for allocation of public land to eliminate incidents of gender bias, misallocation or multiple allocations.
- Implement the recommendations of the Ndungu report.

- Allocation of protected areas reserved for forests, water catchment areas, road reserves, Kayas, wildlife corridors, mountain and hill tops, etc to private developers should be prohibited by law and boundaries of such areas be clearly planned, defined and documented.
- Stiff and enforceable penalties for those defying the above laws should be put in place.

3.1.13 Management and Protection of Fragile Ecosystems

Background

Kenya is characterized by ecosystems diversity due to various attributes e.g. large range of land elevation above seal-level, climatic differences as well as disparities in quantities and distribution of surface and underground water. All these have variously not only determined the patterns of distribution of various flora and fauna, but also human settlement patterns, their dependant economies and social culture to shape their survival. Within the large spectrum of diverse ecosystems, the critical ecosystems that are key to human survival in Kenya are forests and wetlands based on their, immense goods and services they provide to sustain the primary life needs. It is noted that the existence and functioning of the wetlands is both directly and indirectly interlinked with forests because of the latter's role in the hydrological cycle which provides a framework for supporting life.

Problem Statement

The current human activities propelled by survival needs have led to serious degradation and in some cases destruction of the country's fragile ecosystems. Three examples stand out; a) Excessive logging for timber, wood fuel, illegal cultivation and excision for settlements and agricultural production have almost depleted the country's once beautiful forests; b) the major threat of wetlands caused by human encroachment and conversion for agricultural purposes.

This has impaired the water retention capacity of such areas turning them into dry pans with far reaching implications on the surrounding areas; c) Excessive dumping of industrial and other wastes have greatly polluted our wetlands and impaired their functions while individualization of land ownership, especially in Arid and Semi-Arid Lands (ASAL) areas is increasingly resulting in destruction of wetlands and other natural resources especially the scarce vegetation.

Policy recommendations

- All forest land should be zoned as forest and preserved in order to protect water catchments areas from further degradation. The land policy in synergy with the water and forest policies should clearly articulate the

issues of co-management and rehabilitation of forest resources and recognize traditional management systems and sharing of benefits with contiguous communities.

- Settlement in the water catchments areas should be outlawed and catchments protection should be embedded in the national land policy with sufficient mechanisms for enforcement.
- All water courses and wetlands should be identified, delineated and gazetted in line with recommendations of International Conventions.
- Government should, in conjunction with all stakeholders, plan the conservation, restoration and management of water catchments areas.
- The ownership of fragile ecosystems will be vested directly in the local community structures e.g. the District Land Authorities and supervised by national structures.
- All islands and front row beaches be declared as fragile ecosystems and any ownership should be subject to laid down management orders that will provide access to the said areas taking into consideration national security as well.
- The institutions managing the eco-systems should be given adequate legal powers.
- A comprehensive and integrated land use policy with regard to fragile areas should be put in place. Such a policy must consider the needs of neighbouring communities in such areas.
- Create a platform where the private sector can contribute to efforts of protecting fragile ecosystems.
- Incorporate gender dimensions in the management of and utilization of natural resources.
- There should be a comprehensive and integrated land use planning in areas around sensitive ecosystems. There should be strict controls in the development of human activities in all areas, and specific control of:
 - i. agricultural activities in catchments and mountain areas;
 - ii. hotel and tourist developments in areas contiguous to the land sea interface; and
 - iii. activities in areas governed by international conventions relating to wetlands and bio-diversity value.

3.1.14 Land Rights of Hunters and Gatherers

Background

In Kenya, minority communities who are hunters and gatherers, such as the Ogiek, are culturally dependent on specific geographical habitats. These communities have over the years lost access to resources that are key to their Livelihoods. This follows the gazettement of these habitats as forests or national reserves or their excision and allocation to individuals, who subsequently obtain title to the land. These groups, which also include the

Sengwer and the El Molo, are now recognized internationally as minority groups, deserving of special protection by the state with regard to their land rights and their ability to manage natural resources in a sustainable manner.

Problem Statement

The problems faced by these minority groups are part of historical injustices that arose from dispossession of land resources by one group from another, either by force, trickery, or lopsided and uninformed 'voluntary' exchange. Many such cases have become subject of political and civil society agitation for redress.

Policy Recommendations

- Develop a legislative framework to ensure that minority group right to access and use the resources that are contiguous to them in a sustainable manner are secured.
- Involve hunters and gatherers communities in the development and management of those resources contiguous to them and share the benefits thereof in case of exploitation.
- Recognize and tap the conservation knowledge of these communities.
- Conduct a study of existing minority groups to obtain a clear understanding of their current status and related land rights.

3.1.15 Environmental Concerns Around Refugee Camps and Internally Displaced Persons in Kenya

Background

There are over 227,000 refugees in Kenya settled in four refugee camps in Kenya. These camps are in Daadab Division of Garissa District with 137,000 refugees distributed in three camps namely; Ifo, Dagahaley and Hagadera, and at Kakuma in Turkana district with 90,000. The refugees are hosted in Kenya as a result of the civil strife in neighbouring Sudan and Somalia although a few are from further field. Incidences of tribal and land clashes have also led to creation of camps for internally displaced persons.

Problem Statement

Due to the unpredictable nature of refugee influxes, resources such as fuel wood, water, and even pastures are being overstretched giving rise to excessive demands on resources, degradation and conflicts. In addition, the widespread and chronic infrastructural underdevelopment of the region coupled with extreme fragility of the ecosystem has made its own special contribution to the already intractable situation paused by the refugees. Expectedly, the

tremendous pressure which the presence of the refugee's camps exert on the already fragile eco-system in these arid and semi arid regions has begun to cause ecological degradation. This may lead to environmental damage involving the steady decline in the level of the ground water and massive deforestation, which may eventually lead to accelerated desertification.

Land Policy Recommendations

- Institute a collaborative implementation of EMCA and other sectoral laws on natural resource management while setting up and managing refugee camps.
- Build the capacity of the public, ministries and private sector to appreciate and address environmental concerns in refugee camps.
- Promote popular participation by the affected communities while setting up refugee camps.
- Negotiate riders in the UN conventions on refugees to provide adequate resources for conservation and rehabilitation of refugee camps in Kenya and to include respect of environmental concerns while setting up and managing the camps.
- Need to plan in advance possible sites for refugee camps.

3.2 URBAN LAND USE ENVIRONMENT AND INFORMAL SECTOR

3.2.1 Urbanization, Governance and Institutional Arrangement

Background Statement

Urbanization in Kenya is a recent phenomenon and involves the multiplication of the points of concentration and increase in size of individual concentration. In 1963, Kenya had a total population of nearly 8.6 million, of which about 9% were urbanized in some 34 urban centres. By 1979 the total population had reached some 17.3 million of which 2.3 million or 15% was urbanized in 90 urban centres. The 1989 census results revealed a total population of only 21.8 million, whilst World Bank 1991 Development Report gave Kenya's population as 24 million, of which almost 20% (4.8 million) was urbanized.

To-date, with an estimated population of between 32 million and 35 million, the share of urban population has risen to about one third of the total i.e. about 10 to 11 million. Nairobi alone is estimated to have a population of nearly 3.5 million, with Mombasa having about 1 million. Such rapid rise in population and the growth of urban centres are putting a lot of pressure on the demand for services. At the time of independence, there were only 7 municipalities (including Nairobi city council), 1 city council, 38 town councils, and about 38 county councils (with no urban councils) in the country. Today, there are 30 municipal councils, 17 town councils and 40 county councils (with about 27 urban councils) in the country. Given the continued growth of population and its concentration in urban areas, it is hardly surprising that old urban areas continue to grow (through the extension of suburbs) and that new ones continue to emerge.

Problem Statement

As a result of urbanization the country is currently experiencing major problems including proliferation of urban informal settlements, insecurity and violence, environmental degradation and deteriorating public health standards.

Kenya's urban areas continue to grow at a pace that considerably exceeded the average for most other parts of the world and are experiencing a crisis in urban governance i.e. both the effective functioning of the institutional structure (in this case the structure of local government), and the relationship between this structure and civil society. The governance crisis which Kenya's towns are experiencing consists of two elements: their inability to manage and coordinate a wide range of urban services at a level adequate to the needs of a poor and growing population; and their limited ability to engage with emerging sectors of local society in finding acceptable local solutions to, and resources for, increasingly complex challenges. In addition urban planning has not kept pace

with rapid urbanization and population increase; neither has it been pro-poor nor pro-growth, causing insufficient supply of serviced land for urban activities.

There is also lack of an inclusive institutional framework to accommodate active community participation, a practice currently hampered by vested interests and political interference that is coupled with involvement of many players, and application of numerous Acts of Parliament dealing with land making the process long and cumbersome. Furthermore the structure has inadequate capacity and resources in terms of skill personnel, finance and equipment to address the shortcomings for a more functioning, accountable and transparent land management system.

Land Policy Recommendations

- Develop an appropriate urban development strategy for managing sustainable urban development.
- Integrate comprehensive urban plans into long term national development plans so as to ensure harmony between urban and rural centres.
- Encourage partnerships between planning authorities, development control agencies and citizenry.
- Review current legal and institutional framework for urban land management to improve governance, based on principles of decentralization and devolution of power, responsibility and resources and to encompass public participation.
- Institute capacity building programmes to enhance work performance and ensure a more efficient, accountable and effective system of land management.

3.2.2 Current Arrangements for Urban Land Rights Delivery

Background Statement

A substantial proportion of the urban population in the country has no access to land to undertake useful economic activities. There is problem of scarcity of land in the urban areas. The existing land problems are a direct result of failed urban land management and more particularly, the inability of the delivery system to achieve equitable and fair distribution of limited land resources. The current arrangements of land rights delivery in Kenya based on demarcation, surveying, titling and registration are inappropriate and unable to supply serviced land with security of tenure to the required scale and at an affordable cost.

Problem Statement

The process is expensive, too lengthy, cumbersome and time-consuming and cannot afford urban dwellers access to land. On average, the process constitutes 20% of the total transaction costs. The process is also haphazard and littered with bureaucratic red tape. The inefficiencies and imperfections are due to poor record keeping and this has encouraged double, triple and multiple plot allocations of public urban land. The unsatisfactory land rights delivery system is also a result of land speculation, unprofessional practices by allocation personnel, corruption, political interference and excess powers of the Commissioner of Lands and Town Clerks.

Land Policy Recommendations

- Consolidate all statutes relating to land rights creation and delivery into one Act of Parliament with the aim of ensuring clarity and reducing the bureaucratic red tape and administrative bottlenecks that hamper easy transfer of land rights and other associated land transactions in the conveyance process.
- Establish an autonomous office (National Land Commission) to allocate and manage land. The autonomous office to objectively evaluate all applications for un-alienated Government land and allocate the same to the applicants' best suited, to optimally utilize the land in support of the country's economic development goals. The Government to continue playing its role as a custodian of land rights.
- Modernize and build capacity in the surveying, mapping, valuation and town planning and land management processes and departments. Highly trained and motivated professionals in the above fields will be required to support this process.
- Improve the quality and quantity of land information system by computerization at both national and local authority levels. This will enable the National Land Commission determine the stock of un-alienated Government land, avoid malpractices in the allocation process, hasten the land delivery process and achieve equity in allocation.

3.2.3 Contents of Rights and Insecurity of Tenure for Urban Population

Background Statement

Distribution and access to land in Kenya is characterized by inequity. In Nairobi for example, about 60% of the population lives on, a mere 20% of the available residential land. Thus, while the majority of residents are squeezed in informal settlements, a majority enjoys spacious areas. This land, either privately or publicly owned is without security of tenure and made available under informal arrangements. The situation has been compounded by market

operations, planning standards and the zoning regimes. The occupants of such lands are prone and vulnerable to forced evictions and harassment.

Problem Statement

Notwithstanding the existing development arrangements, evictions have the effect of destroying social and survival networks of the urban poor, impacting negatively by destroying the assets and life savings of those evicted, and invariably increasing their cost of living.

Forced evictions also have a very direct and negative impact on children, whose social patterns of health, education, recreation as well as shelter may be destroyed. Inequitable distribution of land and land related resources may be the main cause of special conflicts and escalation of crime in urban areas.

Land Policy Recommendations

- Put in place a just and fair individual rights and prompt compensation system guaranteed by the state. Titling of land to be enhanced to enable owners use them as collateral, stimulate more efficient land use as it improves tenure security with no eviction risks.
- Establish community-based paralegal system of dispute resolution to ensure that arbitrary entities are minimized.
- Set up land control authorities and mechanisms within the urban centres to protect the less privileged groups against the oppressive forces of the land markets.
- Develop and implement innovative tenure systems and introduce locally administered group based leases to protect urban dwellers in informal settlements. Group titling and identification of special zones in urban centres for low-income groups to be introduced. Leasehold titles to be introduced on private land and owners encouraged to enter into short- and medium-term contract leases.
- Undertake a proper land audit at community level to determine the legal status of all available land occupied in the informal settlements.
- Set up a land information system so as to protect both the authority and the occupier of the land from professional squatters.
- Define clearly public interest and be sufficiently compelling to justify compulsory acquisitions in order not to create undue hardship to individuals and communities.
- Recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions with respect to land.

3.2.4 Urban Land Markets

Background Statement

The urban economy comprises of three basic markets; the urban land market; the urban capital market and the urban labour market. These markets are closely linked and depend on each other. Of these markets, the land market most directly affects the urban environment and the quality of life in the urban centres.

Problem Statement

Most urban centres in Kenya suffer from market imperfections and failures caused by distortions in land development and management practices including bad planning, slow provisions of infrastructure and services, poor land information systems, cumbersome and slow land transaction procedures, as well as under regulation of private land development, leading to unplanned or ribbon/corridor developments of land in the urban periphery. The distortion in the land and property market has led to land speculation which has pushed the poor into the informal land markets as exemplified by the numerous slums, squatter settlements and illegal subdivisions.

Land in and around urban areas are either owned by the government, the private, or communally by communities. These vested interests gain more by keeping the land markets fragmented, without proper controls and by keeping the dealings in the land market both secret and non transparent, with the prime losers being particularly the urban poor.

There is too much conveyancing process in urban land market through taxation/revenue e.g. registration, physical planning, survey fees, stamp duties, rates and rent clearances.

The arbitrary town boundary extensions have in addition brought freehold titles into urban land market affecting the efficient operation of land market. There are also too many players in urban land market for example, provincial administration, politicians, land owners, and professionals including valuers and lawyers. The Urban land market is also affected by lack of data bank for urban properties.

This calls for the elimination of land market imperfections and failures to increase operating efficiencies; removing externalities so that the social costs for land market outcomes correspond more closely to private costs and redistributing society's scarce land resources so that the disadvantaged groups can stay in society's output.

Land Policy Recommendations

- Reduce levies by imposing one single lump sum payment to cut down costs and time.
- Convert peri-urban land parcels to 99 year leases at peppercorn rent to reflect efficient urban land market under leasehold tenure.
- Review valuation systems.
- Create land banks for future urban development.
- Computerize the data bank for efficient open land market operation.
- Review land acquisition procedures to make it less expensive and less cumbersome for urban land market. A committee with equivalent powers for the court like tribunals to speed up the process and circulation of notices be provided.

3.2.5 Urban Land Use Planning, Implementation and Control

Background Statement

At independence, Kenya adopted the master plan model of planning. While these plans often made an important influence on the overall approach to land use planning in the central areas of the city, they failed to capture the spread and direction of growth in the peripheral areas. The level of capital available was not adequate to implement infrastructural project associated with these plans. Thus most urban planning decisions took place within the parameters of building and development regulation that were little more than imitations of the existing legislations and by law in Britain.

The master plans are static and rely on rigid regulations and control, which generate more costs than benefits. The land tenure systems that emphasize private land rights always offered challenge to the implementation of land use plans and development control. The lack of community participation renders the resultant plans ineffective.

The emerging development patterns of the urban centres in Kenya are a dual system of planned developments on public land and unplanned development on private freehold land.

The developments in the planned sections are, in most cases, orderly with necessary infrastructure, unlike the unplanned areas, which are characterized by informal settlements with few basic facilities and land use conflicts. Legislation and regulations governing land use planning, development and control have always been a deterrent factor in the growth of urban centres. The lack of a comprehensive land use planning and management policy has led to substandard developments with inadequate infrastructure services and open

spaces, resulting in a land use system that does not conform to the existing zoning, sub-division and building regulations.

In the case of open spaces, the present pattern indicates that there is inequitable distribution of public open spaces and recreational amenities are located in low density areas while the high density areas have virtually no major public open spaces. Planned Kenyan towns have not been provided with adequate supply of open spaces and recreational facilities. For the few which have been provided, there has been no adherence to the recognized planning standards for them besides encroachment by informal activities.

Problem Statement

Control regulations have been found to be the greatest obstacles to the provision of housing and places of economic activity especially to the urban poor. Unrealistically high standards for subdivisions, restrictive land use and zoning regulations, based on master planning principles, infrastructure and services, and tedious land and building regulations restrict the availability of land and discourage housing development, particularly for low income earners.

Over regulation creates bureaucratic bottlenecks that cause delay in implementing public and private driven development projects with responsibility for approval and supervision of the various developments and development control scattered among various departments of the Local Authorities and various central Government departments and agencies. In addition, the formal subdivision and approval process is long and complicated and a large number of subdivisions are done informally and therefore not recognized. The result has been the growth of informal developments, causing the so-called 'urban crisis' as manifested in: a decline in the levels of formal employment, and a corresponding rapid increase in informal activities in very key areas of the urban economy; deterioration in both the quality and distribution of basic services; and a decline in the quality of urban environment.

Current urban land use practices have exhibited various urban land problems, including, poor planning and governance which lead to proliferation of unplanned settlements, underutilization of land, urban sprawl and environmental degradation, inadequate provision of land for infrastructure and insecurity of tenure.

To address the serious urban land problems, there is need to promote innovative land use practices which are intelligent and a series of co-ordinated remedial actions which are well articulated, strategically planned, financially evaluated and properly implemented.

Land Policy Recommendations

- Create an enabling environment for urban land use development through the establishment of a transparent, accountable, sustainable, comprehensive and participatory governance structures and decision-making processes.
- Reconsider and rationalize the current policy of extending boundaries of urban areas in agricultural areas. This will protect agricultural areas from encroachment by urban centres.
- Review planning standards and zoning regimes to remove any possible causes for inequitable access and distribution of land among different social clusters. The already occupied peri-urban areas to be re-planned taking into consideration the economic activities of the inhabitants.
- Provide for a well coordinated development of urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities.
- Acquire open spaces through free surrender or direct purchase in accordance with the minimum standards.
- Provide adequate green/open spaces with the plans to cater adequately for good environmental management practices and un-vetted access to open spaces and public utilities.
- Consider environmentally sensitive areas, urban design and planning and socio-economic perspectives when undertaking distribution of public open spaces and recreational amenities.
- Involved communities in the initial planning and management of the open spaces and recreational amenities.

3.2.6 Productive Utilization of Urban Land

Background Statement

Land which is the main resource for production is limited in supply, and must therefore be used optimally. Land has various specific users all of which are competing and outbidding each other for prime location. The specific uses are residential, commercial, industrial, infrastructure and service provision, transport, green spaces, forest cover, urban agriculture and recreational. Vulnerable groups (women, children, disabled etc) too can be treated as a separate user as they need to be provided for in terms of space.

The juxtaposition of any different users must strive to ensure that they are compatible, sustainable and complimentary in terms of convenience. The issue of sustainability is crucial because as land is being utilized, it must also be conserved for posterity.

Problem Statement

Urban centres in Kenya have experienced phenomenal growth due to massive rural-urban migration over the years. Such movement has placed undue pressure on the available services and infrastructure, resulting in increased poverty level, environmental degradation and urban sprawl. The social infrastructure i.e. schools, health facilities, educational, and community facilities are in poor condition or in some cases non-existent. Productive utilization of land should take into account the land carrying capacity, plan implementation, and adequate development control.

Land Policy Recommendations

- Undertake comprehensive, integrated planning for all urban centres through consultations with all pertinent professional disciplines and the public to ensure that the interests of all different users are adequately catered for without negatively impacting on any particular user.
- Provide adequate infrastructure to facilitate economic and sustainable utilization of the land resource in all urban centres.
- Institute strong development guidance and control mechanisms to achieve orderly and sustainable development.
- Provide for the needs of the informal sector (mobile merchants/hawkers) and slum dwellers.
- Land ownership ceilings together with taxation of idle land to discourage speculation.

3.2.7 Informal Sector Activities

Background Statement

The country has large and growing Informal or Micro and Small-scale Enterprise (MSE) sectors. It is estimated that about 1.7 million people were engaged in the urban informal sector activities in 1996, making it an increasingly important feature of the Kenyan economy. These enterprises provide one of the most prolific sources of employment creation, income generation and poverty reduction. However, the sector continues to experience a number of constraints namely non-availability of well planned, secure and serviced land for its growth that inhibit the realization of its full potential.

Problem Statement

Land problems faced by the informal sector revolve around access, availability ownership and management. It has been observed that the land available for use by the informal sector has been reducing at a high rate due to the increase in population.

This is a major impediment to their growth, development and productivity. Lack of secure working spaces has also inadvertently led to conflicts among the MSE businesses, leading to harassment of the sector operators and street battles between them and the local authorities' law enforcement officers.

Currently most of the allocated land has been inaccessible and without titles or with temporary letter of occupation. Efforts by local authorities to provide worksites or public markets have not been very effective. The lack of vital services such as water and electricity is another discouraging factor for the sector.

Land Policy Recommendations

- Provide sites for the MSE activities in all the development plans of urban centres.
- Provide infrastructure in terms of access roads, water and electricity supply to the land reserved/set aside for informal sector activities. Such land for the informal sector to be held in trust by the government on behalf of beneficiaries.
- Establish the Inter-Ministerial Committee on Land and Worksites for MSEs with the following additional terms of reference.
- To survey urban centres with heavy concentration of MSE activities with a view to identifying and demarcating suitable public and private land for MSE activities.
- To work out practical modalities to facilitate the process of land acquisition by donors and private sector organisations that wish to develop infrastructure facilities for MSE sector.
- To investigate alternative forms of land tenure, including temporary rights of occupancy for MSE operators currently squatting on public and private land.

3.2.8 Urban Agriculture

Background Statement

Urban agriculture is defined as the production of food and non food items through cultivation of plants, tree crop, aquaculture, and animal husbandry, within urban and peri-urban areas. The main types of crops grown are perishable fruits and vegetables such as kales, spinach, tomatoes, cabbages, maize, arrowroots, beans, cowpeas and potatoes. Different types of livestock such as poultry, goats and cattle are also kept. The yields produced are substantial and it is estimated that 50,000bags of maize, 15,000bags of beans and 42 million litres of milk are produced in Nairobi annually. An estimated 800 million people are engaged in urban agriculture worldwide and it is

estimated that by 2020, 35-40 million urban residents will depend on urban agriculture to feed themselves in Africa. In Nairobi, 150,000 households were estimated to be urban farmers in the late 1990's and 80-85% of cultivators were women.

Problem Statement

Many urban residents have no access to urban land where they can grow crops and rear animals. While middle income earners can grow food in their backyards, low income earners tend to live in overcrowded conditions and farm on public land whenever they can. Urban farming is however ignored by economic and land use planners since subsistence activities are generally considered to be marginal. Urban farming is not only not planned but also often prevented and discouraged.

Urban agriculture as a productive sector has not been integrated into urban planning and hence not allocated any land in the urban centres. This has resulted into its potential in food security, employment creation, income generation and urban environmental management in terms of waste recycling not being fully exploited. There is also absence of appropriate legal framework to regulate and control urban agriculture while the existing ones (e.g. Local Government Act (Cap 265), Physical Planning Act (Cap 286), Public Health Act (Cap 242) and respective local authority by-laws) have outlawed the practice hence issues such as public and environmental risks and nuisance associated with it remain unattended.

Land Policy Recommendations

- Make an inventory of open spaces in the cities and towns, their current uses and the economic value with a view to providing land for urban agriculture.
- Establish a land use information system to monitor the changes in the use of agricultural land.
- Provide vacant public land on medium term-lease to poor urban farmers which will promote optimal use of vacant land.
- Promote multi-functional urban land use (combinations of recreation, water management, maintenance of buffer zone and urban agriculture).
- Demarcate special zones for urban agriculture in peri-urban areas and offer legal protection.
- Gender equity to be observed while availing land for urban agriculture.
- Integrate urban agriculture into all future settlement development and master plans.
- Appropriate legal framework should be put in place to regulate and govern urban agriculture and related activities.

3.2.9 Allocation and use of Public Land

Background Statement

Allocation is the process of selection of the person to whom an area of land is to be allocated or allotted for the specific purpose of development for a particular and identified use. The Government Lands Act (Cap 280) establishes the legal authority for allocation.

Problem Statement

The procedures for allocation of government land have been disregarded for decades, resulting into illegal and irregular allocation of public land in Kenya. This has had a profound effect on the security of tenure, land use planning and development of urban areas. Where public utility land or land reserved for special purposes like forests are irregularly allocated, the injustice caused to the public is indescribable. Failure to adhere to the laws governing land administration and the abuse of the same has further contributed to this problem.

Land Policy Recommendations

- Enforce the adherence to the current provisions for allocation of public land as stipulated by law. There should however be special consideration to the under privileged.
- Review the laws dealing with land with a view to harmonizing them and reducing their number. All the land transactions to be carried out using one law.
- Amend the Government Lands Act to provide for decentralization of the land allocation responsibilities and provide some checks and balances with regard to the broad powers of alienation conferred on the President.
- Computerize all land records countrywide and ensure records maintained are up to date.
- For those titles acquired illegally or irregularly, it is recommended that: -
 - a) With regard to public utility land that is developed with facilities that are in use, titles to be revoked and the allottee, in view of rules of natural justice, be refunded the monies paid for the allocation.
 - b) For public land that has no developments but is required for the planned purpose, the title to be revoked and the allottee refunded the allocation charges.
 - c) For public utility land where the allottee has altered, demolished or re-developed the existing structure, the assumption that the property remains government land and if not required the allottee may pay the

- stand premium and annual rental value as loss of revenue from the date they took possession of the plot.
- d) For public utility land that has been developed by the allottee and is not required for the purpose, the allottee may pay stand premium and annual rental value from the date of possession.
 - e) For public utility land that was subdivided to facilitate allocation.
 - If the land is not required, that allottee may pay market value and loss of rent.
 - If the land is required, the title to be revoked and the allottee refunded the allocation charges paid.
 - f) Revoke allocation of special areas such as natural resources, public access to water bodies, research institution land, riparian reserves, open spaces and wildlife sanctuaries.
 - g) Repossess land meant for development of infrastructure like roads, railways and airports. However, if the land forms part of a re-alignment that is no longer in use, the allottees may pay stand premium rates for the land.

3.2.10 Growth of Informal and Spontaneous Settlements

Background Statement

The problem of informal and spontaneous settlement is widespread in urban areas. It was started with the introduction and implementation of the 1908 Land Titles Ordinance. This Act was initially implemented along the coast, then eventually in other areas. Spontaneous settlements can therefore be said to have originated from the coast as a result of this Act.

Problem Statement

The spontaneous settlements phenomenon is mainly occasioned by rural-urban migration, urbanization processes landlessness and lack of gainful employment opportunities. Expectation of employment opportunities in urban areas, and lately the tribal clashes and /or politically instigated conflicts, abuse of power by the Provincial administration and political leaders in land administration have also contributed to the problem.

Land in the informal settlements are occupied illegally. They are usually found on marginal or environmentally hazardous lands, such as beside railway tracks, rivers and canals, government land or land whose ownership is unclear. These settlements are spontaneous or organic with little or no planning. They are often started by a few families finding a vacant piece of land and establishing a homestead. If they are not evicted, some other families join them and build their houses thereby expanding the settlements. Informal

settlements are characterized by haphazard development patterns, poor quality of housing and an absence of public infrastructure and services such as piped water supply, sewerage, roads and electricity. Unauthorized urban developments exist and expand because of inadequate provision of land, speculative investment patterns, a tendency towards over-regulation, and a regulatory framework that is at best indifferent and, more likely hostile to the needs of the urban poor. Scarcity of planned and serviced land in the right locality is yet another contributory factor to growth of unauthorized settlements which is largely a manifestation of the acute shortage of low cost housing in the urban areas. Equally significant is the role of the provincial administration in the creation of unauthorized settlements.

Urban villages with informal settlements are characterized by land tenure insecurity due to lack of recognition by the government. The tenure insecurity has been compounded by the presence of widows/orphan living with nuclear families due to the HIV/AIDS scourge.

The lack of proper policies to guide regularization of informal settlements as well as political interference creates a scenario whereby previous formalization and slum upgrading projects were unsuccessfully carried out. Regularization has been attempted haphazardly due to lack of an institutional framework to oversee formalization of process. In addition community participation was ignored in the overall implementation.

Land Policy Recommendations

- Put in place machinery to address grievances of those adversely affected by the implementation of the 1908 Land Titles Ordinance.
- Encourage income generating projects in urban areas with a view to alleviating urban poverty in urban areas.
- Put in place a comprehensive national plan for low income and high density housing and shelter development, with well defined targets and financing mechanisms as a strategy for minimizing informal and spontaneous settlements in urban centres in the long run.
- Ensure that provincial administration and other unauthorized or peripheral people are strictly kept out of the land administration process.
- Seek alternative land for settlement of genuine squatters (Coastal region, Kibera etc) after drawing an inventory of all the informal settlements.
- Recognize all categories of informal land occupiers, and secure land for them. There is need for the issuance of communal trust deeds pending sub-divisions to individual plot owners in informal settlements
- Incorporate a wide range of tenure options to ensure affordable access to land for all thus minimizing pressure on land and housing markets.

- Encourage development of appropriate cadastral systems and streamline the land registration procedures as a means of regularizing informal settlements.
- Protect individual property rights and communal rights in urban villages through land registration.
- Enhance community participation in the regularization upgrading all the existing informal settlements.
- Establish an ad-hoc authority not only to plan, govern, control, regulate, mobilize resources and sensitize residents, but also to deal with the wide issue of lack of security of tenure. The authority to address community capacity needs such as interaction and exchange of information and experience.

3.2.11 Peri-Urban Development and Urban Sprawl

Background Statement

The colonial authorities promoted segregation policies, which restricted the occupation and residing of the local communities in the urban areas. Where it happened, there were affluent European/Asian areas and depressed African areas. With the attainment of independence, the latter flocked to the towns in search of urban employment, thereby overwhelming the Local Authorities, in terms of provision of services such as housing and infrastructural facilities, as well as employment. Eventually, individual households found the price of urban land unaffordable and therefore opt for cheaper land in the peri-urban areas. The peri-urban development and urban sprawl have continued with no planning.

Problem Statement

Compounded by limited resources, the local authorities are unable to extend infrastructure and services to match the unexpected influx of people. The 1980s heralded a politically motivated need to expand local authority boundaries with little consideration given to their institutional capacities or structure. Pure rural communities were overnight brought into the urban areas.

The problem is compounded by the double land ownership system. Government provides formal leases in the urban areas with development conditions and controls while the newly absorbed land in the peri-urban areas are freehold titles with little development control. Due to low land prices and proximity to other related urban activities and services, the people opt to settle in peri-urban areas.

Because of continued decline in agriculture, farmers in the vicinity of urban centres have converted the land to the lucrative residential use. Local

Authorities have not intervened to direct these developments. Lack of integrated legal framework and the existing legislations have been unable to regulate and control urban growth leading to the spatial spread/sprawl of our towns.

Land Policy Recommendations

- Put in place measures to tackle the dichotomy in the current land ownership systems. There is the cheap and unregulated freehold land outside the town vis a viz the expensive controlled and leasehold land in the gazetted towns.
- Ensure that Local Authorities prioritize planning and infrastructural development as their core functions. A well-coordinated and integrated urban plan will identify future trends and accordingly offer guidelines on growth.
- Define and protect agricultural land since over 85% of the people rely on agriculture directly or indirectly.
- Avail comprehensive subdivision and infrastructural plans, to ensure that the new settlements do not continuously become large slums. At the outset, the policy must offer guidelines on change of user on fallow agricultural land as urban sprawl is particularly taking place within the large tracts of land previously owned communally but currently undergoing subdivision.
- Integrate peri-urban planning in urban development plans.

3.2.12 Serviced Land for Housing

Background Statement

Land is the most important input in the provision of housing. Kenya has experienced a progressive decline in availability of adequate and suitable urban land for housing due to several factors including the encouragement of private ownership of land, the notion of land as a commodity to be traded on, misapplication and abuse of powers by various authorities in allocating public land in disregard to the existing law. The genesis of this situation can be traced back to colonial legislations like the Government Lands Act. The situation has been worsened by lack of proper policy guidelines and inadequate or inappropriate legal and institutional mechanisms for land administration and management.

Problem Statement

In more recent years the urban land problem including land grabbing and selling phenomena was further officially sanctioned by the Government through Legal Notice No. 305 of 1994, which allowed for sale of undeveloped

leasehold land. The fundamental problem arising from the directive is that vast areas of urban land held in private hands, particularly for speculative purposes and remain undeveloped in the face of acute shortage of land for housing.

Another contributory factor to lack of suitable land for housing is that vast tracks of land both within the core urban and peri-urban areas are held under freehold tenure which gives absolute ownership rights to the owners without stringent development conditions that are necessary for any comprehensive and integrated development planning.

In most urban areas there exist old, dilapidated, low density housing estates whose land can be put to optimum use by redeveloping them into high density residential flats, to accommodate the large urban population who are currently without decent and affordable shelter.

Land Policy Recommendations

- Allocate adequately serviced land for urban development, particularly housing development institutions with greater emphasis to low and middle income housing.
- Acquire, plan and service land within a specified radius of the gazetted boundaries to ensure integrated sustainable development and continuous supply of land for housing.
- Institute a re-distributive land reform programmes such as taxation of idle land and re-development of dilapidated estates into high-rise flats as a strategy for increasing the supply of housing.

3.2.13 Urban Environmental Concerns

Background Statement

Kenya has entered into the new century with a number of environmental challenges. Her environmental degradation is largely associated with the destruction of natural resources such as forests, water, marine and coastal resources as well as soil erosion and pollution-water air and land. Of great concern is the general lack of awareness among the people on their right to a clean and healthy environment. More often than not Kenyans exhibit a high degree of tolerance to environmental vagaries, some natural and others caused by a non-caring citizenry completely ignorant of the non-renewable nature of most of these resources. This means that there is need to address higher levels of decision making to address the quality of the environment.

Land is one of the most important elements of the natural environment and its conservation and protection ensures a high degree of environmental quality. The environment is a bank of resources for consumption of raw materials and keeps flora and fauna at a balance, which is important for the ecosystems and life as a whole.

Problem Statement

Rapid urbanization has led to infringement on environmentally sensitive areas such as wetlands, hilltops, water bodies and coastal line. In most urban areas the problem has been compounded by lack of designated solid waste dumpsites and easements/way leaves for trunk services. This has led to the degradation of water resources and the aquatic environments. In addition, the rapid urbanization experienced in Kenya in the 1980's has given rise to high population influx into our cities causing adverse environmental effects through the presence of informal settlements, slums and solid waste. The scenario is made worse by lack of designated solid waste dumpsites in most of urban areas resulting in the release of greenhouse gases (Methane and Carbon dioxide) in the atmosphere (Sulphur and Nitrogen compounds) in the soil and water systems. Other major urban wastes include; non- biodegradable plastics, scrap metal and residential waste.

Poverty has pushed the urban poor into environmentally sensitive areas where they engage in livelihood activities like urban agriculture that result in environmental degradation.

Land use conflicts between environmental conservation and demand for human settlements have led to destruction of water catchments areas such as Nairobi dam, urban rivers and Ondiri Swamp among others.

Industrialization and urban commercial activities of manufacturing, processing, dry-cleaning, printing, dying, brewing, fishing and textile all generate and discharge untreated solid waste and under treated industrial waste into the environment that lead to degradation of water resources and aquatic environment. Others include gaseous emissions, obnoxious smells, liquid effluents, heat and noise.

Furthermore there is a lot of environmental degradation in Kenya's urban areas, caused by a lot of massive earth crust destruction by unsafe quarrying and excavation activities which have been motivated by pecuniary principles. Unsafe quarrying and excavation of building materials which is the process of getting both building and construction materials either mechanically and or manually have led to stagnation of various infrastructural developments in urban areas due to both destruction and weakening of the earth's strata and crust.

The by-products from unsafe quarrying and excavation and/or from the processing of these materials are indeed injurious to urban areas. The dust from excavation and quarrying are acidic and therefore destroy the flora and fauna, buildings, other infrastructural development, and the general environment. The discharges from these processes have no permanent outlets but are left to find their ways to the roads, and streets hence destroying these

developments. It has been revealed that there is non-existence of legally designated quarrying and excavating areas, although those involved pay annual rent, license fees, to those urban areas.

Land Policy Recommendations

- Put in place solid waste disposal systems in all urban areas with proper sewage treatment plants and refuse disposal sites being planned away from environmentally sensitive areas.
- Form participatory environment groups and encourage preparation of participatory environmental action plans by communities living near environmentally sensitive areas to preserve cultural and social-economic aspects.
- Enforce environmental law and by-laws.
- Discourage discharging of untreated solid and liquid waste into rivers and lakes by individuals and local authorities by providing waste dumping sites, sewerage treatment and incineration facilities.
- Control pesticides, herbicides and excessive extraction of water bodies.
- Institute the polluter pay principle, and impose heavy taxation to manufacturing concerns as deterrent for pollution.
- Ensure that environmental impact assessments are carried out on all developments that have a propensity to pollute.
- Locate industries discharging hazardous waste away from residential areas, and ensure that feasibility studies are done before approval and setting of any industry.
- Encourage labelling of any waste especially hospital waste before dumping.
- Delineate the quarrying and excavation areas within urban areas with the assistance of the Department of Mines and Geology.
- Vest in the government and or local authorities all quarrying surface rights and excavation of all mineral and mineral substances for the protection of such minerals and surface rights.
- Monitor annually and stringently urban environmental degradation to avert both current and future socio-economic negativities in infrastructural developments.
- Encourage urban waste re-use or recycling through provision of land for enhanced livelihoods and environmental management.

3.3 LAND TENURE AND SOCIO-CULTURAL EQUITY

3.3.1 Customary Land Tenure Systems

Background Statement

The most common form of tenure in Africa was communal tenure, whereby land belonged to no one individual but to the community, with each person having rights of access to the land dependent upon need. The rights of access were guaranteed by a political authority in a given community although they did not exercise control over the same. Land could be acquired through a process of occupation by first clearing, inheritance, status - ties, being the descendants of the community founders or alliance with the local spirits, conquest or purchase from another community. Clans determined occupation and land ownership claims.

Kenya has more than forty-two (42) ethnic communities, each having a variety of land tenure systems. This limits the extent to which one can broadly generalise and categorise customary systems of land tenure. However, for many, land assumes many forms that order relationships between people, both the living and the dead. It structures relationship between groups within societies and between people and the supernatural world. In this sense communities perceive land as both sacred and profane and often it is linked with fertility and life. Land is therefore an entity perceived as belonging to the ancestors to be held in perpetuity for the unborn, the living and the dead.

Problem Statement

Many of the challenges arise from the following: Conflicts between customary and statutory laws as a result of transition from indigenous land tenure systems to the western property concept of 'ownership'; Land registration converting multiple, situational and overlapping rights to individual, absolute and exclusive rights; Lack of legal status for communal decision making structures; State ownership and control of natural resources; Registration of land in the name of male head of household undermines women's rights; and individualization of land titles in face of expanding community population.

Having recognized this, the challenge remains, on how to give legal recognition to existing rights under customary principles and to build links between customary land holding systems and statutory laws aimed at harmonizing the two systems.

Land Policy Recommendations

- Document and map existing customary land tenure systems.
- Customary land tenure needs to be recognized. Codify principles, specific norms and how to deal with community variations.
- Register local rights with the aim of giving them legal status.
- Recognition of Common Property Resource Management and women's rights within framework of collective ownership.
- Take into account multiple interests of all land users including the protection guaranteed to women under customary land tenure system.
- Harmonize communal decision making structures with a formal law and their respective powers identified and recognized.

3.3.2 Statutory Rights to Natural Resources and their Implications for Customary Tenure

Background Statement

In indigenous African society, human relationships to land had to do with use of it such as grazing, cultivation, hunting and gathering. There were degrees of control which was exercised at different levels of social organization to ensure their equitable distribution among all members of the community, in which each member had specific rights to access the community owned resources. Colonization radically changed this situation by introducing state ownership and control over natural resources. However, in the minds of communities, they still perceive and continue to use the natural resources which once belonged to them as their own often creating conflict between the communities and the government.

Problem Statement

State ownership of natural resources was continued as a matter of principle after independence and provided for in various laws. Title to natural resources including Trust Lands is vested in the government to the exclusion of communities that depend on these resources for their livelihood. The implication for this is that the state owns and controls key natural resources e.g., water, wildlife, minerals, fisheries, forests and land. The government has the right to dispose of interests in land and natural resources to individuals without regard to local communities, while at the same time, the local communities are excluded in the management of their natural resources and therefore do not benefit adequately from the exploitation of resources - water, wildlife, fish and minerals.

Land Policy Recommendations

- Ownership of land and Natural resources should be vested in the people of Kenya.
- Customary rights over natural resources should be recognized and secured in legislation governing ownership, use and access over these resources.
- Natural Resources should be vested in the community to manage in a sustainable manner.
- Community should be given the right to participate and make decisions affecting their resources and also benefit from them.
- Any displacement for resource exploitation shall be promptly compensated in a manner recognizing intrinsic value of the resource.
- Exploitation of natural resources should provide equitable share of benefits with measures for the uplifting of communities living adjacent to the resource.

3.3.3 Causes and Trends of Rural-Rural, Rural-Urban and Cross-Border Migrations and their Impacts on Land

Background Statement

The process of urbanization is an intrinsic dimension of economic and social development and, in which the Kenya is going through the process of shifting from predominantly rural to predominantly urban societies. Towns are centres of economic growth, providing the impetus for socio-economic innovation and change. The reasons for migration can be divided into two: 'Push Factors' – those that encourage the migrants to leave the area of origin and 'Pull Factors' – the aspects of life in the destination areas which are attractive to them. In Kenya, the push factors include: shrinking farms which no longer can support family subsistence; land fragmentation; soil erosion and reduced crop yield; landlessness; poverty; natural disasters such as floods, draught; poor infrastructures e.g. roads, schools, hospitals, markets etc; and lack of employment opportunities in the rural areas. The pull factors are: employment opportunities; levels of income; good infrastructural facilities and basic services.

Cross-border migrations involve several countries (Kenya, Uganda, Tanzania, Somali, Eritrea, Ethiopia and Sudan) while pastoral communities are known to cross over into each others land in search of scarce pasture and water.

Problem Statement

Effects of migration include depopulation of the rural areas of able bodied people migrating to urban centres leaving old people and children who cannot work on the land. In the urban areas, development of slums by poorly paid unskilled labourers, overpopulation and poor planning and lack of essential services is common. While rural to rural migrations leads to overgrazing, deforestation, soil erosion, excessive use of chemicals, inter clan and tribal conflicts.

Land Policy Recommendations

- Improve infrastructure and increase investment opportunities in rural areas.
- Provide better land-use planning in urban/rural areas.
- Decentralize development/governance/services to communities and rural areas to reduce rural urban migration.
- Introduce reserved grazing lands and watering points.
- Provide proper management of rangelands to minimize migrants and conflict among pastoral communities.
- Reach out to neighbouring states and encourage cross border negotiations based on traditional /cultural dispute resolution mechanisms where conflicts are by communities with similar cultures and are about access and use of natural resources across the borders.

3.3.4 Livelihood Strategies of Forest Dwellers /Hunter-Gatherer Communities, their Access, Use and Control of Land and other Resources

Background Statement

Hunter-gatherer communities identify themselves as distinct peoples with rights to self-determination and preservation of their varied cultures although many factors have undermined their livelihood systems. Because they are relatively few in number, compared to the numerous farming and pastoral communities, they are inadequately represented in decision making organs at all levels.

The political and economic marginalization of Forest Dwelling Communities can be traced to the colonial period when the through the Carter Commission, the settlers failed to recognize them as a distinct community, but instead preferred that they be assimilated into their neighbouring communities like the Maasai or the Kalenjin. Although their ancestral territorial boundaries were recognized by the neighbouring communities, these were disregarded by the colonial government who went ahead and seized their lands. The white settlers

though occupied the plains, gazetted the forests to become state property thus rendering forest dwelling communities homeless. Through the forest preservation policy the colonial government denied them right to live in the forests, forcing them to surrender their community identity through forceful assimilation. In view of this, they became subject to dominant customs of the neighbouring communities who tried to assimilate them.

Problem Statement

Hunter-Gatherer communities' rights of access, use and control of land and related resources are threatened by policy and legislative reforms that prohibit the settlement of people in forested areas. This is coupled by other concerns: failure by Government to recognize them as distinct tribe undermines their social-political heritage; non-representation in resources decision making institutions; frequent evictions/lack of titles; incompatible land tenure system; lack of infrastructure; imposition of Wildlife Management Act (1977); and lack of legal measures to protect their destroyed forest property i.e. honey.

Land Policy Recommendations

- Identify; recognize hunter gatherer communities and their livelihood systems as Hunters/Gatherers. Embrace principle of affirmative action and encourage their participation in rural development programmes.
- Provide legislative framework to facilitate access and user rights to natural resources that these communities earned their livelihoods from.
- Recognize their communal land tenure systems and the management of their resources.
- Provide legal and institutional framework for restitution in lieu of destroyed property and lost cultural habitation in the forests.

3.3.5 Pastoralists' Livelihood Strategies, Access and Control of Land

Background Statement

Pastoralism is practiced in 70% of Kenya's land mass area and is found in the following Districts: Marsabit, Garissa, Isiolo, Wajir, Mandera, Ijara, West Pokot, Baringo, Tana River, Turkana, Samburu, Kajiado, Narok, Transmara, Witu Division of Lamu and parts of Nakuru (Narman, 1990). These pastoral districts support 25% of the human population and 50% of all livestock (National development Plan, 2001 – 2008). The main pastoral communities in Kenya are: Maasai, Samburu, Pokot, Keiyo, Marakwet, Ilchamus, Saboat, Turkana, Eldorois, Gabbra, Rendille, Sakuye, Borana, Orma and Merille.

From the colonial period, nomadic pastoralism has been perceived to be relatively inefficient, causing overstocking and degradation of rangelands.

Emphasis has been laid on improving the pastoral production system by increasing productivity, destocking through increasing sales, decreasing land degradation, improving the welfare of pastoralists through infrastructural support. These strategies can best be pursued in communal grazing lands rather than individual ownership.

Problem Statement

Conflicts between traditional practices and modern technology raise questions of ecosystem sustainability and equitable use of resources with regard to pastoral practices. The current land tenure system poses the following challenge to pastoralism as a livelihood system: land sub-division within the pastoral areas into uneconomic units; lack of good physical infrastructure in pastoral areas and general insecurity; large heads of livestock without market outlet (e.g. during drought);

Encroachment by other non-pastoral communities and activities e.g., residential housing, horticultural activities is a big problem which is especially because pastoralist do not recognize boundaries but the need to access resources. Land taken away by government from pastoral areas such as ADC, military camps, mining sites has reduced their better grazing land while national boundaries and administrative boundaries have limited the mobility of pastoral herds.

Land Policy Recommendations

- Immediately stop land sub-division in pastoral areas.
- Designate land use in specific areas (land to be used according to its suitability). Address frequent droughts with the aim of enhancing the capacities of pastoralists and provide appropriate livestock exit avenues both within and out of the country to mitigate the impacts. Address appropriate and relevant physical infrastructures in pastoral areas which in turn will be effective in reducing insecurity problems. Establish disease free zones.
- Promote and enhance pastoralism as a suitable, viable and an appropriate economic activity that need to be supported and promoted for the development of those who depend on it both directly and indirectly.
- Review reserved lands in pastoral areas with aim of reversing some of them to their owners (land that is not being put to its original intended use).

3.3.6 Historical Injustices against Pastoralists and Hunters and Gatherers

Background Statement

The pastoral population in Kenya is comprised of four major groupings. The Southern pastoralists found in the districts of Samburu and Laikipia to the west of Mount Kenya and in Narok and Kajiado districts on the border with Tanzania. The Northern pastoralists are Cushitic and Oromo speakers who occupy the whole northern half of the country. The third group is the Turkana who live on the north-western tip of the country bordering Uganda, Sudan and Ethiopia and the Coastal pastoralists living in Tana River District.

The Hunters and gatherers communities include the Ogiek, Swenger, Langulo and Sanye. The Ogiek as a community are scattered in various parts of East Africa with majority living in Nakuru District. Others live in Mt. Elgon, Koibatek, Nandi, Samburu and Narok in Western and Rift Valley. The Ogiek are originally a forest dwelling community, surviving through hunting of wild game and gathering fruits and honey. A good number keep livestock while others practice peasant farming. Before the coming of the colonialists Sengwer are believed to have originally lived in areas bordering Nandi, Pokot (Suk), Marakwet, Uasin Gishu, Maasai, Keiyo, Karamoja, Kony and Sebei (Sabiny) communities. Since the coming of the colonialists and later other communities, Sengwer were termed as a community who does not exist. To date they are forced to identify themselves as Pokot, Marakwet or Keiyo. The Langulo and Sanye hunter-gatherer communities are found in Lamu District.

The colonial capitalism led to the marginalization of pastoralists and hunter-gatherer communities at the expense of agricultural expansion. While majority of Kenyan communities lost land to the European settlement, the impact of land alienation was more immediate for pastoral communities and hunter-gatherers than agricultural peoples. There are a number of legislative changes introduced by the colonial state, which negatively impacted on the livelihoods of pastoralists and forest dwellers. These include the Cattle Diseases Ordinance of 1902 that were to prohibit pastoralists from free movement with their livestock. The other was the establishment of protected areas/national parks and forests.

Problem Statement

The incorporation of pastoralists and hunter gatherer communities into the colonial capitalist system did not only undermine their economies, but also led to their political marginalization and deterioration their production system and livelihood. At the same time, the government programme of protecting forested areas has not taken into account the fact that some communities lived in these forests from time immemorial.

The historical injustices against hunters and gatherers includes: displacement and dispossession by colonial and post colonial government; inappropriate land tenure system for common pastoral lands; conflicts with other land use system e.g. wildlife, forest development and agriculture; marginalisation of pastoralism; Negative perception about pastoralism and pastoralists; marginalisation of pastoral women and leasing of land (999yrs).

Land Policy Recommendations

- Historical wrongs be addressed either through compensation or restitution and be traced from way back as 1895 when Kenya became a British Protectorate.
- Recognize communal land ownership and traditional institutions of land dispute resolution mechanisms
- Recognize rights of pastoral communities living adjacent to protected areas to benefit from their resources.
- Recognize pastoralism as a viable land use system and its contribution to national economy.
- Recognize pastoralism as a way of life and not livestock production per se.
- Provide for provisions that protect the rights of women in pastoral lands.
- Review of all existing leaseholds and limit to 99 years with option of renewal upon assessment in consultation with the community.

3.3.7 Use Conflicts between Pastoralists and Other Land Users

Background Statement

The colonial origins of land policy and law in Kenya are important for understanding the current status of the policy and legal framework that governs natural resources and conflicts over those resources. The colonial government determined that all land in the Kenya, whether occupied or unoccupied, was “Crown land” available for alienation to white settlers to settle in and use for agricultural production.

Although their initial interest in the territory was as a route to what is now Uganda, British finally settled in Kenya on account of the perceived agricultural potential of the land, especially that part of it that came to be known as the white highlands. Policies and laws formulated by the colonial administration in Kenya between 1897 and 1960 on land were to ensure easy access to the resources by colonial settlers and to exclude the natives from that which the settlers were interested in. The overall policy objective of the colonial government total control of the land, in order that it many make it available to the white settlers on such terms as would lure them to settle in the colony. To achieve that objective, the colonial administration had to dispossess the

African natives of the land and marginalize their institutions of natural resources governance.

The reforms introduced entailed individualization, titling and registration to pave way for white settlement and their ownership to the land; and removal of some communities to 'reserved' areas. Simultaneously, a new framework for the management of conflict over natural resources was introduced that did not derive its legitimacy from the traditional patterns of relationships that governed access to land and natural resources. The introduction of this new framework served to accentuate existing conflicts, while opening new ones. Independence did not bring any significant change and hopes that traditional institutions of resource management would regain their roles and responsibilities were dashed as continuity rather than change informed the policy framework that has been operational for the last four decades.

Problem Statement

Conflicts over natural resources such as land, water, pasture and forests have for ages been widespread, whether it be a local dispute between neighbouring farmers, forest dwellers, pastoralists or wildlife/human. Delineation of community boundaries during the colonial government and their continued existence has brought hostilities between neighbouring tribes/clans.

Conflicts over land manifests themselves in: Land use conflicts because of competing needs by different land users e.g. pastoralists versus cultivators; residential versus industrial; squatters versus land owners in both rural and urban areas; and private versus public land users etc. Conflicts over forests have two dimensions: the use of land for forests and use of land for other purposes i.e. residential, industrial development, farming, livelihood support for the forest dwellers, environmental function as a carbon sink and water catchments. The conservation approach emphasizes protected areas, when in fact the bulk of the wildlife is found in areas occupied by the pastoralists, whose livestock are adversely affected by wildlife through the spread of the diseases and the denial of access to pastures in the reserved/protected areas.

Land Policy Recommendations

- Promote public awareness on land.
- Address the various conflicts that arise due to conflicting interest groups.
- Provide for conflicts resolution mechanisms by integrating all possible conflict resolution options conventional/traditional.

3.3.8 Nature, Causes and Impacts of Conflicts over Natural Resources in Kenya

Background Statement

The 1999 population census revealed that there were about 30 million people in Kenya at that time consisting of over 42 ethnic communities. Ten years earlier (1989), the country had one of the highest birth rates in the world, at 4%. However, owing to concerted government and civil society pressures and awareness campaigns, this rate has now fallen to below 3%. While the average population density over the whole country is low, the distribution of people is skewed. Over 75% of the total rural population lives in the highlands where the average population density is close to 200 people per square kilometre. Close to 70% of the 30 million people live in the rural areas, while the rest live urban areas. 25% of this population lives in the arid and semi arid lands, occupying a total of over 70% of the land area. Population increases in urban areas is very high at 6% compared to about 1.9% in rural areas.

This is an indicator that there is a high incidence of rural urban migration, possibly due to increasing unemployment and inadequate social facilities in the rural areas. The most significant natural resource and therefore the most controversial is land. The country's land consists of 12% high potential land while 88% is arid and semi arid. Of the 12% land that is of potential, arable land occupies 7% of which 1% is under permanent crops, 37 permanent pastures, 30% forests and woodlands and other land uses consist of 25%.

The increasing population has put pressure on natural resources as these become scarce. This scarcity has led quite often to serious conflicts between and among communities with each wanting to prevail over the other. The resources are water, wetlands and catchments, fish, minerals and range resource including wildlife and forests. While these do not constitute the whole spectrum of natural resources, it is observed that they are the leading cause of conflicts in the country.

Problem Statement

Serious conflicts have been witnessed in the country as result of several issues among them: In-equitability in natural resource allocation, access and benefit sharing and competing interests among the various categories of users; Conflicts arising from lack of access to watering points and pasture in protected areas; Lack of access to gazetted forests and the resources therein by local communities; Inter-community conflicts over natural resources due to inequity and disagreements over access rights on pasture and water; Tribal

clashes due to competing land - uses. Unfair legislation affect community access to benefits over natural resources. Lack of a defined land policy defining clear optimal land uses in the various ecological zones; Conflicts related to competition over pastureland and water resources (Kajiado, Narok, North Eastern and Laikipia); Conflicts related to compensation for damages including loss of livestock and lose of human life (Mt. Kenya region, Narok, Kajiado, etc.; Interference of trans boundary fishing limits especially in Lake Victoria

These conflicts have occasionally flared into fully-fledged tribal clashes such as occasioned in the Enoosupukia area, some parts of Isiolo and north-eastern province as well as in areas where animal wildlife conflicts have been witnessed. These conflicts are a serious threat to social stability and national development.

Land Policy Recommendations

- Integrate statutory and traditional dispute resolution mechanisms to avoid conflicts arising from misunderstanding and occasionally misrepresentation of community interests in law
- Identify the optimal land uses for various categories of land in Kenya and take into account the social cultural aspects of communities.
- Formulating a policy that recognizes both consumptive and non consumptive forms of wildlife utilization.
- Establish a trust fund to support community conservation programmes and enhanced management capacities within community conservation.
- Define clearly benefit sharing criteria of natural resources within the jurisdiction of local communities.
- Specify compensation criteria for life and property arising from the destruction of wild animals.

3.3.9 Women, Land and Socio-Cultural Equity

Background Statement

Equal rights of men and women as they relate to matters of land and property ownership are enshrined in several International Instruments viz:

[Universal Declaration of Human Rights, 1948; Vienna Declaration and Programme of Action, 1993; UN Millennium Declaration, 2000: Paragraph 6; International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Elimination of All Forms of Discrimination against Women, 1979; African Charter on Human and People's Rights, 1981; Beijing Declaration and Platform for Action, 1995; Istanbul Declaration and Habitat Agenda, 1996]

The Draft Constitution prohibits discrimination on the basis of sex. In practice, discrimination of women remains widespread even though women's full participation on the basis of equality in all spheres of society, including equal rights, opportunities, access and control of land and its resources are critical to the development of a country. In Kenya women account for just 5% of registered land holders nationally and yet they contribute over 80% of the agricultural labour force, 64% of subsistence farmers and produce approximately 60% of farm derived income.

The present land tenure systems tend to emphasize the extinguishing of customary land tenure system which provided some protection to women's access and use of land and replacing it with individual tenure systems and title deeds. Culture and customs continue to support registration and inherence of land rights to males. The Islamic law recognizes women's rights of inheritance. However social cultural factors limit women from rights enshrined in the Succession Act and land markets based on the principle of a 'willing buyer, willing seller' do not favour women who are often vulnerable to poverty and male dominations.

Problem Statement

Legislations and policies in place in Kenya regarding land management have not been harmonized with the international provisions. Example is the 'equality clause' in the Kenyan Constitution which is restricted by article 82 (4), making exemption with respect to adoption, marriage, divorce, and devolution of property at death. Culture and traditions continue to support male inheritance of family land while there is lack of review/formulation of gender sensitive family laws. There is conflict between Constitutional provisions on gender equality vis-à-vis customary practices that discriminate women even when implementing the Law of Succession Act. Land boards or tribunals are generally dominated by men. Women are sparingly represented in institutions that deal with land, their rights under communal ownerships and ranches are not defined and this allows men to dispose off family land freely. Few have land registered in their names and lack of financial resources restricts them from entering the land market. Moreover International Conventions on Women's Human Rights relevant to women's property rights ratified by Kenya government have not been made into policies/laws.

Land Policy Recommendations

- Existing laws, regulations, any customs and practices which constitute discrimination against women in land shall be outlawed and appropriate legislation established to ensure effective protection of women against any such acts.

- Succession and Matrimonial Property Laws be harmonised to conform to the principle of equality between women and men.
- Review regulatory frameworks to ensure women's equal rights.
- Enactment of specific legislation governing division of marital property to replace the married women's property Act of 1882 of England.
- Widows/widowers and divorcees shall be protected through the provision of co-ownership.
- Appropriate legal measures be taken to ensure that men and women are entitled to equal rights in land, before marriage (in cases of inheritance), during marriage and during its dissolution and after the death of the spouse.
- Address the land markets in relation to women especially with regard to matrimonial and family land by enacting laws to curb selling, mortgaging family land without the involvement of both spouses.
- Define women's rights in Trust/Communal Land.
- Promote women's access to justice in land issues and land information.

3.3.10 Perceptions of Communities on Land as Heritage and an Identity

Background Statement

The link between culture and environment is clear among indigenous people. They share a spiritual, cultural, social and economic relationship with their traditional lands. Access to and control over land resources has frequently determined their socio-political structures. Traditional laws, customs and practices reflect both on attachment to land and responsibility for preserving traditional lands for use by future generations. Land is perceived as a means of livelihood which can bring social support, security, confidence, incentives, group and status identity.

Therefore, the physical and cultural survival of indigenous people is dependent upon the protection of their land and its resources. However, the relationship between the indigenous people and their environment has been eroded because of dispossession or forced removal from traditional lands and sacred sites. Land rights, land use and resource management remain critical issues for indigenous peoples around the world. Development projects, mining, forestry activities and agricultural programmes continue to displace indigenous people.

Problem Statement

Modern approaches on land as evidenced in government policy interventions have challenged or contradicted the traditional perception to land resulting in many obstacles in policy and project implementation. Land privatization, while positive in its intentions, affects the concept of shared access to land, interferes with people's livelihoods and introduces competition on already scarce

resources. Constitutions calls for freedom of movement but this can result in invasion and encroachment by intruders to land which is attached to another community resulting in conflicts. Introduction of projects and implementation of policies without local peoples consultation may conflict on their perceptions on land, tenure structures and land use, leading to low productivity, destruction of biodiversity, sacred and historical sites on the other hand disaster management is usually hindered by strong attachment to land especially in re-location proposals while land planning and development are subject to traditional perceptions that each person must own a piece of land.

Land Policy Recommendations

- Have strategies that will ensure that communities have not been deprived of their rights in land.
- Document existing perception on land in different communities.
- Land be given to those whose livelihoods depends on it.
- Consider customary land tenure structures.
- Recognize that land is more than a question of production and markets, but also a spiritual, a sacred and an identity element as well as a means of preserving cultural heritage.
- Effective involvement of the local communities be made mandatory when introducing programmes.
- Review lands acquired from the community by the Government.
- Facilitate alternative means of livelihood- to ease land as the only means of livelihood.

3.3.11 Historical Settlement Patterns and Land Claims

Background Statement

Kenya has three (3) major distinct groups of people. The Bantu believed to have originated from the current Cameroon, Gabon and Congo in early 16th Century; the River-Lake Nilotes from Southern Sudan 14th to 17th Century and Highland-Nilotes (pastoralists) from south-western Ethiopia in the course of 18th to 19th Century and the Cushites who migrated southwards from the Ethiopian Highlands.

Between 1500 AD and 1900 AD the Bantu, Eastern Cushites and Nilotes were involved in internal (local) movements, which eventually brought most of their clans in touch with other peoples, evolving them into present distinct ethnic groups and into their present day homelands. Apart from “10-Mile Strip” of the coastal region, the rest of Kenya was independent of any foreign control and people governed themselves.

The arrival of the British in 1890's to East Africa was the start of land dispossession whether by force, persuasion, treaties and agreements. British settlers alienated the best lands to themselves hitherto held by communities, displaced locals, and confined them into 'reserves'. Independent Kenya later inherited land administration laws that allowed freedom of movement and ownership of land anywhere and introduced settlement programmes that enhanced present settlement patterns regardless of any historical claims that were there on the lands by the local communities.

Problem Statement

The Constitution makes no special provision to protect the rights of those who through historical events like colonialism were disposed off their land. Instead legislations were introduced that marginalize some communities like the Saboat, Ogiek, Sengwer and other hunter/gatherers. The coastland question, where land was alienated, and a landlord tenant situation created by the sultanate of Zanzibar thereby dispossessing whole communities off their ancestral land and creating internal squatters on people who have a legitimate claim to land remains unresolved. There is lack of recognition of historical land claims by successful independent governments and there is inequitable distribution of settlements trustees fund leaving out the needy and the dispossessed.

Land Policy Recommendations

- Reclaim land irregularly allocated through the crown land ordinance and post independent Government and allocate it to indigenous squatters.
- Critically and squarely address the squatter problem.
- Address ancestral land rights and seek restitution as a result of historical injustices.
- Recognise common property management of land.
- County Councils should no longer hold land in trust for local communities but communities should be facilitated to be trustees of their own land.
- Undertake a comprehensive audit of resettlement programmes with a view of determining whether and what extent it has availed land to the needy people.
- Recognize the Nubian land question and find a permanent solution to it.
- Treat Coast land tenure problem separately in consultation/participation with/of the local communities to find solutions.

3.3.12 Impact of HIV/AIDS on Land Rights, Access, Ownership and Use

Background Statement

HIV/AIDS pandemic continues to ravage developing countries with devastating effects. Kenya is one of the countries worst hit by the pandemic. National statistics indicate that about 1.5 million Kenyans have died from HIV/AIDS related infections since 1986 when the pandemic was first reported while about 2.0 million Kenyans are HIV/AIDS positive with 50% of the infected being young women and girls. This scourge has affected children and orphaned an estimated 1.8 million of them who often get disinherited on their family land. Women who provide the labour force in agriculture in the rural areas have died causing the food insecurity and cash crops production to dwindle while others get disinherited after the death of their spouses. Records indicate that women aged between 15-24 years are three times likely to be infected by HIV/AIDS compared to the young men in the same age bracket.

The scourge has been felt in every economic sector. Agriculture, which is the backbone of Kenyan economy, has been very adversely affected. Production of cash crops like coffee, tea, pyrethrum and flowers that earn the country substantial foreign exchange earnings through export has drastically been reduced. In the rural areas where the majority of the populations reside, HIV/AIDS has tremendously affected the subsistence agricultural production, increasing levels of poverty in many parts of the country side.

Problem Statement

The impact of HIV/AIDS on poor rural households remains very significant in food production. Food production depends on the availability of labour to work on the land, accessibility and ownership of land. Too many laws governing inheritance by orphans and widows on family land limit access and use of land by women, while lack of empowerment render them poor subjects of male exploitations making them vulnerable to HIV/AIDS. Moreover traditions, customary laws and illiteracy reduce women and youths power to fight for their rights on family land. They are then left without titled to use as collateral to access credit for owns development.

Land Policy Recommendations

- Review, harmonise and consolidate all the laws relating to children's inheritance of family property in order to protect and promote the rights of orphans.
- Protect boy and girl-child/women's inheritance rights through legislation.
- Do away with traditions that bar the youth from inheriting family land.

- In the case of private land, the power of the primary rights holder to alienate the land should be regulated by law in order to ensure that such alienation does take into account all the other legitimate rights or interests (including family rights or interests) held or claimed by other persons over the affected land. In particular, the law should impose an obligation on the primary rights holder to obtain the written and informed consent of all secondary rights holders before exercising the power to alienate. Further, in the case of community land, the law should prohibit sales to non-members of the affected community but allow sales and exchanges between members.
- In view of the need for vulnerable persons to acquire land in special circumstances (e.g. of HIV/AIDS), land boards should assess all applications on their wider merits, and in this regard, age should not be a barrier to allocation where other circumstances indicate that on allocation to a person less than 18 years of age would be appropriate.
- Enforce Children's Act (Cap 586) and supervise the appointment of guardians for orphans to safeguard their property/land rights. Facilitate public awareness campaigns on the need to write wills to protect their dependants in effect of death

3.3.13 Rights of Access and Use of Land and Related Resources for Vulnerable Groups

Background Statement

Vulnerability is usually a manifestation of poverty and deprivation. Poverty takes many forms besides hunger and malnourishment. Vulnerability can also be viewed through lack adequate shelter, illiteracy, exposure to ill treatment, lack of power to influence decisions affecting ones life and as a physical disability.

The most vulnerable in Kenya are clustered into several socio-economic groups which include: Subsistence farmers, pastoralists in Arid and Semi-Arid Lands, agricultural labourers, casual labourers, unskilled and low-skilled workers, household heads who are female and/or without formal education, unemployed youth, and people with disabilities, HIV/AIDS persons, orphans, slum and street dwellers and the aged. Poor and vulnerable people lack voice, power and representation in their respective societies and this limits their chances of accessing, using and owning land and related resources

Problem Statement

Culture and negative attitudes influence decisions made on the vulnerable groups by others especially on use and land ownership. Vulnerable groups' rights to land are not protected and are subject to bias and discrimination.

The loss of security engendered in a husband's death exposes widows and their children (orphans) to molestation and infringement of their rights by other members of the society. The problem is further compounded by the fact that under most customary laws women have no property rights and are consequently not allowed inheriting the same. The existing land legislations do not empower women and other vulnerable groups. These groups on the other hand lack cohesive corporate body/institutions to represent their concerns. Negative perceptions, discriminatory and inequitable practices due to gender and stigma against vulnerable groups reduce their self esteem and will to access land and land related resources while they lack capital to access and utilize land.

Land Policy Recommendations

- Identify the vulnerable groups and protect their land rights.
- Encourage direct participation and involvement of marginalized/vulnerable groups to own/acquire access and use land for livelihood.
- Engage the vulnerable groups in decision-making processes from the grassroots to the national level in land reform programmes engage the vulnerable groups in decision-making processes from the grassroots to the national level in land reform programmes.

3.4 LAND INFORMATION MANAGEMENT SYSTEMS

Background

All past land reform initiatives such as the Njonjo Commission, Ndungu Commission, etc, have recommended the setting up of computerized Land Information Management Systems (LIMS) in order to improve land administration in the country.

A modern LIMS is a computer based information system that enables the capture, management and analysis of geographically referenced, land related data in order to produce land information for decision making in land management. Such a LIMS is expected to greatly alleviate the inefficiency associated with the present system in which land records are paper based and manually processed.

The setting up of a modern LIMS requires that there be standards that can ensure hardware, software and data interoperability amongst the different data producers and users. A uniform geo-referencing system, preferably tied to similar regional/global systems is also a must. In addition, a number of prerequisites such as awareness creation, feasibility study, user needs assessment, authentication of documents, existence of appropriate data and the creation of an information market need to be in place. Appropriate legal and institutional frameworks also need to be in place to support LIMS. Adequate security measures are also a must, especially so with the current threat of cyber crime. Appropriate mechanisms for data dissemination and sharing, such as the proposed National Spatial Data Infrastructure (NSDI) also need to be in place, as are data and land information pricing guidelines.

The Problem

In Kenya today, land information is held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making about land. Kenyans therefore currently experience a lot of difficulties and expense in accessing land information. The case for a computerized LIMS is therefore strong and clear; however, even the paper records themselves are not optimally organized, and this can significantly slow down their systematic computerization. In addition, Kenya today lacks an up to date inventory of the amount of land under different uses such as forests, water; infrastructure etc. Lack of this vital information complicates effective planning, zoning and overall management of urban and rural land.

Other problems that need to be overcome in order to facilitate the setting up of a modern LIMS include the fact that Kenya has no systematic geo-information

standards. The geo-referencing system needs to be harmonized and tied to the regional and global geo-referencing systems.

Most of the requirements for setting up the LIMS are not in place, for example there is very little awareness amongst the general citizenry about LIMS technology and there is lack of capacity in terms of facilities and trained personnel. The Legal and Institutional Frameworks are deficient; for example there are no laws addressing right of access to information, confidentiality of information, liability for information, intellectual property in information, etc. The NSDI initiative, which is to facilitate data dissemination and sharing, has not been proceeding as well as planned.

Security measures in respect of the proposed LIMS are at present mostly lacking. The concept of land information as an economic resource has not taken root; there is therefore a negligible land information market with no pricing guidelines.

Land Policy Recommendations

3.4.1 Standards

- Data standards should be developed for geoinformation, to provide especially for standardized feature definitions, data content, data coding, spatial referencing, data accuracies and metadata, through the coordinated effort of all data producers.
- Every producer of geoinformation to be required to produce metadata and to conform to standards.
- In the short term, hardware, software, data and communications standards should be developed mainly by adopting and customizing standards already developed by major bodies such as the International Organization for Standardization/Technical Committee 211 (ISO/TC 211), Federal Geographic Data Committee (FGDC), Open Geospatial Consortium (OGC) and also de facto standards developed by industry. The Kenya Bureau of Standards should be involved in the work of ISO/TC 211 as a participating national body rather than a mere observer national body. It should start by forming a subcommittee to coordinate the formation of geoinformation standards.
- Geographical Information System (GIS) installations should be encouraged to adopt and use some of the “open source” software that is available free over the internet and makes available the source code.
- There is a need for a regulatory body for Geographical Information System (GIS) professionals. Such a body will not only generate the synergies needed for the development of standards, but will also enable the development of a code of ethics for geoinformation professionals plus the standardization of the relevant training through certification of professionals and accreditation of academic programmes.

3.4.2 *Geo-referencing Systems*

- A unitary and homogeneous network of control points of adequate density should be established, preferably using dynamic technology such as Global Positioning System (GPS).
- The Survey Act should be amended to allow for the use of modern technology such as Global Positioning System (GPS), Geographical Information System (GIS) etc.
- Re-determination of the sea level and a systematic observation of the gravity should be undertaken to enable redefinition of the geodetic datum.
- Kenya should be an active participant in regional and global georeferencing initiatives such as African Reference Frame (AFREF) and International Terrestrial Reference Frame (ITRF).
- The Survey of Kenya should be required to develop and maintain a nationwide Digital Terrain Model (DTM) dataset at appropriate scales.

3.4.3 *Alternative Land Information Management Systems*

- Existing land records should be re-organized, updated and authenticated in terms of accuracy in readiness for the setting up of a computer based LIMS.
- Appropriate database models and architectures which are in harmony with other systems in the country and in the region should be used.

3.4.4 *Requirements for the Establishment of a LIMS*

- The LIMS to be set up in a systematic manner by ensuring that prerequisites such as awareness creation, human resource capacity building across all sectors, feasibility study, user needs assessment, authentication and updating of existing records are carried out.
- Unnecessary controls on availability of land information to be removed in order to allow the growth of a viable information market to sustain the LIMS.
- Develop a strategy to facilitate sharing of information across government departments
- The private sector to be involved in the setting up of the LIMS.
- A continuous budget to be provided for sustainability of the LIMS.
- A Research & Development unit to be established to facilitate continuous research on LIMS technology.
- Unregistered lands, especially slum areas, to be incorporated into the LIMS, even for visualization purposes only before they are mapped and registered.

3.4.5 Impact of Existing Legal Instruments and Institutional Arrangements

- The many laws that touch on land should be reviewed and harmonized and for land registration, there should preferably be just one law.
- A land information law should be enacted to provide for all aspects of land information access and management.
- There should be established a Land Information Management Division (LIMD) within the proposed Land Commission, which agency would be responsible for coordinating land information management activities nationwide.
- A mechanism should be defined for incorporation of traditional land information in the LIMS.
- Existing institutions to be re-structured in order to be receptive to the LIMS.
- Offices offering land transaction services to be as close together as possible at any station.

3.4.6 Security Issues in LIMS

- Security of the present manual LIMS to be improved through better data storage and handling and stricter access protocols as a computer based LIMS is installed. There is need to have viable privacy, access, accountability and authentication policies.
- Enact laws based on international conventions as they apply to cyber and IT related crimes.
- Legal deterrents to be developed to facilitate LIMS data security.
- All LIMS installations to be required to have data backup systems.

3.4.7 Ownership and Intellectual Property Rights as Related to LIMS

- A trade off be struck between the need to protect investment in LIMS for the purpose of sustainability, and the right of citizens to a publicly funded information resource.
- Relevant intellectual property protection laws such as Copyright, patent etc. to be strengthened and others developed to adequately cater for fair commerce in land information.

3.4.8 Methods of Land Information Dissemination and Sharing

- Land information to be made available to at least the divisional level. Necessary infrastructure, such as electricity, computers and internet connectivity should be taken down to this level.
- Land information to be made available in a form and language that can be understood by most citizens.
- Priority to be given to further development of the National Spatial Data Infrastructure (NSDI) initiative.

3.4.9 Data and Information Pricing

- There should be appropriate amendments to all laws and regulations that restrict the availability of land information products to the market.
- Mechanisms should be put in place to minimize the cost of land information such as the sharing of facilities, hiring (instead of buying), equipment, etc.
- A comprehensive metadata catalogue should be produced and maintained in respect of all LIMS products, and an appropriate marketing strategy put in place.
- The management of the LIMS to put in place an appropriate pricing strategy that will take cognizance of the following:
 - i. The need to generate sufficient revenues to sustain the LIMS.
 - ii. The need to apply differential pricing for different categories of citizens such as sister government bodies, private citizens, private corporations, the poor etc.

3.5 LEGAL FRAMEWORK

The current legal framework is not suitable for many of the contemporary issues that have arisen in the realm of the land sector. In the first instance, there is a multiplicity of laws dealing with substantive and procedural land issues. In addition to these laws, there are also many sectoral laws and policies on land. These laws are neither synchronized nor harmonized. In the second instance, the institutions created by the different laws are uncoordinated. Thirdly, the enforcement of rights protected under the laws has been sub-optimal. Fourth and related is that the management of land rights and registration functions has been abused by diverse actors over the years leading to a crisis of trust in the system. The problems relating to and affecting the efficacy of the legal framework have been recognised for a long time. The reports of the Presidential Commission of Inquiry into the Land Law System in Kenya (Njonjo Commission), the Constitution of Kenya Review Commission and the Presidential Commission of Inquiry into Illegal/Irregular Allocation of Public Land (Ndungu Commission) are testimony to this recognition. All these Commissions point to the need for a land policy anchored to an effective legal framework. Among the issues that such a legal framework should address are historical injustices, customary land rights, tenure regimes, incidents and security of tenure, land markets, management of public land, land use planning and dispute resolution.

3.5.1 Historical Injustices

Background Statement

Historical injustices are land grievances which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities from their land, which grievances have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, treaties and agreements between local communities/rulers and the British.

For purposes of the National Land Policy Formulation, the definition and scope for the understanding of historical injustices/claims, it is generally agreed that 1895 be the cut-off date, being the year when Kenya became a colony under the British East African Protectorate with the power to enact laws and policies under the Crown. The historical injustices/claims shall exclude various displacements of people which may have been occasioned by sporadic ethnic or civil strife or politically motivated clashes before, during and after colonial administration.

The grievances remain unresolved because successive post independence governments have failed to address the land problem in a holistic manner. In

fact, the land policies pursued after independence either exacerbated the problems or only offered artificial and temporary solutions to them.

A cautious, land-market based and hybrid system of resettlement was preferred to a wholesale and massive land restitution programme. This meant that land which had been lost to white and other settlers could not be entirely repossessed for restitution by the Government.

Problem Statement

The adoption of colonial laws and policies by the post-independence government that fundamentally affected the land rights of the indigenous people has both created and perpetuated historical injustices. Compounding this is the lack of clear, relevant and comprehensive policies and laws to resolve historical injustices, corruption and political patronage and land 'grabbing' mania.

The enactment and application of the Land Titles Act (Cap 282) for instance was, and is still is the single most important cause of the land problems of the ten-mile coastal strip. The application of the Act has resulted in many adverse consequences one of which is that of absentee landlords. The effect of adjudication of claims, under the said Act, was to vest titles to land in non-indigenous coastal people at the expense of local communities. Many of those who obtained titles to this land either through adjudication process, or through grants from both the colonial and independent Government, have never been resident on or utilized "their" land. Some of these 'land owners' have either left the country or died without heirs, while others merely collect 'ajira' (rent) through 'agents'. This category of land is invariably occupied or utilized by 'squatters' or 'tenants at will' who in most cases are the original owners of the land under their customary laws but who, unfortunately, have no measure of statutory protection.

Land Policy Recommendations

- The Government should establish a suitable legal and institutional framework to investigate the historical injustices and recommend solutions thereto.
- Review of all laws and policies adopted by post independence governments that intensify the historical injustices, including the Constitutional provisions on the right to private property and compensation on compulsory acquisition regardless of how the property was acquired.
- The Government should establish suitable mechanisms for restitution, reparation and compensation for historical injustices.

- In respect of agricultural land, the Government should, where applicable enforce the provisions of section 33 of the Government Lands Act (Cap 280) relating to development covenants and, where there is breach of such covenants, invoke the forfeiture provisions of section 77 of the Act.
- Amend the Agriculture Act (Cap 318) Section (1) to give the National Land Commission adequate power to deal with misused and mismanaged land.

3.5.2 Security of Tenure

Background Statement

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted. Land tenure regimes in Kenya may be classified in three ways:

- In terms of the location of radical title (ultimate ownership) to specific territorial land units, whether government land or trust land or private land;
- In terms of the legal regime governing land relations, i.e., whether that regime is statutory or customary;
- In terms of the quantum of rights held, i.e., whether as freehold, leasehold or common hold.

Kenya's tenure regimes are fragmented, complex and pluralistic. Indeed, where the tenure reform process is incomplete, as in the case of trust land awaiting registration, where individuals have customary rights over land legally vested in local authorities as trustees, land rights are quite indeterminate.

Problem Statement

Security of tenure to land is not guaranteed for all Kenyans. There is thus a need to ensure that all systems of derivation of land rights confer adequate security. That is, there should be no difference whether title is obtained by grant from the State, membership of an ethnic community, or through adjudication and registration.

Land Policy Recommendations

- All land in Kenya should be designated public land, community land or private land. All public land should vest in, and be held by, a National Land Commission (NLC) in trust for the citizens of Kenya.
- Community land should be held by institutions recognized by the affected communities in trust for the indigenous residents of the affected areas. Radical title to such land should vest in the NLC. The community institutions should hold such lands in terms of a legal regime based on

customary law principles which provide effective and equitable land rights security for all occupiers and users without discrimination.

- All private land should be held on terms that are clearly subordinate to the doctrines of compulsory acquisition and the regulatory power of the State. Such land should be exclusively held, freely alienable and transmissible without discrimination on grounds of sex, ethnicity or geographical origin.
- Further, such land should revert in the first instance to the District Land Boards (DLBs) or to the NLC, in conditions of escheat or bona vacantia.

3.5.3 Statutory Tenure Regimes

Background Statement

Written land policy in Kenya started in 1888 when Imperial British East Africa Company was granted Royal Charter for trading purposes guaranteed through land regulations done in 1894. Between 1897 and 1902, legal frameworks were built to support the colonial government and settlers conducive conditions to tap the agricultural potential of the country through granting of leases and licenses. These land policies neglected African needs leading to marginalization, displacement and discontent.

The first attempt to recognize Africans need was done after the Carter Commission established to look into the land problems in the country. It established native reserves under the trusteeship of Native Land Authorities. The Swynnerton Committee set up in response to Africans' clamour for land rights recommended adjudication of land rights; the consolidation of scattered holdings under African customary law and registration of interests in land. This introduced three distinct categories of land rights' holding namely: Government (public) Land; Trust Land which comprised the former native reserves and Private land derived from grants to individuals of government land and by the process of adjudication and consolidation exercise in the native reserves. The three categories are administered through diverse tenure systems.

There are currently three statutory tenure regimes in Kenya. These are freehold, absolute proprietorships and leasehold. Freehold connotes the largest quantum of land rights which the sovereign can grant to an individual. While it confers unlimited rights of use, abuse and disposition, it is subject to the regulatory powers of the state. In Kenya, such interests are individually held under the Registration of Titles Act, the Land Titles Act or the Government Lands Act. The absolute proprietorship was introduced by the Registered Land Act with the intention of extinguishing customary tenure and replacing it with rights that would be individually and exclusively held.

For its part, the leasehold involves the derivation of rights from a superior title for a period of time certain or capable of being ascertained and the enjoyment of such rights in exchange for specific conditions including, but not limited to, the payment of rent. Statutory leaseholds in Kenya are created either by the State in respect of land it holds directly under the Government Lands Act, by local authorities in respect of land they hold or trust land, or by proprietors who hold freeholds, absolute proprietorships or other leases.

Problem Statement

The vesting of radical title over land by statutes in the president and the state, and the delegation of powers to administer land to the Commissioner of Lands has led to irregular allocation of public land and trust land by the central government officials and the local authorities giving rise to unequal distribution, double ownership and registrations, unnecessary disputes, loss of records, destruction of environment, loss of wetlands, insecure circumstances, uncontrolled developments in both urban and rural areas, loss of recreation and public spaces, idle land, squatting and absentee landlords. Trust land and Government land are no longer held and used by the authorities for the benefit of the people but for the benefit of influential individuals.

The process of adjudication, consolidation and registration of rights was intended to extinguish customary law and replace it with individual exclusive rights. The consequences of this attempt were among others: the extinction of trans-generational rights upon registration; the emergence of incongruence between the law and social reality; individualization of pastoral land; marginalization of women and children, and the breakdown of land administration.

Kenya has over seventy five (75) different statutes in place. Most of these statutes overlap are obsolete and conflict with each other while supporting different land regimes within the same areas. Moreover, the difference between the freehold and the absolute proprietorship is a cause of confusion. There is no need to continue these two separate classifications of what is essentially the same form of land tenure. Kenya's property system does not provide for optimum control of land use. For example, there is shortage of land for expansion of urban areas resulting in poorly planned cities and towns.

Land Policy Recommendations

- Land should be vested in the people of Kenya. A National Land Commission should be entrenched in the Constitution to hold land in trust for the people of Kenya.
- The statutes governing land should be reviewed/rationalized to do away with obsolete laws

- Customary land laws and regulations that are beneficial should be given legal status.
- Women's rights to land should be legally protected.
- Alternative methods of registration for the pastoral communities should be provided while allowing them to maintain their unique land use system and livelihoods.
- The rights of vulnerable groups especially widows, orphans and people living with disability should be recognized protected and guaranteed.
- Freehold tenure and absolute proprietorship should be merged with the best attributes of each being kept and any unnecessary confusing features dispensed with.
- Except as embodied in local property statutes, the application of the English common law, the doctrines of equity and the statutes of general application, in so far as they are relevant to the interpretation of property rights in Kenya, should be discontinued.
- The incidents of freehold tenure should be modified so as to permit resumption of family ownership of land converted from customary tenure, co-ownership of land acquired during marriage, prohibition against the sub-division of land held in family ownership, and removal of the principle of absolute sanctity of first registration.
- In the case of private land, the power of the primary rights holder to alienate the land should be regulated by law in order to ensure that such alienation does take into account all the other legitimate rights or interests (including family rights or interests) held or claimed by other persons over the affected land. In particular, the law should impose an obligation on the primary rights holder to obtain the written and informed consent of all secondary rights holders before exercising the power to alienate. Further, in the case of community land, the law should prohibit sales to non-members of the affected community but allow sales and exchanges between members.
- Land within urban areas should be held on leasehold tenure only since the leasehold provides a flexible mechanism for land use control. This means that as urbanization expands all rights coming within an urban area should automatically be converted to leasehold, subject to the payment of adequate compensation.
- All leases should be issued for a period sufficient to encourage long-term investments in land while also allowing for government regulation of the use of the land.
- All leases should be renewable subject to general planning requirements.
- Non-citizens should hold land on leasehold tenure for significant investment purposes only, depending on investment plan.

Principles to govern Leasehold Period (Community and Public Land)

Length of leases should be based on location of land and type of user. Leases will not only be from public land, but also from community land and private land. The periods suggested aim to enhance transactions between public and private citizens as well as between the private citizens themselves.

Urban Land

- i. Urban land in planned areas within cities and municipalities should be leased for maximum of **99 years**, and should be revoked if does not conform to approved development. This will be for residential, commercial and industrial properties. It would not matter whether such a developer is local or foreign.
- ii. Grants of leases for settling urban poor will be designed to take into account the principles of security of tenure, upgradeability, affordability and collective ownership.
- iii. Land in intermediate centres (town councils and market centres) without structure plans should be leased for **99 years**, so as to allow for redevelopment as the centre gets better planned.

Rural land

Rural land to be considered in terms of the particular husbandry practices:

- Land for plantation forestry should be leased for **99 years** on the grounds that each crop will take 30 years to mature and an investor needs at least 3 rotations to recoup investment.
- Arable land for annual crops; **10 years** (maximum)
- Arable land for perennial crops; **25 years** (maximum)
- Arable land for permanent crops; **50 years** (maximum)
- Ranch and Pastoral lands for livestock husbandry; **25 years** (maximum)

Mineral land

- i. Mineral land; **25 years** (or be determined by quantity of exhaustible mineral ore)

3.5.4 Customary Land Rights

Background Statement

Colonialism not only imposed alien land tenure relations in Kenya, it also introduced conceptual, legal and sociological confusion in traditional tenure systems. One area, which has suffered far-reaching disruption in this regard, is the African customary land tenure system and laws.

At the outset, the colonial policy makers proceeded from the assumption that customary land tenure systems were inimical to modern imperatives of agricultural development. The Registered Land Act was meant to provide the legal framework for the extinction of claims to land based on African customary land law. Both the Trust Land Act and the Land (Group Representatives) Act were enacted to provide a framework of transition from customary tenure to

individual tenure in areas where immediate individualization could not be undertaken.

The Trust Land system has been widely abused by the local authorities and the Central Government. Instead of acting as the custodians of the land, the County Councils have facilitated the alienation of such land in favour of individuals in total disregard of the rights of the local residents. The courts have almost invariably ruled in favour of the registered proprietors and against the local residents. The authority of customary law and the viability of customary tenure have been severely undermined by a combination of political patronage, corruption and the English/ Common law view of land ownership questions. Yet most Trust land areas still fit the label of “communal” or “traditional” land. The land use practices prevailing in these areas are based on customary law and other forms of traditional usage.

Similarly, there have been abuses of the rights of the people in areas where the Group Ranch system under the Land (Group Representatives) Act applies. Unlike the regime of the Trust Land Act, the Group Ranch system was meant to preserve communal tenure among pastoral communities. The intention of Parliament at the time of this legislation’s enactment was that the land would be held communally and in accordance with the applicable customary laws and practices. Later however, the Government embarked upon a process of converting the group ranches into individual tenure. This policy has had far-reaching tenurial and environmental implications on the social and economic lives of the people in the area, and led to sub-division of land into units and parcels, which cannot sustain the prevalent land uses in those areas.

Problem Statement

Both the economic and legal models upon which the relegation or intended extinction of customary land rights was based have failed the test of time. Land relations in many parts of the country are still actualised on the basis of customary tenure. Claims to land are still being made on the basis of customary tenure even where such land is registered under the Registered Land Act. Communal tenure systems are still very much part of the social and economic fabric between and within ethnic societies in Kenya and the instrumentality of English/Common law has failed to socially engineer an irreversible movement from communal tenure to individual tenure. Neither has the jurisprudence developed by the courts of law succeeded in extinguishing customary land rights. The resilience of customary land law is proof that the assumptions for its modernization or extinction through law were not based on sound science.

There are other forms of land use such as pastoralism that are dependent on community tenure regimes and are therefore steeped in cultural norms and practices. Many conflicts that have arisen between different land uses can

indeed be attributed to the incongruence between individual and communal tenure. There is also a perception that customary tenure does not facilitate the development of a market in land. This is viewed as a serious shortcoming in terms of economic development.

Land Policy Recommendations

- The broad principles of customary land tenure should be recorded and incorporated into a framework law designed to facilitate the orderly evolution of customary land law.
- The framework law should address, inter alia, the following issues:
 - Recognition of two distinct estates under customary tenure; namely the commonhold as the primary estate and the customary leasehold;
 - Inheritance of land under customary tenure;
 - Land rights protection for women, children and the disabled;
 - The relative position of individuals in communities in which they live; and
 - The re-establishment of authority structures for land management in areas under customary tenure.
- The Government should in consultation with the affected communities design a system for the documentation of customary land transactions which these communities can operate and manage. These should take into account mechanisms for allocation, recognition and transmission of land rights and interests in the affected communities.

3.5.5 Land Markets

Background Statement

Land markets are concerned with the sale of interests in land. Land policy and law in Kenya have sought to promote individual tenure on the reasoning that, unlike customary tenure, it provides the investment security necessary to make land more efficient and productive. Among other things, it is claimed that customary tenure makes it difficult for people to obtain credit since land cannot be mortgaged, and the solution is to facilitate the commercialization of land rights. This claim led to the transformation of customary tenure through land adjudication and/or consolidation of fragmented peasant holdings and registration.

The commoditization of land has occasioned some injustices, leading to efforts to regulate this market in the public interest. The Land Control Act was enacted to stem injustices occasioned (by the application of the Registered

Land Act) to customary land rights. At the same time, the government typically regulates the land market through the instrument of the police power.

Problem Statement

The land markets in Kenya are constrained by speculation, inefficient and corrupt administration, political interference, unplanned developments, inadequate infrastructure, inadequate human, financial and technological resources and poor land information systems. Further, the government has not fully utilised planning, zoning, permits and penalties as tools to regulate land markets.

Land Policy Recommendations

- The government will institute effective enforcement mechanisms for existing laws particularly on development planning and zoning, permits and penalties.
- An appropriate schedule of Vacant and Under Utilized Land Taxes should be developed and enforced by the Government to discourage speculative hoarding of urban land.
- There should be progressive taxation to discourage hoarding of both urban and rural land as determined by land use plans.
- The Government should develop legal instruments and rules that will provide for promotion of market efficiency and ensure that adequate information is available to the stakeholders in both rural and urban areas so as to protect the rights of both lessors and lessees.

3.5.6 Management of Public Land

Background Statement

Because of Kenya's peculiar history, radical title to land is vested either in the government and classified as "Government Land" or in the local authorities and classified as "Trust Land." That classification is a reflection of the fact that since 1938, radical title to land has always been and remains split between these juridical entities.

On the one hand, Government Land consists of all unalienated land in the country including gazetted forests, national parks, rivers and lakes, public roads and road reserves, marine reserves, the territorial seabed, protected areas, and land occupied by government or quasi-government institutions. Radical title to private land is also vested in the government. The classification of land as "Government" has, erroneously or by design, tended to be interpreted to mean that such land is "Private" to the Government and may be, and has been in practice, used and disposed of as such. On the other hand,

trust land consists primarily of land held by local authorities on behalf and for the benefit of persons ordinarily resident on that land.

Both categories of land should be, and indeed are in practice, termed “public land” to the extent that they are held by the government and local authorities on behalf of and for the benefit of the Kenyan people.

Problem Statement

The government and local authorities have mismanaged public land. In particular, the abuse of the wide discretionary powers given by law to the President, the Commissioner of Lands and local authorities has resulted in widespread irregular allocations and mismanagement of land.

Land Policy Recommendations

- All public land should be managed by the National Land Commission and the District Land Boards. The NLC should take over the powers of the President and the Commissioner of Lands to dispose of public land.
- The NLC should establish clear procedures and criteria for the allocation of public land with a view to eliminating incidents of misallocation or multiple allocations.
- Institute a commission of inquiry into illegal allocation of public land and trust land.
- Where proof of irregularity in acquisition of public land is established, any such land should not be protected by the Constitution but should be repossessed by the National Land Commission without compensation.
- The NLC should establish an open and transparent consultative forum between its departments to facilitate the promulgation of objective criteria for the development and disposal of public land.

3.5.7 Environmental and Natural Resources Management

Background Statement

Kenya’s natural resources include Wildlife (and its habitats), Forests, Water, Minerals, and Land itself. Others include biodiversity¹ resources, cultural heritage, palaeontology, archaeology and indigenous knowledge. Not all of these resources are protected. For instance, Kenya’s wildlife including large herbivores, carnivores, endemic and including unique and endangered species

¹ Biodiversity as defined under Convention on Biological Diversity (CBD).

are found in both protected and non-protected areas with different levels of law enforcement and management.

These natural resources are finite and their exploitation must be regulated. At the national level, Kenya has developed primary guidelines and laws based on sectors of NRM, which sometimes conflict with each other. Kenya is also a party to many international conventions, which can enhance national goals in land, and land based resource management including productive and sustainable use practices

Tenure to land based resources is an important issue in contemporary land policy. These resources include water, forests, minerals, mineral oils, wildlife and marine resources. In colonial times, these resources were carefully appropriated by the State, and access to them was only possible through a complicated system of licenses and permissions operated by the state. Community participation in the utilization, conservation and development of these resources was therefore generally outlawed. Prior to the enactment of the Environmental Management and Coordination Act (EMCA), environmental management regulations were scattered in various statutes. EMCA has sought to address this anomaly by adopting an integrated and comprehensive approach to the management of environmental and natural resources. In the interests of sound management, land-based resources should accordingly be integrated with the framework established by the EMCA.

Problem Statement

There is widespread degradation of land-based resources, such as water, forests and wildlife. This is due to the lack of community participation, lack of an integrated approach to resource management and ineffective state stewardship. There is also weak enforcement of existing legislations and low penalties for offenders. Resources' scarcity, degradation and conflicting uses have also resulted in clashes between different groups.

There is also inadequate enforcement of sector guidelines, laws, regulations, and international Conventions on natural resource management. Kenya's legal framework for Natural Resource Management (NRM) is uncoordinated and un-integrated across sectors, resulting in contradictions in implementation to the detriment of natural resources and people. Most legislative frameworks disregard community rights in the utilization of natural resources. Benefits accruing from certain natural resources are not shared equitably with the communities who in turn develop negative attitudes to NRM.

On the international front, Kenya is far from fully implementing and domesticating many of her obligations under natural resource-related international conventions she has ratified. The problem seems to be putting the provisions of these conventions into the local and national context.

International conventions hold great potential for enabling participating countries utilize and manage natural resources in a sustainable way, without prejudice to social and economic development goals.

The land question in Kenya is key to effective conservation and fundamental to environmental governance at scales from local, national, to global, yet the Ministry of Lands and Housing (MoLH) is not an active participant in implementing Kenya's obligations under international conventions in natural resource management.

Land Policy Recommendations

- The utilization of land based environmental and natural resources should take into account the need to share benefits with contiguous communities. Contiguous communities should be fully involved in the management and development of the resources.
- The government should develop a comprehensive resource tenure policy as part of an overall land use policy for the country.
- The formulation of a resource tenure policy should be informed by customary tenure principles relating to the common utilization, protection and development of land based resources.
- The management of land based resources should be integrated with the Environmental Management and Coordination Act.
- Sectoral laws on the management of natural resources should be strengthened and properly coordinated to ensure that they are coherent.
- The ministry of lands and housing should be involved in the formulation of natural resources management laws.
- The land law system should be amended to recognize community rights to natural habitats and natural resources.
- All natural resources should be vested in the citizens of Kenya through legally established structures and where such ownership is vested in any other person or corporation they shall only hold such natural resources as managers in trust for the people of Kenya.
- The Constitution should provide for the identity of ownership and protection of all natural resources including minerals and mineral oils, wildlife, forests, fisheries, water and marine resources.
- Establish an inter-ministerial technical working group with the Ministry of Lands and Housing. The protection and exploitation of natural resources should take into account, pay special regard to the interest of, and confer benefits on the communities affected by virtue of their occupation of and historical connection with the area involved.
- Establish an inter-ministerial technical working group with the Ministry of Lands as the lead agency to resolve user conflicts and harmonize land resource use among competing users and ensure adequate coordination and enforcement of sector guidelines.

- Regarding multilateral conventions, parliament should generate an ‘act of transformation’ which would be both an expression of parliamentary approval of a treaty and of its incorporation into domestic law.
- Create an effective institutional framework and capacity to implement international conventions especially those touching on land related resources.
- Plan and prioritize action items and principles relating to international conventions related to NRM in Kenya.
- Ministry of Lands and Housing should be involved in the implementation of natural resource management related conventions, e.g. for resources that require continued supply from another country (e.g. rivers and lakes), and resources which move back and forth across a border (e.g. wildlife).
- Kenya should foster Trans-Boundary Natural Resource Management (TBNRM) in the interest of national and international conservation and development goals.
- In the spirit of international conventions, trans-boundary collaborations must address the management implications of both internal and external threats at national and cross-border scale including rationale for trans-boundary cooperation

3.5.8 Disaster Management

Background Statement

The country experiences disasters that should be managed in order to avoid the loss of both human and animal life, the negative impacts on plant growth and the destruction of property. Such disasters include floods, earthquakes, landslides and the collapse of buildings. Whereas there is no clear legislation on the issue, the Constitution provides that the state has power to carry out any action over property for the safety of its citizens.

The President may also invoke the provisions of the Constitution on the preservation of public security to prevent the occurrence of a national disaster.

Problem Statement

There is no legal, policy and institutional framework for the management of land-related disasters. There is also a dearth of appropriate technologies and financial resources to deal with these disasters.

Land Policy Recommendations

- The NLC should establish a legal and institutional policy framework for the prevention, preparedness and management of land-related disasters.

3.5.10 Land Rights Delivery

Background Statement

Land rights delivery is a process which entails the mobilization of institutional mechanisms and personnel for the ascertainment of rights, registration, demarcation and/or survey, the preparation of cadastres and the regulation of land markets. In Kenya, these processes are run as part and parcel of public administration, and have thus been politicized.

Government and Trust lands are administered by the Commissioner of Lands, with the result that ultimately access to land is controlled by the Commissioner. Although there are procedures in the Government Lands Act for the proper notification to the public of land available for grant and for the assessment of applications, these are routinely ignored or by-passed by public officers in the Commissioner's office.

Conversely, private land is administered by the proprietors themselves but under the facilitation of a complex bureaucracy consisting of staff from central government line ministries, local political functionaries and local or traditional administrators. The overall effect is that decision making on these issues is often contradictory and ineffectual. There is thus a need to rationalize and simplify this system.

Problem Statement

The existing land administration and delivery systems are bureaucratic, undemocratic and prone to abuse. They are also expensive and cause inordinate delays in the administration of land. The existence of numerous statutes governing land makes it hard to ascertain the exact legal position regarding land rights regimes.

Land Policy Recommendations

- The process of land rights delivery should be democratized by ensuring full and informed participation by land rights holders at all levels; so that routine land functions such as boundary marking, ascertainment of rights and record keeping devolve to communities.
- All land rights delivery functions should be centralized in the proposed National Land Commission (NLC). The NLC should have power to create a decentralized system of land registries drawing, where possible, on community level structures and organs of government. Land delivery systems should be exercised at the appropriate level in the hierarchy.
- The NLC and other structures under it including District Land Boards and community institutions should be empowered by law to inspect,

coordinate and direct the development and use of idle land at the respective levels and if necessary to repossess such land taking into account climatic, geographical, economic, ecological and speculative factors.

- Land rights delivery functions should be insulated from politics.
- Land rights delivery legislative instruments should be amended to allow for the use of modern technology.
- Land rights delivery legislation should facilitate access to information by affected parties.

3.5.11 Compulsory Acquisition

Background Statement

Compulsory acquisition is the power of the state to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation, and is provided for in the Constitution. It is derived from the feudal notion that as sovereign, the state holds the radical title to all land within its territory. This power is exercised by the Commissioner of Lands on behalf of the state. The Constitution permits a modified form of acquisition in the case of trust land which may be activated by the President or local authorities. This is referred to as “setting apart”.

Problem Statement

The established procedures for compulsory acquisition are not adhered to leading to poor management. There is also abuse of the power and process of compulsory acquisition. In addition the powers of the President and local authorities to set apart trust land overlap.

Land Policy Recommendations

- Review the law on compulsory acquisition in order to harmonize institutional framework and avoid overlapping mandates with regard to trust land.
- Devise compulsory acquisition processes and procedures that are efficient, transparent and accountable.
- Where the public purpose or interest justifying the compulsory acquisition fails or ceases, the law should give the original owners or their successors in title pre-emptive rights.

3.5.12 Dispute Resolution Mechanisms

Background Statement

Dispute resolution mechanisms (DRMs) refer to the systems by which competing claims over land are addressed. DRMs include mechanisms for the resolution of land use conflicts, land development conflicts and conflicts arising from the incongruence between individual and customary tenure.

Problem Statement

The existing mechanisms for the settlement of land disputes are varied, complex and protracted in terms of substance and procedure. They are implemented by a web of tribunals each with a different system of appeals to higher tribunals, ministers and the High Court. In addition they are not efficient, transparent and accountable.

Policy Recommendations

- The government will undertake a comprehensive review of all laws and mechanisms for the resolution of land disputes with the objective of ensuring that they are efficient, democratic, accountable and accessible to all Kenyans.
- The Government will establish appropriate institutions for dispute resolution and access to justice within communities with clear operational procedures, mechanisms for inclusion of all members of community in decision-making and clear record keeping to ensure transparency and the development of guiding rules for making decisions on specific matter.

3.6 INSTITUTIONAL AND FINANCING FRAMEWORK

Background

Institutions responsible for managing land in urban and rural Kenya are many and varied, being the product of a series of legislative measures and administrative decrees promulgated throughout the last century. And that is where the problem lies, in that some institutions are tired and obsolete, a few are irrelevant, many poorly manned and not adequately funded. Agencies ranging from the highest office in the land to the local chief could until recently allocate public land. County councils on the other hand have been unable to effectively look after land under customary tenure entrusted to them in 1963. Municipalities are buckling under the mounting pressure exerted by unplanned settlements, hawkers and decaying infrastructure. These and many others are the problems facing existing institutions. The capacity of the judicial system to resolve disputes is severely constrained by tradition, an overly legalistic approach and inadequate resources.

A set of principles have been identified as fundamental beacons in the search for solutions and necessary reforms to the existing institutional structures for land administration and management. These are:

- Devolution of power and authority
- Community / stakeholder participation and representation
- Operational and resource autonomy for new structures
- Effective surveillance and performance monitoring systems
- Justice, equity, gender, environment and appropriate enforcement mechanisms
- Sustainability and conservation as pervasive values
- Smooth transition from the current to the proposed arrangements.

Problem Statement

The main policy problem facing the country in the land sector is the existence of an institutional structure for land administration and management (LAM) that:

- Is highly centralized in the Ministry and the Executive.
- Is performing poorly in service provision and is inadequately funded.
- Is not accessible to the poor, hostile to users and is perceived to be corrupt.
- Has a land information system that is manual and badly needs computerizing.
- Has no stakeholder involvement in decision making at community level.
- Uses a very complex legal process that is not well understood by users.

Previous land policy reform initiatives including the Njonjo, Constitution of Kenya Review and Ndungu Commissions strongly recommended the

overhauling of the LAM system. The thrust of these policy reforms was to make the sector contribute more to poverty reduction, become more accessible to the poor, efficient, cost effective and equitable. The key issues pertaining to the solutions towards the desired reforms and the intended actions are outlined below.

Policy Recommendations

3.6.1 Devolution of Power and Authority

- Devolve power and authority over decision making on land administration and management (LAM) away from the MoLH to lower levels of government and communities.
- Radically reform the current institutional framework for LAM to make it more transparent and accountable.
- Decentralize most LAM functions to the district / local authority and community level to facilitate a more accountable system in the delivery of LAM services.
- Improve people's access to dispute resolution facilities / agencies.

3.6.2 Community / Stakeholder Participation and Representation

- Apply the organizational principles of democratic governance, decentralized authority and accountability.
- Improve stakeholder representation in line with the devolved levels of government as proposed in the CKRC Draft Constitution.
- Computerize land information and make it more accessible to owners and users.

3.6.3 Operational Efficiency and Resource Autonomy

- Ensure that the proposed new organizational structures are lean, have own funding and are shielded from politics.
- Ensure that land taxes / revenues provide the base for support to the national land development programme and meet the funding requirements of the proposed new institutional arrangements in LAM.
- Ensure that the new institutions established are accountable, transparent, pro-poor and pro-growth with a high degree of integrity and customer orientation.

3.6.4 Performance Monitoring Systems

- Design/adapt objective criteria and benchmarks that will facilitate independent evaluation of the performance of the new institutions.
- Formulate suitable indicators for monitoring and evaluation (M&E).

3.6.5 Redress of Injustices, Inequity and Gender Imbalances

- Endeavour to correct past injustices to the extent possible bearing in mind present day realities and social dynamics.
- Observe the principles advocated by the Bill of Rights as far as they relate to land and property.
- Improve access to justice and promote awareness of and access to land rights by disadvantaged and vulnerable groups including squatters, people affected by HIV-Aids, women and children.
- Recognize the needs and rights of pastoral communities in terms of pastures, water and social services.

3.6.6 Ecological Balance / Long-term Sustainability

- Ensure that sustainability and conservation are pervasive values in planning and managing the development and use of land.
- Conservation measures should focus on quality (rather than quantity or size) and adopt people-based approaches.

3.6.7 Smooth Transition from MoLH to the New Organizations

- Facilitate orderly transfer of functions, resources and authority for land administration and management (LAM) from MoLH to the proposed new organizational structures.
- Establish a suitable unit reporting to the Permanent Secretary to manage the transition and drive the policy reforms to ensure continued flow of services to the public and secure the success of the land reforms. Legislative framework creating NLC will define its linkages with the ministry
- Design and implement a public awareness programme focusing on issues and proposed policy statements for debate and consensus during policy formulation and later during implementation

3.6.8 Expansion of Knowledge on Land Matters

- Establish a land research and resource centre to expand land tenure and policy knowledge and be a depository of land information and studies carried out in the sector.
- Disseminate research results and enable communities to document, learn and use knowledge on traditional *land rights and methods of coexistence*.

3.6.9 Proposed Change to the Organizational Structure

The changes that are considered necessary to ensure LAM services are improved and will continue to be provided in a sustainable way are outlined below:

3.6.9.1 Ministry of Lands and Housing

- Rationalize the role of the Ministry to help it shed the LAM functions to the proposed new structures i.e. NLC, DLB, CLB and local authorities.
- Develop the residual role of the Ministry around the core functions of policy making, coordination of policy implementation, programming / implementation environment, gender, HIV AIDS and redress of social equity concerns. Rationalize the titles of departments and harmonize them in terms of seniority as part of the ministerial reform.
- Let the Ministry also focus on sector resources mobilization, policy advocacy and providing political leadership; public accountability and facilitating implementation of this land policy reform programme to its logical conclusion will be major goals.
- Rationalize the current functions that can be commercially operated or should be privatized to ensure sustainable service delivery e.g. surveying, valuation, physical planning and revenue collection, with MoLH setting service standards, regulating providers, quality control and capacity building.
- Monitoring and Evaluation of sector performance especially in regard to enhanced accountability
- The initiative for managing the reform process will be taken through the Land Reform Management Unit that is described later in section 3.6.9.11

3.6.9.2 The Devolved Structure for Land Administration / Management

- Rationalize the functions that are currently performed by the MoLH to form the core mandate of the NLC as recommended by the CKRC and Njonjo Commission of Inquiry.
- Pay attention to the functions that should be outsourced from the entities that will be commercially operated or privatized. Apply the principles guiding the reform process above in designing the membership of the commissions at the national and district levels.
- Rationalize the role of elected local authorities in the operations of the new structures and integrate them into the new organizational framework.

3.6.9.3 National Land Commission (NLC)

Establish the National Land Commission (NLC) to carry out land administration and management sustainably, efficiently, cost effectively, to hold title and administer public land in Kenya. The management of Private land through lease administration will also be the responsibility of the NLC in order to facilitate efficient operation of land markets. The existence and mandate of the NLC shall be founded on the Constitution of Kenya; it shall levy / collect and manage all land tax revenues except rates. NLC will also establish the office of Keeper / Recorder of Public Lands who will prepare and maintain a register of public lands and related statistics. It will set up a Land Titles Tribunal as recommended by the Ndungu Commission of Inquiry into Illegal

Allocation of Public Land. The Land Titles Tribunal will sort out the bona fide ownership of land that was previously public or trust land.

Its nine (9) members and Board Chair shall be nominated by Parliament and appointed by the President of the Republic, its chief executive officer, heads of departments and its entire staff shall be appointed by the Board. The Board shall determine the number of departments, divisions and sections that will be required to provide the LAM service cost effectively at the national level. Among the key departments of NLC will be a technologically advanced entity responsible for remote sensing, mapping, different types of surveys, LIS, cadastral information and a public information service operating along commercial lines. The NLC will install and operate an electronic land registry and also advise DLBs and CLBs on establishing computerized land registries at their respective levels. Existing structures for regulation of transactions (especially in rural areas) and rents will be streamlined.

The NLC will have an office to investigate, document and recommend measures to be taken in respect of historic injustices including restitution or compensation over a ten year period. A window for Compensation will be established within the Trust Fund to address claims of deserving aggrieved parties of past injustices. The compensation will be funded from contributions by the Exchequer, Donations and penalties imposed on perpetrators of historical injustices. NLC will also establish a Land Policy Research Centre (LPRC) possibly through partnership with Universities to coordinate land policy research. It will set the agenda, identify researchers and finance investigation into key policy areas.

The NLC will establish several directorates within its internal structure including a Directorate of Land Tax / Revenues to deal with financial administration. It will host the system for assessing, collecting and widening of the tax base, improving collections and retaining a substantial proportion of the revenues for use in the sector. The NLC, DLB and CLBs will have to establish a revenue system and exercise fiscal autonomy. The other directorates will include Land Information, Physical Planning, Housing and Unplanned Settlements, Surveying, Valuation, Human Resources and Land Administration. Local authorities will be encouraged to improve the rating infrastructure and NLC will spearhead reforms to the property tax system covering all types of land. (The terms of reference for a study covering the area of finance are ready. The Ministry of Finance should be involved in the process of the study so as to own and promote its findings).

3.6.9.4 District Land Board (DLB)

Rationalize the functions that are currently performed by the MoLH at the district level to form the core function of the DLB as recommended by the CKRC and Njonjo Commission of Inquiry. The DLBs will constitute the NLC

offices at the district and will have several departments that are needed to facilitate land administration and management including; surveying, recording of transactions, issuing of titles and enabling the efficient operation of land markets at the district level. The transactions of the district land registry will cover both public and community land. The reform process should pay special attention to the needs of different communities in the jurisdiction and facilitate the democratic election of their representative in line with the principles guiding the reform process above in designing the membership of the Board at the district level. The DLB jurisdiction may need to cover more than one district in order to have sufficient transactions to support it in financial terms.

The institutional reform process at the district level will entail the establishment of the District Land Board (DLB) in each defined jurisdiction to carry out land administration and management sustainably, efficiently and cost effectively. The district jurisdiction shall be defined in a manner consistent with the CKRC and ECK legislative stipulations. The existence and mandate of the DLB shall be founded on the Constitution of the Republic, it shall levy / collect and manage all land tax revenues except rates, five (5) of its seven (7) members shall be elected by a majority of eligible voters in the jurisdiction from candidates who shall meet eligibility criteria set by the NLC as the nominating authority, while two (2) members shall be nominated by the local authorities in the jurisdiction to cater for minority representation especially gender considerations. The Board with the approval of the NLC shall appoint its chief executive officer and heads of departments and staff.

3.6.9.5 Community Land Boards (CLB)

Community land is land that is owned by the communities themselves and vested in Community Land Trusts (CLTs). It will be managed by the communities themselves, which will create legal entities to be known as Community Land Boards (CLB) to constitute the third tier of the devolved land administration system. The CLBs will be elected bodies which will vet / approve all land transactions relating to trust / community land and submit relevant documentation to the district land registry to facilitate recording and issuing of title by the DLB. They will carry out detailed investigations to determine the inventory of all community lands. The work of CLBs at divisional and locational levels will be coordinated by the DLB through the establishment of standards and regulatory framework. A Community Land Act (CLA) will be enacted as a special legislation to deal exclusively with community land.

3.6.9.6 Local Authorities/District Governments

The function of land use planning and enforcement of development controls will continue to be carried out by local authorities in line with the Local Government Act (Cap265). Also relevant to this function is the harmonization with the agriculture and forestry legislation. The NLC will oversee overall policies and standards for land use planning and enforcement of development

plans. In the event the new Constitution is adopted before the NLP Reform Process is concluded, the new district governments will be established as a creation of the Constitution and there will be need to internalize the land administration and management function within their services. This will put the reform closer to the Lesotho model where LAM is a local government function at the district level.

3.6.9.7 Land / Property Tribunals

At the moment there are two tribunals that operate in the area of regulating the changes in property rents for residential and business premises. The Rent Restriction Tribunal may be necessary to protect workers and poor tenants from too rapid rises in the level of house rents. The continued relevance of the Business Premises Tribunal will be reviewed in light of progressive liberalization of investment and trade. The reform to the tribunals will be in line with the general reforms in the judiciary.

3.6.9.8 District Land Tribunals (DLTs)

Establish at District / Community level alongside the judiciary a mechanism for land disputes / conflict resolution in the form of a District Land Tribunal. At the community level the CLB will maximize the opportunity to apply Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation, arbitration, etc. to reduce the number of cases that end up in the court system and delayed justice.

3.6.9.9 Land Courts

Adopt the recommendation of the Ndungu Commission of inquiry into illegal allocation of land and establish Land Court as a division of the High Court to deal exclusively with land issues in the country.

3.6.9.10 National Land Trust Fund (NLTF)

Establish an independent National Land Trust Fund (NLTF) to mobilize and pool finances to facilitate interventions that are of mutual benefit to people in all the district land jurisdictions. The duties of the NLTF will include

- Managing the funds contributed by DLB
- Mobilizing own funds
- Disbursing funds to priority projects of NLC including compensations
- Ensuring financial sustainability of the land sector.

It will have the mandate of promoting equal access to land, conservation of cultural sites, protection of minority land rights, redressing historical injustices through appropriate awards and reducing transaction costs of CLBs.

All the DLBs shall contribute at least five percent (5.0%) of their land tax revenue into the NLTF which shall be administered by its own independent board set up along the lines of the existing National Water Trust Fund (NWTf).

3.6.9.11 Land Reform Management Unit (LRMU)

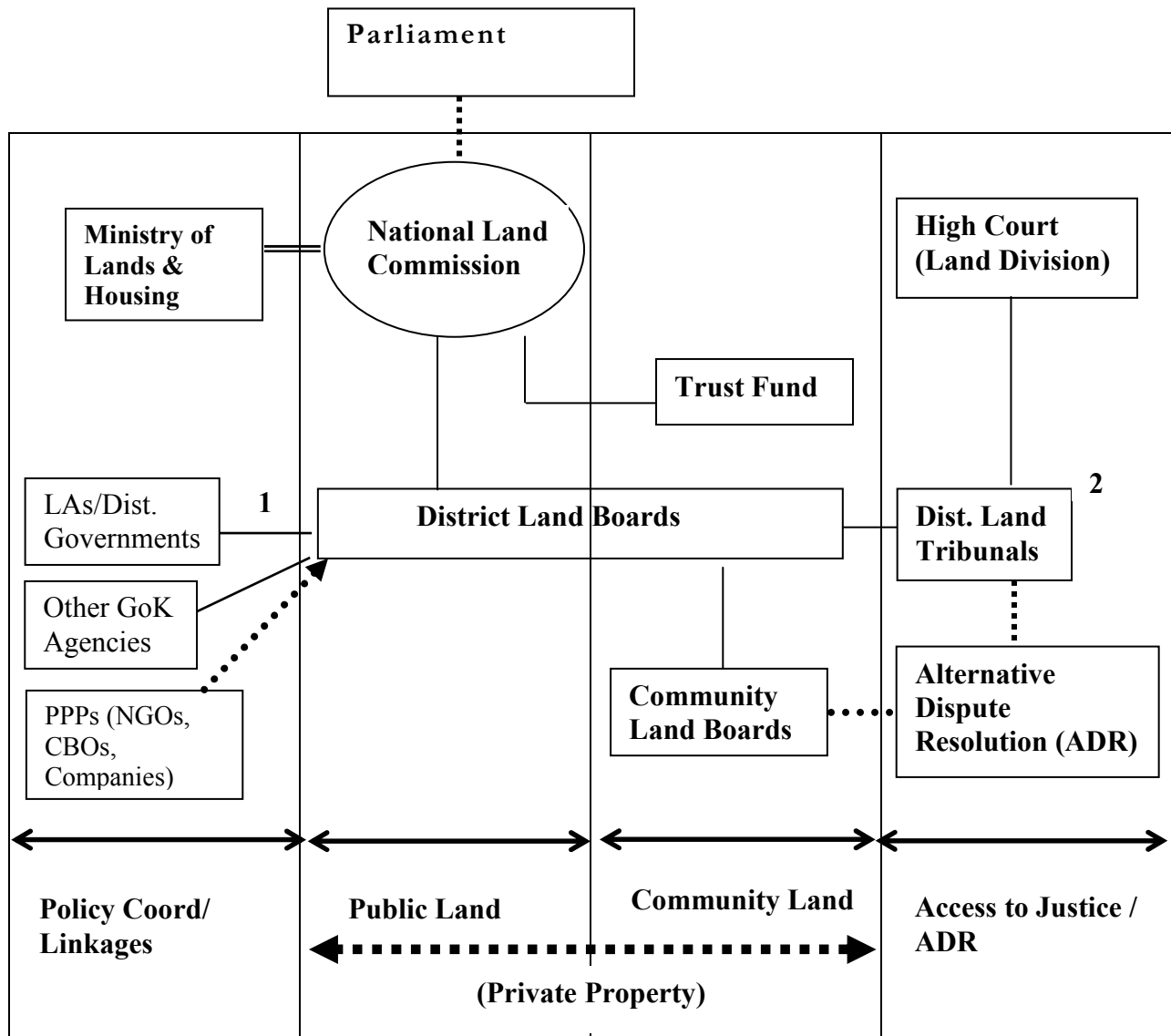
The MoLH needs to establish the organizational structure that will be used to drive the reform programme within. It is a feasible option to fashion the NLP Secretariat into a Land Reform Management Unit to do this but it will require reorganizing and supporting with appropriate technical assistance. Additional capacity may be required within the Unit to negotiate necessary internal changes in the ministry and give the Unit relative autonomy in decision-making in the interest of reforms.

The Implementation Unit will initially be coordinated and led by Land Reform Administrator for a fixed-period of maximum three years with the specific task of:

- Getting the legislation drafted and passed;
- Organizing the civic education;
- Mobilizing the finances ;
- Forming relevant institutions;
- Recruiting and training required personnel; and
- Generally ensuring a smooth transition.

3.6.9.12 Proposed Organizational Structure (New Institutions)

The main elements of the proposed three tier organization chart are shown below.



NLP Implementing Institutions

- Notes 1:** 1 Civil Society also to be represented in all statutory bodies
 2 Including Physical Planning Liaison Committees

Notes 2:

1. Legal Status of NLC: The NLC shall be a Constitutional office as recommended by the CKRC and Njonjo Commission reports. The legislation that will establish it shall specify its autonomy regarding funding and internal operations. Its linkages with the Ministry shall be defined in the legal framework.

2. Internal Operating Structures: Upon establishment, it will decide its own structures for effective operations at the National, District and Community levels. It will draw from the existing capacities and organs of the MoLH. A set of conditions precedent to its creation will be put in place by MoLH during the transition period. This will be done through the establishment of a Reform Implementation Unit in the Ministry.

3. Dispute Resolution: In the dictum of separation of powers, disputes resolution is primarily a judicial function if the principle of having 'checks and balances' is to be observed in the land sector. The disputes resolution is depicted in a separate column to signify this desirable separation from routine land administration functions.

4. Functions of NLC/DLBs/CLBs: List of proposed functions of the NLC are given in Annex 1

4.0 CONCLUSION

This Issues and Recommendations Report is a culmination of the various activities that the National Land Policy Formulation Process has gone over since its commencement in August, 2005. It brings out the various outputs the Process has achieved at different stages over the period of time it has lasted. The Report presents in summary all the issues that underlie the land question and hence require policy intervention. On the basis of the land issues that have been identified, specific problems that need to be addressed with specific policy interventions have been analyzed and brought to the fore.

This Report is neither conclusive nor exhaustive given the complexity and sensitivity of the land issues in Kenya. But it does present the most important achievements of the Process thus far. This is in respect of the fact that whereas the stakeholders and wider public may not have reached total agreement on every issue identified and the ensuing policy recommendations, there is every evidence that consensus was built across the many varied interests and concerns.

There may be still much to be done to bring on board issues of regional and international concern and lessons from good practices experienced elsewhere across the world. It might even be necessary to subject the Report further to the rigours of professional and technical review.

However, at this stage, it can be said with an unassailable degree of confidence that the Process, as demonstrated in this Report, has achieved its principal objective of bringing out issues and recommendations that form the basis for policy formulation through an all-inclusive, participatory, consultative, transparent and interactive approach.

It is hoped that this Report will provide anchorage to equity, efficiency, compliance and consistency as the cardinal pillars of policy development and implementation in Kenya.

ANNEX 1: INSTITUTIONAL FUNCTIONS

Agency: The National Land Commission

Legal basis: Constitutional body

Composition: Members nominated by government and approved by Parliament

- I) To carry out the functions relating to administration and enforcement under the following existing written laws:
- 1) The Physical Planning Act – Cap 286
 - 2) The Survey Act – Cap 299
 - 3) The Government Lands Act – Cap 280
 - 4) The Registration of Documents Act – Cap 285
 - 5) The Registration of Titles Act – Cap 281
 - 6) The Land Titles Act – Cap 282
 - 7) The Registered Land Act – Cap 300
 - 8) The Sectional Properties Act – No. 21 of 1987
 - 9) The Stamp Duty Act – Cap 480
 - 10) The Trustee (Perpetual Succession) Act – Cap 164
 - 11) The Land Control Act – Cap 302
 - 12) The Land Consolidation Act – Cap 283
 - 13) The Land Adjudication Act – Cap 284
 - 14) The Land (Group Representatives) Act – Cap 287
 - 15) The Trust Land Act – Cap 288
 - 16) The Trusts of Land Act – Cap 290
 - 17) The Equitable Mortgages Act – cap 291
 - 18) The Wayleaves Act – Cap 292
 - 19) The Distress For Rent Act – Cap 293
 - 20) The Trespass Act – Cap 294
 - 21) The Land Acquisition Act – Cap 295
 - 22) The Rent Restriction Act – Cap 296
 - 23) The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act – Cap 301
 - 24) The Land Disputes Tribunals Act – No. 18 of 1990
 - 25) Part XI of the Agriculture Act – Ca 318
- II) To review and formulate policies on the administration and management of land, land use planning, and the administration, management and exploitation of all land based natural resources.
- III) To co-ordinate the activities of all bodies concerned directly or indirectly with land matters and serve as a channel of communication between those bodies and the Government.

- IV) To establish and operate an integrated information system countrywide specifically to act as a central depository for all research material and information on land.
- V) To recommend and undertake land reform programme, review existing land laws and propose new or amending legislation necessary to implement its recommendations.
- VI) To be responsible for the preparation, registration and issue of titles for all categories of land under the Acts referred to in (I) above.
- VII) To administer the renewal and extension of leases in respect of Government leasehold titles, and to order, well in advance of the expiry of those leases, the planning of areas where the renewals or extensions are to take place.
- VIII) To facilitate the carrying out of valuations of all categories of land where legally required to do so and regulate the practice of the valuation profession in the country.
- IX) To control and manage the collection of land survey data for the production of maps, plans and charts, and to promote the introduction of whatever technological systems that may be developed to obtain the data in as reliable, cheap and accurate a manner as possible for use in registration of titles, tourism, defence, education, planning, health, agricultural and industrial development and any other purpose it considers suitable.
- X) To formulate and prepare national, regional and local physical development policies, plans, guidelines and strategies, and initiate and undertake or direct studies and research into matters concerning physical planning, and to advise local authorities, and public and private developers on the most appropriate use of both public and private land.
- XI) To undertake research into, and formulate national policies on, human settlement and to initiate and continue programmes and projects for urban and rural settlement.
- XII) To initiate and facilitate the formulation and implementation of informal settlements upgrading programme especially in peri-urban areas of cities and to provide for regularization of tenure for bona vide residents therein.

- XIII) To promote the advancement of research and scientific knowledge in land matters, natural resources and encourage the development of technology to ensure protection of beneficial use and the maintenance of the quality of land, and to prevent or minimize adverse effects that endanger human health or welfare.
- XIV) To initiate or commission studies, research or inquiries for the identification, harmonization or codification of the customary land laws and land tenure systems of the various communities in Kenya, and to recommend whether and the extent to which those laws and systems may be incorporated into existing or new legislation.
- XV) To undertake and promote general educational programmes in land matters for the purpose of creating an enlightened public in its protection and improvement.
- XVI) To establish offices of the National land Commission (NLC) throughout the country.
- XVII) To facilitate the participation of communities in the formulation or review of the national land policy.
- XVIII) To assess and administer taxes on land and premiums on property in any area designated by law.
- XIX) To protect, conserve and provide unfettered public access to public land.
- XX) To facilitate the review of all grants or dispositions of public land to establish.
- XXI) To initiate the formulation of the law to establish the National Land Trust Fund (NLTF) to enable citizens to gain access to land on an equitable basis, respond to land related disasters and settle redress claims awarded to victims of historical or other injustices.
- XXII) To establish a land bank to facilitate the availability of land for public purposes.
- XXIII) To protect the dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land.

Agency: Community Land Boards

Legal basis: Community Land Act (or equivalent legislation to be passed)

Composition: Membership will be partly elected and partly nominated, with a large community representation

Function:

- i. Keep a record of all community lands in the area of jurisdiction and the communities entitled thereto
- ii. Allocate occupancy and development rights over community lands in terms of a framework prescribed by NLC/ DLB
- iii. Collaborate with the local authorities on placing of infrastructure delivery issues
- iv. Oversee and monitor the use of community land
- v. Administer private property interests (e.g. leases) in community land
- vi. Keep the DLB informed and up to date on all aspects of community land administration including statistics, proceedings of meetings, periodic returns and so on
- vii. Cooperate with other CLBS as appropriate
- viii. Involve community members, women and vulnerable persons in the management of their land

Agency: District Land Boards

Legal Basis: Community Land Act; alternatively the Land Commission legislation could also incorporate DLBs as an executing arm in respect of community land

Composition: Partly elected and partly nominated membership

Function:

- a. Under the guidance and supervision of NLC, investigate and document traditional tenure systems of communities in there are
- b. Establish rules for managing community land
- c. provide procedural and operational guidelines for CLBs
- d. Advise and provide technical backup to CLBs including training
- e. Promote traditional methods of resolving disputes and establish machinery for hearing appeals from community based dispute resolution structures
- f. Assess and collect land rent and taxes (excluding local authority property rates)
- g. Cooperate with local authorities in planning and conservation efforts including physical and environmental planning
- h. Assist communities in the management of natural resources
- i. Provide alternative methods of registration for pastoral & HG communities while respecting their unique land use and livelihood systems

ANNEX 2: LIST OF STATUTES

1. The Constitution
2. The Permanent Secretary to the Treasury (Incorporation) (Cap 101)
3. The Trustees (Perpetual Succession) Act (Cap 164)
4. The Antiquities and Monuments Act (Cap 215)
5. The Local Government Act (Cap 265)
6. The Government Lands Act (Cap 280)
7. The Registration of Titles Act (Cap 281)
8. The Land Titles Act (Cap 282)
9. The Land Consolidation Act (Cap 283)
10. The Land Adjudication Act (Cap 284)
11. The Registration of Documents Act (Cap 285)
12. The Trust Land Act (Cap 288)
13. The Trusts of Land Act (Cap 290)
14. The Equitable Mortgages Act (Cap 291)
15. The Wayleaves Act (Cap 294)
16. The Land Acquisition Act (Cap 295)
17. The Rent Restriction Act (Cap 296)
18. The Survey Act (Cap 299)
19. The Registered Land Act (Cap 300)
20. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301)
21. The Land Control Act (Cap 302)
22. The Agriculture Act (Cap 318)
23. The Maritime Zones Act (Cap 371)
24. The Water Act (Cap 372)
25. The Wildlife (Conservation and Management) Act (Cap 376)
26. The Forests Act (Cap 385)
27. The Public Roads and Roads of Access Act (Cap 399)
28. The Lakes and Rivers Act (Cap 409)
29. The Stamp Duty Act (Cap 480)
30. The Children's Act (2001) (Cap 586)
31. The Transfer of Property Act of India 1882
32. The Foreign Jurisdiction Act (Britain) 1890
33. The Indian Land Acquisition Act 1894
34. The East Africa Land Regulations of 1897
35. The East Africa (Lands) Order in Council 1901
36. The Outlying Districts Ordinance No.5 of 1902
37. The Crown Lands Ordinance No.21 of 1902
38. The Land Titles Ordinance 1908
39. The Crown Lands Ordinance No.22 of 1915
40. The Agricultural Advances Ordinance No.12 of 1930
41. The Land and Agricultural Bank Ordinance No.3 of 1931
42. The Agricultural Mortgagor's Relief Ordinance No.35 of 1934
43. The Farmers Assistance Ordinance No.18 of 1936

44. The Kenya (Natives Areas) Order in Council, 1938
45. The Kenya Independence Order in Council, 1963
46. The Constitution of Kenya (Amendment) Act No.28 of 1964
47. The Trust Land (Amendment) Act No.28 of 1964
48. The Constitution of Kenya (Amendment) Act No.14 of 1965
49. The Land (Amendment of Laws) Act No.39 of 1968
50. The Sectional Properties Act No.21 of 1987
51. The Land Disputes Tribunal Act No.18 of 1990
52. The Constitution of the Republic of South Africa, 1993
53. The Government Lands (Amendment) Bill, 1964
54. The Physical Planning Act No.6 of 1996
55. The Environmental Management and Co-ordination Act, 1999
56. The Survey Act 1977 (Queensland, Australia) (Reprint No.2)

ANNEX 3: LIST OF GOK PUBLICATIONS AND REPORTS

1. Constitution of Kenya Review Commission Draft Constitution of Kenya, 2004, CKRC
2. Report of the Commission of Inquiry into the Land Law System of Kenya, 2002, Government Printer
3. Report of the Commission of Inquiry into Illegally and Irregularly Allocated Lands, 2004, Government Printer
4. Poverty Reduction Strategy Paper, 2001 – 2004, Ministry of Finance and Planning
5. Statistical Abstract, 2004, Central Bureau of Statistics (Ministry of Planning and National Development)
6. Economic Survey, 2005, Government Printer
7. Economic Recovery Strategy for Wealth and Employment Creation, 2003 – 2007, Ministry of Planning and National Development
8. National Development Plan, 2002 – 2008, Ministry of Planning
9. Strategic Plan, 2005 – 2009, Ministry of Lands and Housing
10. Forest Bill, 2005
11. Constitution of Kenya Bill, 2005

ANNEX 4: LIST OF LAND POLICIES/REPORTS/INTERNATIONAL
CONVENTIONS

1. Convention relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22, 1954.
2. The Ramsar Convention on Wetlands of International Importance, 1971
3. United Nations Convention on the Law of the Sea, 1982
4. The Convention on Biological Diversity (Nairobi 1992)
5. United Nations Framework Convention on Climate Change: Kyoto Protocol (1997).
6. Land Policies for Growth and Poverty Reduction: World Bank Policy Research Report, 2003
7. Ghana National Land Policy, 1999
8. Malawi National Land Policy, 2002
9. Draft Lesotho Land Policy, 2002
10. Botswana National Land Policy (Revised), 2003
11. South Africa Land Policy, 1996
12. Rwanda National Land Policy, 2005

ANNEX 5: INTERNATIONAL INSTRUMENTS ON EQUAL RIGHTS OF MEN AND WOMEN WHICH AFFECT LAND & PROPERTY OWNERSHIP

International Instruments

These are some of the **International Instruments** on equal rights of men and women which affect land and related matters of property ownership.

1. Declarations and Recommendations:

- i. Universal Declaration of Human Rights, 1948: Article 16 ,entitles men and women to equal rights before and during marriage and its dissolution., and Article 17,recognizes a person's right to own property alone as well as in association with others and stipulates that no one shall be arbitrarily deprived of their property.
- ii. Vienna Declaration and Programme of Action, 1993: explicitly recognizes that human rights of women and the girl-child are inalienable, integral and indivisible part of human rights.
- iii. UN Millennium Declaration, 2000: Paragraph 6, states that equal rights and opportunities of women and men must be assured. Under paragraph 19, member states resolved to promote gender equality and the empowerment of women.

2. Covenants, Conventions and Treaties:

- i. International Covenant on Economic, Social and Cultural Rights, 1966: Article 3 obliges states to undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant, including right to adequate housing.
- ii. Convention on the Elimination of All Forms of Discrimination against Women, 1979: among other things, obliges states to take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- iii. African Charter on Human and People's Rights, 1981: among other things, requires states to ensure that every form of discrimination against women is eliminated and that the rights of the women and children are protected

3. Agendas and Platforms for Action:

- i. Beijing Declaration and Platform for Action, 1995: in which governments among other things, determined to take all necessary measures to eliminate all forms of discrimination against women and the girl-child and remove all obstacles to gender equality and the advancement and empowerment of women.
- ii. Istanbul Declaration and Habitat Agenda, 1996; among other things urges Governments among other things, to ensure and enhance access to land by
 - ✓ promoting greater security of tenure for the poor and vulnerable and enabling better access to information and good practices, including awareness of legal rights and remedies in case of violation
 - ✓ Promoting awareness campaigns and education regarding women's legal rights to land ownership and inheritance.

ANNEX 6: GLOSSARY OF TERMNOLOGIES USED IN THE REPORT

1. Land

Land in Kenya means the soil and everything above and below it. It includes any estate or interest in the land plus all permanent fixtures and buildings together with all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations and gardens thereon or thereunder. This definition is relevant to land registered, governed or subject to the following statutes:

- The Registered Land Act – Cap 300
- The Registration of Titles Act – Cap 281
- The Registration of Documents Act – Cap 285
- The Land Titles Act – Cap 282
- The Transfer of Property Act – India 1992
- The Survey Act – Cap 299
- The Government Lands Act – Cap 280
- The Physical Planning Act – Cap 286
- The Environmental Management and Coordination Act (1999)

2. Land Administration

This is the set of principles, procedures and processes relating to:

- Land rights delivery (comprising registration, record keeping and retrieval, transfers, transmissions, etc.),
- Land adjudication, survey and cadastral operations,
- Land market operations (including control of transactions and tenancy regulations),
- Land allocation and revocation processes,
- Land information management operations,
- Land dispute processing, and
- The institutional structures through which the above are administered

3. Land Management

Land management is about setting goals and methods that may be chosen to improve land use and the ways of influencing them in the desired direction. As a rule many parties are involved in land management (public, private, community), and their respective roles are determined by the legal framework and institutional arrangements.

In essence, land management involves the application of one or a combination of principles, procedures and practices that relate to regulation of land uses, environmental assessment and audit (including ecosystem management), land use planning (both registered and urban) and land conversion and protection.

4. Restitution

In the context of historical injustices or claims, restitution refers to the restoration of individuals or communities to areas from which they were unfairly removed or evicted. Restitution claims depend on accurate determination of the boundaries of original settlements and definite cut-off dates. Restoration of illegally/irregularly acquired land to the original purpose will also amount to restitution. It may take the form of indemnity or monetary compensation.

5. Reparation

In the context of redress of historical grievances, reparation means redress by way of indemnity where restitution or monetary compensation is not possible or appropriate. Reparation usually comes in the form of developments or similar value added or equivalent projects directed at enhancing the livelihoods of persons or communities which are unjustly injured by historical circumstances.

6. Informal Settlements/Sector:

These are settlements without formal or official tenure rights and/or settlements that are not in compliance with the relevant physical or land use planning requirements. The essence of 'informal' or 'spontaneous' or 'squatter' settlements is that it is without secure tenure and/or is unplanned.

7. Absentee Landlords/land owners:

This normally refers, in the one case, to persons whose land is under occupation or use by others but who themselves are not regularly in residence or supervision of the land; and in the other, to persons whose conduct amounts to abandonment of the land. Periodicity in relation to absence is therefore important. At the Coast of Kenya, it refers to persons who, seldom ever use land of which they are the registered owners and such land, if it is managed at all, is ordinarily under agents who may or may not have been validly appointed by the registered owner(s).

8. Idle Land

"Idle" land refers to land (with a registered title) that is lying idle without being used (as opposed to lying fallow) and has lain without being used for a considerable period of time.

9. Squatter

Legally, a squatter is a person who occupies land or a building that legally belongs to another person or institution without the owner's consent.

At the Coast of Kenya, a squatter would include a person occupying Government land or private land. For historical reasons the word "squatter" in

this context is regarded by indigenous coast people as a term of abuse or misnomer.

In the former white highlands a squatter would include a person and his family occupying part of large farm with the permission of the farm owner. The squatter would provide labour to the farm owner on a casual basis.

Similarly, a forest squatter would occupy land in a gazetted forest with the authority of the Forest Department in exchange for providing casual labour from time to time.

In urban areas a squatter would be found on Government land or private land which in many cases will be unplanned hence the term is often confused with slums. The latter refers to land or building that is in poor environmental and sanitary condition.

10. Landless/Landlessness

This term should be used to designate a condition where a person is:

- Without access to land
- Has no means of acquiring such access and
- Needs land for sustainable livelihood

It should be noted however, that merely not having land does not per se constitute landlessness.

11. Peri-Urban:

Peri-urban land refers to areas lying at the interface between designated urban boundaries and contiguous rural areas. What makes the land 'peri-urban' is the complex mix of land uses stimulated by urban and rural impacts. These areas are usually in the process of transition due to urban sprawl and encroachment as population expands.

12. Zoning

Zoning is a planning tool for the designation and control of the use of land, as well as regulating the type and density of the improvements upon it.

13. Power of Eminent Domain

This refers to the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation, and is provided for in the Constitution. It is derived from the assumption that as sovereign, the state holds the radical title to all land within its territory. Thus compulsory acquisition is the exercise of eminent domain powers of the state by the Government in respect of justly and legally held private land.

14. Land Tenure

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted.

15. Private Land/Communal Land/Public Land

Public land

Refers to land vested in held in trust by the State (including land held by the Government as its private property). The broad category includes:

- (a) all land held as an unalienated government land as defined by an Act of Parliament;
- (b) land lawfully held, used or occupied by any government ministry, department, agency or local authority, except where such land is occupied under a private lease;
- (c) all public roads and roads of access as specified by an Act of Parliament;
- (d) all water bodies as defined by an Act of Parliament;
- (e) the territorial sea and its sea bed;
- (f) all national parks, game reserves, forests, etc.

Communal land

Land vested in communities whose legal persona can be identified, is usually referred to as 'community land'. This category normally applies to land for which individuals and families have access under customary land tenure and includes:

- (a) all land currently defined as Trust land under the Constitution and the Trust Land Act;
- (b) land lawfully registered in the name of group representatives under the provisions of any law for the time being in force;
- (c) land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; and
- (d) any other land declared to be community land by an Act of Parliament,

Private land shall include:

- (a) any registered land held by any person under a freehold tenure;
- (b) land held by any person under leasehold tenure; and
- (c) any other land that may be declared private land under an Act of Parliament.

16. Sanctity of title

This refers to the principle that once a specie of land rights is vested in an individual or community, state law and practice should defend those rights against claims or violations not founded on prior rights or claims.

17. Optimal Land Use

This concept has meaning only in the context of land use planning and land sector development programmes. It aims to put land to the highest and best possible use by taking into consideration zoning regulations.

18. Historical Injustices/Claims

In the context of land question in Kenya this should be used to refer to land grievances arising from forced expropriation, dispossession, or eviction at a particular point in history (colonial or post-colonial) coupled with persistent neglect or disregard of demands for redress. It matters not whether that dispossession is executed administratively or legally.

19. Radical Title

This refers to ultimate ownership of land. It is the 'root' title from which all other tenure rights derive. Radical title is an incident of sovereignty hence vests in the State or analogous construct.

20. Communal Rights

Rights of a particular community (whose legal persona can be defined) to possession and use of resources

21. Minority Communities/Groups:

This refers to that category or groups of persons, who by their position or status in society (political affiliation, religion, gender, or way of life) are deprived of advantages or opportunities, which their counterparts not subjected to such circumstances, are accorded.

22. Hunters and Gatherers

Hunter-Gatherers are people whose primary livelihood is derived from hunting and gathering. Hunters and gatherers are originally a forest dwelling community, surviving through hunting of wild game and gathering fruits and honey. A good number now, however, keep livestock while others practice peasant farming and are largely in the process of transition.

23. Urbanization

This is defined as a process of increasing concentration of a country's national population into towns and cities. The process includes the multiplication of points of concentration and increase in size of individual concentration.

24. Illegal/Irregular Allocations

An irregular allocation is an allocation of land that was initially available for allocation but in circumstances where the standard operating or administrative procedures have not been observed. The title created out of such an irregular allocation will not be void or illegal if all other legal formalities have been

complied with. It will be an irregular title capable of rectification where necessary.

The Government Lands Act establishes the legal authority for allocation of land. Any attempt to allocate land that is not available for allocation or allocating it outside the regulations will result in an abuse of office and an illegal title.

25. Customary Land Rights/Systems

This refers to rights conferred by or derived from custom or customary law whether formally recognized by legislation or not. They are land rights held through traditional systems or rules in various communities and are not written.

26. Vulnerable and Marginalized Groups

Vulnerability is usually a manifestation of poverty and deprivation. Vulnerability can also be viewed as lack of adequate shelter, illiteracy, exposure to ill treatment, lack of power to influence decisions affecting ones life and as a physical disability. The most vulnerable in Kenya are clustered into several socio-economic groups which include: Subsistence farmers, pastoralists in Arid and Semi-Arid Lands, agricultural labourers, casual labourers, unskilled and low-skilled workers, household heads who are female and/or without formal education, unemployed youth, and people with disabilities, those affected/infected with HIV/AIDS, slum and street dwellers and the aged.

The marginalized groups/communities are those who by virtue of their geographical, cultural, economic and political predisposition are not included in decision-making process on matters of access, use and control of land and land related resources.

27. Communal Tenure Systems

These refer to unwritten land ownership practices by certain communities. In such instances land is owned or controlled by a family, clan or appointed community leader. Every individual is entitled to the use of land, while ownership is linked to the socio-cultural life of the entire community. It also includes a system of open access where the access to land is unlimited, rights are left unassigned, there are no duties or obligations, but benefits are available to every one.

28. Resource Tenure

this expression is used to refer to the manner in which the 'natural resources' (i.e. water, forests, minerals, mineral oils, wildlife and biodiversity) are held, accessed and controlled. It also refers to a system of access and management guideline regulating possession and use of natural resources.

29. Wildlife Dispersal Lands/Migratory Corridors

Land left in a state of nature, uninhabited, unoccupied and uncultured, and not in use for any artificial purpose, but for seasonal wildlife migration.

30. Community Land Board/ District Land Board

A committee of elected or appointed persons who exercise quasi-legal jurisdiction over issues related to land and interests in land within a given community or district as defined by the Constitution and Act of Parliament

31. Allocation of Land/Alienation of Land

Allocation is the process of selection of the person to whom an area of land is to be allocated or allotted for the specific purpose of development for a particular and identified use.

32. Indigenous People

Born or belonging naturally to a place or ancestral land as distinct from an immigrant.

33. Open Spaces

Land which is used or is available for use for recreation, and falls into two categories; private open space and public open space. The term is commonly used to refer to those parts of the property that are not in fact built upon, such as the open space surrounding a block of flats as defined in Physical Planning and land use schemes.

34. Urban Agriculture

This refers to agricultural land use activities (crop and animal husbandry) within and in zones contiguous to gazetted urban areas.

35. Co-ownership (Joint and Common)

Co-ownership refers to ownership by two or more proprietors. Where 'joint' the proprietors have the right of a single indivisible owner, hence when one dies, the full plenum of rights devolve upon the survivor; and where 'common', the proprietors hold separate but undivided shares (say, one-third and two-thirds undivided shares for A and B respectively). The share of a tenant-in-common may be separately disposed of by him/her while alive, and on death the share passes not to the other tenant-in-common but by will or laws of inheritance.

36. Family (in the context of land ownership)

This refers to a set of relations, especially parents and children, or descendants of a common ancestor. In terms of individual tenure the family would refer to parents and children, irrespective of the marital status or family arrangements while for communal ownership the family could be a clan.

37. Fragile Ecosystems

Ecosystem is a dynamic complex of plant, animal, micro-organism, communities and their non-living environment interacting as a functional unit. Fragile ecosystems are those ecosystems that are key to the survival and sustainability of flora and fauna and include forests, ASALs and wetlands that need protection from degradation and destruction.

38. Historical/National Heritage Sites

These are sites listed under the Antiques and Monuments Act and the National Museums Act for the purposes of protection and preservation due to their cultural or historical importance.

39. Land Development

The making of any material change in the use or density of any buildings, or land, or the subdivision of any land (as defined in the Physical Planning Act, 1996).

40. Community Land Trust

An incorporated association of a particular community for holding land by putting the title in one or more trustees for the benefit of the members of the community whose interests are evidenced by land trust certificates

41. Land Tenure

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted.

42. Interoperability

The capability to communicate, execute programs or transfer data among various functional units in a manner that requires the user to have little or no knowledge of the unique characteristics of those units.

43. Metadata

A catalogue of data that may identify who has what data, its characteristics, how it may be accessed, and how much it costs.

44. Geo-information

This refers to spatial land information including zoning maps and national atlases.

ANNEX 7: LIST OF THEMATIC GROUP PARTICIPANTS

National Coordinator: Ms. Rosemary W. Wachira

THEMATIC GROUP PARTICIPATION IN THE LAND POLICY FORMULATION PROCESS

NAME	ORGANISATION
LEGAL FRAMEWORK FOR IMPLEMENTATION THEMATIC GROUP	
1 Ambrose Rachier (Chair)	Rachier & Co. Advocates
2 Dr. Migai Aketch (Resource Person)	University of Nairobi
3 Dr. Kameri-Mbote (Resource Person)	University of Nairobi
4 Teresia Mburu	Ministry of Lands and Housing
5 Benson Akungo	Ministry of Lands and Housing
6 John W.Some	Kenya National Federation of Agricultural Producers
7 James Achoki Mbogha	Widows and Orphans Welfare Society of Kenya
8 Charles C. Magara	Kenya Bankers Association
9 Joshua Chemoigut	Institution of Surveyors of Kenya
10 Edward M. Muriithi	Judiciary
11 Joseph K. Kania	Housing Finance Co. Ltd
12 Eliud Moki	Ministry of Lands and Housing
13 Lillian Mbindyo	Attorney General's Chambers
14 Edith Torome	Ministry of Local Government
15 Tom O.Ojienda	Law Society of Kenya
16 Leah N. Muraguri	Ministry of Lands and Housing
17 Joseph N. Ngayai	Ministry of Lands and Housing
18 Sally Mahihu	Compulsory Acquisition
19 Winnie Mwangi	Institution of Surveyors of Kenya
20 Rosina Mule	Ministry of Lands and Housing
21 Teresa Omondi	FIDA (K)
22 Jacqueline M.Muindi	Attorney General's Chambers
23 Fatuma Ibrahim	Kenya National Commission of Human Rights
24 W. Nyagwanga	Office of the President
25 Jane Weru	Pamoja Trust
26 Jermiah N. Kioni	Land Disputes Tribunal
27 Dr. Caleb Mireri	Kenya Institute of Planners
28 Odindo Opiata	Kenya Land Alliance
29 Haron M. Ndubi	Kenya Land Alliance/Kituo cha Sheria
30 Emily Otieno	Ministry of Justice & Const. Affairs
31 Hillary Korir	National Housing Corporation
32 Raphael J. Mtsung	Coast Land Rights Lobby, Malindi
33 A. K. Masinde(Rappoteur)	Ministry of Lands and Housing

LAND INFORMATION MANAGEMENT SYSTEM THEMATIC GROUP MEMBERS

1 Dr. Wilber Ottichillo (Chairman)	Regional Centre for Resource Management and Development
2 Dr. Galcano Mulaku (Resource Person)	University of Nairobi
3 A.W. Njuguna	Architectural Association of Kenya
4 Charles Situma	Dept. of Resource Surveys and Remote Sensing
5 Christopher N. Omare	Kenya Institute of Planners
6 E.L.Namwalo	Office of The President
7 Eng. D.W. Mugambi	Institute of Engineers of Kenya
8 Erick Khamala	Regional Centre for Resource Management and Development
9 Esther N. Ogega	Ministry of Lands and Housing
10 G.M Theuri	Telkom (K) Ltd
11 Irene W. Maina	Kenya Power and Lighting Company
12 J. Shigoli	Postal Corporation
13 J.W. Ndiba	Ministry of Lands and Housing
14 John Tito	Kenya Airports Authority
15 Leonard Yaa Mangi	Kubuka Farmers' Association
16 Maina Kiambigi	Kenya Institute of Planners
17 Muturi M. Masila	Kenya Revenue Authority
18 N.M Nthiga	Ministry of Lands and Housing
19 Nancy W. Macharia	Jomo Kenyatta University of Agriculture and Technology
20 Njambi Kinyungu	University of Nairobi, Dept. of Land Development
21 P.K Kahuhu	Ministry of Lands and Housing
22 P.M Gota	Ministry of Lands and Housing
23 Patricia Sangiriaki	Narok Town Council
24 Philip Ole Sironka	MPIDO (Pastoralist)
25 Rose Muema	Ministry of Local Government
26 Wanja Njoroge	Ministry of Agriculture
27 Wilson N. Kamau	Institution of Surveyors of Kenya
28 Jonathan Kinyamal	Shartuka Group Ranch
29 Herbert Musoga	Ministry of Lands & Housing
30 Ekuam Ewoi	Pastoralists Development Network of Kenya
31 David Lekitekui	Pastoralists Development Network of Kenya
32 Reuben M. Murugu (Rapporteur)	Ministry of Lands & Housing

INSTITUTION AND FINANCING FRAMEWORK FOR IMPLEMENTATION

1 Prof. Saad S. Yahya (Chair)	CKRC/Assoc. of Professional Society of East Africa
2 S. M. Mwangi (Resource Person)	Oaks Springs Development Consultants
3 F.O. Ndege	Office of the President, DPM
4 Dr. Konyimbih T.N.M.M	Institution of Surveyors of Kenya
5 Njambi Muchane	Kenya Institute of Management
6 G.M Sianga	Office of the President, Provincial Adm.& National Security

7	Odenda Lumumba	Kenya Land Alliance
8	Justus A. Amaya	Ministry of Local Government
9	S.O. Kiaye	Kenya Institute of Planners
10	Domenic Mutege	City Council of Nairobi
11	P.A. Ogada	University of Nairobi, Political Science Dept.
12	Davider Lamba	Mazingira Institute/Operation Firimbi Network
13	Mrs. E.C.Kigen	Ministry of Finance
14	Agil Saleh	Kenya Institute of Planners
15	M.N. Musembei	Ministry of Lands & Housing
16	P.K. Wanyoike	Ministry of Lands & Housing
17	H.K. Kivunira	Ministry of Lands & Housing
18	Dr. Walter Odhiambo	Kenya Institute of Public Policy Research Analysis
19	Makenzi Kiilu	Ministry of Lands & Housing
20	Silvester C.M.Wafula	Kenya Private Sector Alliance
21	Kepher N.Nguli	Coast Land Rights Lobby Group
22	Samuel K.T.Kimani	Institute of Certified Public Accountants of Kenya
23	Kerika Ole Ndere	Ewaso Ng'iro South Development Authority
24	Salah Abdi Sheikh	Pastoralist Development Network off Kenya
25	J.M. Muriithi (Rapporteur)	Ministry of Lands & Housing

RURAL LAND USE, ENVIRONMENT AND INFORMAL SECTOR

1	Kimaru Gathiru (Chairperson)	Private Consultant
2	Bosire Ogero (Resource Person)	Matrix Development Consultants
3	Dr. Patrick Gicheru	KARI, Kenya Soil Survey
4	H. K. Mwathe	Ministry of Agriculture
5	Josiah W. Mulwa	Ewaso Ng'iro North Dev.Auth.
6	William Otieno Ogola	Lake Basin Dev. Authority
7	Amondi E. Agutu	Biosafety News
8	Dr. Renison K. Ruwa	Kenya Marine and Fisheries Research Institute
9	Saeed Mwanguni	Coast Development Authority
10	Charles Taleng'o	Ewaso Ng'iro North Dev. Auth.
11	Lillian Ndubai	Ministry of Lands & Housing
12	Timothy S. G. Makunda	Kenya Institute of Planners
13	Zahara Ali Shurie	Garissa County Council
14	David K. Tanui	Kerio Valley Dev. Authority
15	Duncan Ochieng Onduu	Self Help Devt. International
16	Dr. Philip Muruthi	African Wildlife Foundation
17	Gerald M. Ngatia	Human Wildlife Conflict Network
18	Christine N. Baari	Loita Naimina Enkiyo Conservation Trust
19	G. V. Masinde	Ministry of Lands & Housing
20	Anthony M. Itui	Ministry of Lands & Housing
21	Patrick B. M. Malaki	Ministry of Lands & Housing
22	Alphonse S. Musili	Ministry of Livestock & Fisheries Devt.
23	Tom Sipul	Kenya Wildlife Service
24	Ismail Gedi	Kenya Livestock Marketing Council

25	Hassan Duba	Distict Livestock Marketing Council
26	David Yator Kiptum	Hunter-Gatherer Forum Sengwer Community
27	Michael Ochieng Odhiambo	Reconcile
28	Cllr Francis Mwongera	Meru County Council
29	Masila Lambert Kioko	Rural Aid Kenya
30	Dr. Samuel Obiero	University of Nairobi, Dept Urban Regional Planning
31	Mueni Kiio	Oxfam G. B. Kenya
32	Maurice M. Lishenga	Ministry of Roads & Public Works
33	Edward Kerindo	Widows and Orphans Welfare Society of Kenya
34	Denis Ochwada	Kenya National Federation of Agricultural Producers
35	Gakuu Mathenge	Nation Media Group
36	Solomon Abwere	Ministry of Local Government
37	Mr. Paul Nguru	National Environment Management Authority
38	Hamid Mohamed Zubeir	Coast Land Rights Lobby Group
39	George M. Migwi	Ministry of Water and Irrigation
40	Haji Mohamed Mwakio	Coast Land Rights Lobby Group
41	Catherine Kariuki	Institution of Surveyors of Kenya
42	Beatrice Mwaka Mwaringa	Constitution of Kenya Review Commission
43	Brigitte M. Kitenge	Inter-Agency Rural Dev. Programme (IRDP)
44	Davidson Maina Mwaniki	Private Sector
45	Charles P.K. Mbugua	Ministry of Environment, Forestry Department
46	Yusuf Wako Dogo	Friends of Nomads International (FNI)
47	Thomas Nyangeri	Ministry of Tourism Development
48	Festus Baridi Mbasu	Kakamega County Council
49	Agatha Wangeci Kahara	Peace & Justice Commission
50	Gideon Gathaara	Ministry of Regional Development
51	Priscilla W. Nyaga (Rapporteur)	Ministry of Lands & Housing

URBAN LAND USE ,ENVIRONMENT & INFORMAL SECTOR THEMATIC GROUP

1	Erick Makokha (Chair)	Shelter Forum
2	Dr. Washington Olima (Resource Person)	University of Nairobi
3	Rose Lily N.Thuo	Ministry of Agriculture
4	Samuel M.Kariuki	Ministry of Labour
5	Cleophas N.Odhiambo	Ministry of Labour (Dept of Micro &Small Scale Enterprises)
6	Edith Jenkins	Kenya Railways Corporation
7	Rose Sirali Antipa	National Environment Management Authority
8	Winnie Kaburu Kinyuah	Kenya Private Sector Alliance
9	Christine Mwaka	Kenya Private Sector Alliance
10	Daniel Mbekar	Nairobi Environment Network Initiatives
11	Mary M.Njenga	Urban Harvest-International(C.I.P)
12	Joseph N.Mutiso	Ministry of Lands & Housing
13	Erustus O.Abonyo	Architectural Association of Kenya
14	Fred Opondo	National Council for Science & Technology
15	G.O.Oduor	National Housing Corporation

16	Ezekiel Rema Oeri	Muungano wa Wanavijiji
17	Richard O.Oludo	Ministry of Lands & Housing
18	Patrick Tom Odongo	Min. of Local Govt. Dept. of Urban Development.
19	Joy Mideva	Export Processing Zone
20	Eliud M.Mbiyu	Jua Kali Associations
21	Jamaldin Yahya	Kibra Land Committee
22	Patrick Kiptoo	Kerio Valley Dev.Authority
23	Oliver Gwer Pacho	Private Land Valuer
24	Githua Rose W.	Kenya Institute of Planners
25	Abubakar A.Maddy	Municipal Council of Mombasa
26	Patrick Silili Adolwa	Kisumu City Council
27	T.G.Ndorongo	Ministry of Lands & Housing
28	Osman Feruz Khamis	Kibra Land Committee
29	Elijah Agevi	Research Triangle
30	Bernard Mucheke	Low Cost Community Shelter Co-op Society
31	Bernadette W.Mwaniki	Kenya Institute of Planners
32	Federick Mungai Kiarie	Peace & Justice of Catholic Church
33	Gore Mohamed	SUPKEM
34	John G.Kariuki	Ministry of Health
35	Benjamin N.Gitoi	Constitution of Kenya Review Commission
36	Thomas Nyaboke Aburi	Constitution of Kenya Review Commission
37	Wilberforce Ojiambo Oundo	Institution of Surveyors of Kenya
38	P.K. Mutugi	Nairobi City Council
39	Cassius Kusienya	Ministry of Lands & Housing
40	G.K. Mutugi	Private Valuer
41	Mike S.Kibue	Private Valuer
42	Hussein Sakwa	Kenya Youth Muslims
43	Julius Barare Okara	Kenya Private Sector Alliance, Kenya Federation of Jua Kali Association
44	Hiribae B.Dololo	Coast Land Rights Lobby Group
45	Pramila Asena	Widows and Orphans Welfare Society of Kenya
47	Emmanuel Opar	Private practitioner
46	V. K. Liyai (Rapporteur)	Ministry of Lands & Housing
	LAND TENURE AND SOCIAL CULTURAL EQUITY	CENTRE FOR WOMEN LAND RIGHTS
1	Akinyi Nzioki (Chair)	Mendeleo ya Wanawake
2	Christine N.Ngari	Land Rights Lobby-Coast
3	Amida Isaac	Land Rights Lobby-Coast
4	Gladys Mbagu	Empowerment Resources Development Centre
5	Miriam Muto Malogo	Ministry of Agriculture
6	F.W.Mbote	Kenya Livestock Management Council
7	A.A Hussein	Ministry of Planning
8	David Kibe Kariuki	Ministry of Lands and Housing
9	Edward K.Kosgei	Private Practice
10	George M. Njoroge	Ministry of Gender & Sports
11	Peter N. Rutere	

12	Ngeiywa Lawrian	Sabaot Culture Organization
13	Eddy J. Kiema	Kenya Times
14	Joseph Ole Kishau	Pastoralist Group (KOMINITI)
15	Mary Simat	Pastoralist Group
16	Peter A.O. Oraro	Ministry of Lands & Housing
17	Jacob Ngumi	COHORT for Environment
18	Zablon A. Mabea	Ministry of Lands and Housing
19	Geoffrey Leparteleg	Office of the President, Arid Lands and Rangeland Management Project
20	B.N.Mutugi	Ministry of Lands and Housing
21	Nyokabi Gitahi	African Wildlife Foundation
22	Waweru Mugo	The Standard Newspapers
23	Urbanus Mwania	Water for Arid Areas Development
24	Ronald O. Athoo	International Support Services
25	Beatrice Wasike	National Council of Women of Kenya
26	Theresia Munyua	Ministry of Lands and Housing
27	Miriam K. Mukosi	Young Professionals for Development
28	Kanini Michael	Rural Aid Kenya
29	Clement I. Lenachuru	Pastrolist Development Network of Kenya
30	Eunice Lepariyo	Iichamus Devt. Consortium
31	Wanjohi Kabukuru	The People Daily
32	Hasan ole Naado	SUPKEM
33	Ruth Lemlem	FIDA (K)
34	Hilda A.Orimba	Widows and Orphans Welfare Society of Kenya
35	Apakamoi P. Renson	Pastoralist Group
36	A.A. Adan	Ministry of Water and Irrigation
37	Sonya Orre	Ministry of Livestock and Fisheries Devt.
38	Stacy Otieno	Centre for Women Land Rights
39	Waweru Mburu	Citizen Radio
40	Helen K. Nzaiinga	University of Nairobi, Dept. of Urban & Regional Planning
41	Joseph K. Gitau	Justice and Peace Commission
42	Francis K. Lesingo	Ogiek Welfare Council
43	Dr.Mzalendo Kibunja	National Museums
44	Dr.Joseph Otieno	Egerton University
45	Julius Mokogi	K-rep Bank Ltd
46	Mohamed G.Wario	Kenya Livestock Marketing
47	Penninah Kihika	Association of Media Women in Kenya
48	Joel Yego	Institution of Surveyors of Kenya
49	Abudur Aziz Hussein	Kibra Land Committee
50	Agnes Musau	Child Welfare Society
51	Jane Karanja	Ministry of Co-operative Development
52	Dickson Kaelo	Koyaaik/Lemek Group Ranch
53	Paul Gathito	Kenya Wildlife Services
54	David M. Mbuvi	University of Nairobi, College of Agriculture & Veterinary Sciences
55	Mercy Njamwea (Rapporteur)	Ministry of Lands & Housing