

A SUMMARY OF LAND POLICY PRINCIPLES

DRAWN FROM

**THE COMMISSION OF INQUIRY INTO THE LAND
LAW SYSTEM OF KENYA (‘NJONJO COMMISSION’)**

**THE CONSTITUTION OF KENYA REVIEW
COMMISSION (CKRC)**

**PROCEEDINGS OF THE NATIONAL CIVIL SOCIETY
CONFERENCE ON LAND REFORM AND THE LAND
QUESTION**

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1. Introduction

1. At the First National Stakeholders' Workshop on the National Land Policy Formulation Process, 10-11 February 2004, it was agreed that future deliberations and recommendations on the content of the proposed National Land Policy should take account of a framework of land policy principles. It was proposed and accepted that a paper setting out such principles should be presented to the next general meeting of stakeholders.
2. The purpose of this document is not unjustifiably to constrain or limit the scope and content of deliberations, but to remind participants of the recent work on the formulation of land policy principles in Kenya, much of which has a remarkable degree of agreement.
3. The presence or absence of a particular land policy principle in this consultative document should not be taken to confirm or deny Government's acceptance or rejection of that principle. Nor should the absence of a particular principle or point of view constrain participants from raising it as an issue.
4. As stated in the Concept Paper for the National Land Policy Formulation Process,¹ three developments have strongly influenced the desire for a coherent and comprehensive National Land Policy in Kenya:
 - (a) the deliberations of the Constitution of Kenya Review Commission (CKRC);
 - (b) the report of the Report of the Commission of Enquiry into the Land Law System of Kenya (the 'Njonjo Commission'),² which outlines a number of important new policy principles and institutional changes for the land sector; and
 - (c) the *Kenya Economic Recovery Strategy for Wealth and Employment Creation 2003-2007*, which commits the Government to developing a clear time bound action plan for implementing the recommendations of the Njonjo Commission.³

1.1 The Draft Constitution

5. In the final analysis, the National Land Policy must be rooted in the Constitution of Kenya and the overall national development framework. Although the Draft Constitution, as adopted by the National Constitutional Conference on 15 March 2004, has yet to be adopted either by Parliament or in a national referendum, Chapter 7 provides a framework on which to build a national land policy and the relevant Articles are included in boxes in the text of this document.⁴

1.2 The Njonjo Commission

6. The report of the Njonjo Commission, particularly Chapter 4, provides the principal source of land policy principles in this document. The substance of the recommendations of the

¹ National Land Policy Formulation Process, Concept Paper, Ministry of Lands and Settlement, March 2004

² Report of the Commission of Enquiry into the Land Law System of Kenya on the Principles of a National Land Policy Framework, Constitutional Position of Land and New Institutional Framework for Land Administration, November 2002.

³ See Section 9.4, page 52, *Kenya Economic Recovery Strategy for Wealth and Employment Creation 2003-2007*

⁴ Participants are also referred to the important Chapter 8, 'Environment and Resources' of the CKRC Draft Constitution, 15 March 2002.

Njonjo Commission correspond closely to the principles set out in Chapter 7 ‘Land and Property’ of the draft Constitution, which was published in March 2004 (See Box 1, Draft Constitution, Land Policy Framework).

7. The Njonjo Commission principles have been summarised in this document for the convenience of participants, who should refer to the Commission’s report for the full justification and rationale for the recommendations.
8. In reproducing the land policy principles recommended by the CKRC and the Njonjo Commission, the purpose is not to impose a straitjacket on the deliberations of participants, but to provide a frame of reference. However, significant departures from the principles proposed by the two Commissions would need to have a clear and reasoned justification since these principles are themselves the outcome of a thorough review processes.

1.2 International land policy context

9. The Istanbul Declaration on Human Settlements and the Habitat Agenda⁵ should provide the international policy and legal context for the human settlements component of the National Land Policy for Kenya.
10. Under the Habitat Agenda governments have committed themselves to:
 - providing legal security of tenure and equal access to land to all people, including women and those living in poverty;
 - ensuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure;
 - protecting all people from and providing legal protection and redress for forced evictions that are contrary to law, taking human rights into consideration and when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.
11. The proposed National Land Policy, would take due account of the Istanbul Declaration on Human Settlements and the Habitat Agenda. Government would play its part in advancing these important international goals.

1.3 National civil society land policy principles

12. In May 2002, the National Civil Society Conference on Land Reform and the Land Question⁶ endorsed a comprehensive set of land policy principles as an input into the Constitution of Kenya Review Commission and the Njonjo Commission. These important rights-based principles are reproduced in Appendix 1 of this document for ease of reference.

2. The Goal and Objectives of Land Policy⁷

⁵ Endorsed by the United Nations Conference on Human Settlements (Habitat II), held in Istanbul in 1996

⁶ ‘Eradication of Poverty through Assured Security of Access to Land and Natural Resources’, Report of the National Civil Society Conference on Land Reform and the Land Question in Kenya, held at KCCT, Nairobi, 20-23 May 2002, Kenya Land Alliance.

⁷ See paragraph 105-106 of the ‘Njonjo’ Report. For the rationale for these principles, refer to the full report.

13. The goal of land policy in Kenya should be to establish a framework of values and institutions that would ensure that land and associated resources are held, used and managed efficiently, productively and sustainably.

Box 1 CKRC Land policy framework

- (1) Land is Kenya's primary resource and the basis of livelihood for the people, and shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.
- (2) The Government shall define and keep constantly under review a national land policy ensuring the following principles -
 - (a) equitable access to land and associated resources;
 - (b) security of land rights for all land holders, users and occupiers in good faith;
 - (c) sustainable and productive management of land resources;
 - (d) transparent and cost effective administration of land;
 - (e) sound conservation and protection of ecologically sensitive areas;
 - (f) the discouragement of customs and practices that discriminate against the access of women to land; and
 - (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this constitution.

Source: Article 77. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

14. The objectives of the land policy should be to establish a land administration and management system that is economically efficient, socially equitable, environmentally sustainable and operationally accountable to the Kenyan people.

15. The specific objectives of land policy should be to facilitate:

- efficient, transparent and participatory land administration and land management;⁸
- efficient, effective and sound conservation, management and protection of ecologically sensitive areas (e.g. wildlife sanctuaries, forests, coastal and marine zones, wetlands, water catchments);
- equitable distribution and access to land and associated resources;
- gender equity;
- security of land rights within and across generations;
- efficient and orderly land use planning and development of public land resources to promote rapid socio-economic development;
- efficient and cost effective delivery of land rights;
- socially acceptable resolution of land disputes; and
- the development of efficient and sustainable infrastructure.

16. The fundamental principles on which the goal and objectives of the land policy should be founded are as follows:

⁸ *Land administration* ('land rights delivery' in the Njonjo report) is the process of determining, recording and disseminating information about the tenure, value and use of land. *Land management* is concerned with the management of land as a resource from an environmental and an economic perspective.

- Since land is the common heritage of all Kenyans, it is their duty to ensure that it is responsibly administered, managed and productively used.
- All citizens of Kenya, irrespective of gender, should have equal opportunity of access to land, whether this is through the market, or through any system of inheritance, customary or statutory.
- It is the duty of public officers to ensure that land is administered transparently and that they remain accountable to Kenyans at all times.
- Sustainable management of land is a prerequisite to security of access to that land, hence poor or unproductive land use is unacceptable.
- Efficient operation of the land rights market at all levels is fundamental to land development, hence market distortions of whatever nature, legal or otherwise, must be eliminated.
- Comprehensive land use planning and fidelity to the plan are integral to land development especially in the urban and peri-urban areas.

3. Land Sovereignty⁹

Box 2 CKRC Vesting and classification of land

- (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.
- (2) All land in Kenya is designated as public, community or private.

Source: Article 78. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

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relating to **the location of radical title** should be resolved in accordance with the following principles:

- All Public Land¹⁰ should vest in, and be held of, a national institution on behalf of the people of Kenya, created by legislation and entrenched in the Constitution.
- The core functions, duties and powers of the national institution should be defined in the Constitution.
- All private land whose registered title was derived from or granted by the Government should vest in and be held of the national institution and all private land whose registered title was derived from Trust Land should vest in and be held of community based institutions created by legislation and entrenched in the Constitution.
- All Community Land¹¹ vested in county councils should vest in and be held of community based institutions created by legislation and entrenched in the Constitution.

Box 3 CKRC Vesting of public land

- (1)
- (2) Public land classified under Article 79 (1) (a) to (e) shall vest in and be held by district governments in trust for the people resident in the relevant district and shall be administered on their behalf by the National Land Commission.
- (3) Public land classified under (79) (1) (f) to (m) shall vest in and be held by Government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
- (4) Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that disposal or use.

Source: Article 79. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

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Box 4 CKRC Vesting of community land

- (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, residence or community of interest.
- (2)
- (3) Any unregistered community land shall be held in trust by district governments on behalf of the communities.
- (4) Community land shall not be disposed of or otherwise used except in accordance with an Act of Parliament.
- (5) Parliament shall enact legislation to give effect to this Article.

Source: Article 80. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

se of the power of **compulsory acquisition** should be guided by the following principles:

- The power of compulsory acquisition should vest, and only in the State.
- The conditions necessary and sufficient for the exercise of that power in respect of any category of land or interest therein should be clearly defined by law and should, in addition, provide for consultation with the local community or land owners including cities and municipalities.
- The law should provide that preparation of an Environmental Impact Assessment should be part of a feasibility study before any compulsory acquisition or setting apart is commenced if the project will have significant impact on the environment.
- The law should establish a single mode for the exercise of that power irrespective of the tenure category in respect of which land is held.
- A uniform set of principles for the determination of compensation should be applied to all categories of land acquired irrespective of tenure status.
- The law should prohibit the taking of possession of any land or interest in land acquired before full and fair compensation, either in cash, or in terms of land of equivalent value or size is made.
- Where the public purpose or interest justifying the compulsory acquisition fails, the law should provide for the original owners, or their descendants, of the property or interest to be given first option of restitution on condition that original compensation is

Box 5 CKRC Protection of Right to Property

- (1) Subject to Article 83, every person has a right to acquire and own property in any part of Kenya, either individually or in association with others.
- (2) Parliament shall not enact a law that permits the State, or any person –
 - (a) to arbitrarily deprive a person of property of any description;
 - (b) to arbitrarily deprive a person of any interest in, or right over, such property; or
 - (c) to limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds set out under Article 36(1).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property, unless that deprivation –
 - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Seven; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution or an Act of Parliament that –
 - (i) requires prompt payment in full, of a just compensation to the person, before the property is taken;
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of the land so acquired who may not hold title to that land.
- (5) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

Source: Article 58. Chapter 6, The Bill of Rights, Draft Constitution of Kenya, 15 March 2004

18. The exercise of compulsory

reference.

19. The power

er of the State to **control and regulate land use** and guide development should be guided by the following principles:

- In addition to the State in its corporate capacity, all the planning authorities in the country should have the inherent power to regulate the use of land in the public interest.
- Legislation embodying that power may be general or sectoral but must, in either case, establish clear standards which override proprietary land use practices, and which landowners, occupiers and holders of interests in land would be required to comply with.
- Such legislation should embody international and national policies relating to the sustainable use of the land and the preservation of environmental values.
- The exercise of the regulatory power at any level should take into account local or community values on land use and environmental management.
- Any law or by-law expressing the regulatory power of the State or of a planning authority, should, in addition to the usual procedures of publication, be fully and effectively discussed by the public or by local communities before they are enacted or promulgated.

Box 6 CKRC Regulation of land use

- (1) The State has the power to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property.
- (2) The State shall encourage and provide a conducive, social, economic, political and legal atmosphere for the creation, development and management of property.
- (3) The State shall ensure –
 - (a) the establishment of a housing development fund to enable the people of Kenya to gain access to more and better housing; and
 - (b) the development and review of a national housing policy with a view to increasing, regulating and maintaining the national housing stock.
- (4) Parliament shall enact legislation –
 - (a) requiring the State and relevant organizations including devolved governments to encourage the use of acceptable, affordable and reasonable intermediate technologies, building materials, innovations and methods in the property sector provided their use is not harmful and injurious to persons and the environment; and
 - (b) ensuring that major investments in property benefit local communities and their economy.

Source: Article 80. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

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If systems of land rights confer adequate tenure security, attention should be paid to their derivation as follows:

- All land rights, depending on tenure category, should originate from either a national land authority or a community-based institution known as a district land authority.
- The national land authority should devise a suitable mechanism, whether documentary or otherwise, for the ascertainment of land rights under each tenure category.
- A flexible mapping mechanism should be developed to identify and map all customary land rights at different levels, collective, household and individual.
- Existing land rights obtained by grant or registration should be deemed to have been derived from the national land authority or district land authorities as the case may be.

- The national land authority, where appropriate, should commence the process of verification of land titles, and a comprehensive register under each category prepared accordingly.

Box 7 CKRC National Land Commission

- (1) There is established the National Land Commission.
- (2) The functions of the National Land Commission are –
 - (a) to manage public land on behalf of the national and devolved governments;
 - (b) to formulate and recommend to the Government a national land policy;
 - (c) to advise the Government and devolved governments on a policy framework for the development of selected areas of Kenya, to ensure that the development of community and private land is in accordance with the development plan for the area;
 - (d) to investigate disputes of land ownership, occupation and access to public land in any area provided for by legislation;
 - (e) to advise the Government on, and assist in the execution of a comprehensive programme for the registration of title in land throughout Kenya;
 - (f) to conduct research related to land and natural resource use, and make recommendation to appropriate authorities;
 - (g) to initiate investigations on its own or upon a complaint from any person or, other persons or institutions on land injustices both present and historical and ensure appropriate redress;
 - (h) to facilitate the participation of communities in the formulation of land policy;
 - (i) to encourage the application of traditionally accepted systems of dispute resolution in land conflicts;
 - (j) to assess tax on land and premiums on property in any area designated by law;
 - (k) to monitor and have oversight responsibilities over land use planning throughout the country;
 - (l) to consolidate and from time to time review all laws relating to land; and
 - (m) to initiate revision of all sectoral land use laws in accordance with the national land policy.
- (3) The National Land Commission shall establish offices throughout the country.

Source: Article 85. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

Box 8 CKRC Legislation on land

- (1) Parliament shall enact legislation to –
 - (a) revise, consolidate and rationalise existing land laws;
 - (b) revise sectoral land use law in accordance with the national land policy;
 - (c) regulate the manner in which any land may be converted from one category to another;
 - (d) regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;
 - (e) enable the ascertainment of land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it;
 - (f) protect, conserve and provide unfettered access to all public land;
 - (g) enable the review of all grants or dispositions of public land to establish their propriety or legality;
 - (h) enable the settlement of landless people including the rehabilitation of spontaneous settlements of rural and urban communities, until a solution is found;
 - (i) establish a land fund to enable citizens to gain access to land on an equitable basis;
 - (j) establish a land bank to facilitate the availability of land for public purposes; and
 - (k) prescribe minimum and maximum land holding acreage in arable areas.
- (2) Parliament shall determine the cut-off date with reference to which the review required in clause 1(g) is to be conducted.

Source: Article 86. Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

4. Land Tenure Classification¹²

21. All land in Kenya should be designated as follows:

- Public Land should comprise all land currently held as unalienated government land except such land within the Coast Province that became Government Land through the application of the Land Titles Act (Cap. 282) (excluding land within the boundaries of any City or Municipality and the foreshore) and all land used or occupied by any Ministry, Department or Agency of the Government or a Statutory Corporation and all

Box 9 CKRC Public land

- (1) Public land is –
- (a) land which at the effective date was unalienated government land as defined by an Act of Parliament;
 - (b) land lawfully held, used or occupied by any government Ministry, department or agency of local authority, except where such land is occupied under a private lease;
 - (c) land transferred to the Republic by way of reversion, surrender or by virtue of the provisions of this Constitution;
 - (d) land in respect of which no individual or community ownership can by any legal process be established;
 - (e) land in respect of which no heir can by ordinary legal process be identified;
 - (f) all minerals as defined by any law;
 - (g) government forests other than forests to which Article 80(2)(e) applies, and water catchment areas, national parks and specially protected areas;
 - (h) all roads and thoroughfares specified by an Act of Parliament;
 - (i) all rivers, lakes and other areas of water as defined by an Act of Parliament;
 - (j) the territorial sea and its sea bed;
 - (k) all land between high and low water mark;
 - (l) any land not classified as private or community land under this Constitution; and
 - (m) any other land declared to be public land by an Act of Parliament.

Source: Article 79 (1) Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

public roads and roads of access as defined in the Public Roads and Roads of Access Act (Cap. 399) (whether gazetted or not), all rivers, lakes, the territorial sea and the seabed and the reversionary interest in all Government freehold and leasehold titles.

- Community Land should comprise all land:
 - currently defined as Trust Land under the Constitution and the Trust Land Act other than land already registered under the provisions of the Registered Land Act (Cap. 300) and all land that is currently unalienated Government land within the Coast Province that became Government land through the application of the Land Titles Act (Cap. 282) (excluding land within the boundaries of any City or Municipality and the foreshore) and should include all land held by county councils consequent upon reversion of a freehold and leasehold title;
 - held and managed as community forests, water sources, grazing areas, and shrines identified as such by specific communities; and

¹² See paragraph 121-122 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report.

- ceded to the commons by any process of alienation or transmission;
- any land registered in the name or reserved for the purpose or use of a local authority.

Box 10 CKRC Community land

- (2) For the purposes of clause (1) “community land” includes –
- (a) all land lawfully held as trust land by devolved governments;
 - (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;
 - (d) land lawfully transferred to a specific community by any process of law;
 - (e) ancestral lands traditionally occupied by hunter-gatherer communities; and
 - (f) any other land declared to be community land by an Act of Parliament, but shall not include public land as defined in Article 79.
- (3) Any unregistered community land shall be held in trust by district governments on behalf of the communities.
- (4) Community land shall not be disposed of or otherwise used except in accordance with an Act of Parliament.
- (5) Parliament shall enact legislation to give effect to this Article.

Source: Article 79 (1) Chapter 7, Land and Property, Draft Constitution of Kenya, 15 March 2004

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ntly registered under the existing land registration statutes including Group Ranches; and

- otherwise acquired by mechanisms which confer exclusive occupation thereof.

Box 11 CKRC Private land

Private land includes –

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

Source: Article 81, Chapter 7, Land and Private Property, Draft Constitution of Kenya, 15 March 2004

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22. The legal incidents of Public Land, Community Land and Private Land should be defined in a single comprehensive piece of legislation, with attention being paid in such legislation to the following principles:

- As regards Public Land
 - such land to be held by the national land authority in trust for the citizens of Kenya;
 - the national land authority to hold such land in terms of specific legislation setting out the terms and conditions of the trust governing such holding;
 - clear procedure for allocation of public land that would eliminate incidents of gender bias, misallocation or multiple allocations be established by legislation and rigorously enforced;
 - the State should provide for adequate infrastructure prior to allocating the public land, the cost of which would be borne by the allottee;

¹³ See paragraph 123-128 of the report of the Njonjo Commission.

- where proof of irregularity in acquisition of public land is established any such land should not be protected by the Constitution but should be re-possessed by the national land authority without compensation;
 - under no circumstances should there be allocation of protected areas and reserved land such as forests, water catchment areas, *kayas*, road reserves, public access to beaches, fish landing sites, foreshore, wildlife corridors, historical sites and monuments among others; and
 - where there is proof of disregard and abuse of existing laws and practices relating to public land, the law should provide for stiff penalties against the offenders.
- As regards community land,
 - such land to be held by the district land authorities in trust for the indigenous residents of the districts;
 - clear procedures for allocation of community land that would eliminate incidents of gender bias, misallocation or multiple allocation be established by legislation and rigorously enforced;
 - such land to be held in terms of a legal regime based on customary law principles which provide effective and equitable land rights security for all holders, occupiers and users without discrimination;
 - where proof of irregularity in acquisition of community land is established any such land should not be protected by the Constitution but should be re-possessed by the district land authorities without compensation;
 - such land to be administered by the district land authorities in accordance with principles of responsible and sustainable management founded on customary laws that do not discriminate against women, the broad principles of which should be codified;
 - clear principles be established in the relevant legislation defining the domains of individual and community rights to specific parcels of land within community land;
 - procedures for the conversion of land comprised within community land to public or private land, or re-conversion from such categories be provided; and
 - where there is proof of disregard and abuse of existing laws and practices relating to community land, the law should provide for stiff penalties against the offenders.
 - As regards private land,
 - Such land to be held on terms that are clearly subordinate to the doctrines of compulsory acquisition and the regulatory power of the State;
 - Such land to be exclusively held, freely, alienable and transmissible without discrimination on grounds of sex, ethnicity or geographical origin.

Box 12 CKRC Property rights of spouse

A surviving spouse shall not be deprived of a reasonable provision out of the estate of a deceased spouse whether or not the spouse died having made a will.

Source: Article 82, Chapter 5

Box 13 Landholding by non-citizens

- (1) A person who is not a citizen may hold or use land on the basis of leasehold tenure only, and such a lease however granted, shall not exceed ninety-nine years.
- (2) An agreement, deed or conveyance or whatever nature which confers on a person who is not a citizen an interest in land greater than a ninety-nine year lease, is void.
- (3) On the effective date, any interest in land greater than a ninety-nine year lease held by a person who is not a citizen shall revert to the State and the State shall grant to a person who held such a greater interest, a ninety-nine year lease.
- (4) Parliament shall enact legislation to bring into effect the provisions of clause (3).

Source: Article 83, Chapter 7, Land and Private Property, Draft Constitution of Kenya, 15 March 2004

5.1 Freehold and absolute proprietorship¹⁴

23. The review should take account of the following principles:

- Freehold tenure should be the only primary estate capable of creation under the property law of Kenya.
- 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.
- Land in urban areas should progressively and gradually be converted from either freehold or absolute proprietorships into leasehold.
- Land in pastoral areas should be held as community property and where required by the community a form of corporate title should be created.
- A modern law providing protection for married women and children should be drafted promptly.

5.2 Leaseholds and tenancies¹⁵

24. Leasehold should be strengthened in Kenya's property system. In that regard, account should be taken of the following principles:-

- All leases to citizens should be issued for a standard period of 100 years.
- Land within urban areas should be held on leasehold tenure only. This means that as urbanisation expands all rights to land coming within an urban area should automatically be converted to leasehold, subject to payment of adequate compensation.
- On no account should leases in respect of public land extend beyond 100 years and where such leases exist, these should be converted to 100 years from the date of conversion.
- Unless determined for good cause, leases in respect of public land or the commons should be renewable subject to general planning requirements.
- Clear policy on the regularisation of the tenure status of those who hold land as tenants-at-will or at sufferance on public or private land should be developed.
- Non-citizens of Kenya should hold land on leasehold tenure for significant investment purposes only, as recommended by the Investment Promotion Centre, for a period of not exceeding 50 years.

5.3 Customary tenure regimes¹⁶

25. There is need to rethink the status of customary tenure in Kenya's property system. In that regard, account should be taken of the following principles:-

- 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:

¹⁴ See paragraph 130-136 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report.

¹⁵ See paragraphs 137-140 of the report of the Njonjo Commission.

¹⁶ See paragraphs 141-148 of the report of the Njonjo Commission.

- 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;
 - the re-establishment of authority structures for land management in areas under customary tenure.
- A system for the documentation of customary land transactions, which communities can operate and manage, should be designed.
 - There is need to develop a clear pastoral land use policy which would recognise land and promote pastoralism as a viable economic activity with adequate linkages with other sectors.
 - Recognition of customary practices whereby the community enter into reciprocal arrangements for the use of each other's land and resources particularly in times of drought and other natural calamities.

5.4 Land tenure reform¹⁷

26. Consideration should be given to the following principles:-

- Land rights security for all land users, irrespective of tenure category, should be guaranteed.
- In the case of the former Ten-Mile Coastal Strip, consideration should be given to a general enfranchisement of all occupiers on land registered under the Land Title Act.
- Rural-rural migration and the acquisition of permanent land rights across ethnic territories should be encouraged.
- Discriminatory practices relating to access to and control of land and acquisition of land rights through inheritance should be eradicated.
- A system for the periodic consolidation of land sizes, taking into account ecological and technological factors, should be designed.
- Support services for infrastructure, especially credit, marketing, extension and technological services to agriculture should be encouraged.

6. Historical Claims¹⁸

27. As part of the process of tenure reform, there should be mechanisms for the investigation and resolution of historical claims, especially those of communities in the Coast and Rift Valley Provinces.

7. Tenure of Land-based Resources¹⁹

28. There is need to rethink policies regarding the utilisation, protection and development of land-based resources. The following principles should be taken into account:

¹⁷ See paragraphs 149-153 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

¹⁸ See paragraphs 154-155 of the report of the Njonjo Commission.

¹⁹ See paragraphs 157-158 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

- Subject to the principle next following, ownership of the soil should always entail ownership of all resources on, above and below the surface.
- Control and management of land-based resources should continue to vest in and be exercised in terms of the compulsory acquisition and regulatory powers of the State.
- As a general rule, the exploitation of land-based resources by the State should take into account the need to share the benefits or to co-manage such resources by contiguous communities.
- Where land belonging to individuals or communities is taken or reserved for purposes of mineral development, full compensation representing loss to present and future generations must be given.
- There is need to develop a comprehensive resource tenure policy as part of an overall land use policy for the country.
- In the formulation of a resource tenure policy, substantial value could be drawn from customary tenure principles relating to the common utilisation, protection and development of land-based resources.
- Existing laws should be revised so as to ensure that communities contiguous to these resources are fully involved in their management and development.
- Community principles regarding the utilisation of water, forests and wetlands should be strengthened.
- Natural forests and mangroves should be conserved and protected.
- The principle governing the protection of forests, and wildlife, embodied in the concept of gazettement and national parks, respectively, should be re-examined. These resources should be protected by reason of their intrinsic value to the nation, and not through physical exclusion from human contact.
- Mineral oils should be owned, controlled and managed by the State, but the communities contiguous to the resources should manage water, forests and wetlands in accordance with sound environmental principles.
- Adequate compensation ought to be provided where landowners are displaced as a result of exploitation or utilization of land-based resources.
- Environmental impact assessments by independent persons should be carried out before the commencement of any exploitation or utilization of land-based resources.
- The local communities should be consulted before the projects are initiated and their sentiments included in the environmental impact assessment.

7.1 Sensitive ecosystems²⁰

29. These principles should include:

- the vesting of ownership of sensitive ecosystems directly in the national land authority or the district land authority as appropriate;
- the management of those ecosystems by an independent environmental management agency with adequate powers to protect them;
- comprehensive and integrated land use planning in areas around sensitive ecosystems;
- strict control of development activities in all contiguous areas, and specific control of:-
 - agricultural activities in catchment and mountain areas;

²⁰ See paragraphs 159-160 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

- hotel and tourist developments in areas contiguous to marine parks and reserves; and
- activities in areas governed by international conventions relating to wetlands and bio-diversity colonies.

7.2 Historical sites and monuments²¹

30. The following principles should apply:

- Where proof of irregularity in allocation of public land on which historical sites and monuments stand is established, the national land authority should repossess such land.
- Legislation should be put in place requiring Land Registrars/Registrars of Title to protect properties that have been declared historical sites or monuments.
- The Antiquities and Monuments Act (Cap. 215) should be suitably amended to give more powers to the National Museum of Kenya to ensure that historical sites and monuments on private land are secure and protected.

8. Productive and Sustainable Land Use²²

8.1 The contemporary land use context²³

31. The policy framework should facilitate:-

- a clear land use policy to be developed to guide rural and urban development;
- the attainment of orderly, productive and sustainable land use through sound land use practices;
- the conservation and enhancement of the quality of land and land-based resources;
- the improvement of the condition and productivity of degraded lands in rural and urban areas;
- the development by the State of a set of guidelines for adoption by planning authorities throughout the country in order to ensure uniformity in the exercise of the State's regulatory power;
- appreciation of the essential linkages between the environment and development and the promotion of individual and community participation in environmental action;
- the provision and maintenance of adequate infrastructure, particularly the promotion of agricultural development;
- the proper management of demographic and health parameters in the country and especially in the rural areas;
- integrated land use planning through information based and participatory processes;
- the provision of social, economic and other incentives to induce the sustainable use and management of land; and
- the dissemination of agricultural research results and experience to farming communities.

²¹ See paragraphs 161-164 of the report of the Njonjo Commission.

²² See Chapter 8, Environment and Natural Resources, Draft Constitution of Kenya, 15 March 2004.

²³ See paragraphs 165-169 of the report of the Njonjo Commission.

8.2 Rural Land Use²⁴

32. A review is needed of the social, economic, legal and ecological contexts in which rural land is used. The review should build on the following principles:-

- the need to re-establish an enabling environment for agriculture and livestock development, especially as regards research, extension services, finance and infrastructure including marketing, agro-processing, rural electrification and farmers training;
- the need for realistic policies for the management of rural population growth, particularly as regards rural-rural migration;
- the institutionalisation of mechanisms designed to induce land owners to put their land to productive use;
- the intensification of land use in the high potential, densely populated areas, through the application of efficient technology;
- the need to control agricultural imports that threaten local farmers and industries;
- periodic consolidation of holdings and re-organisation of rural settlements as a method of controlling sub-economic fragmentation of rural land;
- the need to review the desirability of reducing/consolidating the existing multiple laws and institutions and bureaucratic agencies dealing with agriculture and livestock development and marketing;
- the application of cost-effective irrigation methods in areas of low agricultural potential;
- the need for a clear policy for the comprehensive development of the livestock sector; and
- the need to restore the management and control of commodity boards and institutions, established under the Agriculture Act and associated legislation, to producers.

8.3 Urban Land Use²⁵

33. Planning for urbanisation should take account of the following principles:

- the need to undertake an audit of the informal settlers and renters;
- the need to provide legal security of tenure;
- the need for a comprehensive national plan for low income and high density housing and shelter development with well defined targets and financing mechanism as a strategy for minimising informal settlements in the long run;
- the need to empower the disadvantaged groups to access decent environmentally acceptable and affordable shelter;
- the need to provide funding or to mobilize resources for upgrading of informal settlements;
- the need to create an enabling environment for urban development through the establishment of transparent, accountable, sustainable, comprehensive, and participatory governance structures and decision making processes;

²⁴ See paragraphs 170-173 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

²⁵ See paragraphs 174-175 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

- the integration of comprehensive urban plans into long range development plans so as to ensure harmony between the urban centres and the rural areas;
- the development of secondary towns as a means of stimulating agro-industrial development, thus easing pressure on demand for urban services;
- the provision of services such as electricity that would stimulate the growth of secondary towns as a basis of agro-industrial development, thus easing the pressure on demand for urban services;
- the need for protection of agricultural land from indiscriminate extension of urban boundaries and other encroachments and the re-planning of peri-urban areas for agricultural or pastoral communities;
- the control of spatial growth in order to generate an economic and social environment for urban development;
- the reconceptualisation of zoning and sub-division control, not as exclusionary mechanisms within and across residential areas, but as tools for the creation of integrated viable urban communities sharing common services;
- the provision of efficient amenities for urban settlements;
- the provision of resources for the upgrading or gentrification of existing slums, and the discouragement of further slum development;
- the reservation of green and recreational areas within urban centres and beyond the pale of speculative land grabbing; and
- the need to encourage urban agriculture.

9. The Management and Development of Land²⁶

34. There is need to revisit the issue of land management in terms of the following principles:

- Because comprehensive land use planning is essential for sustainable land use, every effort must be made to develop and periodically update a national land use plan, regional plans and local and area specific plans.
- The planning process should:
 - facilitate orderly management of both urban and rural land;
 - empower land users and occupiers to make better use and more productive use of their land;
 - promote efficient and environmentally sound land use practices;
 - promote participatory involvement by all stakeholders in land use planning;
 - ensure security and equity in access to land resources;
 - facilitate overall micro-level planning while taking into account regional and sectoral considerations;
 - provide for inter-sectoral coordination at all levels of land use development; and
 - make use of political and administrative resources available at national, regional, district and other local levels.
- Planning authorities and administrators must ensure that the physical planning process works and that urban landholders and occupiers respect approved urban development plans.
- Because comprehensive land use planning will require a land information system, this must be developed and operationalised nationwide.

²⁶ See paragraphs 176-178 of the report of the Njonjo Commission.

- An innovative framework for land auditing in rural and urban areas will need to be designed and implemented.
- The management of rural-urban migration will require an integrated settlement policy for those land sectors.
- Clear environmental standards will be necessary so as to guide agricultural, livestock, urban, mineral and tourist development and such standards should incorporate strict environmental impact assessment procedures.
- Public education and sensitisation should take place through the school system.

10. Land Rights Delivery²⁷

35. Consideration should be given to the following principles:-

- All land delivery functions should be centralised in the proposed national land authority. The authority should have the power to create a decentralised system of land registries drawing, where possible, on community level structures and organs of government.
- The process of land delivery should itself be democratised by ensuring full and informed participation of land rights holders at all levels, so that routine land functions such as boundary marking, ascertainment of rights and record keeping devolve to communities.
- Land delivery functions should be insulated from politics so that land can be appreciated as property and not as political service.
- The Land Consolidation Act (Cap. 283) should be replaced and all the processes under the Act should be carried out under the Land Adjudication Act (Cap. 284).
- The process of land adjudication should be improved in order for it to contribute to an efficient land delivery system.
- A strict verification process should be put in place to ensure that only squatters, the landless and deserving cases are settled.
- The national land authority should be empowered by legislation to inspect, coordinate and direct the development and use of idle land and if necessary to repossession such land taking into account climatic, geographical, economic, ecological and speculative factors.
- The Minister for the time being responsible for Agriculture should invoke the provisions of the Agriculture Act and make reservation, development and/or management orders over idle and under-utilised land.
- The Constitution and the relevant law should be amended to facilitate the taking over of land belonging to absentee landlords and allocate the same to 'squatters'.

11. Demarcation and Cadastral Survey²⁸

36. Consideration should be given to the following principles:

²⁷ See paragraphs 179-186 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

²⁸ See paragraphs 187-196 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

- the need to train more personnel in survey since this is a function that is integral to an efficient land delivery system;
- the need to ensure that the process of demarcation and survey in the context of land adjudication are more participatory to avoid disputes;
- the need, in the light of increasing population and intrusion of customary law in the process of transmission of land in registered areas, to re-demarcate boundaries and resurvey these areas in order to capture the reality of land ownership on the ground;
- the desirability of strengthening customary demarcation procedures in the process of reorganizing customary land tenure;
- the need to use modern and fast survey systems (e.g. GPS) to gradually overhaul the general boundary system and bring it under more accurate survey systems in order to increase certainty of boundary relocation and thus reduce disputes;
- the need to amend the Survey Act (Cap. 229) in order to remove the control of cadastral survey procedures (through authentication of plans) from the Government and make licensed surveyors wholly accountable for their work.

11.1 Preparation and maintenance of cadastres (land records)

37. The following principles should guide such an effort:

- The infrastructural apparatus for land delivery must be modernised through computerisation or the use of other electronically linked systems throughout the country.
- Personnel in land registries and survey offices will need training and re-training so as to operate modernised infrastructure.
- An accessible land information system will have to be installed as a back-up to the cadastral system.

12. Land Market Regulation²⁹

38. The following principles should apply:

- There is an urgent need to update the property register in all former Trust Land areas that have been under title registration for at least four decades. This requires a programme of title adjudication, as opposed to land adjudication.
- In order to facilitate transparency in registered land marketing an accessible and efficient land information system will need to be installed and decentralised to the district land registries.
- Land use predominantly for agriculture in urban and peri-urban areas should, by zoning regulations, protect through legislation the integrity of agricultural use unless and until such land is converted to other uses.
- In areas still governed by customary land tenure, an attempt should be made to design a functional system of land rights records to facilitate the operation of customary land markets.
- Until such time as district land authorities take over the functions of land control boards, there is an urgent need to review and reorganise the establishment and appointment of Land Control Boards, and appointment of members including

²⁹ See paragraphs 199-206 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

representation of women, chairing of such boards by non public officers and adequate and prompt remuneration to board members.

- In order to bring about economic and efficient land use planning, the boards or their successors should seek relevant technical advice.
- The law should be amended to require the approval of the applicant's spouse, adult children and beneficiaries in respect of controlled transactions.

13. Land Dispute Resolution

13.1 The general nature of land disputes³⁰

39. The following principles should be useful in the design of dispute resolution mechanisms:

- For the more simple disputes, questions of jurisdiction should be simplified and clarified.
- The tenure system governing the land in dispute should not affect jurisdiction.
- The choice of rules should allow for the application of customary or received law depending on the circumstances and the facts of the case.
- Once a decision is reached, it should be final and subject to appeal on limited grounds only.
- The mechanisms should be devoid of delays, incompetence, corruption, nepotism and political interference.

13.2 The resolution of customary land disputes³¹

40. There is need for a carefully designed customary land dispute resolution system based on a thorough examination of the reasons why the Land Disputes Tribunals Act, No. 18 of 1990, does not meet the purpose for which it was enacted. The design of such a system should take account of the following principles:

- Customary land laws should be researched into and codified by the national land authority to facilitate identification of mechanisms for settlement of land disputes.
- Customary land disputes should always be determined, in the first instance by institutions that have authority over the community in accordance with custom and tradition.
- Because inheritance disputes are socially the most fractious, consideration should be given to the possibility of enacting a set of uniform rules for the inheritance of land throughout the country.
- In order to discourage the progression of certain customary land disputes from generation to generation, a record of the final determination of any dispute should be maintained by the relevant community organs;
- Women's rights to land should become part of the fundamental principles of the National Land Policy.

³⁰ See paragraphs 207-212 of the report of the Njonjo Commission.

³¹ See paragraphs 213-217 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

- Legislation should be enacted which ensures gender equity with respect to access and control of resources and land;
- A proportionate number of women representation should be constituted in all the land bodies at all levels.
- Until district land authorities that will nominate members of land dispute tribunals are constituted, there is need to provide for appointment of members who are people of high integrity with basic education, who also have a reasonable understanding of both the land issues of the relevant community and of the law and who are vetted by the national land authority.
- The Land Disputes Tribunals should be properly constituted, promptly gazetted, established in all districts and chaired by persons knowledgeable in law.
- The law should recognise community-based conflict resolution mechanisms.
- Custom that has been observed over a long period of time and is of general application should be recognised by statute and taken judicial notice of except that customs that discriminate against women should not be recognized.

13.3 The resolution of disputes over registered land³²

41. Attention should be paid to the following principles:

- The level of complexity and procedures and expenses associated with litigation over registered land should be reduced.
- Land registry records should be periodically updated so as to reflect the position on the ground.
- There is need to create a special division in the High Court decentralised to the lowest court in the districts to handle land cases as a means, *inter alia*, of developing a consistent and rational jurisprudence on Kenya's property law.
- Where disputes over registered land entail the determination of deeply rooted social and cultural rights, these should first be resolved in an appropriate forum before the technical issues based on the relevant legislation are determined.
- There is need to uphold integrity and improve efficiency in the Court system.
- Section 143 (1) of the Registered Land Act should be amended to allow for challenge in any court of law where registration of title (other than first registration completed and registered prior to the commencement of the Act) has been obtained, made or omitted by fraud or mistake.
- Section 126 (1) of the Registered Land Act should be amended to provide that a person acquiring land, a lease or a charge in fiduciary capacity must be described by that capacity in the instrument of acquisition and must be registered with the addition of the words "as trustee" together with particulars of any trust.

³² See paragraphs 218-221 of the report of the Njonjo Commission. For the rationale for principles, refer to the full report

Appendix 1: National Civil Society Land Policy Principles ³³

Topic	Principles
1.1 Underlying ownership of land in Kenya	<ul style="list-style-type: none"> - All land in Kenya shall vest in the Kenya Land Commission as trustee for the citizens of Kenya - Parliament shall enact legislation to define the terms and conditions upon which the Land Commission will hold such land as trustee for the citizens of Kenya
1.2 Land tenure	<ul style="list-style-type: none"> - The State must take reasonable legislative and other measures, within an established statutory fund, to foster conditions that enable citizens to gain access to land on an equitable basis. - Land in Kenya shall be held under: customary, private or public tenure.
1.3 Customary (or community) land tenure	<ul style="list-style-type: none"> - All land hitherto known as trust land, which is still unadjudicated and unregistered, is to be referred to as land held under customary tenure. - All such land which is used and/or occupied by local residents and from which they derive their daily livelihoods shall be vested in them on the basis of either private or customary tenure depending on the prevailing circumstances. - Such land that is not occupied or not in the immediate use of the local residents of an area shall be set apart for and vested in the indigenous communities of the area as commonage. - Any other such land not used or occupied, or set apart as above, shall be reserved for future use in the public interest. - Any trust land irregularly allocated or acquired contrary to the provisions of the law, or the lease for which has expired, shall immediately revert to the National Land Commission for re-allocation by the land board and reclassified as stated above.
1.4 Private tenure	<ul style="list-style-type: none"> - All land acquired upon first registration, or which was legally acquired through transfer, belongs to the person(s) legally holding it. - Private landowners shall enjoy security of tenure over their land, but with due regard to any public interest that may take precedence over individual rights. - The extinction of a private landowner's rights will take place only in accordance with the requirements of the constitution

³³ 'Eradication of Poverty through Assured Security of Access to Land and Natural Resources', Report of the National Civil Society Conference on Land Reform and the Land Question in Kenya, held at KCCT, Nairobi, 20-23 May 2002, Kenya Land Alliance.

1.5 Public land (currently government land)	<ul style="list-style-type: none"> - All land hitherto referred to, as unalienated government land shall be ‘public land’ belonging to the people of Kenya in their sovereign status and held by the National Land Commission (NLC) - All public land shall be used only for public purposes and in the public interest. - Privatisation of public land shall take place only if it promotes the public interest. - All irregularly acquired public land shall immediately revert to the NLC. Otherwise the holder of such land shall pay to the authorities compensation that is considered reasonable in the circumstances. - The Government or Local Government may acquire land in the public interest in a manner prescribed by Parliament. - The Government shall, as determined by Parliament, protect lakes, rivers, wetlands, forests, game reserves, national parks and hold them in trust for the common good of the people. - Any alienation and disposal of protected areas, including forest reserves, should be done in a manner that maintains biological diversity, productivity, capacity for regeneration as well as paying due regard to its future ecological, economic and social functions and to the land needs of local people.
1.6 Land Expropriation	<ul style="list-style-type: none"> - No one may be deprived of land except in terms of a law of general application. - Land includes customary interests in land. - No law may permit arbitrary deprivation of land. - Land may be expropriated only for a public purpose or in the public interest, and subject to compensation. - The amount of the compensation and the time and manner of payment should be just and equitable reflecting an equitable balance between the public interest and the interests of those affected, having regard to relevant circumstances, including the history of the acquisition and use of the land. - Public interest includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all Kenya’s natural resources.
2.1 Women’s land rights	<ul style="list-style-type: none"> - All citizens are equal before the law and in all spheres of political, economic, social and cultural life and in every other respect shall enjoy equal protection of the law. - Men and women are entitled to equal rights in marriage, during marriage and at its dissolution. - Upon marriage, the husband and wife shall enjoy common ownership of spouse land as long as such land is the principal residence of the family or is the principal source of income or sustenance of the family. - No citizen may be deprived of property on the basis of gender, marital status or age or any other reason created by history, tradition or custom.

<p>2.2 Land rights of pastoralists</p>	<ul style="list-style-type: none"> - All land hitherto known as trust land, which is still unadjudicated and unregistered, is to be referred to as land held under customary tenure. - All such land which is used and/or occupied by local residents and from which they derive their daily livelihoods shall be vested in them on the basis of either private or customary tenure depending on the prevailing circumstances. - Such land that is not occupied or not in the immediate use of the local residents of an area shall be set apart for and vested in the indigenous communities of the area as commonage. - Any other such land not used or occupied, or set apart as above, shall be reserved for their future use in the public interest. - Any trust land irregularly allocated or acquired contrary to the provisions of the law, or the lease for which has expired, shall immediately revert to the National Land Commission for re-allocation by the land board and reclassified as stated above.
<p>2.3 Land rights of farm dwellers and beneficial occupiers ('squatters')</p>	<ul style="list-style-type: none"> - The state must take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis. - No law may permit arbitrary deprivation of property. - Public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all Kenya's natural resources. - A person or community whose tenure of land is insecure as a result of past unjust laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.
<p>2.4 Land and housing rights for the urban poor</p>	<ul style="list-style-type: none"> - Everyone has the right to have access to adequate land and housing and information on how this can be obtained. - The State must take reasonable legislative and other measures, within an established statutory land fund, to achieve the progressive realisation of this right. - No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
<p>2.6 Redress of historical injustices</p>	<ul style="list-style-type: none"> - The state must take reasonable legislative and other measures, within an established statutory land fund, to foster conditions that enable citizens to gain access to land on an equitable basis. - A person or community whose tenure of land is insecure as a

	<p>result of past unjust laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.</p> <ul style="list-style-type: none"> - A person or community unjustly dispossessed of land after 1895 is entitled to the extent provided by an Act of Parliament, either to restitution of that land, or to equitable redress. - There shall be a permanent Land Claims Commission as an organ of the National Land Commission that will investigate claims of historical injustices to individuals or communities in relation to land. - The State shall recognise respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions with respect to land. It shall consider these rights in the formulation of national plans and policies.
3.1 Land administration	<ul style="list-style-type: none"> - An independent National Land Commission and democratic District Land Boards, and a Land Claims Court financed by the Consolidated Fund, shall be established in terms of an Act of Parliament. - The aforesaid Act of Parliament shall provide for the establishment of the Land Reform Fund to provide funds for the landless to acquire land, and for compensation to be paid to persons deprived of their land. - Women may not be discriminated against, either directly or indirectly, in determining the occupation or use of, or access to land; attendance at, or participation in, decision-making forums regarding the occupation or use of, or access to land; or membership of any structure involved in the administration and management of land rights.
3.2 Land markets	<p>NB Most of the principles set out in previous sections assume indirect intervention by the State in the land market. Others imply direct intervention (e.g. 1.2, 1.6, 2.3, 2.4, and 2.6)</p>
3.4 Environmental Management	<p>Everyone has the right –</p> <ul style="list-style-type: none"> - to an environment that is not harmful to their health or well-being; and - to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that: <ul style="list-style-type: none"> o prevent pollution and ecological degradation; o promote conservation; and o secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

