RECONCILE
Resources Conflict Institute

TOWARDS AN INSTITUTIONAL FRAMEWORK FOR LAND POLICY ADVOCACY IN KENYA

(A Report of the Proceedings of the Kenya Land Alliance Planning Workshop held at Utafiti Hall, Egerton University, Njoro, 15th -17th August, 1999 with funding and support from DFID)

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Glossary

ACTS	African Centre for Technology Studies
CDN	Catholic Diocese of Nakuru
CEPLA	Centre for Environmental Policy and Law in Africa
CLARION	Centre for Law and Research International
CMRT	Crop Management Research Training Project
DFID	Department for International Development
FAN	Forest Action Network
IUCN	International Union for the Conservation of Nature
KHRC	Kenya Human Rights Commission
KPF	Kenya Pastoralists Forum
LUCID-EA	Land Use Change Impacts and Dynamics in East Africa
MP	Member of Parliament
NGO	Non-Governmental Organization
PLI	Public Law Institute
PPG	Pastoralists Parliamentary Group
RECONCILE	Resources Conflict Institute
WWF	World Wildlife Fund

1.   Introduction

The idea of establishing a coalition of individuals and institutions to mobilize for effective advocacy for the reform of land policy and law in Kenya was agreed at a consultation held at Lenana Mount Hotel, Nairobi on 18th May, 1999.   The consultation on the way forward in land policy advocacy, brought together twenty-four participants from thirteen organisations to brainstorm on three questions, to wit; what is the status of land policy advocacy in Kenya?; what is clogging the process of land policy advocacy?; and what is the way forward for effective land policy advocacy and reform?   It was hosted by RECONCILE with funding support from Oxfam Kenya.

After day-long consultations, it was agreed that Kenya lacked an organized framework for effective advocacy for change and reform of the land policy and law; that such initiatives as existed were sporadic, sectoral and not focused in a programmatic sense; and that in order for the situation to be remedied, it was necessary to establish an umbrella body to coalesce the activities of the various civil society organisations towards the specific objective of an all-embracing, participatory and thoroughgoing process of advocacy for the reform of land policy and law.   It was thus agreed to establish the Kenya Land Alliance.

To manage the preparatory process for the establishment of the Kenya Land Alliance, an Interim Steering Committee was constituted, made up of ten of the organisations that were represented at the Lenana Mount Hotel consultation.   It was agreed that the Interim Steering Committee would be chaired by Oxfam while RECONCILE would operate as the Interim Secretariat for the Alliance.   Mr. Robert Shaw was named Organizing Secretary to the Committee to assist the Secretariat in the organizational work.   The Committee and the Secretariat were mandated by the participants to oversee the process of bringing to fruition the idea of the Kenya Land Alliance.

To this end, it was proposed that a more thoroughgoing planning process be undertaken.   This process, it was agreed, would entail the holding of a planning workshop at which the participants at the consultation would be joined by other stakeholders to chart out more clearly the format, objectives, activities, outputs and strategies of the Kenya Land Alliance.   The institutional framework and its governance structure would also be designed at this workshop.

A funding proposal was thereafter presented to the Kenya Office of the Department for International Development (DFID) seeking support for the hosting of a planning workshop, and the process of developing a project proposal for the establishment of the Kenya Land Alliance (See Appendix 1: The Funding Proposal).   DFID which had been represented at the consultation in an observer capacity, had expressed support for the initiative and intimated a willingness to consider a proposal for a more focused planning workshop and process.   DFID did provide funding for the hosting of the planning workshop as well as support for one-half of the budgeted expenses of the Secretariat relative to the preparation of the project proposal[2].

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[2] This translated to Shs. 780,000, being Shs. 500,000 for workshop expenses and Shs. 280,000 for Secretariat support.

2.   The Planning Workshop

2.1   Session One: Introductory

The Kenya Land Alliance Planning Workshop was held at Utafiti Hostel within the campus of Egerton University, Njoro, on 16th and 17th August, 1999. It brought together twenty one participants from thirteen organizations as well as two independent consultants concerned with the land question, and was facilitated by Gordon Jallango Anyango, a Management Consultant and Director of the Management Centre, Nairobi. Participants arrived at the venue on Sunday 15th August, 1999. It had initially been planned that the workshop would be for two full days. In the end however the programme was condensed to one and a half days of deliberations at the request of the participants, most of whom had traveled from Nairobi and wished to travel back on the afternoon of the third day. It was also done in appreciation of the load of work involved in the planning process, and with a view to ensuring that there was maximum output.

The Chairman of the Parliamentary Committee on Lands and Natural Resources[3], had been invited to officially open the workshop. Efforts were made to speak to him prior to the workshop to confirm his availability but, in the end, it proved impossible to speak to him, partly because Parliament was then in recess. In the result, the official opening as well as the official closing functions were removed from the programme of the workshop[4].

In a sense, this enabled the participants to get down to serious work directly, thus making the event truly a planning workshop. Following the introductions, the Executive Director of RECONCILE, Michael Ochieng Odhiambo, who hosted the workshop addressed the participants. In his address, he traced the evolution of the idea of the Alliance, particularly since the Lenana Mount Hotel Consultation[5]. He outlined and commended the role played by the Interim Steering Committee and Secretariat in developing the proposal and obtaining funding for the planning workshop. He thanked the DFID for their support for the planning workshop as well as for the process of project development that will follow the workshop. He wished the participants a successful workshop and hoped that at the end of the deliberations they would have agreed on a framework for the Alliance that would be sustainable, as well as objectives, activities and strategy that would be adequate for the development of a funding proposal to support the establishment of the Alliance.

The participants were joined at the Introductory Session by Dr. Robert Obura, the Director of the CMRT Project within whose complex the workshop was held. In a short welcoming address, Dr. Obura introduced the participants to the activities of the Project, welcomed them to the complex and wished them successful deliberations. This first session ended with the adoption of the Programme for the workshop.

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[3] Hon. Wycliffe Osundwa, MP

[4] Mr. Oduor Ongwen, chair of the NGO Council had agreed to officiate at the closing ceremony, and not being available had made arrangements to be represented. He was in the end advised not to bother in view of the cancellation of the ceremony.

[5] For the report on the consultation, see, Ochieng Odhiambo, M. and D. Adhoch, Towards Effective Land Policy Advocacy: A Consultation on the way forward in Land Policy Reform in Kenya. Nakuru: RECONCILE, June, 1999.

2.2. Session Two: Objectives, Activities and Membership of the Alliance

2.2.1 Objectives

The workshop started in earnest during the second session following the morning break. With the assistance of the Facilitator, the participants set out to define the objectives of the Alliance. They were mindful to define the objectives of the Alliance in such a way as to justify its establishment for the benefit of the potential membership. In this connection, the participants were mindful that the Alliance should not just be another initiative to do what others were already doing. As an umbrella organization, the Alliance must facilitate its membership to do their own projects effectively, efficiently and in the most cost effective way. It must not be seen to be competing with its member organizations, whether in terms of programmes and projects or in terms of funding; but rather as enabling their individual efforts to be coalesced for greater effectiveness. It was noted that only thus would the organizations justify for their own membership the need to work within the Alliance.

The participants spent the major part of the session agreeing on a major objective that would encapsulate the overriding mission of the Alliance. They sought to agree on a wording that would be wide enough to resonate with the diverse stakeholders, while not being overly ambitious. In addition to the major objective, they outlined a number of sub-objectives that would service the major objective. The same criteria of balancing the scope with the realism of what is achievable, informed the drawing up of the sub-objectives. In the end, the participants agreed on the objectives as set out in Box 1.

Box 1:   Objectives of the Kenya Land Alliance

Main Objective

To mobilize individuals and institutions for effective advocacy to achieve the reform of land policy and law in Kenya.

Sub-Objectives

- to facilitate networking and information sharing among the members and between them and others locally, regionally and at the international level;

- to sensitize and inform stakeholders and the public on the reform of land policy and law in Kenya;

- to contribute to the current debate on the reform of land policy and law in Kenya;

- to generate policy and legal options for land reform in Kenya; and

- to organize civil society groups to formulate a draft land policy for presentation to the government

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This statement of objectives, it was agreed, could not be exhaustive. Rather it was seen as the basis of ongoing evolution to be worked on as the Alliance is established. The participants were alive to the fact that they formed but a proportion of the potential stakeholders of the Alliance. They could only set the ground for the eventual development of the Alliance when it is operational and other stakeholders have come aboard.

2.2.2. Activities

At the programme level, the participants considered the kind of activities that the Alliance could validly and effectively engage in at the moment. It was appreciated that the proposal and eventual funding would determine to a large extent the capacity of the Alliance to undertake serious activities. However, there was also a strong feeling from the participants that the Alliance should not rely solely on donor funding as a basis for initiating action. Rather, it was suggested that the members should be prepared to innovate and carry out activities even as the Alliance is being institutionalized. That way, the momentum already gained since the Lenana Mount Consultation would not be lost. In any event, apart from the fact that not all activities require funding, it should also be possible for the Alliance to benefit from the activities of its member organizations for which the latter may already have funding.

In this regard, it was suggested that the member organizations should identify those of their existing programmes and projects that may be useful for advancing the objectives of the Alliance. In this connection, Lumumba Odenda for the KHRC informed the participants that his organization would be happy to discuss with the Alliance how it could be involved in the project on landlessness for which the Commission already had funding. Lumumba had sent information to the Interim Secretariat about the project, and it was agreed that the Secretariat would circulate the information to the members for comments. It was the general feeling of the participants that it would not be useful at the moment for the Alliance to assume responsibility over this project of the KHRC or any other project. The focus for now should be on the institutionalization of the Alliance. Nevertheless, the members would consider the project further; and they welcomed such invitations from other member organizations.

The participants were anxious not to put together too ambitious a list of activities, especially at this early stage. It was further appreciated that it will be much easier to agree a list of activities and prioritize the same once the institutional framework of the Alliance is properly constituted and the membership is widened. In the result, it was agreed that of immediate concern at the institutional level is the creation of the Alliance as a legal entity, the enlargement of the membership of the Alliance, as well as the development of the proposal for the proper functioning of the Alliance. In this connection it was resolved that the Alliance will be constituted as a trust and the responsibility for drafting the trust deed was given to the Public Law Institute. The members felt that a trust was the easiest and the cheapest format of registration, and in any event was appropriate at this preliminary stage. Once the Alliance is fully operational, the members could very well agree to change the institutional character and the nature of its registration.

In the meantime, it was agreed that the Alliance would seek to identify the major issues to be addressed in advocating for a new land policy, with a view to developing a Concept Paper that will guide the work of the Alliance. In addition, the Alliance would seek to learn from the experiences of similar networks in the region. The Uganda Land Alliance and the National Land Forum in Tanzania were identified as useful models that could be readily accessed for the sharing of experiences. In this connection, it was noted that a two-person delegation from RECONCILE

and OXFAM had visited the two organizations soon after the Lenana Mount Consultation[6]; and that one of the members of the Interim Steering Committee is a former Coordinator of the Uganda Land Alliance[7]. It should therefore be quite easy for the necessary lessons to be drawn and for these to be fed into the project proposal for the Kenya Land Alliance.

The development of the project proposal for the Alliance is a critical activity at the moment. The participants discussed the project and funding proposal in detail. In the end they mandated the Interim Steering Committee and the Interim Secretariat to work on the draft proposal, discuss it within the Steering Committee and with a number of stakeholders and thereafter sell it to potential funders. It was agreed that the proposal shall seek to ensure the long term sustainability of the Alliance. In this connection, the proposal shall provide for both institutional support and programme support. It will also consider strategies for fundraising within the member organizations.

The participants agreed on the activities listed in Box 2 as the ones to be undertaken in the interim period as the institutional framework of the Alliance is put in place.

Box 2:   Interim Activities

- Establish an appropriate institutional framework for the Alliance

- Recruit members to the Alliance

- Develop a Concept Paper on the way forward for the Alliance

- Develop a Strategic Plan for the Alliance

- Conduct a Strategic Planning Workshop

- Identify land issues of concern to the Alliance

- Create a database of institutions and expertise in land issues in Kenya

- Develop a project and funding proposal

The participants were mindful that the list of activities should not be too ambitious; while at the same time it should reflect their serious commitment to get the Alliance off the ground. In this connection, all the activities agreed on at this stage are those that are useful for the institutionalization of the Alliance. It is expected that more substantive work will begin once an institutional framework for the Alliance is in place. For the time being however, the Interim Secretariat shall be responsible for coordinating the agreed activities, and following up those responsible for them.

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[6] Thomas Barasa and Damaris Adhoch visited Uganda and Tanzania soon after the Consultation and held discussions with officials of the two organizations with a view to discovering the lessons to learn from their experiences as well as best practice of land policy advocacy.

[7] Godber Tumushabe was Coordinator of the Uganda Land Alliance before he moved to Kenya and joined ACTS.

2.2.3 Membership

With respect to membership, a number of options were considered. It was felt that as a networking organization, the Alliance should principally target organizations as members, without altogether ignoring individuals who have no institutional affiliation but are able to make a significant contribution to the operations of the Alliance. In each organization however, it would be useful to have a person who shall be the contact person for the activities relative to the network.

The focus on organizations is important in the light of the need for the Alliance to build on the work going on within the member institutions that have a bearing on the mission of the Alliance. At the same time, the insistence on having an individual within a member organization who will be the contact person for the Alliance is meant to ensure that the Alliance shall be able to ensure follow up processes within member organizations, and to identify a core group of individuals spread across the member organizations who would carry forward the work of the Alliance. However, it is important to ensure that institutional links between the Alliance and its membership are not wholly dependent on individuals within those member organizations. This way, the turnover of individuals at member organisations shall not adversely impact on the involvement of those member organizations in the Alliance.

It was agreed that recruitment of members would be an ongoing exercise even as the process of institutionalization continued. The existing membership is expected to take an active part in creating awareness about the Alliance to the potential membership, and in drawing the major stakeholders to the Alliance. Ultimately, decisions will have to be made about such details as membership criteria, numbers, fees, etc. It was however felt that such details are better left to the Interim Steering Committee or for discussion once the institutional framework for the Alliance is in place.

3. Session Three: The Institutional Framework

The institutional framework of the organization determines to a very large extent, the viability and sustainability of the organization. It also determines the capacity of the organization to realize its mandate. This is probably more important in an umbrella organization that seeks as its major function to facilitate a diverse membership to achieve a specific objective. The diversity of the membership, each with its own agenda and governance structure makes it all the more imperative that the institutional framework of the Kenya Land Alliance is properly thought out and agreed.

The discussions on this aspect of the planning revolved around the issues of governance and sustainability. The participants recognized the link between institutional governance and sustainability, and sought to agree on a format that would ensure the success of the Alliance.

3.1. Governance

The participants considered the various options available for registration, and settled on a trust. It was agreed that the Alliance would in the first instance be constituted as a trust, with the Interim Steering Committee being used as the interim leadership for purposes of registration of the trust. A trust deed shall be drawn by the PLI to be approved by the interim steering committee before registration.

It was further agreed that a detailed structure of governance is better worked out after the Alliance is registered. This is because as an umbrella organization, it is important that the structure of the Alliance is agreed in a participatory process, and preferably by consensus. The member organisations need to identify with the governance structure that will run the Alliance and to feel that they have played a part in constituting it.

For the moment, the participants were only concerned that there should be a minimal bureaucracy in the structure of the Alliance. Actual details shall however be worked out in the constitution and through a more elaborate participatory process. It was also agreed that the Alliance would seek to put in place a governance structure that ensured optional consultation and participation by the member organizations, without compromising the need for efficient operations. These principal concerns, it was agreed, are the foundations upon which the governance structure of the Alliance shall be built.

It was agreed that RECONCILE shall continue to operate as the interim secretariat for the Alliance, and in this connection shall oversee the process of registration. It was noted that part of the funding received from DFID is to cover in part, the expenses of coordination by RECONCILE. The Executive Director of RECONCILE informed the participants that the portion of the Institute's time not covered by the funding shall constitute their contribution to the process of institutionalization of the Kenya Land Alliance.

3.2. Sustainability

The major considerations relative to sustainability were recognized to be finances and activities. The financial needs of the Alliance must be addressed in a manner that ensures that there is a sustainable funding base for the Alliance. It was appreciated that in the short run the Alliance would of necessity have to rely on funding from Foundations and other donors based in Kenya, principally in Nairobi. In this connection, one of the most immediate tasks relative to the institutionalization of the Alliance shall be to develop a funding proposal to be used in fund-raising from a number of Foundations and donors in Nairobi. The participants also hoped that DFID would consider supporting the initiative beyond this planning workshop, and in this connection they resolved that DFID shall be the first donor to be approached for support.

However, the participants were concerned that the Alliance should not depend solely on donor funding for its operational sustainability. It was felt that the member organizations should be able to support it, and that the Alliance itself should be able to innovate ways of generating funds within the country to support its activities. A number of suggestions were made for the type of activities and initiatives that the Alliance could use to generate funds; among them, membership fees, sale of publications and solicitation of *harambee* donations from a select group of stakeholders. The actual details of these would clearly have to be worked out once the Alliance is properly established and functional.

With respect to sustainability of activities, it was appreciated that for the alliance to attract and retain its membership, it must address the kind of issues that that membership identifies with, and which it finds useful for its own purposes. It is the value added that member organizations find in belonging to the Alliance that shall in the long run justify their joining and remaining in it. In this connection the consultation and the planning workshop were useful means for identifying the needs of the potential membership of the Alliance. The challenge now lay in translating the

ideas already generated into a set of activities that would give effect to the perceived concerns of the potential membership, and enable them work together to realize their objectives.

Sustainability of activities also depends on the extent to which the activities pursued by the Alliance are consistent with and serve the overall social objectives of the Kenyan people.   In this connection, the participants noted that the consultative process must seek to identify the concerns of the Kenyan people over the land question, and to mobilize them to support and identify with the Alliance and its initiatives.   As pressure groups, NGOs can only be effective to the extent that they have the support and substantive involvement of the population in the activities and initiatives that they pursue.   Only thus can they deal with those forces within society that shall invariably seek to frustrate the objectives of such initiatives.   There is a sense in which this need for popular support and involvement is probably greatest with respect to the land question in Kenya.

4.   Session Four: Existing Resources

On the second and final day of the workshop, the participants turned their attention to the practical consideration about what would happen immediately after the workshop.   This meant that the participants agree on a Workplan to be implemented immediately with a view to realizing the objective of the establishment of the Alliance.   This resulted in a substantial alteration of the original agenda for the final session; but the alteration was deemed necessary for the proper conclusion of the workshop.

To introduce this part of the discussion, RECONCILE through its Executive Director updated the participants on the current financial status of the Alliance.   He supplied the participants with copies of the Funding Proposal to DFID, the communication from DFID outlining what they would fund, as well as the budget for the funds received from DFID.   It was noted that, while the planning workshop had been fully funded, the budgeted expenses of RECONCILE as the Interim Secretariat had only been funded in half.   These expenses include the cost of organizing and reporting on the workshop as well as developing the project proposal.   The Institute had envisaged that these activities would take a period of three months, and had raised a budget accordingly.   Although only part of the budget has been funded by DFID, RECONCILE nevertheless confirmed to the participants that it shall work on the project to its conclusion.   The non-funded portion of the Institute's time shall constitute its contribution to the project.

The participants agreed that there was a serious need to raise funds for the Alliance to be able to take off; and reiterated their concern that the immediate task for the Interim Steering Committee and the Interim Secretariat is to develop the project and funding proposal for the Alliance. However, they were happy to note that there were sufficient funds and commitment to enable at least the project development phase of the work to continue to its end.   It was understood that those who have committed themselves to seeing the idea of the Alliance become a reality, shall have to volunteer a substantial part of their time and efforts to help it get off the ground.

In considering the way forward during the final session of the workshop, the participants benefited from a short presentation by Dr. Robin Palmer, the Land Policy Adviser, Africa at Oxfam Headquarters in the UK.   Dr. Palmer has closely followed and been supportive of the initiative to establish the Kenya Land Alliance, and had sent his comments on the idea and the deliberations at the Lenana Mount consultation after he read the report thereon, which was sent

to him by Oxfam Kenya. He shared his experiences of other similar initiatives in other parts of Africa, and drew attention to some of the issues that the members must keep in mind if they are to be successful in this endeavour.

He cautioned that the work that the Kenya Land Alliance was setting itself up to do is a difficult and sensitive one. It requires serious commitment on the part of those who are to see it through. In particular, he drew attention to the fact that elsewhere, particularly in Uganda and Tanzania, the initiative to mobilize civil society on the land question arose in response to action by the governments in drafting statutes on land tenure. On the other hand, in Kenya, the initiative was seeking to be the one to push the government to take this action. Clearly, the Kenyan initiative shall therefore be a much more difficult one to see through than was the case in Uganda and Tanzania.

It was thus necessary to think clearly the challenge and hard work that lay ahead. In this respect, he was glad to have been able to participate in the workshop and to note that the participants were alive to the challenges lying ahead and committed to pursue this important objective to its full realization. He confirmed Oxfam's interest in the issues that the Alliance is involved with and expected that Oxfam Kenya would continue to be an active member of the Alliance.

Session Five: The Workplan

Following the morning break, the participants set out to formulate a workplan for what needed to be done in the meantime even as the Alliance was being brought into being. They emphasized the need to ensure that for every task set to be done, there was a specific person or institution that was entrusted with the responsibility of seeing it through. It was also agreed that whereas the overall responsibility for implementing the Workplan lay with the Interim Steering Committee and the Interim Secretariat, the rest of the membership would be available for consultation and to take up tasks as well as to provide support and services where needed.

After long deliberations the participants agreed on a Workplan that sought to ensure on the one hand that the momentum created so far is built upon; and on the other hand that the Alliance does not at this early stage take upon itself too much by way of tasks. The idea was to ensure that the limited resources of the Alliance are put to the best use possible in the circumstances. In the end, the Workplan agreed on is the one shown in Table 1 below.

Table 1: WORKPLAN

TASKS	PERIOD	RESPONSIBILITY	BUDGET

I. PROJECT PROPOSAL
♦ Preparation of project Proposal
    Draft
    - Steering Committee to consider draft
    - final version of proposal
    - Presentation to Donors
♦ Steering Committee Meeting
	♦ 1st September, 1999
	♦ 3rd September, 1999
	♦ 15th September, 1999
	♦ Immediately after September, 1999
	♦ 15th September, 1999
		Reconcile/Steering Committee	Funded

II. KLA ESTABLISHED AND OPERATIONAL ♦ Preparation of a Trust Deed ♦ Review by Steering Committee ♦ Registration as a Trust	♦ 1st September, 1999 ♦ 3rd September, 1999 ♦ Immediately after	♦ PLI ♦ - ♦ -	Funded Funded

Election of Steering Committee, Recruitment of Members/Application, Memorandum of Understanding/Contract, Appointment of Interim Co-ordinator — September, 1999; Mid October; Continuous; After Project Proposal; After Project Proposal and Election — Reconcile/Steering Committee — Funded, No Budget Implication, No Budget Implication

III. SOURCES OF INFORMATION IDENTIFIED — Identify Land Issues of concern; Compile an Inventory of institutions/organisations and their activities; Prepare Draft Report — End of November (x3) — Reconcile/Steering Committee — Not Funded

IV. PREPARATION OF CONCEPT PAPER — Prepare Terms of Reference (15th September, 1999); Draft Report Prepared (15th January, 2000); Draft Report discussed (15th February, 2000); Final Report (16/17 February, 2000) — OXFAM/Steering Committee/Co-ordinator — Not funded

V. PREPARATION OF STRATEGIC PLAN — Workshop (22nd/23rd February); Draft Strategic Plan issued/discussed (End of February); Final Report (End of February) — Steering Committee/Co-ordinator — Not funded

Although it may appear ambitious at this stage the Workplan nevertheless constitutes a deliberate attempt to balance ambition with a realistic assessment of what is feasible at this point in time. The realization of the set objectives and achievement of the envisaged outputs shall depend to a very large extent on the continued enthusiastic participation of the Interim Steering Committee in collaboration with the Interim Secretariat. It is on the shoulders of these two that the bulk of the responsibilities have been placed at this stage of the institutionalization of the Alliance. The members of the Interim Steering Committee and the representatives of RECONCILE assured the participants of their willingness to continue with the work that they have done to-date until the Alliance is up and running.

The workshop ended on a promising note, with the participants committing themselves to the plan of action agreed, and expressing their desire to see to the establishment of the Kenya Land Alliance, to spearhead the mobilization of the society for the reform of the land policy and law.

The Interim Secretariat undertook to ensure that the workshop report was ready as soon as practicable, so that the other activities envisaged in the Workplan may take off.