

The Draft National Land Policy

Some Implications for the Conservation and Sustainable Use Of Renewable Natural Resources

Presented to the National Land Policy Secretariat

**on behalf of the
East African Wildlife Society**

by

Dr. M. Norton-Griffiths
Council Member of the EAWLS
and
Chairman of the Conservation Committee of the EAWLS

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The Draft National Land Policy may be downloaded from mng5.com

RESOURCE CONSERVATION ON AGRICULTURAL LAND

The improvement in the standards of land use and the investment in land management over the last 30 years throughout the agricultural lands of Kenya has been truly astonishing. Yields per hectare have increased steadily by the adoption of improved agricultural technology (terracing, bunds, water harvesting, irrigation, availability of inputs, improved cultivation methods, biological pest control) and the adoption of more advanced plant varieties with higher yields and genetic resistance to drought, disease and pests. Farmgate prices have also risen in real terms, for example by more than 400% over the last 15 years in the smallholder horticultural sector.

These increases in yields and prices have been driven by population growth (more must be obtained from each hectare) and by the development of markets – especially the burgeoning urban markets and their ever increasing demand for products of higher quality and value as they themselves become more sophisticated.

However, it was the introduction and almost universal acceptance of private, freehold tenure which made it worthwhile for landowners to make the necessary investments in land improvement and new agricultural technology, and which has been so spectacularly successful in the creation and accumulation of wealth in the rural areas. In strictly economic terms, net returns to land are now up to four times greater on freehold land compared with unadjudicated land under customary tenure.

These gains in the standards of land management and in the quantity and value of agricultural production are all dependent upon the absolute security of tenure that is guaranteed in the constitution.

Exactly the same principles apply in rangeland areas. Comparing adjudicated Group Ranches with rangelands occupied under trust or customary rights, it is clear that the Group Ranches are significantly more developed. Wildlife populations on the adjudicated Group Ranches are stable rather than decreasing and produce higher returns; growth in livestock sales and cultivation are two and five times higher respectively; the value of livestock sales are higher; and the extent of infrastructural development is far more advanced. With adjudication comes security of tenure, with security of tenure comes investment, and with investment comes higher and more valuable productivity and the accumulation of wealth.

THREATS TO THE SECURITY OF TENURE

Most agricultural land in Kenya is held under private freehold tenure by literally hundreds of thousands of small holders and by other private and corporate landowners. This forms the economic dynamo of Kenya.

The Draft National Land Policy threatens to compromise the **sanctity and security** of their property rights through proposals to convert some private tenure to leaseholds – specifically along the "coastal strip" and on "all islands and lake shores"; to convert existing long leaseholds to 99 years; to restrict all new leaseholds to a maximum of 99 years; to abandon completely the absolute sanctity of first registration; to revert Group Ranches back to communal, trust tenure no longer under the control of local councils; to confiscate land (from whom? and from

where?) for resettling the landless and the poor; and to confiscate land (private or leasehold) that is considered (by whom?) to be "unutilised", "idle", "unoccupied", "mismanaged", "undeveloped", owned by "absentee landlords", or deemed necessary for "environmental or resource protection".

The **free and unencumbered transfer** of their property rights is in turn severely compromised by proposals to place restrictions on the transfer of any property right. Specifically, transfer of property rights must first take into account all other legitimate rights or interests held, or claimed, by other persons over the affected land; with an obligation to obtain their prior written and informed consent in advance of any transfer.

IMPLICATIONS FOR INVESTMENT IN LAND AND LAND MANAGEMENT

If implemented, the provisions set out in this Draft National Land Policy will at a single stroke weaken the economic foundations of agricultural development in Kenya. By compromising the both the security and the transferability of property rights to agricultural land, whether leasehold or freehold, land and property will no longer be regarded as a safe asset for securing loans. This has two major implications.

First for land purchase, for long term mortgages, arguably the foundation of all investment in property and land, are rarely available once leases have less than 50 - 60 or so years to run; while it becomes increasingly difficult to obtain mortgages of any term on leases with 35 years or less to run.

Second, and more importantly, landowners will no longer be able to use their title to raise working capital for land improvement and adopting new agricultural technologies. Furthermore, the proposed taxes on land improvement will create even greater disincentives for investment.

In the face of such disincentives, standards of land management will fall as will agricultural productivity. This will in turn undermine the creation and accumulation of wealth in rural areas, and will accentuate and perpetuate rural poverty.

IMPLICATIONS FOR SUSTAINABLE USE AND CONSERVATION OF NATURAL RESOURCES

Wise resource husbandry entails the conservation and sustainable use of natural resources. This is by definition a long term undertaking. On private land this calls for the absolute security of property rights and tenure to create and maintain the long term perspective necessary to encourage and sustain long term investment and use.

Remove this security -- or even the sense of such security -- and owners and users of land will invest less in the future and more in the present, leading to the inevitable overexploitation and mining of resources rather than to their sustained use. Under such conditions the conservation and sustainable use of all natural resources, be it of land, of soils, of woodlands and forests, of habitats or of wildlife becomes increasingly difficult and problematic.

IMPLICATIONS FOR PROTECTED AREAS (AND ANY PRIVATE LAND)

Other proposals in the DNLP threaten the very existence of all protected areas, National Parks, County Council Game Reserves and Forest Reserves alike, by allowing "contiguous communities" to participate fully in their management and utilisation of land and land based resources in a manner that confers benefits to them. This legalises and sanctions the invasion of protected areas and the use of the resources contained within them – for example grazing, wildlife and forest products. These proposals will also legalise and sanction the invasion of large scale ranches by communities living around them, or indeed the invasion of any land by any contiguous community. The implications are simply staggering.