



**NATIONAL LAND POLICY**  
THE FORMULATION PROCESS

**MINISTRY OF LANDS**

*DRAFT NATIONAL LAND POLICY*

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## EXECUTIVE SUMMARY

Kenya has not had a clearly defined or codified National Land Policy since independence. This, together with the existence of many land laws, some of which are incompatible, has resulted in a complex land management and administration system. From the advent of colonialism, Kenya has been grappling with the land question, which subsequent government regimes have been unable to or are unwilling to solve. The land question has manifested itself in many ways including fragmentation, breakdown in land administration, disparities in land ownership and poverty. This has resulted in environmental, social, economic and political problems including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilization and abandonment of agricultural land, tenure insecurity and conflict.

To address these problems, the Government embarked on the formulation of a National Land Policy through a widely consultative process with the aim of producing a policy whose vision is to ***“guide the country towards a sustainable and equitable use of land”***. Stakeholders from public, private and civil society contributed towards the policy formulation through thematic groups and regional workshops. Past initiatives such as the Presidential Commission of Inquiry into the Land Law System of Kenya, the Constitution of Kenya Review Commission and the Presidential Commission of Inquiry into the Illegal/Irregular Allocation of Public Land also informed the formulation process.

This land policy has thus been formulated to address the critical issues of land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management. It also addresses constitutional issues, such as *the eminent domain* and *the police power* as well as tenure. It recognizes the need for security of tenure for all Kenyans (all socio-economic groups, women, pastoral communities, informal settlement residents and other marginalized groups).

The Policy designates all land in Kenya as Public, Community or Private. Most significantly, it recognizes and protects customary rights to land. It also recognizes and protects private land rights and provides for derivative rights from all categories of land rights holding.

Through the policy, the government will ensure that all land is put into productive use on a sustainable basis by facilitating the implementation of key principles on land use, productivity targets and guidelines as well as conservation. It will encourage a multi-sectoral approach to land use, provide social, economic and other incentives and put in place an enabling environment for agriculture and livestock development.

National, regional, urban, peri-urban, spontaneous settlements planning principles and guidelines will be formulated and implemented in a transparent, accountable, sustainable, comprehensive and participatory manner. To ensure sound and sustainable environmental management of land based resources, dealings in such land will be guided by conservation and sustainable utilization principles outlined in national environmental laws and policies.

Land management and administration problems (such as systematic breakdown in management, over-centralization, lack of participation by communities, high costs, unnecessary delays) will be addressed through streamlining and strengthening surveying and mapping systems, adjudication procedures and processes, land registration and allocation systems and land markets. To ensure access to justice in land related matters, land dispute institutions and mechanisms will be streamlined through the establishment of independent, accountable and democratic systems and mechanisms including Alternative Dispute Management regimes.

Inefficient and time consuming land information systems have complicated planning, zoning and overall management of land. The Government will prepare and implement national guidelines to improve the quality and quantity of land information through computerization at both national and local levels. This will cover all aspects such as standards, geo-referencing, pre-requisites for LIMS, security, intellectual property rights and land information dissemination and pricing.

Land issues requiring special intervention, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest-dwellers and pastoralists) and vulnerable groups will be addressed. The rights of these groups will be recognized and protected. Measures will be initiated to identify such groups and ensure their access to land and participation in decision making over land and land based resources.

Institutions managing land in Kenya are many and varied. This structure has performed poorly, is not accessible to the poor, has a poor information system and uses a very complex legal process. The institutional framework will be reformed to ensure devolution of power and authority, participation and representation, justice, equity and sustainability. Three institutions will be set up: the National Land Commission, the District Land Boards and Community Land Boards. A land court and District Land Tribunal will also be established, as will be a National Land Trust to mobilize finances. The Ministry of Lands will continue performing residual roles including policy formulation and implementation, resource mobilization, and monitoring and evaluation.

Implementation of the Land Policy requires building of in-house capacity. The National Land Policy Secretariat will be transformed into the Land Reform Unit (LRU) to plan and implement the change process.

## CHAPTER 1: INTRODUCTION

### 1.1 The Problem

1. Land is critical to the economic, social and cultural development of Kenya. It is crucial to the attainment of economic growth, poverty reduction and gender equity. Its importance is recognized by various Government initiatives including the initial *Poverty Reduction Strategy Paper* (PRSP), political party manifestoes and the *Economic Recovery Strategy for Wealth and Employment Creation (2003-2007)*. Land was a key reason for the struggle for independence and Land issues remain politically sensitive and culturally complex.
2. Kenya does not have a clearly defined or codified National Land Policy. The problems posed by the lack of a policy have been exacerbated by the existence of very many land laws, some of which are incompatible. The result is a very complex land administration system.

### 1.2 Vision of the Policy

3. A National Land Policy that will guide the country towards a sustainable and equitable use of land.

### 1.3 Objectives of the Policy

4. The overall objective is to prepare a National Land Policy that will provide for sustainable growth and investment and the reduction of poverty in line with Government's overall development objectives.
5. The specific objectives are to develop a framework of policies and laws designed to ensure the maintenance of a system of land administration and management that will provide:
  - a) All citizens, particularly the poor, with the opportunity to access and beneficially occupy and use land;
  - b) An economically, socially equitable and environmentally sustainable allocation and use of land; and
  - c) The efficient, effective and economical operation of the land market.

### 1.4 The Structure of the Policy

6. This policy is organized into four chapters. Chapter One introduces the document by stating the need for land policy and outlining the policy formulation process. Chapter Two focuses on the land question in Kenya and the justification for policy reform. Chapter Three constitutes the main body of the document and sets out the policy principles and statements. Chapter Four sets out the institutional changes that are expected on implementation of the set out policy.

## **1.5 The Policy Formulation Process**

### **1.5.1 Land Policy Principles**

7. Land Policy Principles address the essential values, which the society seeks to promote and preserve. The principles have been drawn from various sources including the deliberations of the Constitution of Kenya Review Commission (CKRC), the report on the Commission of Inquiry into the Land Law System in Kenya (the 'Njonjo Commission'), the report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land ('Ndungu Commission') and the proceedings of the National Civil Society Conference on Land Reform and the Land Question. They include:
  - a) Equitable access to land;
  - b) Secure land ownership;
  - c) Effective regulation of land development;
  - d) Sustainable land use;
  - e) Access to land information;
  - f) Efficient land management;
  - g) Vibrant land markets; and
  - h) Transparent and democratic administration of land.

### **1.5.2 Guiding Values of the Process**

8. In view of the emotive nature of the land question in Kenya, the national land policy formulation process was designed to be:
  - a) Consultative;
  - b) Participatory;
  - c) Interactive;
  - d) Inclusive;
  - e) Consensus building;
  - f) Timely and professional;
  - g) Transparent;
  - h) Gender sensitive;
  - i) Innovative; and
  - j) Cost effective.

### **1.5.3 Methodology**

9. Land policy issues were grouped into six themes that were assigned to groups as listed in section 1.5.4.3. These groups, under the direction of their chairpersons, were empowered to undertake the following tasks:
  - a) Identify issues related to their theme about which policy recommendations needed to be made;
  - b) Produce research/topical issues papers on each issue identified;
  - c) Facilitate and participate in thematic group meetings, joint group workshops and regional workshops and institutional visits; and

- d) Integrate the issue papers into one issues and recommendation report taking into account inputs from workshops and institutional visits.
- 10. Workshops were organized in all the eight provinces in the country to collect views from stakeholders representing various interest groups. They included members of the provincial administration, heads of Government departments, mayors, town clerks, chairpersons of urban and county councils, civic officers and representatives of various organizations and community based groups. The identified issues and respective recommendations from the regional workshops provided an input into the Integrated Issues and Recommendations report which forms the basis for the writing of the National Land Policy document.

#### **1.5.4 Organizational Structure for the NLPFP**

- 11. The National Land Policy Formulation Process had a three tier management structure namely: the Minister, the Steering Committee, and the Thematic Groups. The management structure was supported by a Coordinating Unit and a Technical Advisory Council.

##### **1.5.4.1 The Minister**

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

##### **1.5.4.2 The Steering Committee**

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

##### **1.5.4.3 Thematic Groups**

- 14. As indicated above, land policy issues were grouped into six broad themes, each of which was reviewed and analysed by a Thematic Group. Each group was made up of state and non-state actors from the public sector, private sector, the civil society and the communities. The groups are as follows:
  - a) Rural Land use, Environment and Informal Sector;

- b) Urban Land use, Environment and Informal Sector;
- c) Land Tenure and Social Cultural Equity;
- d) The Legal Framework;
- e) Land Information Management System; and
- f) Institutional and Financing Framework for Implementation.

#### **1.5.4.4 Coordinating Unit**

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

#### **1.5.4.5 Technical Advisory Services**

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

## CHAPTER 2: THE LAND QUESTION

### 2.1 Country Background

#### 2.1.1 Geographical Features and Ecological Zones

17. The Republic of Kenya has an area of approximately 582,646 sq. km. comprising of 97.8% land and 2.2% water surface. Only 20% of the land area can be classified as medium to high potential agricultural land and the rest of the land is mainly arid or semi-arid. Forests, woodlands and national reserves and game parks account for ten percent (10%) of the land area, i.e. 58,264 sq. km.
18. Topographically, the country may be divided into four distinct geographical and ecological regions or zones with different patterns of land use, namely; the coastal plain, the arid low plateau, the highlands, and the Lake Victoria basin. The rainfall patterns are extremely varied but generally follow those regions, with the Lake Victoria basin receiving the heaviest and most consistent rainfall.

#### 2.1.2 Population and Human Settlement Patterns

19. Kenya's population is estimated to be 30.4 million with an annual growth rate of 2.9% and is expected to rise to 55 million by 2050. In terms of demographic characteristics, the population remains relatively young with 60% being below the age of 18 years, and over 51% being female.
20. The decline in population growth rates in the last ten years was the result of both increased mortality (10% in 1995 to 12% in 2003) and stagnation in fertility levels (4.7% in 1995 to 4.9% in 2003). Mortality levels remain high as a result of the persistence of tropical diseases such as malaria and nutrition deficiency, as well as poverty related causes including widespread food shortages in major parts of the country.
21. More recently, the rapid spread of HIV and AIDS has accelerated mortality levels in both urban and rural areas. HIV and AIDS prevalence in most parts of the country now stands at about 7% of the adult population. This has led to reduction of gains achieved earlier in health standards, life expectancy, mortality and child survival. It has also increased the dependency ratio and put the traditional care structures under strain in most parts of the country. Although considerable progress has been achieved in controlling this pandemic, mortality due to HIV and AIDS is yet to peak.

### **2.1.3 Land Use and Population Distribution**

22. Approximately seventy five per cent (75%) of the country's population lives within the medium to high potential (20% of land area) and the rest in the vast Arid and Semi-Arid Lands (ASALs). One consequence of this is that size and distribution of land varies quite widely as does population density which ranges from as low as 2 persons per sq. km. in the ASALs to a high of over 2000 in high potential areas.
23. The rural-urban balance stands at 78% and 22% respectively with the most rapid growth confined to major urban centres and satellite towns. According to the 1999 population census, the overall growth rate of Kenya's urban population stands at 6% implying a very rapid rural-urban migration pattern and that absolute poverty in the rural and urban areas now stands at 54% and 53% of the population respectively.
24. In the rural areas, the high to medium potential zones are dominated by small farm holdings. In some cases, insecure land-tenure systems have led to low investment in land improvement and productivity. Many smallholder areas are suffering continuous fragmentation of holdings into uneconomic sizes, and farms are getting smaller in the high rainfall areas and in the drier zones. In addition, many large farms that used to produce seed and breeding stock have been sub-divided and transferred from State to private ownership. The National Development Plan (2002-2008) has proposed the formulation of a National Land Use Policy that would facilitate the preparation and implementation of land use plans for all urban and rural areas.

## **2.2 The Origins of the Land Question**

### **2.2.1 Political Aspects**

25. It was expected that the transfer of power from colonial authorities to indigenous elites would lead to fundamental restructuring of the legacy on land. This did not materialise and the result was a general re-entrenchment and continuity of colonial land policies, laws and administrative infrastructure. This was because the decolonisation process of the country represented an adaptive, co-optive and pre-emptive process which gave the new power elites access to the European economy. Therefore:
  - a) It had to be moulded, in a way that allowed the settlers to adapt to the changed economic and political situation by identifying new centres of influence that were not overtly political;
  - b) It had to achieve the aim of socialising the new elite into the colonial political, economic and social patterns to ensure that the elite was able to rule functionally on an inherited political structure and co-operate with the outgoing rulers; and

- c) The process was geared towards preventing the mobilisation of a nationalist base that would be opposed to continuation of colonial policies after independence.
26. Property rights protection was deemed imperative for the conclusion of the independence talks held in Lancaster House from 1960-1962. Having worked out an acceptable bargain, the new rulers set about consolidating their power in the new State. The issue of the landless natives proved a thorny one for this new Government prompting it to institute measures to appease the vocal Africans still clamouring for the land taken from them. Within a few years into the independence period, small holders in Kenya had become the main driving force behind agricultural production.

### **2.2.2 Economic Aspects**

27. The genesis of the land question can be traced from the colonial times when the objective was to entrench a dominant settler economy while subjugating the African economy through administrative and legal mechanisms. The process of colonisation introduced an alien concept of property relations in Kenya, where the State or the protectorate as a political entity came to own land and grant to property users subsidiary rights. The economies of nearly all Kenyan communities remain largely dependent on land for livelihoods. Politically the land question is related to the administrative controls of the economy that use land as leverage for political support.

### **2.2.3 Legal Aspects**

28. At independence Kenya had two substantive regimes in property law i.e. Customary Property Law, and English Property Law. These property systems are operated under the following statutes;
- a) Registration of Titles Act (Cap 281),
  - b) Government Lands Act (Cap 280),
  - c) Land Titles Act (Cap 282),
  - d) Registered Land Act (Cap 300) and
  - e) Sectional Properties Act No.21 of 1987.
29. The net effect of these systems on land administration was to perpetuate a dual system of economic relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry. The duality was manifest in:
- a) Systems of land tenure based, in the one case, on principles of English property law and, in the other, on a largely neglected regime of customary property law;

- b) A structure of land distribution characterized by large holdings of high potential land, on the one hand, and highly degraded and fragmented small holdings on the other;
- c) An autonomous and producer controlled legal and administrative structure for the management of the European sector, as opposed to a coercive control structure for the African areas; and
- d) A policy environment designed to facilitate the development of the European sector of the economy by under-developing its African counterpart.

### **2.3 Contemporary Manifestations of the Land Question**

30. The land question in Kenya is still alive and vexatious. The following are some of its many manifestations:
- a) Population pressure on land, particularly in Central, Eastern slopes of Mount Kenya and Western Kenya;
  - b) Population pressure in agricultural areas leads to encroachment on arid and semi-arid areas;
  - c) Over-concentration of land management and administration at the ministry in charge of lands;
  - d) Escalation of desertification in the arid and semi-arid areas due to accelerated land degradation and global climate change;
  - e) A multiplicity of legal regimes that govern land;
  - f) Lack of an effective environmental management;
  - g) The gross disparities in land ownership with regard to gender and generational discrimination in succession;
  - h) Inter-ethnic resource conflicts especially in areas originally expropriated for resettlement;
  - i) The poor management of essential infrastructure; and
  - j) The privatization of public land through wanton and illegal allocation of such land to private individuals and corporations in total disregard of the public interest in the post-independence period, popularly known as land-grabbing.

### **2.4 Impacts of the Land Question**

31. The impacts of the foregoing on land have been many, varied and include the following:
- a) Fragmentation and sub-economic parceling of land particularly in the high potential areas of the small farm sector;
  - b) Low land productivity;
  - c) Deterioration in land quality as a result of poor land use practices;
  - d) The growth of extra-legal land administration processes;
  - e) Landlessness and the squatter phenomenon;
  - f) Unproductive and speculative land holding especially, by the elite;

- g) Disinheritance of women and vulnerable members of the community;
- h) Poor health, malnutrition, and effects of HIV and AIDS and a non-productive labour force leading to low economic growth and productivity;
- i) Uncontrolled urban squalor and environmental pollution;
- j) Severe tenure insecurity due to the existence of overlapping rights;
- k) Wanton destruction of forest, catchment areas and areas of unique biodiversity;
- l) Severe competition between wildlife's needs and those of human settlements;
- m) Declining land carrying capacity in the arid and semi-arid areas;
- n) A rise in the levels of poverty; and
- o) Uncontrolled development and a general disregard for planning regulations.

## **2.5 Land Policy Issues**

- 32. On account of the above factors, immediate, holistic and systematic policy attention to the land question is needed from a historical as well as contemporary context to address the economic, social, cultural and political ramifications of the land issue.
- 33. The important issues that the National Land Policy addresses are the following:
  - a) Constitutional issues;
  - b) Land reform issues;
  - c) Land tenure issues;
  - d) Land use management issues;
  - e) Land administration issues; and
  - f) Land issues requiring special attention.

## CHAPTER 3: THE LAND POLICY FRAMEWORK

### 3.1 CONSTITUTIONAL ISSUES

34. Land is a central category of property in the lives of Kenyans. It is the principal source of livelihood and material wealth, and invariably carries cultural significance for many Kenyans. For these reasons, land is being treated as a constitutional issue. In particular, and in an ideal situation, a constitution should set out the broad principles on land, and establish an efficient and equitable institutional framework for land ownership, administration and management. Land policy reforms are not likely to succeed in the absence of such a sound constitutional framework. Accordingly, land reforms should be accompanied by constitutional changes if they are to be effective.
35. The desired constitutional changes have, however, not been realized throughout the history of the Republic of Kenya. Land is left out of the current Constitution as a socio-economic factor that governs the lives of Kenyans, and is instead lumped with other aspects of property. More specifically, State responsibility over land matters has been centralized, with the effect that governmental decisions have not been responsive to the citizenry, especially at the local level.
36. The Government has not been accountable in its governance of land, which occurs under a regime that does not facilitate meaningful public participation. Thus cases of irregular allocation of public land abound.
37. The existing Constitution facilitates the protection of private property rights even where they are acquired in an illegitimate manner. This happens, for example, where public land is irregularly alienated to individuals.
38. Kenyans have expressed immense dissatisfaction with the inequitable distribution of land in the country. Many Kenyans do not have access to land due to factors such as inappropriate policies, laws and corruption, which have been facilitated by the weak governance framework of the current Constitution. There is thus a need to facilitate better access to land especially for individuals and groups who have historically been denied such access.
39. Women, children, minority groups and persons with disabilities have been denied ownership of and access to land rights as a result of discriminatory laws, customs and practices.
40. The Government has not effectively regulated private property rights, as a result of which unplanned settlements and environmental degradation have become commonplace.

41. The existing Constitution does not provide an adequate framework for the taxation of land rights, as a result of which the problem of idle land has in particular emerged.
42. In order to establish a firm foundation for land policy reform, a constitution shall respect the following principles:
  - a) Rational allocation of powers and responsibilities to State institutions and the transparency and accountability of such institutions;
  - b) Participation of the citizenry in Government decision-making processes, including land matters;
  - c) Security of legitimate rights to land and equitable access to land in the interests of social justice;
  - d) State regulation of the use of privately owned land;
  - e) Protection of human rights for all. In particular, it should provide protection against laws, customs and practices that discriminate against women, minorities, children and persons with disabilities, with respect to access to and ownership of land rights; and
  - f) Sound framework for the taxation of resources such as land to facilitate efficient utilization and distribution of land rights.
43. The Government shall facilitate the review of the current Constitution to embrace the constitutional principles outlined above and to establish a firm foundation for implementation of land policy reforms.

### **3.1.1 Regulation of Private Property Rights**

44. In the regulation of private property rights, two particular powers of Government raise fundamental constitutional issues, and have not been exercised effectively or accountably. These are the powers of *eminent domain* (compulsory acquisition) and the *police power* (development control).

#### **3.1.1.1 Eminent Domain**

45. *Eminent domain*, or compulsory acquisition, is the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation, and is provided for in the current Constitution. This power is exercised by the Commissioner of Lands on behalf of the State. The Constitution permits a modified form of acquisition in the case of Trust Land which may be activated by the President or local authorities. This is referred to as “setting apart”.
46. The established procedures for compulsory acquisition are either abused or not adhered to leading to irregular acquisitions. In addition, the powers of the President and local authorities to set apart Trust Land overlap.

47. The Government shall review the law on compulsory acquisition in order to harmonize the institutional framework and avoid overlapping mandates with regard to Trust Land. The revised law shall provide for compulsory acquisition processes and procedures that are efficient, transparent and accountable. Further, the revised law shall provide that the power of compulsory acquisition be exercised by the State and local authorities through the National Land Commission.
48. Where the public purpose or interest justifying the compulsory acquisition fails or ceases, the revised law shall confer pre-emptive rights on the original owners or their successor in title.

### **3.1.1.2 The 'Police' Power**

49. The *Police Power* or development control is the power of the State to regulate property rights in land, and is derived from the State's responsibility to ensure that the use of land is not injurious to the public interest. Hence, 'police' power seeks to limit the use of land in order to protect public welfare from any dangers that might arise from its misuse. In Kenya the 'police' power as an instrument of sovereignty is constitutionally derived. However, the *Police Power* has not been extensively used to control or otherwise regulate the use of land and to enforce sustainable land use practices throughout the country. Furthermore, the *Police Power* is exercised by various Government agencies whose activities are uncoordinated with the result that the attendant regulatory framework is largely ineffective.
50. The Government shall:
  - a) Empower all planning authorities in the country to regulate the use of land to take account of the public interest;
  - b) Review all legislation embodying the *Police Power* so as to establish clear standards which override proprietary land use practices, and better enforcement frameworks. In particular, the revised legislative framework will embody International Conventions and national policies relating to the sustainable use of land and the preservation of environmental values; and
  - c) Ensure that the exercise of the *Police Power* takes into account local or community values on land use and environmental management.
  - d) Ensure effective participation in the exercise of the *Police Power*.

## **3.2 LAND REFORM ISSUES**

### **3.2.1 Land Reform Principles**

51. Land reforms should adhere to the principles of redistribution, restitution, resettlement, land banking, land readjustment and land taxation in order to secure the land rights of all Kenyans. In

particular, the Government shall employ these principles in the resolution of the special land problems outlined below.

#### **3.2.1.1 Redistribution**

52. The purpose of land redistribution is to provide the disadvantaged and the poor with access to land for residential and productive purposes. The need for land redistribution also arises because of the gross disparities in ownership that have been occasioned by lopsided development priorities, environmental degradation, gender and trans-generational discrimination. Further, the need for land redistribution is necessitated by the HIV and AIDS pandemic which underscores the need for the speedy reorganization of rural settlements, and the protection of the rights of widows and orphans. The Government shall develop a legal and institutional framework that defines the standards, procedures and criteria for land redistribution.

#### **3.2.1.2 Restitution**

53. The purpose of land restitution is to restore land rights to those that have unjustly been deprived of such rights. It is based on a recognition that the lack of access to land may be due to unfair governmental policies and laws. It underscores the need to address circumstances which give rise to such lack of access, including historical injustices. The Government shall develop a legal and institutional framework for handling land restitution.

#### **3.2.1.3 Resettlement**

54. The purpose of resettlement is to grant the poor and the landless access to land, and to provide them with infrastructure and basic services such as shelter, water and sanitation facilities. Resettlement therefore aims to empower the poor so that they may become self-reliant. Further, the resettlement principle seeks to procure adequate land for the reorganization of both rural and urban settlements in light of expanding populations. The Government shall establish criteria for the determination of who qualifies to benefit from resettlement programmes and ensure that it is carried out in a transparent and accountable manner.

#### **3.2.1.4 Land Banking**

55. The implementation of the principles of redistribution, restitution and resettlement of the poor and the landless will depend on the availability of land. Further, rising populations have also led to an increase in the demand for land and land based resources. The Government shall establish land banks in order to facilitate the successful implementation of these principles.

#### **3.2.1.5 Land Readjustment**

56. The purpose of land readjustment is to ensure that land holdings are economically viable. The Government shall develop a legal framework for a periodic review of land use practices with the provision for reorganization of rural settlements, to control excessive fragmentation into sub-economic units, and for provision of infrastructure.

#### **3.2.1.6 Land Taxation**

57. The Government shall develop and enforce an effective and appropriate progressive taxation system to discourage speculative hoarding of land.
58. The Government shall put in place appropriate fiscal measures so as to promote the efficient use of land and land-based resources.

### **3.3 LAND TENURE ISSUES**

59. Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed off, or transmitted. Land tenure regimes in Kenya are fragmented, complex and pluralistic. As in the case of Trust Land (under Trust Land Act) land rights are quite indeterminate.
60. Overlapping land rights and insecure tenure presents a problem for land management and leads to conflicts. The Government shall put in place a clear land tenure policy.

#### **3.3.1 Overall Tenure Principles**

61. The principles guiding tenure policy shall include secure access to land, equity in transmission and distribution of land rights, and an enabling environment.
62. The Policy recognizes the following as cross-cutting issues; gender equity, HIV and AIDS and poverty.
63. The Government recognizes the need for security of tenure. It shall implement the following principles:
  - a) Designate all land in Kenya as Public, Community and Private;
  - b) Facilitate the enforcement of the legal rights of access, control, ownership and inheritance, access to credit and co-registration in all tenure systems;
  - c) Regulate land tenure and ensure security of tenure for all socio-economic groups, and that women and men have equal access to land for production processes;
  - d) Protect individual property rights and communal rights in urban and rural settlements through land registration; and
  - e) Facilitate the protection of intellectual property rights over land and land-based resources.

### **3.3.1.1 Public Land**

64. Public land comprises all land owned by the Government and dedicated to a specified public use or made available for private uses at the discretion of the Government. To secure tenure to public land, the Government shall:
- a) Designate and keep an inventory of all public land and place it under the National Land Commission (NLC) to hold and manage in trust for the people of Kenya;
  - b) Establish an appropriate land taxation system to mobilise revenue and discourage land speculation;
  - c) Repossess any public land acquired irregularly;
  - d) Facilitate the establishment of participatory and accountable mechanisms for the development and disposal of public land by the NLC; and
  - e) Continue to enforce existing legal provisions relating to the allocation of public land and establish a clear legislative framework and procedures for future allocation of public land to eliminate incidents of misallocation or multiple allocations and bias.

### **3.3.1.2 Community Land**

65. Community land refers to land lawfully held, managed and used by a specific community. This creates a powerful system of land allocation regimes and a tenure system designed to preserve the asset base for current and future generations. Communities traditionally see land and kinship in a genealogical map through which access to land is attained. Families and individuals are allocated rights to use the land in perpetuity, subject only to effective utilization. The ultimate ownership (radical title) vests in the community.
66. The process of individualization of tenure, that is, land adjudication and/or consolidation and the eventual registration of interests in land under the Registered Land Act (Cap 300) has undermined customary tenure in two material respects. First, individualization has undermined traditional resource management institutions with the effect that there are no longer legitimate authorities within the affected communities that can enforce the traditional resource use regulatory mechanisms. Secondly, individualization led to the condemnation of customary land rights not deemed to amount to ownership, such as family interests in land, the rights of “strangers” (for example *jodak* among the Luo and the *ahoi* among the Kikuyu), and communal rights to clan land (such as rights to *inkutot* land among the Maasai and rights to *kaya* forests among the Mijikenda).
67. In addition, there has been widespread abuse of trust in the context of both the Trust Land Act and the Land (Group Representatives) Act. In both cases, the law sought to entrust the management of

community land to representatives of the communities. However, the representatives have in many cases abused their trust. Thus county councils, which are the trustees of Trust land, have in many cases disposed of trust land in an irregular/illegal manner. Further, in the case of community land among pastoralists, the group representatives entrusted with the management of that land have in many cases disposed of group land without consulting the land owners.

68. To secure community tenure to land, the Government shall:
- a) Document and map existing customary land tenure systems in consultation with the affected communities, and incorporate them into broad principles that will facilitate the orderly evolution of customary land law;
  - b) Establish a clear legislative framework and procedures for recognition, protection and registration of customary rights to land and land based resources. The envisaged legislative framework and procedures will in particular take into account multiple interests of all land users including women;
  - c) Review all previous acquisitions of community land to facilitate restitution for the affected communities;
  - d) Develop procedures to govern community land transactions using participatory processes;
  - e) Incorporate customary mechanisms for land management and dispute resolution in the overall national framework for harnessing land and land based resources for development;
  - f) Invest in capacity building for traditional land governance institutions; and
  - g) Vest the right of reversion of community land in the community in the first instance where the owner dies without any heirs, and ultimately to the Community/District Land Boards in trust for the community.

#### **Land Rights of Minority Communities**

69. Minority communities are culturally dependant on specific geographical habitats. Over the years, they have lost access to land and land-based resources that are key to their livelihoods. This follows the gazettelement of these habitats as forests or national reserves or their excision and allocation to individuals, who subsequently obtain titles to the land. These communities are now recognized internationally as *minority groups* deserving special protection by the State with regard to their land rights and ability to manage their natural resources in a sustainable manner.
70. These communities have not been represented adequately in governmental decision making at all levels since they are relatively few in number. Their political and economic marginalization has also been attributed to the fact that colonial policies assimilated

them into neighbouring communities. In addition, the colonial Government alienated their lands through forest preservation policies, which effectively rendered them landless as they were denied the right to live in the forests. Colonial capitalism also led to the marginalization of hunter-gatherer communities at the expense of agricultural expansion.

71. To protect and sustain the land rights of the minorities, the Government shall:
  - a) Undertake an inventory of the existing minority communities with a view to obtaining a clear assessment of their status and land rights; and
  - b) Facilitate the practice of their land tenure and resource management systems by providing a suitable legal framework.

### **3.3.1.3 Private Land**

72. Private land refers to land held by an individual or other entity under freehold or leasehold tenure. The Government shall rationalize existing systems of private land ownership.
73. To secure private land, the Government shall:
  - a) Ensure that the alienation of private rights to land takes into account all other legitimate rights or interests (spouses and children rights or interests) held or claimed by other persons over the affected land;
  - b) Ensure that all private land is held on terms that are clearly subordinate to the doctrines of compulsory acquisition and the *police power* of the State;
  - c) Ensure that private land is held, alienable and transmissible without discrimination on grounds of sex, ethnicity or geographical origin; and
  - d) Subject all private land to common residual rights of the NLC on behalf of the people of Kenya and the right of reversion to the NLC in case the owner dies without any heirs.

### **3.3.1.4 Freehold Tenure**

74. Freehold connotes the largest quantum of land rights which the sovereign can grant to an individual. While it confers unlimited rights of use, abuse and disposition, it is subject to the regulatory powers of the State. In Kenya, such interests are individually held under the Registration of Titles Act (Cap 281), the Land Titles Act (Cap 282) or the Government Lands Act (Cap 280). The absolute proprietorship was introduced by the Registered Land Act (Cap 300) with the intention of extinguishing customary tenure and replacing it with rights that would be individually and exclusively held.
75. Moreover, the difference between the freehold and the absolute proprietorship is a cause of confusion. There is no need to continue these two separate classifications of what is essentially the same

form of land tenure. To address and streamline freehold tenure, the Government shall review the law to effect the following:

- a) Merge freehold tenure and absolute proprietorship with the best attributes of each being kept;
- b) Modify incidents of freehold tenure 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; and
- c) Regulate the power of the primary rights holder to alienate land in order to ensure that such alienation does take into account all the other legitimate rights or interests (including family rights or interests) held or claimed by other persons over the affected land. In particular, the law should impose an obligation on the primary rights holder to obtain the written and informed consent of all secondary rights holders before exercising the power to alienate.

### **3.3.1.5 Leasehold Tenure**

76. Leasehold involves the derivation of rights from a superior title for a period of time, certain or capable of being ascertained and the enjoyment of such rights in exchange for specific conditions including, but not limited to, the payment of rent. Leasehold tenure provides a flexible mechanism for transacting rights in land and for land use control. It is a private contractual right subject to the conditions imposed by the owner and grants exclusive rights to the leaseholder.
77. To secure leasehold tenure, the Government shall:
  - a) Ensure that all leases are issued for a period sufficient to encourage long-term investments in land while also allowing for Government regulation of the use of the land. It will also provide for the renewability of all leases subject to general planning requirements;
  - b) Establish mechanisms for creating leasehold interests out of public, community or private land so long as the term of the lease is less than that of the residual term;
  - c) Rationalize existing leasehold tenure systems in rural and urban areas;
  - d) Ensure effective and sustainable use of land, and promulgate regulations on all tenure categories irrespective of where such land is located;
  - e) Ensure that the duration of all future leases will be 99 years or less and subject to revocation if they do not conform to approved development conditions; and
  - f) Ensure that leases for settling the urban poor are designed to take into account the principles of security of tenure, upgradeability, affordability and collective ownership.

### **3.3.1.6 Informal Settlements**

78. The essence of 'informal' or 'spontaneous' or 'squatter' settlements is that it is without secure tenure and/or is unplanned. The problems of 'squatters' and 'informal' settlements continue to present a challenge for development in Kenya. A large proportion of Kenya's population has no decent homes, and live as 'squatters' or in slums and other squalid places.
79. To deal with the 'squatters' and informal settlements, the Government shall:
  - a) Create a regime of secondary land rights as a means of improving security in informal/spontaneous settlements;
  - b) Recognize and protect the rights of informal land occupiers and guarantee their security of tenure; and
  - c) Establish a legal framework and put in place procedures for transferring unutilized land and land belonging to absentee landlords to 'squatters' and landless people.

### **3.3.1.7 Resource Tenure Policy**

#### **Ownership**

80. All land-based natural resources belong to the People of Kenya collectively as a nation, as communities and as individuals.
81. To secure ownership of natural resources, the Government shall:
  - a) Align, to the greatest extent possible, tenure to land based natural resources to the different land tenure systems namely public, community and private. Where ownership of land-based natural resources are vested in a private entity or community, it shall ensure that they are managed sustainably and in trust for the people of Kenya;
  - b) Put in place mechanisms to ensure sustainable management of natural resources for posterity;
  - c) Ensure public access to beaches, lakes, rivers and landing sites for fishing; and
  - d) In consultation with the communities, identify, map and gazette critical wildlife migration dispersal areas and corridors and provide incentives for the communities to invest in income generating conservation programmes.
82. To facilitate sustainable management of land resources, the Government shall:
  - a) Develop a comprehensive resource tenure policy as part of an overall land use policy for the country. The formulation of this policy will be informed by customary tenure principles relating to the common utilization, protection and development of land-based resources; and
  - b) Create an effective institutional framework and capacity to implement International Conventions especially those touching

on land related resources. It shall also plan and prioritize action items and principles relating to International Conventions on natural resources that Kenya is a party to.

### **Community Interest and Benefit-Sharing**

83. To protect community interests over land based natural resources and facilitate benefit sharing:
  - a) A legal framework shall be established for recognizing community and private rights over natural resources and put in place procedures for use of and access to these resources by communities and private entities;
  - b) Devise and implement participatory mechanisms for compensation for loss of lives and damage to property occasioned by wild animals;
  - c) Establish mechanisms for the sharing of benefits emanating from natural resources by the People of Kenya and by use of participatory methods, define benefit sharing criteria for natural resources within and contiguous to the jurisdiction of local communities;
  - d) Ensure that the management and utilization of land-based natural resources by community entities take into account the need to share benefits with contiguous communities and that such communities are fully involved in the management and development of the resources. It shall revisit the gazettement of forests and protected areas to ensure that these are protected for their intrinsic value to the nation and not through physical exclusion by human beings;
  - e) Encourage the development of wildlife sanctuaries and conservancies and involve local communities in the co-management of parks with communities living contiguous to the parks and protected areas. It shall also provide mechanisms for resolving grievances of communities arising from human wildlife conflict; and
  - f) Recognize and protect the rights of forest dependent or other natural resources dependent communities and facilitate their access, co-management and derivation of benefits from the resources.

### **Environmental Resource Tenure Principles**

84. The Government shall develop a comprehensive resource tenure policy as part of an overall land use policy for the country.
85. The formulation of a resource tenure policy shall be informed by customary tenure principles relating to the common utilization, protection and development of land based resources.
86. The Government shall amend the land law system to recognize community rights to natural habitats and natural resources.

### **3.3.1.8 Pastoral Land Tenure**

87. The term 'pastoralism' denotes a way of life and social organization based on livestock raising as the primary economic activity. It is suited to the dry lands and has been adapted from generation to generation. Pastoralism has survived as a livelihood and land use system despite deliberate efforts from successive Governments to replace it with other land use systems. This tenacity of pastoralism testifies to its appropriateness to the dry lands. As a productive system, pastoralism depends on livestock and livestock products.
88. The problems of pastoral land tenure relations have their roots in the dispossession of pastoralist communities of their land and land based resources. The expropriation of high potential areas for natural forests and game reserves, poor infrastructure and services attests to this official neglect. Colonial and post-colonial land administration in the pastoralist areas led to the deprivation of land management rights from the traditional institutions thereby creating uncertainty on the access, control and exploitation of land based resources including grazing lands, water and salt licks among others.
89. The Land (Group Representatives) Act (Cap 283) was enacted to provide a framework of transition from customary pastoral land tenure to individual tenure in pastoral areas.
90. The diverse roles that women play in dry land areas and the special problems that lack of rights to land places in their way of performing those roles is recognized.
91. To secure pastoralists tenure to land, the Government shall:
  - a) Institute alternative methods of registration of land for pastoral communities while allowing them to maintain their unique land use system and livelihoods;
  - b) Ensure that the rights of women in pastoral lands and land-based resources are recognized and protected;
  - c) Provide for flexible and negotiated cross boundary access among clans, groups and communities for mutual benefit to facilitate the migratory nature of pastoralism;
  - d) Ensure that all land uses and practices under pastoral tenure conform to the principles of sustainable resource management; and
  - e) Review the boundaries of reserved lands in pastoral areas to determine the current need.

### **Community Ownership**

92. To secure tenure in communally owned land, it shall be necessary:
  - a) Institute community tenure to land and land-based resources. The Government will also ensure security of tenure and trans-

generational and gender equity in access to and use of land and land based resources;

- b) Review the Group Registration System in areas where it still applies and where private tenure to land has not been introduced with a view to determine the extent to which the system remains viable and sustainable;
- c) Establish a legislative framework to regulate dealings in community land in pastoralist areas; and
- d) Establish appropriate local community institutions for land dispute resolution and access to justice within the pastoral communities.

### **3.3.1.9 Equitable and Sustainable Access to Land**

- 93. Access to land shall be assured for all Kenyans on the basis of equity, fairness, sustainable management and efficient utilisation of the land.

#### **Trans-generational Access to Land**

- 94. The Government shall enforce existing laws and establish a clear legislative framework for protecting the rights of all Kenyans to land for current and future generations.

#### **Access to Land for Basic Livelihood**

- 95. Encourage direct participation and involvement of all citizens (including marginalized groups) in access, use and control of land and land-based resources.

#### **Access for Investment**

- 96. Put in place mechanisms for access to land and guarantee all citizens access for investment purposes.

#### **Access for Non-Citizens**

- 97. Under the present land law, any person, a citizen or foreigner, can apply and be allocated land for any permissible use within the urban areas ranging from residential and industrial. Regulating non-citizen ownership of land is a principle employed by a number of countries to prevent citizens from becoming landless in their own country.
- 98. To encourage access to land with transparent legal guarantees, non-citizens and foreign companies will be permitted to acquire land from the Government or directly from landowners for investment purposes only in accordance with their investment objectives.
- 99. The Government shall put in place mechanisms for non-citizens and foreign companies interested in acquiring land for investment purposes to acquire renewable leasehold contracts and ensure that their investment assets are protected by law. For that purpose, the

standard leasehold term for land leased for investment purposes in Kenya shall not exceed 99 years.

### **3.3.1.10 Gender and Equity Principles**

100. Culture and traditions continue to support male inheritance of family land while there is lack of review/formulation of gender sensitive family laws. There is conflict between constitutional and international provisions on gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance.
101. Women are not sufficiently represented in institutions that deal with land. Their rights under communal ownership and group ranches are also not defined and this allows men to dispose of family land without consulting women. Few women have land registered under their names and lack of financial resources restricts them from entering the land market. Moreover International Conventions on Women's Human Rights relevant to women's property rights ratified by Kenya Government have not been translated into policies or laws.

### **Non-Discrimination in Land Distribution**

102. The Government shall adhere to principles of non-discrimination. It shall:
  - a) Repeal existing laws and outlaw regulations, customs and practices constituting discrimination against women in relation to land. It shall put in place appropriate legislation to ensure effective protection of women's rights to land and related resources;
  - b) Review, harmonise and consolidate all the laws relating to children's inheritance of family property in order to protect and promote the rights of orphans;
  - c) Enforce existing laws and establish a clear legislative framework for protecting the rights of boy and girl-child, youth and women in issues of inheritance to land and land-based resources;
  - d) Put in place mechanisms for assessing all claims to land on their wider merits to ensure that vulnerable persons acquire rights to land in special circumstances such as where parents are people living with HIV and AIDS and ensure that age and gender are not a barrier to allocation;
  - e) Enforce the Children's Act (Cap 586) and supervise the appointment of guardians for orphans to safeguard their property/land rights. It will also facilitate public awareness campaigns on the need to write wills to protect dependants in the event of death; and
  - f) Ensure proportionate representation of women in institutions dealing with land at all levels.

### **Protection of Marginalized Groups**

103. Marginalised groups comprise persons who, by virtue of their position or status in society (political affiliation, religion, gender or way of life) are deprived of advantages or opportunities in relation to land or land-based resources available to persons who are not under similar circumstances.
104. The problems faced by marginalized groups are part of historical injustices that arose from dispossession of land resources by one group from another, either by force, trickery, or lopsided and uninformed 'voluntary' exchange.
105. The Government shall:
  - a) Identify marginalized groups and put in place mechanisms to protect their land rights. It will undertake an inventory of existing marginalised groups to obtain a clear understanding of their current status and related land rights;
  - b) Develop a legislative framework to ensure that the rights of marginalised groups to access land and use the resources that are contiguous to them in a sustainable manner are secured;
  - c) Provide legal and institutional frameworks for restitution in lieu of destroyed property and loss of cultural habitation;
  - d) Involve the marginalized communities in the development and management of those resources contiguous to them and share the benefits thereof in case of exploitation; and
  - e) Recognize and protect the traditional knowledge of marginalized groups with regard to conservation of land-based resources.

### **Matrimonial Property**

106. To secure the rights of spouses to matrimonial property, the Government shall:
  - a) Review succession, matrimonial property and other related laws to ensure that they conform to the principle of equality between women and men;
  - b) Enact specific legislation governing division of matrimonial property to replace the Married Women's Property Act of 1882 of England;
  - c) Protect the rights of widows, widowers and divorcees through the enactment of law on co-ownership of matrimonial property;
  - d) Put in place appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources, before marriage (in cases of inheritance), during marriage, upon dissolution of marriage and after the death of the spouse; and
  - e) Put in place mechanisms to curb selling and mortgaging of family land without the involvement of the spouses.

### **3.4 LAND USE MANAGEMENT ISSUES**

107. The use of land in urban and rural areas as well as in the land/water interface has been a major area of concern to all Kenyans. Problems of unsustainable production, inadequate land use planning, poor environmental management, inappropriate ecosystem protection and management are commonplace and require appropriate policy response.

#### **3.4.1 Sustainable Production Principles**

108. Key problems that need to be resolved at the level of policy and law include:

- a) Underutilisation of land particularly in large farms;
- b) Land deterioration due to population pressure, massive soil erosion and variability in climatic patterns among other things;
- c) Poor infrastructure leading to abandonment of agricultural activities;
- d) Emergence of land use conflicts as a result of competing land uses;
- e) Uncontrolled subdivision of agricultural land;
- f) Indiscriminate sale and purchase of land;
- g) Overstocking in rangelands; and
- h) Limited extension services and shortage of agricultural finance.

109. The Government shall ensure that all land is put into productive use on a sustainable basis by facilitating the implementation of key land policy principles on sectoral land use, productivity targets and guidelines as well as conservation of land quality.

##### **3.4.1.1 Sectoral Land Use**

110. The Government shall facilitate an integrated and multi-sectoral approach to land use by implementing the following:

- a) Formulate a clear land use policy to guide rural and urban development, avoid land use conflicts and spur productivity; and
- b) Encourage integrated land use planning through use of appropriate information technology and participatory processes.

##### **3.4.1.2 Productivity Targets and Guidelines**

111. The following principles regarding land productivity targets and guidelines shall be implemented:

- a) Provision of incentives to induce land owners to use their land sustainably;
- b) Putting in place an enabling environment for agriculture and livestock development, including research, extension services, finance and infrastructure, marketing, agro-processing, rural electrification and farmers' training;

- c) Promulgation of a legal framework for a periodic review of land use practices with the provision for reorganization of rural settlements, to control excessive parcellation into sub-economic units, and for provision of infrastructure;
- d) Putting in place measures to determine appropriate land sizes according to use and productivity of land and provide incentives to stimulate voluntary readjustment of land sizes;
- e) Institution of a regulatory framework for land rental markets to spur development of rural agricultural land; and
- f) Review the law so as to encourage concurrent as opposed to individual proprietorship of land.

### **3.4.2 Land use Planning Principles**

- 112. Land use planning is a process that is concerned with the preparation and actualization of spatial frameworks for orderly management of human activities. The principal objective is to ensure that such activities are carried out in a manner that promises utmost attainment of economy, safety, aesthetics, harmony in land use and environmental sustenance.
- 113. Land use plans are usually prepared at national, regional and local levels on the basis of predetermined goals. The purpose of physical development plans is to provide development patterns meant to integrate rural and urban development. Further, such plans provide strategies for human settlement in terms of service centres, growth centres, transport and communication network, environmental conservation and rural development.
- 114. It is recognized that land use planning is essential to the efficient and sustainable utilization and management of land and land based resources. However, little effort has been made to ensure that such plans are effectively prepared and implemented. This has been largely due to the glaring functional disconnect between the plan preparatory authorities and agencies, lack of appropriate technical and institutional capacity of local authorities, inadequate human resource establishment in the ministry responsible for physical planning, lack of an effective coordinating framework for preparation and implementation of the planning proposals and regulations. Lack of a national land use policy has made the situation worse. These problems manifest themselves in terms of unmitigated urban sprawl, land use conflicts, environmental degradation, spread of slum developments and low levels of land utilization among others.
- 115. To address this problem, the Government shall provide an appropriate framework for the preparation of national, regional and local area land use plans and ensure that the planning process is integrated, participatory and meets stakeholder needs. Further, the

Government shall facilitate the preparation of a national land use policy as the basis for land use management.

#### **3.4.2.1 National and Regional Planning**

116. The Government shall:

- a) Ensure the preparation of national, regional and local area physical development plans;
- b) Develop procedures to ensure that all processes for initiation, preparation, approval and implementation of the plans are participatory; and
- c) Review the current laws related to planning to facilitate provision for the implementation of cluster settlements for easier provision of infrastructure.

#### **3.4.2.2 Urban and Peri-Urban Land Use Planning**

117. Development of land in urban areas has been inhibited by poor planning, rapid growth of peri-urban areas, urban sprawl and inadequate provision of infrastructure. Proper planning will provide for a well coordinated development of urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities.

118. The Government shall undertake to prepare and implement local area development plans (urban plans) for all urban and peri-urban areas in the country.

#### **3.4.2.3 Spontaneous (Informal) Settlement Planning**

119. Informal settlements shall be dealt with through implementation of the following principles:

- a) Development of a slum upgrading and resettlement programme under secure system of tenure for existing slums; and
- b) Putting in place measures to prevent further slum development.

#### **3.4.2.4 Urban Agriculture and Forestry**

120. Urban agriculture which is defined as the production of food and non food items through cultivation of plants, tree crop, aquaculture, and animal husbandry, within urban and peri-urban areas, has not benefited from proper regulation and facilitation.

121. The following principles will be implemented:

- a) Promotion of multi-functional urban land use; and
- b) Putting in place appropriate legal framework to regulate and govern urban agriculture and forestry.

#### **3.4.2.5 Planning and Development Control**

122. The key to effective land use planning lies in the existence of requisite institutional capacity and governance structures for judicious implementation and enforcement of approved plans,

- policies and strategies. Development control is a regulatory function of the State. In Kenya this functional responsibility is largely in the domain of Local Authorities which operate under both the Local Government Act (Cap 265) and the Physical Planning Act (Cap 286).
123. Problems associated with development control include weak and inadequate institutional capacity and lack of harmony among the principal statutes that govern planning and enforcement. In addition, outdated planning standards and regulations, the absence of a coordinating framework between and amongst the public sector agencies and the private sector aggravate the situation. Consequently, there is a disconnect between plan preparation, implementation and development control.
  124. To ensure that land use plans are applied as tools for effective land use management, the Government shall facilitate the following:
    - a) Review of relevant legislations to harmonize the governance structures, decision-making processes, planning standards and regulations;
    - b) Enhancement of institutional and human resource capacity of the Local Authorities; and
    - c) Provision of a framework for coordinated approach to enforcement of planning decisions amongst the various planning authorities and the citizenry.

### **3.4.3 Environmental Management Principles**

125. Kenya faces a number of environmental problems including the degradation of natural resources such as forests, wildlife, water, marine and coastal resources as well as soil erosion and pollution of air, water and land.
126. To achieve an integrated and comprehensive approach to the management of environment and natural resources, all policies, regulations and laws dealing with land based resources shall be harmonised with the framework established by the Environmental Management and Coordination Act (EMCA), 1999. This shall be directed by principles related to general environmental guidelines, environmental assessment and audit, urban environment problems as well as conservation.

#### **3.4.3.1 Environmental Guidelines**

127. All natural resources shall be vested in the citizens of Kenya through legally established structures, and where such ownership is vested in any other person or corporation they shall only hold such natural resources as managers in trust for the people of Kenya.
128. Policies for the management of land based resources in all sectors shall be harmonized with the Environmental Management and Coordination Act, 1999.

129. The Government shall domesticate international treaties relating to the protection of the environment, to which Kenya is a signatory.
130. The Government shall encourage preparation of participatory environmental action plans by communities living near environmentally sensitive areas to preserve cultural and social-economic aspects.

#### **3.4.3.2 Environmental Assessment and Audit**

131. To promote environmental assessment and audit as tools for environmental management, the Government shall implement following principles:
  - a) Ensure that environmental impact assessments and audits are carried out on all developments that have a propensity to pollute and implement appropriate remedial measures;
  - b) Monitor annually and stringently urban and rural environmental degradation to avert both current and future socio-economic negativities in infrastructural developments;
  - c) Encourage public participation in the monitoring and protection of the environment; and
  - d) Institute the polluter pays principle, and provide incentives to manufacturing concerns in order to control pollution and soil acidification.

#### **3.4.3.3 Urban Environmental Problems**

132. Kenya's rapid urbanization has led to infringement on environmentally sensitive areas such as wetlands, hilltops, water bodies and the coastline. Discharge of untreated industrial and domestic waste, gaseous emissions and unsafe quarries are some of the common urban environmental problems.
133. To address urban environmental problems the following measures shall be implemented:
  - a) Prohibit discharge of untreated solid and liquid waste into rivers and lakes by individuals and local authorities by providing waste dumping sites, sewerage treatment and incineration facilities;
  - b) Encouragement and requirement for labelling of any waste especially hospital waste before dumping;
  - c) Vesting in the local community structures all quarrying surface rights and excavation for the protection of environment and surface;
  - d) Encouragement of urban waste re-use or recycling; and
  - e) Development of a framework for rehabilitation of dumping sites and land that has been subjected to environmental degradation for enhanced livelihoods and environmental management.

#### **3.4.3.4 Environmental Conservation**

134. Contiguous communities shall be fully involved in the management and utilization of land and land based resources in a manner that confers benefits to them.
135. The Government shall foster Trans-Boundary Natural Resource Management (TBNRM) in the interest of national and international conservation and development goals.

#### **3.4.3.5 Conservation of Land Quality**

136. The following land quality conservation principles shall be implemented:
  - a) The intensification of use in the high potential, densely populated areas, through the application of efficient technology;
  - b) The improvement of the condition and productivity of degraded lands in rural and urban areas;
  - c) The dissemination of agricultural research results and experience to the farming communities;
  - d) The application of cost effective irrigation methods in areas of low agricultural potential; and
  - e) The formulation of a clear policy for comprehensive development of the livestock sector.

#### **3.4.3.6 Environmental Restoration**

137. To restore environmental integrity and facilitate sustainable management of the environment, the Government shall:
  - a) Put in place mechanisms for extinction of land rights in the interest of sustainable management of land-based natural resources and also for prompt and adequate compensation to communities and/or private entities whose land rights are extinguished in the interest of sustainable natural resource management; and
  - b) Put in place mechanisms for restoration of land for environmental purposes.

#### **3.4.4 Ecosystem Protection and Management Principles**

138. Kenya is characterized by diverse ecosystems which include forests, wetlands marine and coastal ecosystems, national parks, arid and semi arid lands (ASALs), water sheds, lakes and drainage basins. The core problem in the conservation and management of these ecosystems is related to their unsustainable exploitation arising principally from conflicting land uses and inadequate enforcement of natural resource management guidelines.

#### **3.4.4.1 Fragile Ecosystems**

139. Fragile ecosystems shall be managed and protected using the following measures:
- a) Development of a comprehensive and integrated land use policy with regard to fragile areas that considers the needs of neighbouring communities in such areas;
  - b) Zonation of all forest land and preserve it in order to protect water catchment areas from further degradation;
  - c) Development of procedures for co-management and rehabilitation of forest resources, recognizing traditional management systems and sharing of benefits with contiguous communities;
  - d) Vesting of the ownership of fragile ecosystems directly in the local community structures and supervised by national structures; and
  - e) Encouragement of participatory management and protection of fragile eco-systems in partnership with public, private and community sectors.

#### **Water sheds, Lakes, Drainage basins and Wetlands Protection**

140. The protection of water sheds, lakes and wetlands shall be guided by the following principles:
- a) Settlement and agricultural activities in the water catchment areas shall be prohibited; and
  - b) All water courses and wetlands should be identified, delineated and gazetted in line with recommendations of International Conventions.

#### **Marine and Coastal Ecosystems**

141. All islands and front row beaches shall be declared as fragile ecosystems.
142. Development activities in all islands and front row beaches shall take into account public concerns including access to beaches and national security and shall be subject to strict controls and management orders.

#### **Arid and Semi-Arid Lands (ASALs)**

143. All land uses and practices in the ASALs shall conform to land use plans and the principles of biodiversity protection, conservation and sustainable development.

#### **3.4.5 Sectoral and Cross-Sectoral Land Use**

144. Land Policy should be understood in the context of other sectors such as water, energy, human settlement, industry, tourism, wildlife, forestry and fisheries. Thus effective land management requires coordination and cooperation among these sectors.

145. To address these concerns, the following measures shall be undertaken:
- a) The Ministry of Lands shall institute consultative measures with the relevant sectors in order to mainstream their concerns in land reform programmes;
  - b) All relevant sectoral policies touching on land shall be rationalized and harmonized in line with this National Land Policy;
  - c) All public and private institutions whose functions are associated with the Ministry of Lands will work together with the ministry to ensure efficient implementation of the National Land Policy. Further, the NGOs and CBOs working in the land sector shall be encouraged to participate in effective utilization of land; and
  - d) Local Authorities shall work together with the Ministry of Lands to ensure proper land administration in their respective areas of jurisdiction.

### **3.5 LAND ADMINISTRATION ISSUES**

Land administration is the process of registration and dissemination of information in relation to land transactions. A good land administration system provides land title guarantee and land tenure security, supports the process of land taxation, and guides land transactions.

146. Principal components of land administration functions include:
- a) Definition and maintenance of property rights;
  - b) Establishment and enforcement of performance standards for land resource management;
  - c) Establishment of an efficient and accurate land information system;
  - d) Establishment of mechanisms for the assessment of land resources for fiscal development and revenue collection;
  - e) Establishment of efficient and accessible mechanisms for the resolution of land disputes; and
  - f) Establishment of mechanisms for management of public land.
147. The existing land administration and delivery systems are bureaucratic, expensive, undemocratic and prone to abuse, resulting in inordinate delays in the administration of land.

#### **3.5.1 Cadastral Principles**

148. A cadastre is the basis of a land administration system and is defined as a parcel based and up-to-date land information system containing a record of interests in land. Cadastral surveying is concerned with the charting of land to accurately define its boundaries for purposes of obtaining a certificate of title to and providing information about that land.

149. Shortage of trained personnel, the high cost of cadastral surveys, the centralization of cadastral processes, insufficient capacity and institutional development and requirements by law for authentication of plans stifle development as procedures are slow, cumbersome and time-consuming. Demarcation and cadastral survey systems require rationalization and strengthening, in order to contribute to an efficient land delivery system.

#### **3.5.1.1 Land Survey and Mapping**

150. The Government shall:
- a) Amend the Survey Act (Cap 299) to allow for technological advancements and streamline the survey authentication procedures;
  - b) Ensure that the processes of demarcation and survey in the context of land adjudication are more participatory to avoid land disputes; and
  - c) Improve mapping standards in general boundary areas.

#### **3.5.2 Land Adjudication Procedures and Processes**

151. The processes and procedures of land adjudication, consolidation and registration of rights were intended to extinguish customary land tenure and replace them with individual exclusive rights. The land adjudication process has witnessed a slow pace of implementation as a result of legislative and institutional constraints.
152. The Government shall put in place the following measures:-
- a) Review the law related to land adjudication to make the process transparent, accountable and efficient. The process will also recognize existing communal and other overlapping rights, provide sound dispute resolution systems to protect those concerned and provide for setting aside of land for public utility; and
  - b) Amend and merge the Land Adjudication Act (Cap 284) and the Land Consolidation Act (Cap 283) to increase the pace of implementation of land adjudication process in the remaining parts of the country. The new Act shall allow for both the appointment of community leaders to Boards and for registration of parcels not affected by objections to the Adjudication Register upon expiry of the stipulated inspection period of the Register.

#### **3.5.3 Land Rights Delivery Principles**

153. Land rights delivery is a process, which entails the mobilization of institutional mechanisms and personnel for ascertainment of rights, registration, planning, demarcation and/or survey, and the preparation of cadastres.

154. The Trust Land system has been widely abused by the County Councils and the Central Government. Instead of acting as the custodians of the land, the councils have facilitated the alienation of such land in favour of individuals and institutions in total disregard of the rights of the local residents.
155. The current arrangements of land rights delivery in Kenya as based on planning, demarcation, surveying, titling and registration are inappropriate and unable to supply adequate serviced land with security of tenure to the required scale and at an affordable cost. The process has been unable to achieve equitable and fair distribution of limited land resources. Furthermore the land allocation process is haphazard, expensive, lengthy, bureaucratic and time-consuming and therefore cannot afford the populace access to land rights.
156. The unsatisfactory land rights delivery system is also a result of land speculation, unethical practices by allocation personnel, corruption, political interference and excessive powers of those mandated to manage land. The inefficiencies and imperfections in the organization of the land registries are due to poor record keeping. This has encouraged multiple plot allocations and registration of land.

#### **3.5.3.1 Land Registration Systems**

157. The Government shall consolidate and harmonize all registration statutes relating to land rights creation, and delivery into appropriate Act(s) of Parliament with the aim of ensuring clarity and reducing the bureaucracy and administrative bottlenecks.

#### **3.5.3.2 Vesting of Community Land Rights**

158. The Government shall vest community land in representative community based structures such as community land boards, and adapt the system to recognize customary land rights, understand indigenous land management systems, and respect the rights of the vulnerable groups and women.

#### **3.5.3.3 Maintenance of Land Records**

159. The Government shall ensure that land records are authenticated, documented, and their custody and sanctity secured. To promote efficient land transactions, computerization of the land registries shall be undertaken and the information made available and accessible to all interested parties.

#### **3.5.3.4 Transaction Procedures and Costs**

160. In order to reduce costs and time, Government shall review land transaction procedures to make them less cumbersome and efficient for the land market.

### **3.5.4 Land Allocation Principles**

161. The procedures provided for in the Government Lands Act (Cap 280) and Trust Land Act (Cap 288) for allocation of public land have been routinely ignored, by-passed and disregarded by public officers for decades, resulting into illegal and irregular allocation of public land to individuals and corporation in disregard for public interest. This has had a profound effect on the security of tenure, land use planning, and development of urban areas.
162. Similarly allocation procedures for settlement schemes created by the Government under the Agriculture Act (Cap 318) are not defined, leading to manipulation of the lists of allottees, the result of which is that the landless and the poor are marginalized. In the rural areas there is a conflict between customary allocation of land and statutory allocation mechanisms, particularly when it comes to issues of inheritance.

#### **3.5.4.1 Allocation of Public Land**

163. The Government shall:
  - a) Review land allocation procedures to make them transparent, equitable and efficient;
  - b) Enact a Public Lands Act in place of the Government Lands Act (Cap 280) to provide for decentralization of land allocation responsibilities of public land to the Local/District Government levels taking into account planning principles and procedures; and
  - c) Prohibit by law allocation of protected areas reserved for forests, water catchment areas, road reserves, *Kayas*, wildlife corridors, mountain and hill tops, etc. The boundaries of such areas shall be clearly delineated and documented.

#### **3.5.4.2 Allocation of Community Land**

164. The Government shall enact the Community Lands Act in place of the Trust Land Act (Cap 288) that will vest community land in local/district authorities and establish clear procedures and criteria for the allocation of community land to eliminate incidents of misallocation or multiple allocations.

### **3.5.5 Land Market Principles**

165. Land markets are concerned with transfer, lease and mortgage of interests in land. The land market is complex under all tenure categories. It is closely linked and depends on both the capital and labour market. The land market directly affects both urban and rural environments and the quality of life in these areas. It responds differently to social and economic stimuli. It, however, suffers from lack of adequate information, and has too many players, including the provincial administration, politicians, land owners, and

professionals such as valuers and lawyers. There are currently emerging new land markets including rental market transactions in the informal settlements.

166. The lengthy conveyancing processes in land market involve registration, taxation, valuation, mortgages, payment of stamp duties, land rents and rates. Most urban centres in Kenya suffer from land market imperfections and failures caused by poor planning, slow provisions of infrastructure and services, poor land information systems and cumbersome and slow land transaction procedures.
167. The distortion in the land and property market has led to land speculation and hoarding, inefficient and corrupt administration which has pushed the poor into the informal land markets.

#### **3.5.5.1 Efficiency Criteria in Land Markets**

168. In order to increase availability and access to land efficiently and guarantee that the land market is liberated from impediments that would fetter its smooth and expeditious operation, the Government shall put in place the following measures:
  - a) Facilitate the commercialisation of land rights for ease of land market operation subject to principles of equity and sustainability;
  - b) Develop structures and instruments that will make the land market operations more efficient and effective;
  - c) Enact legislation to promote individual tenure, provide the investment security in the mortgage market and ensure that adequate information is available to stakeholders in both rural and urban areas so as to protect the rights of both lessors and leasees; and
  - d) Create a decentralized system of land registries drawing, where possible, on community level structures and organs of Government.

#### **3.5.5.2 Land Taxation**

169. The land and property tax system is currently based on legislation that gives extensive powers to the State and local authorities to assess and collect a variety of taxes, including land rents, stamp duty, estate duty and property rates, not to mention income tax on rents. However, the land based revenue sector is not performing as it should and has not reached its full potential due to land market inefficiencies caused by land speculation and under-utilization as well as policy assessment and administrative procedures. It is imperative that reform measures are put in place in the interest of equity, discouraging land speculation, enhancing revenue collection, and making serviced land more accessible.

170. The Government shall therefore undertake the following measures as part of the policy reform approaches:
- a) In urban areas the Unimproved Site Value and Improvement Value Taxation shall be implemented;
  - b) A special revenue collection system such as House Tax or Area Tax shall be designed for unplanned settlements to tap into the emerging commercial property markets in the slums and also facilitate improvement efforts;
  - c) The Development and Capital Gains Tax will be applied in order to capture for society some of the value created through public infrastructure improvement;
  - d) Estate/Probate Tax will be retained but applied subject to the remissions already enjoyed by certain types of properties and ownership to safeguard interests of the poor and the rural folk;
  - e) Stamp Duty will continue to be a major revenue source; however the tariff will be reviewed from time to time, especially to facilitate homeownership; and
  - f) The capacity of public institutions including local authorities, to assess and collect taxes shall be drastically improved.

### **3.5.5.3 Markets in Community Held Land**

171. The Government shall:
- a) Devolve the administration and management of land and other natural resources to accountable and representative local structures, which shall have sufficient legal safeguards;
  - b) Enact legislation to promote the land market operations in land held by communities; and
  - c) Ensure that legislative and regulatory instruments governing administration and management of community land are regularly reviewed and harmonized.

### **3.5.6 Dispute Resolution Principles**

172. There is need to ensure access to timely, efficient and affordable dispute resolution mechanisms. This is important for efficient land markets, tenure security and investment stability in the land sector.

#### **3.5.6.1 Resource Conflicts Resolution Principles**

173. The Government shall:
- a) Establish an independent, accountable and democratic system for adjudication of land disputes that is devolved to the local levels and backed by law;
  - b) Put in place mechanisms to resolve the human wildlife conflict; and
  - c) Put in place adequate legal and administrative conflict resolution mechanisms to address the variety of conflicts that arise due to conflicting interests and uses of land and related resources.

### **3.5.6.2 Community Dispute Processing**

174. The Government shall establish appropriate institutions for dispute resolution and access to justice within communities with clear operational procedures, mechanisms for inclusion of all members of community in decision-making and clear record keeping to ensure transparency and the development of guiding rules for making decisions on specific matters.

### **3.5.6.3 Jurisdiction of Courts and other Tribunals**

175. The Government shall establish a Land Division at the High Court to deal with:

- a) Land issues in the country; and
- b) Land dispute and conflict resolution mechanisms at District and Community levels.

### **3.5.6.4 Alternate Dispute Management Systems**

176. The Government shall:

- a) Integrate and utilize all possible conflict resolution options including those traditionally used by communities; and
- b) Encourage and facilitate the use of Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to reduce the number of cases that end up in the court system and delayed justice.

### **3.5.7 Land Information Management Principles**

177. In Kenya today, land information is held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making about land. Therefore Kenyans are currently experiencing a lot of difficulties and expense in accessing land information. However, even the paper records themselves are not optimally organized, and this can significantly slow down their systematic computerization.

178. In addition, Kenya lacks an up to date inventory of the amount of land under different uses such as forests, water and infrastructure among others. Lack of this vital information complicates effective planning, zoning and overall management of urban and rural land.

179. To address this situation, the Government shall prepare and implement national guidelines to improve the quality and quantity of land information system by computerization at both national and local authority levels. The guidelines will cover and address all aspects as standards, geo-referencing, security, intellectual property rights, and land information dissemination and pricing. This will enable the National Land Commission determine the stock of un-alienated Government land, avoid malpractices in the allocation process, hasten the land rights delivery process, achieve equity in allocation and efficiently disseminate land information to the public.

### **3.5.7.1 Prerequisites for LIMS**

180. The Government shall:

- a) Re-organize, update and authenticate existing land records in terms of accuracy in readiness for the setting up of a computer based LIMS;
- b) Provide necessary infrastructure, such as electricity, computers and internet connectivity down to the district level;
- c) Promote the growth of a viable information market to sustain the LIMS by removing unnecessary controls on availability of land information;
- d) Develop a strategy to facilitate sharing of information across Government departments; and
- e) Encourage public-private partnerships in the setting up of the LIMS.

### **3.5.7.2 Standards**

181. The Government shall:

- a) Develop data standards for geo-information, to provide especially for standardized feature definitions, data content, data coding, spatial referencing, data accuracies and metadata, through the coordinated effort of all data producers; and
- b) Facilitate the formation of a regulatory body for Geo-Information professionals to generate and develop a code of ethics and to standardize training of professionals.

### **3.5.7.3 Geo-referencing Systems**

182. The Government shall:

- a) Establish a unitary and homogeneous network of control points of adequate density, preferably using dynamic technology such as Global Positioning Systems (GPS); and
- b) Amend the Survey Act to allow for the use of modern technology such as Global Positioning Systems (GPS), Geographical Information Systems (GIS), etc.

### **3.5.7.4 Database Models and Architectures**

183. Appropriate database models and architectures which are in harmony with other systems in the country and in the region shall be used.

### **3.5.7.5 Legal Instruments and Institutional Arrangements**

184. The Government shall:

- a) Enact a land information law to provide for all aspects of land information access and management; and
- b) Define a mechanism for incorporation of traditional land information in the LIMS.

#### **3.5.7.6 Security Issues**

185. The Government shall:

- a) Put in place viable privacy, access, accountability and authentication policies; and
- b) Domesticating international conventions/laws as they apply to cyber and IT related crimes.

#### **3.5.7.7 Intellectual Property Rights Issues**

186. The Government shall develop and strengthen relevant intellectual property protection laws such as copyright and patent to adequately cater for fair commerce in land information.

#### **3.5.7.8 Land Information Dissemination and Sharing**

187. The Government shall:

- a) Make available land information in a form and language that can be understood by most citizens; and
- b) Put in place a National Spatial Data Infrastructure (NSDI).

#### **3.5.7.9 Land Information Pricing**

188. The Government shall:

- a) Undertake appropriate amendments to all laws and regulations that restrict the availability of land information products to the market;
- b) Put in place mechanisms to minimize the cost of land information such as the sharing of facilities, hiring (instead of buying), equipment, etc.;
- c) Produce and maintain a comprehensive metadata catalogue in respect of all LIMS products, and put in place an appropriate marketing strategy; and
- d) Put in place a structured management of the LIMS and an appropriate pricing strategy that will take cognizance of the need to generate sufficient revenues to sustain the LIMS; and apply differential pricing for different categories of users such as Government bodies, private individuals and corporations, the poor, etc.

### **3.6 LAND ISSUES REQUIRING SPECIAL INTERVENTION**

189. Several land problems deserve special attention and the Government shall take measures to resolve them, taking into account the land reform principles. These land issues include historical injustices, Coastal region land issues, the land rights of minority and marginalized, the land rights of vulnerable groups and the land rights of women. In addition, the impact of the HIV and AIDS pandemic on agricultural production and access to land rights shall be given due consideration.

### **3.6.1 Resolution of Historical Injustices**

190. Historical injustices are land grievances which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, treaties and agreements between local communities and the British. The grievances remain unresolved because successive post independence Governments have failed to address them in a holistic manner. In the post-independence period, the problem has been exacerbated by the lack of clear, relevant and comprehensive policies and laws.
191. The Government shall:
- a) Establish mechanisms to resolve historical land claims arising in 1895 or thereafter. The rationale for this decision is that 1895 is the year when Kenya became a colony under the British East African Protectorate with the power to enact policies and laws under the Crown. It is these colonial policies and laws which formed the genesis of the mass disinheritance of various Kenyan communities of their land;
  - b) Establish a suitable legal and administrative framework to investigate the historical injustices and recommend mechanisms for their resolution;
  - c) Review all laws and policies adopted by post independence Governments that exacerbate the historical injustices, including the constitutional provisions on the right to private property and compensation on compulsory acquisition regardless of how the property was acquired; and
  - d) Establish suitable mechanisms for restitution, reparation and compensation of historical injustices/claims.

### **3.6.2 Land Issues Peculiar to Coast Region**

192. The land question within the Coast region is potentially explosive owing to its peculiar historical and legal origins. In spite of this situation no serious systematic efforts have been made by subsequent Governments to solve them. The Land Titles Act (Cap.282) radically altered the concept of land ownership under African customary tenure governing the indigenous coastal communities, and created bases in the land adjudication against the indigenous communities. The abuse of the Land Titles Act has had a great negative impact on coastal land leading to the area having the largest single concentration of landless indigenous people. Specifically, this is manifested in form of “squatters” on Government land, absentee landlords, tenants-at-will, idle land, mass evictions and lack of access to the sea. In addition, the slow

land adjudication process and the displacement of the locals by the establishment of settlement schemes have rendered the locals landless rather than giving them the security of ownership.

193. To address the Coastal land problems, the Government shall:
- a) Take an inventory of all Government land along the '10 mile coastal strip' and other parts of the province where the problem is prevalent and come up with a framework for conversion to community land for eventual adjudication;
  - b) Vest all that land in the respective community structures within whose jurisdiction they are situated as trustees for the persons ordinarily respondent in the area;
  - c) Establish a suitable legal mechanism and administrative framework for addressing historical claims arising from the application of the Land Titles Act (Cap 282) of 1908;
  - d) Immediately convert freehold interest along beaches, islands and marine grounds to 99 years leasehold in exchange for the severance of the freehold interest effective from the passing of the policy/laws;
  - e) Provide a legal framework to protect the tenants at will;
  - f) Establish convenient public utility plots along the coastline to serve as landing sites and also for public recreation, and open up all public access roads to the beach. The Government shall also develop controls that limit construction of walls along the high water mark; and
  - g) Make appropriate constitutional and legal amendments to repossession of idle land that is unoccupied, abandoned, mismanaged and undeveloped for purposes of redistribution to the indigenous occupants.

### **3.6.3 Land Rights of Vulnerable Groups**

194. Vulnerability is usually a manifestation of poverty and deprivation. It takes forms such as lack of adequate shelter, illiteracy, exposure to ill treatment, lack of power to influence decisions affecting one's life, and physical disabilities. The most vulnerable persons in Kenya are but not limited to subsistence farmers, pastoralists, hunters and gatherers, agricultural labourers, unskilled and low-skilled workers, unemployed youth, persons with disabilities, persons living with HIV and AIDS, orphans, slum and street dwellers, and the aged. Poor and vulnerable people lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources.
195. The land rights of vulnerable individuals and groups are not protected and are subject to bias and discrimination. Further, the vulnerable lack cohesive institutions to represent their interests. In addition, negative perceptions, discriminatory and inequitable

practices due to gender and stigma against vulnerable groups undermine their will to access land.

196. The Government shall:

- a) Develop mechanisms for identifying, monitoring and assessing the vulnerable groups with a view to facilitating their access to land;
- b) Provide for the participation of the vulnerable groups in decision making over land and land based resources; and
- c) Protect the land rights of the vulnerable groups particularly the orphans.

#### **3.6.4 Implications of AIDS and HIV on Land Rights and Agricultural Productivity**

197. The National Land Policy recognizes the following as cross-cutting sectoral issues; poverty, HIV and AIDS, bio-diversity, youth and gender issues. Resource channelling shall be targeted to address poverty-related and HIV and AIDS occasioned problems. Policies, strategies and programmes for the conservation of bio-diversity and sustainable use of biological and genetic resources shall be integrated into relevant sectoral/cross-sectoral policies, strategies and programmes. Empowerment of youth and women is a critical factor in eradication of poverty. Emphasis shall be placed on mainstreaming youth and women concerns in anti-poverty programmes.

198. The HIV and AIDS pandemic has had significant impact on total economic productivity, specifically on utilization and production from land based resources. It has tended to affect the most productive age bracket. The pandemic thus calls for a reorganization of rural settlements with a view to rationalizing agricultural production systems. Further, this pandemic has adversely impacted on the property rights of widows and orphans, who are invariably disinherited of their family land whenever male house heads succumb to illnesses occasioned by the pandemic. The HIV and AIDS pandemic thus underscores the urgent need to reform cultural and legal practices that discriminate against women and children with respect to access and ownership of property.

199. The Government shall:

- a) Undertake an assessment of impact of the HIV and AIDS pandemic on agricultural production systems in the country so as to facilitate a reorganization of rural settlement systems;
- b) Review, harmonize and consolidate all the laws relating to children's inheritance of family land in order to recognize and protect the rights of orphans;
- c) Review the legislative framework to provide that minority does not constitute a barrier to proprietorship where circumstances

indicate that conferring ownership rights upon a minor would be appropriate;

- d) Carry out public education campaigns so as to encourage the abandonment of cultural practices that bar the youth and women from inheriting family land; and
- e) Review the laws on trusts and administration of estates with a view to ensuring that trustees act in the best interests of the beneficiaries of trusts and estates.

### **3.6.5 Disaster Management**

- 200. The country experiences disasters that should be managed in order to avoid the loss of both human and animal life, the negative impacts on plant growth and the destruction of property. Such disasters include floods, earthquakes, landslides and the collapse of buildings. Whereas there is no clear legislation on the issue, the Constitution provides that the state has power to carry out any action over property for the safety of its citizens. There is no legal, policy and institutional framework for the management of land-related disasters. There is also a dearth of appropriate technologies and financial resources to deal with these disasters.
- 201. The Government shall establish legal, policy and institutional framework for the prevention, preparedness and management of land-related disasters.

### **3.6.6 Environmental Problems around Camps for Refugees and Internally Displaced Persons**

- 202. Refugees are hosted in Kenya as a result of the civil strife in neighbouring countries. Incidences of tribal and land clashes have also led to creation of camps for internally displaced persons.
- 203. Due to the unpredictable nature of refugee influxes, resources such as fuel wood, water, and even pastures are usually overstretched giving rise to excessive demands on resources, degradation and conflicts. In addition, widespread and chronic infrastructural underdevelopment in the affected areas makes the situation worse. The presence of these camps exerts pressure on the fragile eco-systems thereby causing systematic ecological degradation.
- 204. The Government shall:
  - a) Institute a collaborative implementation of Environmental Management Coordination Act and other sectoral laws on natural resource management while setting up and managing camps;
  - b) Build the capacity of ministries, communities and private sector to appreciate and address environmental concerns in the camps;
  - c) Promote participation by the refugees and host communities while setting up the camps; and

- d) Negotiate riders in the UN conventions on refugees to provide adequate resources for conservation and rehabilitation of refugee camps in Kenya and to include respect of environmental concerns while setting up and managing the camps.

## CHAPTER 4: INSTITUTIONAL FRAMEWORK

205. The institutions responsible for managing land in urban and rural Kenya are many and varied, being the product of a series of legislative measures and administrative decrees promulgated throughout the last century. The land sector is faced with the existence of an institutional structure for Land Administration and Management (LAM) that:
- a) Is highly centralized in the Ministry of Lands and the Presidency;
  - b) Is performing poorly in service provision and is inadequately funded;
  - c) Is not sufficiently accessible to the poor, hostile to users and is perceived to be corrupt;
  - d) Has a land information system that is manual, inefficient and urgently needs computerizing;
  - e) Has not entrenched stakeholder involvement in decision making at the community level; and
  - f) Uses complex legal and administrative processes that are neither understood by users nor effectively applied as required.
206. There shall therefore be a complete overhaul of the existing LAM system and related institutional structures to ensure that service delivery is efficient, effective and equitable.

### **4.1 Structural Reform Principles**

207. The thrust of these policy reforms is to make the sector contribute more to poverty reduction, become more accessible to the poor, efficient, cost effective and equitable. The reform process will be guided by seven key principles:
- a) Devolution of power and authority
  - b) Community / stakeholder participation and representation
  - c) Operational and resources autonomy for new structures
  - d) Effective surveillance and performance monitoring systems
  - e) Justice, equity, gender, environment and appropriate enforcement mechanisms
  - f) Sustainability and conservation as pervasive values
  - g) Smooth transition from the current to the proposed arrangements.

### **4.2 Policy Framework for Land Management Institutions**

208. In order to deal with the diverse issues raised in Sections 3.4-3.6 above, the Government will set up three key land management institutions: the National Land Commission (NLC), the District Land Boards (DLBs) and Community Land Boards (CLBs).

#### **4.2.1 The National Land Commission (NLC)**

209. There shall be established a National Land Commission (NLC) to carry out land administration and management sustainably, equitably, efficiently and cost effectively.
210. The National Land Commission shall consist of commissioners nominated by Parliament and appointed by the President of the Republic. Members of the commission shall be drawn from public, private, community and civic sectors. Its chief executive officer, heads of departments and the entire staff shall be appointed by the Board of commissioners. The commission shall determine the number of departments, divisions and sections that will be required to provide the LAM service cost effectively at the national level.
211. The NLC will establish several directorates within its internal structure including a Directorate of Land Tax / Revenues to deal with financial administration. It will host the system for assessing, collecting and widening of the tax base, improving collections and retaining a substantial proportion of the revenues for use in the sector. The NLC, DLBs and CLBs will have to establish a revenue system and exercise fiscal autonomy. Local authorities will be encouraged to improve the rating infrastructure and NLC will spearhead reforms to the property tax system covering all types of land. The other directorates will include Land Information, Physical Planning, Surveying, Valuation, Human Resources and Land Administration.
212. The existence and mandate of the NLC shall be founded in the Constitution of Kenya and shall have the following functions:
  - a) Hold title to and administer public land in Kenya.
  - b) Manage private freehold and leasehold land in order to facilitate efficient delivery of land rights and operation of land markets.
  - c) Levy / collect and manage all land tax revenues except rates which shall be collected by district-based authorities.
  - d) Establish the office of Keeper / Recorder of Public Lands who will prepare and maintain a register of public lands and related statistics.
  - e) Set up a Land Titles Tribunal, which will sort out the bona fide ownership of land that was previously public or trust land.
  - f) Install and operate an electronic land registry and also advise DLBs and CLBs on establishing computerized land registries at their respective levels. Existing structures for regulation of transactions (especially in rural areas) and rents will be streamlined.
  - g) Establish a Land Policy Research Centre (LPRC) possibly through partnership with universities to coordinate land policy research. It will set the agenda, identify researchers and finance investigation into key policy areas.

213. The NLC on establishment shall within two years create legal and administrative mechanisms to investigate, document and recommend measures to be taken in respect of historic injustices including restitution or compensation over a time period specified by legislation. A window for compensation will be established within the Trust Fund to address claims of deserving aggrieved parties of past injustices. The compensation will be funded from contributions by the Exchequer, donations and penalties imposed on perpetrators of historical injustices.
214. NLC will create and manage a semi-autonomous National Land Trust Fund (NLTF) to mobilize and pool finances to facilitate interventions that are of mutual benefit to people in all the district land jurisdictions. The duties of the NLTF will include:
  - a) Managing the funds contributed by DLB,
  - b) Mobilizing own funds,
  - c) Disbursing funds to priority projects of NLC including compensations,
  - d) Ensuring financial sustainability of the land sector.
215. All the DLBs shall contribute a proportion of their land tax revenue into the NLTF which shall be administered by its own independent board.

#### **4.2.2 The District Land Boards (DLBs)**

216. It will have the mandate of promoting equitable access to land, conservation of cultural sites, protection of minority land rights, redressing historical injustices through appropriate awards and reducing transaction costs of CLBs.
217. The functions that are currently performed by the MoLH at the district level shall be rationalized to form the core function of the District Land Boards (DLBs). The DLBs will be the agent of NLC at the district and will have several departments as appropriate. In addition there shall be Land Information and Land Tax/Revenue departments. These departments are needed to facilitate land administration and management. Other functions shall include:
  - a) Enabling the efficient operation of land markets at the district level.
  - b) Coordinating and overseeing the work of CLBs.
  - c) Monitoring and evaluation of programmes at the district level.
218. The transactions recorded in the District Land Registry will cover public, private and community land.
219. The reform process shall pay special attention to the needs of different communities in the jurisdiction and facilitate the democratic election of their representatives in line with the principles guiding the reform process stated above in designing the membership of the Board at the district level. The DLB jurisdiction

may need to cover more than one district in order to have sufficient transactions to support it in financial terms.

220. The majority of members of DLB shall be elected by a majority of eligible voters in the jurisdiction from candidates who shall meet eligibility criteria set out by the legislation. The Board shall appoint its chief executive officer and heads of departments as per guidelines, standards and minimum qualifications set by NLC.

#### **4.2.3 Community Land Boards**

221. Community land is land that is owned by the communities themselves and which is currently managed by county councils. It will be managed by the communities, which will create legal entities to be known as Community Land Boards (CLB) to constitute the third tier of the devolved land administration system. Membership of the Board shall be worked out by the communities in close consultation with respective DLBs from people ordinarily resident in that area. The criteria shall respect ethnic diversity, gender, socio-political dynamics, and sustainability. The CLBs will be elected bodies which will vet / approve all land transactions relating to trust / community land and submit relevant documentation to the district land registry to facilitate recording and issuing of title by the DLB. They will carry out detailed investigations to determine the inventory of all community lands. The work of CLBs at divisional and locational levels will be coordinated by the DLB through the establishment of standards and a regulatory framework. A Community Land Act (CLA) shall be enacted in place of the current Trust Land Act (Cap 288) as a special legislation to deal exclusively with community land.

### **4.3 SUPPORT AGENCIES**

222. In addition to the land management institutions described above, other important institutions in the land sector will include the Ministry of Lands (residual function), local authorities/district governments, land property tribunals, district land tribunals, Land Division Courts (High Court), National Land Trust Fund (NLTF) and the Land Reform Unit.

#### **4.3.1 The Ministry of Lands and Housing**

223. The main tasks of the Ministry will be to:
- a) Rationalize the role of the Ministry to help it shed the LAM functions to the proposed new structures i.e. NLC, DLB, CLB and to the local authorities.
  - b) Develop the residual role of the Ministry around the core functions of policy making, coordination of policy implementation, programming / implementation, environment, gender, HIV and AIDS and redress of social equity concerns.

- c) Rationalize and harmonize the respective departments as part of the ministerial reform.
- d) Focus on sector resource mobilization, policy advocacy and providing political leadership; public accountability and facilitating implementation of the land policy reform programme to its logical conclusion.
- e) Coordinate the management of the National Spatial Data Infrastructure (NSDI).
- f) Rationalize the current functions that can be commercially operated or should be privatized to ensure sustainable service delivery e.g. surveying, valuation, physical planning and revenue collection, with MoLH setting service standards, regulating providers, quality control and capacity building.
- g) Monitoring and Evaluation of sector performance especially in regard to enhanced accountability.
- h) Drive the reform process through the Land Reform Unit.
- i) Coordinate and oversee through the various statutory bodies created for the purpose, the regulation of the land related professions including planners, surveyors, valuers and estate agents.

#### **4.3.2 Local Authorities/District Governments**

224. The function of land use planning and enforcement of approved development plans/controls will continue to be carried out by local authorities in line with the Local Government Act (Cap 265) and the Physical Planning Act (Cap 286), which statutes will be amended to conform to changes introduced by this land policy. Also relevant to this function is the harmonization with the agriculture and forestry legislation. The DLBs will oversee overall policies and standards for land use planning and enforcement of development plans.

#### **4.3.3 Property Tribunals**

225. At the moment there are two tribunals that operate in the area of regulating the changes in property rents for residential and business premises. The Rent Restriction legislation shall be reviewed in order to ascertain its necessity to protect workers and poor tenants from too rapid rises in the level of house rents. In the short-term however it is necessary to review upwards the rent ceiling for controlled tenancies, which is now too low. The continued relevance of the Business Premises Tribunal will be reviewed in light of progressive liberalization of investment and trade. The reform to the tribunals will be in line with the general reforms in the judiciary.

#### **4.3.4 Land Disputes Tribunals**

226. There shall be enacted a statute to establish at the District and Community level a Land Disputes Tribunal alongside the judiciary for land disputes/conflicts resolution. In this respect the current

Land Disputes Tribunal Act No. 18 of 1990 shall be replaced. At the community level the CLBs and DLBs will maximize the opportunity to apply Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to reduce the number of cases that end up in the court system resulting in delayed justice. Disputes will be referred to LDTs by individuals and CLBs.

#### **4.3.5 Land Courts**

227. The Government shall establish a land court as a division of the High Court to deal exclusively with land issues in the country.

#### **4.3.6 Land Reform Unit**

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

229. The Reform Unit will be coordinated and led by Land Reform Coordinator for an initial period of three years subject to renewal, with the specific tasks of:

- a) Getting the legislation drafted and passed,
- b) Organizing the civic education,
- c) Mobilizing the finances,
- d) Forming relevant institutions,
- e) Recruiting and training required personnel, and
- f) Generally ensuring a smooth transition.

230. The Reform Unit will be coordinated and led by Land Reform Coordinator who will be guided by the programmes/priorities outlined in the Land Policy Implementation Framework. Among the tasks will be legislative reform, capacity building, formation of the new agencies and mobilising the resources needed to transform the new land policy from vision to reality.

#### **4.4 Land Policy Implementation Framework**

231. The process of land policy implementation will generally be guided by the framework that will be set by the Government after necessary consultations with other sectoral agencies and development partners. The current NLP Secretariat once transformed into the Land Reform Unit will need to prepare the ground for the establishment of the organs that will own and drive the policy implementation process from within the Ministry of Lands and Housing. The Land Reform Unit will source for additional technical capacity as necessary to manage a time-bound work programme that will deliver the main outputs of policy implementation over an initial period of 36 months.
232. The work programme will include the inputs of short term consultancy service providers towards specific studies, land systems data inventories, organizational development and management studies, personnel recruitment and training, civic education, awareness creation and detailed consultations with stakeholders.

##### **4.4.1 Programming Implementation**

233. The effort required to mobilize the necessary resources and set out the road map for wide ranging sector reforms needs to be appreciated and mechanisms for their realization need to be put in place relatively quickly. Besides, at the base of implementation programme should be a well thought out capacity building plan that should focus on the development and transfer of relevant skills, technological transformation and infusion of progressive mindsets across the entire MoLH and critical stakeholder institutional components.
234. In order to ensure the success of the land sector reforms it is recommended that:
- a) MoLH moves quickly to establish in-house capacity to own and drive the reform programme from within, by transforming the current NLP Secretariat into the Land Reform Unit (LRU) reporting directly to the Permanent Secretary;
  - b) The deployment of the NLP Secretariat personnel to the unit should be rationalized under suitable time-bound contractual terms that are attractive to encourage results-oriented management and performance. LRU personnel should all be

- delinked from their mother departments in the MoLH to ensure effective coordination and allegiance to the programme;
- c) The Unit shall be supported by relevant technical consultancy services identified and judiciously selected as need arises. While generally reporting to the PS, the scope of work and administrative guidelines for the recruited technical experts should be carefully promulgated to ensure that there is no duplicity and overlaps with the mandate of the regular leadership of the unit; and
  - d) The establishment of the Unit and the contracting for the required technical assistance be executed as soon as practically possible in order to enable the Unit take charge of the land reform programme.

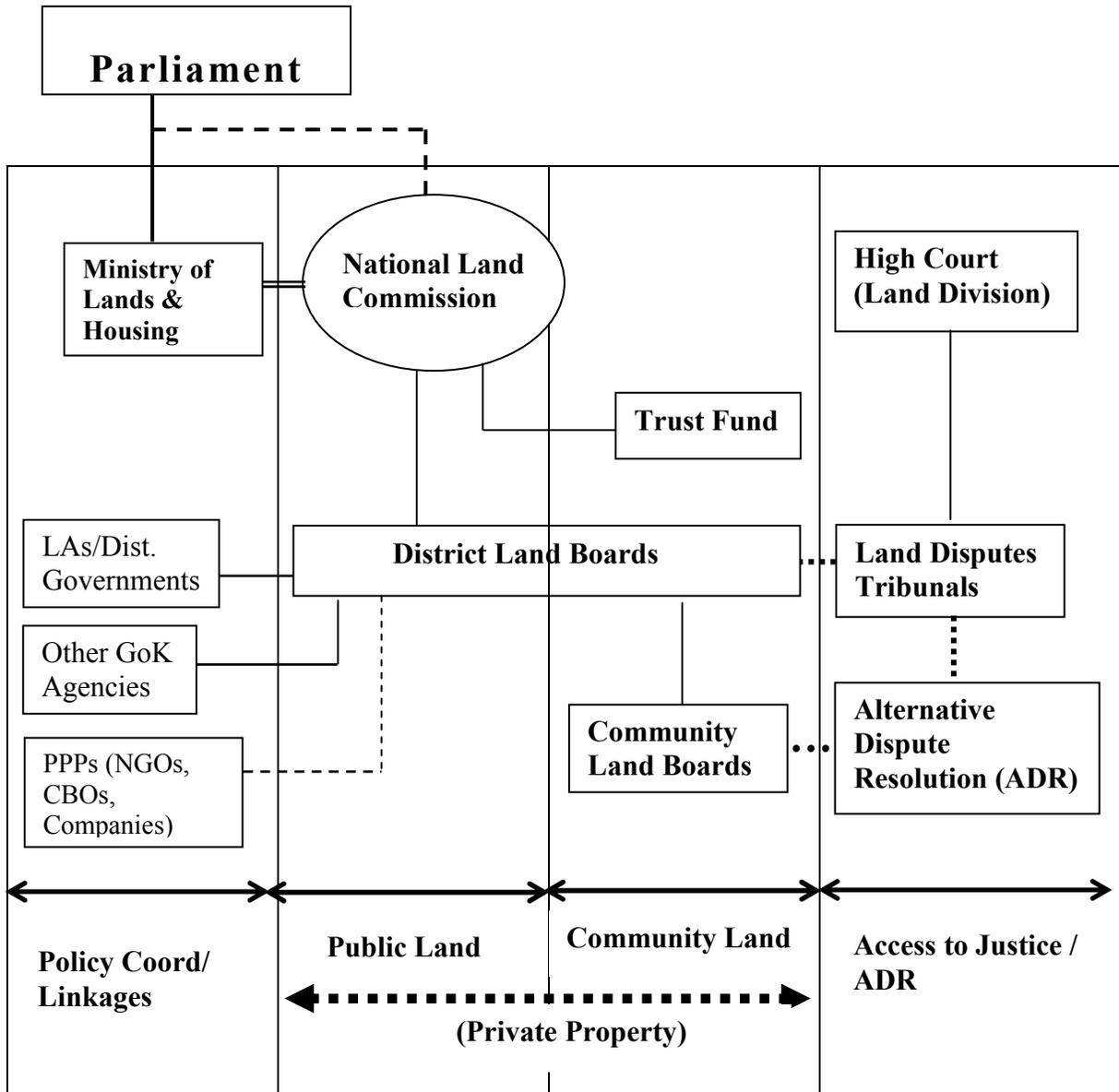
#### **4.5 Financing the Land Reform Programme**

235. Over the next six years, the envisaged Land Sector Reforms will cost Kshs. 9.6 billion (approx.) commencing during the FY 2005/2006. A good proportion of the estimated costs will be met from the various revenue sources available to the Ministry, while the rest will be sourced from development partners. With effective implementation of the proposed land sector reforms, the revenue collection in the Ministry of Lands will more than double the current annual estimate of Kshs. 2.0\* billion.

# ANNEX I: PROPOSED ORGANIZATIONAL STRUCTURE

## Proposed Organizational Structure (New Institutions)

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



NLP Implementing Institutions

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

**Notes 2:**

**1. Legal Status of NLC:** The legislation that will establish NLC shall specify its autonomy regarding funding and internal operations. Its linkages with the Ministry shall be defined in the legal framework.

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

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

## ANNEX II: GLOSSARY OF TERMINOLOGIES

### **Land**

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

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

### **Land Management**

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

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

### **Restitution**

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

### **Reparation**

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

### **Informal Settlements/Sector:**

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

### **Absentee Landlords/land owners:**

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

### **Idle Land**

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

### **Squatter**

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

At the Coast of Kenya, a squatter would include a person occupying Government land or private land. For historical reasons the word "squatter" in this context is regarded by indigenous coast people as a term of abuse or misnomer.

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

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

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

### **Landless/Landlessness**

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

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

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

**Peri-Urban:**

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

**Zoning**

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

**Sanctity of title**

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

**Optimal Land Use**

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

**Radical Title**

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

**Community**

Refers to a grouping of individuals and/or families who share a common heritage, interest or stake in an identifiable land, land based resources or profits that may be derived therefrom. Membership to a community arises out of (but is not limited to) ethnic grouping, kinship ties, territorial delineations, environmental position and on mutually agreed terms.

In the case of pastoralists, community denotes a grouping of individuals and families who identify themselves as belonging to a certain clan that inhabit a defined land area which is exploited for settlement, pasture and other activities.

**Communal Rights**

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

**Minority Communities/Groups:**

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

### **Hunters and Gatherers**

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

### **Urbanization**

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

### **Illegal/Irregular Allocations**

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

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

### **Customary Land Rights/Systems**

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

### **Communal Tenure Systems**

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

### **Resource Tenure**

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

### **Wildlife Dispersal Lands/Migratory Corridors**

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

### **Community Land Board/ District Land Board**

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

### **Allocation of Land/Alienation of Land**

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

### **Indigenous People**

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

### **Open Spaces**

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

### **Urban Agriculture**

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

### **Co-ownership (Joint and Common)**

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

### **Family (in the context of land ownership)**

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

### **Fragile Ecosystems**

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

### **Historical/National Heritage Sites**

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

### **Land Development**

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

### **Community Land Trust**

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

### **Metadata**

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

### **Geo-information**

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