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on
National Land Policy

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FOREWORD

The formulation of a comprehensive National Land Policy commenced in February 2004. In April 2007, a Draft National Land Policy was adopted by stakeholders through a National Symposium. The Seventh Cabinet meeting held on 25th June, 2009 approved the Draft National Land Policy and directed the Minister for Lands to proceed with the preparation of the Sessional Paper for presentation to Parliament. The Sessional Paper is now ready and this marks a critical milestone in the National Land Policy Formulation Process.

The National Land Policy is based on views and expert opinions collected and collated through a structured all-inclusive and consultative process that brought together stakeholders drawn from the public, private and civil society organizations. The broad based process of consultations was carried out around identified thematic areas that formed the nuclei of stakeholder engagement and consensus building, and conducted through workshops, seminars, submission of memoranda and topical research papers.

The various sectoral policies and strategic plans that have been developed by other Government Ministries and Agencies were consulted to ensure that the Land Policy recommendations are relevant and roundly consistent with other policy standpoints. In a large measure, the Land Policy has benefited from the Report of the Commission of Inquiry into the Land Law System of Kenya, the Report of the Constitution of Kenya Review Commission and the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land. Further, the Land Policy Formulation Process has been informed by the various key Government Policy standpoints including the Poverty Reduction Strategy Paper, the Economic Recovery Strategy Paper for Wealth and Employment Creation and the National Environment Management and Coordination Policy.

This Sessional Paper, therefore, presents the issues and policy recommendations that have been identified, analyzed and agreed upon by the stakeholders. It is a hall mark of the rare sense of dialogue and collaboration between the Government and the Citizenry in tackling, arguably, the most emotive and culturally sensitive issue in Kenya. In this respect, therefore, the Paper will form the foundation upon which the administrative and legislative framework will be built. This is the framework that will drive the critically required land reforms in this country.

It is, however, necessary to point out that the act of formulating a National Land Policy will not, on its own, bring about the envisaged land reforms. There is need for goodwill and commitment from everyone to ensure a smooth implementation of the reforms. In this regard, participation of all stakeholders will continue to be sought and enhanced by encouraging

regular consultations and dialogue. The Government, on its part, will provide an enabling policy environment through the establishment of essential institutions and provision of sufficient financial support.

In this way, I am confident that we will collectively achieve the vision of the National Land Policy of guiding the country towards efficient, sustainable and equitable use of our land resource.

A handwritten signature in black ink, appearing to read 'James A. Orengo', with a long horizontal stroke extending to the left.

James. A. Orengo, M.P., E.G.H.

MINISTER FOR LANDS

EXECUTIVE SUMMARY

Kenya has not had a single and clearly defined 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. The land question has manifested itself in many ways such as 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 efficient, sustainable and equitable use of land for prosperity and posterity”*. Stakeholders from public, private and civil society contributed towards the policy formulation through thematic groups *based discussions*, regional workshops and written submissions. 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 Sessional Paper has thus been formulated to provide an overall framework and define the key measures required 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 compulsory acquisition and development control 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 Sessional Paper 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 Sessional Paper, 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 investment, agriculture, livestock development and the exploitation of natural resources.

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 administration and management problems 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.

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. District Land Tribunals will also be established, as will be a National Land Trust Fund to mobilize finances. Land matters may in addition be referred to the land division of the High Court. The Ministry in charge of Lands will continue performing residual roles including policy formulation and enforcement, resource mobilization, and monitoring and evaluation. Implementation of the Land Policy will require building of in-house capacity to plan, prepare and implement the policy recommendations.

CHAPTER 1: BACKGROUND INFORMATION

1.1 The Problem

1. Land is critical to the economic, social, and cultural development of Kenya. Land was also a key reason for the struggle for independence and land issues remain politically sensitive and culturally complex.
2. Kenya does not have a single 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 inconsistent and 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 efficient, sustainable and equitable use of land for prosperity and posterity.

1.3 Mission of the Policy

4. To promote positive land reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, institutions and systems dealing with land.

1.4 Objectives of the Policy

5. The overall objective of the National Land Policy is to secure rights over land and provide for sustainable growth, investment and the reduction of poverty in line with the Government's overall development objectives. Specifically the policy shall offer 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 with the opportunity to access and beneficially occupy and use land;
 - (b) Economically viable, socially equitable and environmentally sustainable allocation and use of land;
 - (c) Efficient, effective and economical operation of land markets;
 - (d) Efficient and effective utilisation of land and land-based resources; and
 - (e) Efficient and transparent land dispute resolution mechanisms.

1.5 National Land Policy Formulation Process

6. 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.

1.5.1 Land Policy Principles

7. The formulation of this Policy was guided by the following principles:
 - (a) Equitable access to land for subsistence, commercial productivity, settlement, and the need to achieve a sustainable balance between these uses;
 - (b) Intra- and inter- generational equity;
 - (c) Gender equity;
 - (d) Secure land rights;
 - (e) Effective regulation of land development;
 - (f) Sustainable land use;
 - (g) Access to land information;
 - (h) Efficient land management;
 - (i) Vibrant land markets; and
 - (j) Transparent and good democratic governance of land.

1.5.2 Guiding Values

8. The national land policy formulation process was designed to be:
 - (a) Consultative;
 - (b) Participatory;
 - (c) Interactive;
 - (d) Inclusive;
 - (e) Consensus-based;
 - (f) Timely and professional;
 - (g) Transparent;
 - (h) Gender sensitive;
 - (i) Innovative; and
 - (j) Cost effective.

1.5.3 Methodology

9. This policy was generated from:
 - (a) The Issues and Recommendations Report produced by the Thematic Groups comprising of state and non-state actors;

- (b) Regional workshops organized in the eight provinces of Kenya to collect views from stakeholders;
- (c) Reports documenting past initiatives on land policy reform; and
- (d) Written submissions from individuals, groups and organisations.

1.5.4 Policy Review

10. The National Land Policy is a living document which comprises an overall framework and set of principles to guide sectoral, legislative and institutional reforms in land administration and management. There will be need to review this Land Policy every ten years to take into account current and future needs in view of social and economic dynamics in the land sector.

CHAPTER 2: THE LAND QUESTION

2.1 Country Background

2.1.1 Geographical Features and Ecological Zones

11. The Republic of Kenya has an area of approximately 582,646 sq. km. comprising 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, national reserves and game parks account for ten percent (10%) of the land area, i.e. 58,264 sq. km.
12. 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 these regions, with the Lake Victoria basin receiving the heaviest and most consistent rainfall.

2.1.2 Population Patterns

13. Kenya's population according to the 1999 Population Census was 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.
14. The decline in population growth rates in the last ten years was as a result of both increased mortality (from 10% in 1995 to 12% in 2003) and stagnation in fertility levels (from 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.
15. 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 retarded productivity levels, increased the dependency ratio and put 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

16. Approximately seventy five per cent (75%) of the country's population lives within the medium to high potential agricultural areas (consisting of 20% of the land mass) while the rest of the population lives in the vast Arid and Semi-Arid Lands (ASALs). One consequence of this is that size and distribution of land vary 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 persons per sq.km. in high potential areas.
17. The rural-urban population 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. The census also indicates that absolute poverty in the rural and urban areas now stands at 54% and 53% of the population respectively.
18. 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 state farms that used to produce seed and breeding stock have been sub-divided and transferred to private ownership. The National Development Plan (2002-2008) 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

19. 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 represented an adaptive, co-optive and pre-emptive process which gave the new power elites access to the European economy. Therefore, this process:
 - (a) 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) 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) Was geared towards preventing the mobilisation of a nationalist base that would be opposed to continuation of colonial policies after independence.
20. Property rights protection was deemed imperative for the conclusion of the independence talks held in Lancaster House from 1960 to 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 the new Government, prompting it to institute measures to appease the vocal Africans still clamouring for the land taken from them. While these measures enabled the small holders to become the main driving force behind agricultural production, they were however, inadequate to resolve the issue of landlessness.

2.2.2 Economic Aspects

21. The genesis of the land question can be traced to the colonial times when the objective was to entrench a dominant settler economy while subjugating the African economy through administrative and legal mechanisms. For example, 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

22. Since independence Kenya has had two land tenure systems, namely Customary and statutory land tenure systems 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);
 - (e) The Land (Group Representatives) Act (Cap 287);

- (f) The Trust Land Act (Cap 288); and
 - (g) Sectional Properties Act No.21 of 1987.
23. The net effect of these tenure 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 on principles of English property law on the one hand and a largely neglected regime of customary property law on the other hand;
 - (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 and government controlled 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 and Impacts of the Land Question

24. Several developments in the country have brought the land question into sharp focus. These include:
- (a) Rapid population growth in the small farm sector, a systematic breakdown in land administration and land delivery procedures, inadequate participation by communities in the governance and management of land and natural resources;
 - (b) Rapid urbanization, general disregard for land use planning regulations, and a multiplicity of legal regimes related to land;
 - (c) Gross disparities in land ownership, gender and trans-generational discrimination in succession, transfer of land and the exclusion of women in land decision making processes;
 - (d) Lack of capacity to gain access to clearly defined, enforceable and transferable property rights;
 - (e) A general deterioration in land productivity in the large farm sector; and
 - (f) Inadequate environmental management and conflicts over land and land based resources.

25. These developments have had many impacts and led to low productivity and poverty. These impacts include :
- (a) Severe land pressure and fragmentation of land holdings into uneconomic units;
 - (b) Deterioration in land quality due to poor land use practices;
 - (c) Unproductive and speculative land hoarding;
 - (d) Under-utilization and abandonment of agricultural land;
 - (e) Severe tenure insecurity due to overlapping rights;
 - (f) Disinheritance of women and vulnerable members of society, and biased decisions by land management and dispute resolution institutions;
 - (g) Landlessness and the squatter phenomenon;
 - (h) Uncontrolled development, urban squalor and environmental pollution;
 - (i) Wanton destruction of forests, catchment areas and areas of unique biodiversity;
 - (j) Desertification in the arid and semi-arid lands; and
 - (k) Growth of extra legal land administration processes.

2.4 Land Policy Issues

26. 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, governance and political ramifications of the land issue.
27. The National Land Policy addresses the following important issues:
- (a) Constitutional issues;
 - (b) Land tenure issues;
 - (c) Land use management issues;
 - (d) Land administration issues;
 - (e) Land issues requiring special intervention;
 - (f) Institutional framework; and
 - (g) Implementation framework.

CHAPTER 3: THE LAND POLICY FRAMEWORK

3.1 PHILOSOPHY OF THE NATIONAL LAND POLICY

28. This Land Policy sets out goals and direction for the present and the future management of land in Kenya. It consists of measures and guidelines which the government shall implement to achieve optimal utilization and management of land, and from which laws governing land administration and management shall be drawn. This Policy and its implementation shall be guided by the philosophy outlined in Paragraph 29 below.
29. Land is not just a commodity that can be traded in the market. It represents the following multiple values which should be protected by both policy and law:
 - (a) Land is an economic resource that should be managed productively;
 - (b) Land is a significant resource to which members of society should have equitable access for livelihood;
 - (c) Land is a finite resource that should be utilized sustainably; and
 - (d) Land is a cultural heritage which should be conserved for future generations.
30. Existing policies and laws on land in Kenya pursue economic productivity at the expense of other equally important values. Accordingly, these policies and laws have largely neglected the need to ensure equity, sustainability and the preservation of culture in the utilisation of land.
31. Some of the consequences of these policies and laws are the deprivation of many Kenyans of access to land and the disruption of indigenous culture and conservation systems.
32. This Land Policy recognizes the values of economic productivity, equity, environmental sustainability and the conservation of culture, and seeks to facilitate their protection.
33. It adopts a plural approach, in which different systems of tenure co-exist and benefit from equal guarantees of tenure security. The rationale for this plural approach is that the equal recognition and protection of all modes of tenure will facilitate the reconciliation and realisation of the critical values which land represents.

3.2 CONSTITUTIONAL ISSUES

34. Land is a central category of property in Kenya. It is the principal source of livelihood and material wealth, and invariably carries

cultural significance for many Kenyans. Fundamental issues in the Policy should be anchored in the Constitution. For these reasons, land should be treated as a constitutional issue.

35. The current Constitution does not recognize the uniqueness of land and lumps it with other categories of property.
36. In an ideal situation, a constitution should set out the broad principles for the governance of 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 reforms if they are to be effective.
37. The need for land reforms in Kenya largely arises from the failure of the current Constitution to establish an efficient, accountable and equitable institutional framework for land ownership, administration and management. This failure has resulted in the following:
 - (a) Centralisation of state responsibility over land matters, with the effect that governmental decisions have not been responsive to the citizenry, especially at the local level;
 - (b) Lack of governmental accountability in land governance leading to irregular allocations of public land;
 - (c) Constitutional protection of private property rights even where they are acquired in an illegitimate manner;
 - (d) Mass disinheritance of communities and individuals of their land;
 - (e) Inequitable access to land, particularly for women, children, minority groups and persons with disabilities; and
 - (f) Ineffective regulation of private property rights, as a result of which unplanned settlements and environmental degradation have become commonplace.
38. The current Constitution does not provide an adequate framework for the fiscal management of land and land based resources, thereby contributing to poor land use, speculation and loss of land based revenue.
39. In order to establish a firm foundation for land policy reform, the Constitution should respect the following principles:
 - (a) Rational allocation of powers and responsibilities to State institutions;
 - (b) Transparency and accountability of State institutions;

- (c) Participation of the citizenry in decision-making processes on land matters;
 - (d) Security of legitimate rights to land;
 - (e) Equitable access to land in the interests of social justice;
 - (f) Resolution of genuine historical and current land injustices;
 - (g) Regulation of the use of all categories of land in the public interest;
 - (h) Protection of human rights for all, especially the rights of women, minorities, children and persons with disabilities, with respect to access to and ownership of land rights; and
 - (i) Sound framework for the fiscal management of land and land based resources to facilitate efficient utilization and equitable allocation of land.
40. The Constitution should embrace the constitutional principles outlined above and establish a firm foundation for the implementation of land policy reforms.

41. The Constitution shall provide for the establishment of a National Land Commission (NLC) to carry out efficient, equitable and sustainable land administration and management.

3.2.1 Regulation of Property Rights

42. In the regulation of property rights, two particular powers of Government raise fundamental constitutional issues, and have neither been exercised effectively nor accountably. These are the powers of compulsory acquisition and development control.
43. The exercise of these powers should be based on rationalized land use plans and agreed upon public needs established through democratic processes.
44. The radical title (ultimate ownership) shall be vested in the people of Kenya collectively as a nation, as communities and as individuals. Tenure rights shall be derived from that radical title under specific laws.

3.2.1.1 Compulsory Acquisition

45. 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 current Constitution also 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:

- (a) Review the law on compulsory acquisition in order to align it with the new categories of land ownership under Section 3.3.1 of this Policy;
- (b) Harmonize the institutional framework for compulsory acquisition to avoid overlapping mandates;
- (c) Establish compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable;
- (d) Institute legal and administrative mechanisms for the exercise of the power of compulsory acquisition by the State through the National Land Commission; and
- (e) Confer pre-emptive rights on the original owners or their successor in title where the public purpose or interest justifying the compulsory acquisition fails or ceases.

3.2.1.2 Development Control

48. Development control is the power of the State to regulate property rights in urban and rural land, and is derived from the State’s responsibility to ensure that the use of land promotes the public interest.

49. Development control has not been extensively used to regulate the use of land and to ensure sustainability.

50. Development control is exercised by various Government agencies whose activities are uncoordinated with the result that the attendant regulatory framework is largely ineffective.

51. The Government shall:

- (a) Align the power of development control with the new categories of land ownership under Part 3.3.1 of this Policy;
- (b) Empower all planning authorities in the country to regulate the use of land taking into account the public interest;
- (c) Harmonize the institutional framework for development control to facilitate coordination;

- (d) Establish development control standards, processes and procedures that are efficient, transparent and accountable taking into account International Conventions and national policies relating to the sustainable use of land and the preservation of environmental values;
- (e) Ensure effective enforcement of development control;
- (f) Provide safeguards to ensure that development control does not amount to compulsory acquisition without compensation;
- (g) Ensure that the exercise of development control takes into account local practices and community values on land use and environmental management; and
- (h) Ensure effective public participation in the exercise of development control.

3.3 LAND TENURE ISSUES

- 52. Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted.
- 53. Existing policies and laws on land have not provided equal protection to all categories of land rights.
- 54. Colonial and post-colonial land administration has undermined traditional resource management institutions, thereby creating uncertainty in access, exploitation and control of land and land-based resources.
- 55. Successive governments in Kenya have been poor stewards of Government Land and Trust land resulting in the irregular and illegal allocation of essential public land, and destruction of critical natural resources such as forests and water catchment areas.

3.3.1 Categories of Land

- 56. Land in Kenya is currently designated as government land, trust land and private land.
- 57. This Policy designates all land in Kenya as Public Land, Community Land and Private Land.
- 58. The Government shall enact a "Land Act" to govern all categories of land.

3.3.1.1 Public Land

59. Public land comprises all land that is not private land or community land and any other land declared to be public land by an Act of Parliament.
60. There is currently no system for registering public institutional land. To safeguard such land, a practice emerged under which it was registered in the name of the Permanent Secretary in the Ministry of Finance.
61. To secure tenure to public land, the Government shall:
 - (a) Repeal the Government Land Act (Cap 280);
 - (b) Identify 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;
 - (c) Rationalize public land holding and use;
 - (d) Establish an appropriate fiscal management system to discourage land speculation and mobilise revenue;
 - (e) Establish mechanisms for the repossession of any public land acquired illegally or irregularly;
 - (f) Establish participatory and accountable mechanisms for the allocation, development and disposal of public land by the NLC; and
 - (g) Establish an appropriate system for registering public institutional land.
62. The "Land Act" shall provide, under the National Land Commission, for the establishment of:
 - (a) The office of Keeper/Recorder of Public Lands who shall prepare and maintain a register of public lands and related statistics; and
 - (b) A Land Titles Tribunal to determine the *bona fide* ownership of land that was previously public or trust land.

3.3.1.2 Community Land

63. Community land refers to land lawfully held, managed and used by a given community as shall be defined in the "Land Act".
64. The process of individualization of tenure, that is, land adjudication and/or consolidation, the eventual registration of interests in land under the Registered Land Act (Cap 300) and declaration of whole districts in the pre-independence period as Government land has affected customary tenure in two material respects:

- (a) Undermining traditional resource management institutions; and
 - (b) Ignoring 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).
65. In addition, there has been widespread abuse of trust in the context of both the Trust Land Act (Cap 288) and the Land (Group Representatives) Act (Cap 287). Thus county councils, which are the trustees of Trust land, have in many cases disposed of trust land irregularly and illegally. Further, in the case of pastoral communities, the group representatives entrusted with the management of that land have in many cases disposed of group land without consulting the other members of their groups.
66. To secure community land, the Government shall:
- (a) Document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law;
 - (b) Repeal the Trust Land Act (Cap 288);
 - (c) Define, in the “Land Act”, the term “community” and vest ownership of community land in the community;
 - (d) Lay out, in the “Land Act”, a clear framework and procedures for:
 - i. The recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women;
 - ii. Resolving the problem of illegally acquired trust land;
 - iii. Governing the grant to, and regulation of, rights of use to members;
 - iv. Reversion of former Government land along the Coastal region to community land after planning and alienation of land for public usage;
 - v. Governing community land transactions using participatory processes;

- vi. Accountability of groups, individuals and bodies entrusted with the management of community land, and community participation in the allocation, development and disposal of community land;
 - vii. Incorporating mechanisms for community land management and dispute resolution;
 - viii. Members opting out of the communal arrangements and buying out of non-members;
 - ix. Reviewing and harmonizing the Land (Group Representatives) Act (Cap 287) with the proposed “Land Act”;
 - x. Setting apart of community land for public use; and
 - xi. Vesting fish landing sites to appropriate local institutions.
- (e) Invest in capacity building for communal land governance institutions and facilitate their operations; and
- (f) Facilitate flexible and negotiated cross-boundary access among communities.

3.3.1.3 Private Land

67. Private land refers to land lawfully held, managed and used by an individual or other entity under statutory tenure. Private land is derived from the Government Lands Act (Cap 280), the Registration of Titles Act (RTA) (Cap 281), the Land Titles Act (LTA) (Cap 282), Registered Land Act (RLA) (Cap 300), Trust Land Act (Cap 288), the Indian Transfer of Property Act (ITPA) and the Sectional Properties Act (Act No.21 of 1987).
68. In order to rationalize existing systems of private land ownership, the Government shall:
- (a) Harmonize existing modes of statutory tenure under the “Land Act”;
 - (b) Ensure that the alienation of private rights to land takes into account legitimate rights, such as the right of spouses and children;
 - (c) Ensure that all private land is held on terms that are clearly subordinate to the doctrines of compulsory acquisition and development control;
 - (d) Ensure that land management in cooperative and company owned farms are regulated by law to secure the rights of affiliate

members and safeguard against subdivisions into uneconomical land sizes and non-adherence to planning requirements;

- (e) Ensure that private land is held, alienable and transmissible without discrimination on grounds of sex, ethnicity or geographical origin;
- (f) Establish appropriate fiscal incentives to encourage 'optimal utilization of private land and discourage land speculation; and
- (g) Ensure that all private land reverts to the State to be managed by the NLC on behalf of the people of Kenya, in case the owner dies without any heirs and in the absence of legally verifiable claims on the land.

3.3.2 Overall Tenure Principles

69. The principles guiding the acquisition, use and disposal of land rights shall include:
- (a) The equal recognition and enforcement of land rights arising under all tenure systems;
 - (b) Non-discrimination in ownership of, and access to land under all tenure systems;
 - (c) The protection and promotion of the multiple values of land; and
 - (d) The development of fiscal incentives to encourage the efficient utilization of land.

3.3.3 Rights of Ownership

70. Rights of ownership refer to the quantity of rights that different tenure systems confer on individuals, groups of individuals and other entities. The principal rights of ownership are the right to use, the right to dispose of, and the right to exclude others from the land owned. The definition and scope of these rights to land differ from one tenure system to another, depending on policy considerations such as the need to ensure equity in access to land.
71. The power of individual holders to sell land has often been exercised at the expense of persons who hold legitimate rights over the same land.
72. Land is a finite resource. Therefore, it is not possible for every person to own land.
73. It is often necessary to restrict the rights of ownership to facilitate sustainable resource utilization.

74. A key goal of this policy is to facilitate secure access to land, and not necessarily to grant full ownership rights to land to every person.
75. The Government shall facilitate the acquisition of rights of access to land.

3.3.3.1 Freehold Tenure

76. Freehold connotes the largest quantity of land rights which the State 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 held under the Registration of Titles Act (Cap 281), the Land Titles Act (Cap 282) or the Government Lands Act (Cap 280). A similar quantity of land rights is conferred by the "absolute proprietorship," which was introduced by the Registered Land Act (Cap 300).
77. The dual existence of the freehold and the absolute proprietorship causes confusion. There is no need to continue these two separate classifications of what is essentially the same quantity of land rights.
78. To address and streamline freehold tenure, the Government shall:
 - (a) Review and rationalize existing laws on freehold tenure, including:
 - i. Rationalizing freehold tenure and absolute proprietorship; and
 - ii. Reviewing the principle of absolute sanctity of first registration under the Registered Land Act to ensure that it only protects land rights that have been acquired in a legal and legitimate manner;
 - (b) Regulate the power of the primary rights holder to dispose of land in order to ensure that such disposal takes into account legitimate rights such as family rights.

3.3.3.2 Leasehold Tenure

79. Leasehold tenure is the right to use land for a defined period of time in exchange for the performance of certain obligations such as the payment of rent. Leasehold rights provide a flexible mechanism for transacting rights in land and for land use control.
80. To facilitate the exercise of leasehold rights, the Government shall:
 - (a) Align all leases to this policy;
 - (b) Establish mechanisms for the creation of leasehold interests out of public, community and private land;

- (c) Ensure that the duration of all leases does not exceed 99 years but is nevertheless sufficient to encourage long-term investments in land;
- (d) Establish appropriate mechanisms for the surrender of interests currently held beyond 99 years in exchange for the proposed leasehold term;
- (e) Subject the renewal of all leases to general planning requirements; and
- (f) Encourage the use of leasehold rights to facilitate concurrent, multiple and shared access to land.

3.3.3.3 Access to Rights of Ownership

81. Access to land in Kenya may be achieved through any one or a combination of the following:

Allocation of public land in rural and urban areas

82. The Government Lands Act (Cap 280) and Trust Lands Act (Cap 288) set out procedures for the allocation of public land. In practice, these procedures have been routinely ignored by public officers, resulting in irregular and illegal allocation of public land in total disregard of the public interest.
83. Land allocation should principally be for investment, social infrastructure and human settlement. The land for these uses will be derived from Public Land and Community Land.
84. To address allocation of public land the Government shall:
- (a) Assess the state of landlessness and develop a suitable programme to address it;
 - (b) Limit the amount of public land allocated to individuals or other entities depending on factors such as the intended use and the ecological zone; and
 - (c) Eliminate incidents of multiple allocations and allocate land through public auctions except for land earmarked for the support of livelihoods in urban and rural areas.

Land adjudication

85. Historically, the processes and procedures of land adjudication and consolidation were intended to extinguish customary tenure and replace it with statutory tenure. The implementation of the processes of adjudication and consolidation has been slow due to legislative and institutional constraints.

86. The Government shall:

- (a) Complete on-going processes of adjudication and consolidation;
- (b) Ensure that future adjudication and consolidation processes adhere to this Policy; and
- (c) Ensure that adjudication and consolidation processes are speedy, transparent and accountable.

Land market operations

87. Land markets deal with the value, transfer, lease, and mortgage of interests in land. Efficient land markets can facilitate access to land.

88. The Government shall:

- (a) Facilitate the commercialisation of land rights subject to principles of equity, sustainability and public policy considerations such as security;
- (b) Develop structures and instruments that will make the land market operations more efficient and effective, including streamlining existing land transaction procedures.

Inheritance of Land

89. Land rights can be acquired through inheritance, which entails testate or intestate succession.

90. The Law of Succession Act was supposed to harmonize succession systems but in practice the transmission of land rights is largely done within customary and religious systems, which discriminate against women and children.

91. The Government shall:

- (a) Sensitize and educate Kenyans on the provisions of the Law of Succession Act;
- (b) Expedite the application of the Law of Succession Act; and
- (c) Require that all Kenya Gazette notices pertaining to Succession cases be posted at the lowest local administrative level and at market centres.

3.3.3.4 Access to Land by Non-Citizens

92. Under existing land laws, non-citizens can apply for and be allocated land for any permissible use. This differs from the practice in some countries where ownership of land by non-citizens is restricted.

93. To ensure that the grant of land rights to non-citizens does not unduly deny citizens access to land, the Government shall:

- (a) Prohibit non-citizens from holding freehold interests in land;
- (b) Allow non-citizens and foreign companies to acquire leasehold interests only, subject to public policy considerations such as security; and
- (c) Ensure that the leasehold term for land leased to non-citizens shall be based on intended use but shall not in any event exceed 99 years.

3.3.3.5 Access to Land for Investment

94. Investments in land related ventures are important avenues for creating wealth that this Policy intends to promote and develop. To secure the national interest and confer benefits to local communities, the Government shall:
- (a) Ensure that the acquisition of land for investment purposes is in accordance with national development objectives;
 - (b) Compulsorily acquire all land on which mineral resources have been discovered before allocating such land to interested investors in order to facilitate fast access to the land and to prevent the exploitation of local communities, environmental degradation and ensure restoration of land after exploitation;
 - (c) Regulate the development of private resort cities and other major ventures to ensure they adhere to development planning and control and facilitate public access thereto;
 - (d) Acquire land for strategic public ventures such as sea ports, airports, and research facilities for purposes of security and planning and ensure that such land is accessible to auxiliary developers only through sub-leases;
 - (e) Create land banks for investment in industry and housing programmes to be availed at prevailing market rates after servicing;
 - (f) Set aside serviced land for housing development for the poor at affordable rates; and
 - (g) Establish a framework for auditing all land based local and foreign investment proposals to ensure that they are aligned with national food security needs and protect the land rights of indigenous people and communities.

3.3.4 Resource Tenure Policy

95. Kenya is endowed with diverse land based natural resources, which contribute directly or indirectly to the socio-economic well being of

its people. These resources include wildlife, forests, water, minerals, marine, and the land itself. Other resources include biodiversity, cultural heritage, palaeontology, archaeology, and indigenous knowledge. Sustainable management of these natural resources depends in large part on the governance systems, which define the relationship between people and the resources.

96. To secure access to land based natural resources the Government shall:
- (a) Undertake an inventory of all natural resources both exploited and unexploited;
 - (b) Develop a comprehensive resource tenure policy as part of an overall land use policy;
 - (c) Vest renewable resources such as wildlife, water and public forests in the State to hold in trust for the people of Kenya;
 - (d) Vest all non-renewable resources such as minerals, mineral oils and gas in the State to hold in trust for the people of Kenya;
 - (e) Establish legislative and administrative mechanisms for defining the obligations of the State as a trustee for land –based natural resources and determining beneficiaries thereof and their respective rights;
 - (f) Align, to the greatest extent possible, tenure to land based natural resources to the different land categories 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;
 - (g) Ensure formal recognition of traditional knowledge related to land-based resources and provide the infrastructure for its development and use;
 - (h) Facilitate public access to beaches, lakes, rivers and fish landing sites unless restricted due to environmental fragility or due to security reasons;
 - (i) Provide incentives for communities and individuals to invest in income generating resource conservation programmes; and
 - (j) Recognize and protect the rights of forest, water dependent or other natural resources dependent communities and facilitate their access, co-management and derivation of benefits from the resources.

3.3.4.1 Benefit-Sharing from Land – Based Natural Resources

97. Sustainable use and sharing of benefits from land based natural resources is a concept that has gained popularity in Kenya and globally. Communities and individuals are increasingly becoming aware of their rights to access and use natural resources within their environs, as well as participate in the conservation and management of such resources.
98. Benefit-sharing is a way of integrating the economic, social and environmental considerations of land activities.
99. Strategies for sharing benefits should be developed taking into account the nature of the resources involved and the contribution that diverse actors make to the management of the resources.
100. To protect community and individual interests over land based resources and facilitate benefit sharing, the Government shall:
 - (a) Establish legal frameworks to recognise community and private rights over renewable and non-renewable land-based natural resources and incorporate procedures for access to and sustainable use of these resources by communities and private entities;
 - (b) Devise and implement participatory mechanisms for compensation for:
 - i. Loss of land and related non-renewable natural resources;
 - ii. Loss of land where this is deemed important in the public interest for the sustainable management of renewable natural resources; and
 - iii. Damage occasioned by wild animals;
 - (c) Put in place legislative and administrative mechanisms for determining and sharing of benefits emanating from land based natural resources by communities and individuals where applicable;
 - (d) Make benefit-sharing mandatory where land based resources of communities and individuals are managed by national authorities for posterity; and
 - (e) Ensure the management and utilization of land-based natural resources involves all stakeholders.

3.4 LAND USE MANAGEMENT ISSUES

101. 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 rapid urbanization, inadequate land use planning, unsustainable production, poor environmental management, inappropriate ecosystem protection and management are commonplace and require appropriate policy responses.

102. The government shall put in place appropriate strategies for managing sustainable growth and development of urban and rural areas.

3.4.1 Land Use Planning Principles

103. 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 implementing agencies, lack of appropriate technical and institutional capacity of local authorities, inadequate human resource establishment in the ministry responsible for physical planning, absence of broad based consultation and the lack of an effective coordinating framework for preparation and implementation of the planning proposals and regulations. Lack of a national land use framework has made the situation worse. These problems manifest themselves in terms of unmitigated urban sprawl, land use conflicts, environmental degradation, and spread of slum developments and low levels of land utilization among others.

104. Key Issues that need to be addressed in land use planning are:

- (a) Preparation of land use plans at national, regional and local levels on the basis of predetermined goals and integrating rural and urban development;
- (b) Review and harmonization of existing land use planning laws;
- (c) Actualization of spatial frameworks for orderly management of human activities to ensure that such activities are carried out taking into account considerations such as the economy, safety, aesthetics, harmony in land use and environmental sustainability;
- (d) Review of strategies for human settlement in relation to service centres, growth centres, transport and communication network, environmental conservation and rural development;
- (e) Efficient and sustainable utilization and management of land and land based resources;
- (f) Establishment of an appropriate framework for public participation in the development of land use and spatial plans; and

- (g) Establishment of an effective framework for coordination of land use plans to ensure implementation of the planning proposals and regulations.

105. To address land use planning issues, the Government shall:

- (a) Review and harmonize the Physical Planning Act (Cap 286) and Local Government Act (Cap 265), and other relevant legislation;
- (b) Develop a national land use policy as a basis for land use management;
- (c) Provide an appropriate framework for preparation and implementation of national, regional and local area land use plans and ensure that the planning process is integrated, participatory and meets stakeholder needs; and
- (d) Facilitate appropriate institutional and technical capacity building initiatives for accelerating plan implementation at national, regional and local levels.

3.4.1.1 National and Regional Planning

106. The Government shall:

- (a) Facilitate the development of national and regional physical development plans as a basis for investment and sustainable utilisation of natural resources, taking local land use practices into account;
- (b) Provide for implementation of cluster settlements for easier provision of infrastructure and to stop uncontrolled subdivision of land; and
- (c) Identify and map areas which are prone to natural calamities such as floods, landslides and droughts, for national disaster preparedness.

3.4.1.2 Rural Land Use Planning

107. To secure effective rural land use planning, the Government shall:

- (a) Review the current laws related to planning to provide for rural land use planning;
- (b) Recognize rural settlement planning as a tool for sustainable resource management, alignment of infrastructure standards and provision of public sites;
- (c) Provide for rural land use strategies to assist communities achieve optimum productivity; and

- (d) Make rural land use planning an integral part of land adjudication process.

3.4.1.3 Urban and Peri-Urban Land Use Planning

108. Development of land in urban and peri-urban areas has been inhibited by poor planning, rapid growth of human settlements and activities, unmitigated urban sprawl and inadequate provision of infrastructure. Proper planning will facilitate coordinated development of urban and peri-urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities.

109. The Government shall:

- (a) Facilitate the preparation and implementation of local area development plans for all urban and peri-urban areas in the country in a participatory manner;
- (b) Establish an effective coordinating mechanism for the preparation, implementation of plans and development control; and
- (c) Encourage development of underutilised land within urban areas.

3.4.1.4 Planning for Urban Agriculture and Forestry

110. Urban agriculture has not been properly regulated and facilitated.

111. The following principles shall be implemented to provide a framework for the proper carrying out of urban agriculture and forestry:

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

3.4.1.5 Planning for Informal Sector Activities

112. Informal sector activities are a key feature in many parts of Kenya both in planned and unplanned areas and form a crucial part of the economy as a source of livelihood.

113. Informal sector activities have not been accommodated in the planning of urban and rural areas. Informal sector activities have arisen spontaneously as a result of rural-urban migration without corresponding availability of formal employment opportunities and other income generating activities.

114. The Government shall:

- (a) Facilitate the provision of land and land use planning to enable the development of informal commercial activities in a more ordered and sustainable manner;
- (b) Put in place mechanisms to allow for informal activities in planned areas;
- (c) Designate areas where informal activities can be carried out; and
- (d) Institute mechanisms to manage rural-urban migration such as decentralizing development to rural areas and minor urban areas.

3.4.1.6 Regulating Use and Development of Land

115. 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.

116. Problems associated with development control include:

- (a) Weak and inadequate institutional capacity;
- (b) Lack of harmony among the principal statutes that govern planning and enforcement;
- (c) Outdated planning standards and regulations;
- (d) The absence of a coordinating framework between and amongst the public sector agencies and the private sector; and
- (e) A disconnect between plan preparation, implementation and development control.

117. To ensure that land use plans are applied as tools for effective land use management, the Government shall:

- (a) Review planning and development control legislation to harmonize the governance structures, decision-making processes, planning standards and regulations;
- (b) Enhance institutional and human resource capacity of planning institutions;
- (c) Provide a coordinated framework for enforcing planning decisions;
- (d) Establish effective and transparent mechanisms to resolve planning and development control disputes; and

- (e) Develop effective legal and administrative mechanisms for the regulation of developments in freeholds in gazetted and planned urban areas.

3.4.2 Sustainable Production Principles

- 118.** Sustainable land use practices are key to the provision of food security and attainment of food self sufficiency. 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) Abandonment of agricultural activities due to poor infrastructure;
 - (d) Emergence of land use conflicts as a result of competing land uses;
 - (e) Uncontrolled subdivision of land;
 - (f) Indiscriminate sale and purchase of land;
 - (g) Overstocking in rangelands; and
 - (h) Lack of alternative innovative land uses and planning for diversification of the rural economy.
- 119.** 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 conservation of land quality, environmental audit and assessment, productivity targets and guidelines, land sizes and land use planning.

3.4.2.1 Productivity Targets and Principles

- 120.** Land is needed for food production and for the support of economic activities in all sectors. Good agricultural land continues to be converted to other non-agricultural uses thereby threatening the country's productive capacity and long term food security. Large tracts of land remain underutilized. The following principles regarding land productivity targets and guidelines shall be implemented:
- (a) Provision of appropriate incentives and sanctions to ensure that land owners use their land productively and sustainably;
 - (b) Putting in place an enabling environment for agriculture and livestock development as well as other uses, including research, extension services, finance and infrastructure, marketing, agro-processing, rural electrification and training of farmers;

- (c) Establishing a legal framework for periodic reviews of land use practices to facilitate the re-organisation of rural settlements and control excessive parcellation into uneconomic units;
- (d) Putting in place measures to determine appropriate land sizes according to use and productivity of land;
- (e) Putting in place appropriate measures that will enhance both large scale and small scale production of food for the maintenance of food security in the country;
- (f) Provide incentives to stimulate voluntary readjustment of land sizes;
- (g) Institute a regulatory framework for land rental markets to spur development of rural agricultural land; and
- (h) Review and provide for laws that encourage shared proprietorship, time sharing of land and property as opposed to individual ownership only.

3.4.2.2 Land Sizes

121. Population growth and the demand for land have resulted in excessive fragmentation of land into uneconomic units. At the same time, a number of people own large tracts of land which are not utilized optimally.
122. The Government shall ensure that all sub-divisions of land are tied to land use sizes specified for different ecological zones. To facilitate the attainment of this objective, the Government shall:
- (a) Put in place a system to determine economically viable minimum land sizes for various zones; and
 - (b) Promote conformity of land subdivisions with the set minimum economically viable land sizes.
123. To ensure that all land is utilized productively, the Government shall periodically commission field surveys on land holdings to determine levels of utilization with a view to ensuring that the use is economic and optimal.

3.4.2.3 Restoration and Conservation of Land Quality

124. To restore the environmental integrity of land and facilitate sustainable management of land based resources, the Government shall:
- (a) Introduce incentives to encourage the use of technology and scientific methods for soil conservation;

- (b) Encourage use of traditional land conservation methods;
- (c) Establish measures to control degradation of land through abuse of inputs and inappropriate land use practices; and
- (d) Establish institutional mechanisms for conservation of quality of land for environmental conservation purposes.

3.4.2.4 Land Reclamation

- 125. Land reclamation is the process of extending or improving land to support a specified end use. It is useful in dealing with land that has been affected by the extraction and processing of non-renewable resources, degraded environments, swampy and seasonally submerged wetlands, and the shoreline of the sea or ocean.
- 126. The purpose of reclamation is to make land suitable for agriculture, settlement or other planned uses.
- 127. To ensure sustainable utilisation of reclaimed land the Government shall develop a regulatory framework for reclamation, rehabilitation, restoration and use of such land.

3.4.3 Environmental Management Principles

- 128. 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 the pollution of air, water and land.
- 129. To conserve and manage the environment, measures on conservation and sustainable management, ecosystem protection, urban environment management, environmental assessment and audits, shall be undertaken.

3.4.3.1 Conservation and Sustainable Management of Land Based Natural Resources

- 130. Sustainable management of land based natural resources depends in large part on the governance systems, which define the relationship between people, and between people and the resources.
- 131. To achieve an integrated and comprehensive approach to the management of land based natural resources, all policies, regulations and laws dealing with these resources shall be harmonised with the framework established by the Environmental Management and Coordination Act (EMCA), 1999.

To manage these resources sustainably, the Government shall:

- (a) Facilitate the preparation of participatory environmental action plans by communities and individuals living near

environmentally sensitive areas in order to take into account cultural and socio economic ;

- (b) Identify, map and gazette critical wildlife migration and dispersal areas and corridors in consultation with the local communities and individual land owners;
- (c) Encourage the development of wildlife sanctuaries and conservancies and involve local communities and individuals living contiguous to the parks and protected areas in the co-management of such areas;
- (d) Provide mechanisms for resolving grievances arising from human/wildlife conflicts;
- (e) Review the gazettement of forests and protected areas to foster the realisation of their multiple values and ensure that they are protected for their ecosystem values and not merely to physically exclude human activities;
- (f) Create an effective institutional framework and capacity to implement International Conventions especially those touching on access to land based natural resources; and
- (g) Facilitate partnership with neighbouring countries to foster Trans-Boundary Natural Resource Management (TBNRM) in the interest of national, regional and international conservation and development goals.

3.4.3.2 Ecosystem Protection and Management Principles

133. Kenya has diverse ecosystems which include forests, wetlands marine and coastal ecosystems, national parks, arid and semi arid lands (ASALs), watersheds, lakes and drainage basins. The trans-boundary nature of these resources presents a formidable management challenge because of factors such as conflicting uses and varied governance frameworks. These factors lead to unsustainable exploitation of resources. In addition the problem of unsustainable exploitation of resources is exacerbated by inadequate enforcement of natural resource management guidelines.

To ensure the protection of ecosystems and their sustainable management, the Government shall:

- (a) Undertake a survey of all critical ecosystems to determine their sustainable land uses;
- (b) Establish measures to ensure that healthy ecosystems are protected through land use controls; and

- (c) Define and maintain beaches at high and low water marks and put in place measures to control beach erosion.
135. Fragile ecosystems shall be managed and protected using the following measures:
- (a) Developing a comprehensive and integrated land use policy having regard to fragile areas and the needs of neighbouring communities and individuals in such areas;
 - (b) Zoning forest land comprising water catchment areas to protect it from further degradation;
 - (c) Developing procedures for co-management and rehabilitation of forest resources, recognizing traditional management systems and sharing of benefits with contiguous communities and individuals;
 - (d) Establishing participatory mechanisms for sustainable management of fragile ecosystems in partnership with public, private and community stakeholders; and
 - (e) Declaring all national parks, game reserves, islands, front row beaches and all areas hosting threatened biodiversity as fragile ecosystems.
136. The Government shall ensure that development activities in all islands and front row beaches take into account concerns of public access to beaches, the fragility of the ecosystem and national security, and subject such activities to strict controls and management orders.
137. The protection of watersheds, lakes, drainage basins and wetlands shall be guided by the following principles:
- (a) Prohibition of settlement and agricultural activities in the water catchment areas;
 - (b) Identification, delineation and gazettement of all water courses and wetlands in line with International Conventions; and
 - (c) Integrated resource management based on ecosystem structures regardless of administrative or political boundaries.
138. The Government shall ensure that all land uses and practices conform to land use plans and the principles of biodiversity protection, conservation and sustainable development.

3.4.3.3 Urban Environmental Management Principles

139. Kenya's rapid urbanization has infringed on environmentally sensitive areas such as wetlands, hilltops, water bodies and the coastline. Poor

management of solid and liquid waste, gaseous emissions and unsafe quarries are some of the common urban environmental problems.

140. To address urban environmental problems the following measures shall be implemented:
- (a) Prohibit discharge of untreated solid and liquid waste into rivers, lakes and the ocean by providing appropriate waste management methods;
 - (b) Encourage and require waste segregation and labelling for easier management;
 - (c) Regulate all quarrying and excavation activities;
 - (d) Encourage urban waste re-use and recycling; and
 - (e) Develop a framework for rehabilitation of dumping sites and land that has been subjected to environmental degradation.

3.4.3.4 Environmental Assessment and Audit as Land Management Tools

141. To promote environmental impact assessment and audit as tools for land management, the Government shall implement the following principles:
- (a) Ensure that environmental impact assessments and audits are carried out on all proposed projects, programmes and activities on land that have a likelihood to degrade the environment;
 - (b) Monitor urban and rural environmental degradation regularly;
 - (c) Encourage public participation in the monitoring and protection of the environment; and
 - (d) Institute enforcement mechanisms such as the “polluter pays principle”, and provide incentives to promote cleaner production and prevent pollution of soil, water and air.

3.4.4 Sectoral and Cross-Sectoral Land Use

142. Effective land management requires coordination and cooperation among different sectors. This Policy should be understood and implemented taking into account all related sectors such as agriculture, livestock, water, energy, human settlement, industry, tourism, wildlife, forestry and fisheries.
143. To achieve this objective of effective land management, the Government shall:
- (a) Facilitate an integrated and multi-sectoral approach to land use;

- (b) Formulate a clear land use policy to guide rural and urban development, avoid land use conflicts and spur productivity;
- (c) Encourage integrated land use planning through the use of appropriate information technology and participatory processes;
- (d) Identify areas of interest for sharing/merging resources and expertise through Public-Private Partnerships;
- (e) Ensure that all public and private institutions whose functions are associated with land are involved in the implementation of this Policy;
- (f) Align the land use provisions of the Local Government Act (Cap 265), the Physical Planning Act (Cap 286) and other relevant laws with this Policy; and
- (g) Rationalize and harmonize all relevant sectoral policies touching on land with this Policy.

3.5 LAND ADMINISTRATION ISSUES

144. Land administration refers to the process of determining, recording and disseminating information about ownership, value and use of land. An efficient land administration system guarantees the recording of land rights, promotes tenure security, and guides land transactions. Further, it provides land users with appropriate forms of documentation to guarantee land rights, and supports the processes of land allocation, land dispute resolution and fiscal management of land.

145. The principal functions of land administration are:

- (a) Ascertainment and registration of land rights;
- (b) Allocation and management of land;
- (c) Facilitation of efficient transactions in land;
- (d) Development and maintenance of an efficient and accurate land information system;
- (e) Establishment of mechanisms for the assessment of land resources for fiscal management and revenue collection; and
- (f) Establishment of efficient and accessible mechanisms for resolving land disputes.

146. However, the existing land administration system has not performed these functions adequately. It is bureaucratic, expensive,

undemocratic and prone to abuse, resulting in inordinate delays and injustice in the administration of land.

3.5.1 Land Rights Delivery Principles

147. Land rights delivery is the process of mobilizing institutional mechanisms and personnel for ascertaining and registering rights. The current system of land rights delivery has not supplied adequate serviced land for development; and the limited available serviced land is not affordable for the majority of the population. Further, the system has not achieved equitable distribution of the limited land resources. This unsatisfactory land rights delivery system is caused by, among others, multiple registration regimes, land speculation, corruption, political interference, poor record keeping and the abuse of power by the public agencies mandated to manage land. In order to establish an efficient land rights delivery system, the Government shall:

- (a) Align land rights delivery procedures and processes with this Policy;
- (b) Consolidate, harmonize and streamline all land registration statutes to ensure clarity and reduce bureaucratic bottlenecks;
- (c) Ensure that land records are authenticated, documented, and their custody and sanctity secured; and
- (d) Computerize land records and facilitate access to land information.

3.5.2 Land Adjudication and Registration Principles

148. Land adjudication is the process of ascertaining and recording rights and interests in land claimed by individuals and other entities. Once ascertained, such rights and interests are entered into a land register, which facilitates the accuracy of the land information system and enables efficient transactions in land.

149. There are too many statutes dealing with the registration of land rights. No attempt has been made to harmonize these statutes to ease the process of registration of land rights and facilitate speedy access to land registration information. There is a need to harmonize the registration statutes to enhance the efficiency, transparency and accountability of the process of land registration.

150. The Government shall:

- (a) Enact a "Land Registration Act" which shall; (i) Recognize and protect all legitimate rights and interests in land held under the categories of land set out in Section 3.3.1 of this Policy; and (ii)

Harmonize the statutes dealing with the registration of land rights;

- (b) Repeal the Land Adjudication Act and Land Consolidation Act; and
- (c) Repeal the land registration provisions of the Registration of Titles Act (RTA) (Cap 281), the Land Titles Act (LTA) (Cap 282) and the Registered Land Act (RLA) (Cap 300).

3.5.3 Settlement Land Allocation Principles

151. There are no clearly defined procedures for the allocation of land in settlement schemes under the Agriculture Act (Cap 318) leading to manipulation of the lists of allottees and exclusion of the poor and the landless. These problems are compounded by the lack of clearly defined procedures for identifying, and keeping records of genuine squatters and landless people. In addition there are numerous cases of underutilized land by allottees.

152. To streamline land settlement procedures and processes, the Government shall:

- (a) Bring in all the provisions relating to settlement under the Agriculture Act (Cap 318) to the proposed “Land Act”;
- (b) Set out in the “Land Act” a clear framework for:
 - identifying, verifying and recording of genuine landless people;
 - acquisition of land for establishment of settlement schemes,
 - planning, survey and demarcation of land in settlement schemes;
 - equitable and accountable allocation of settlement scheme land;
- (c) Review and streamline the documentation process of settlement plots; and
- (d) Repossess and reallocate abandoned settlement plots.

3.5.4 Land Surveying and Mapping

153. The processes of land surveying and mapping are integral to an efficient land administration and management system. In addition to preparing the maps and plans to support land registration, they map the earth for land use planning.

154. These processes have been hampered by slow, cumbersome and out-dated modes of operation, and failure to regulate non-title surveys leading to the development of incompatible maps.

155. The Government shall:

- (a) Amend the Survey Act (Cap 299) to allow: (i) for the use of modern technology such as Global Navigation Satellite Systems (GNSS) and Geographical Information Systems (GIS) and streamline survey authentication procedures; and (ii) regulation of non-title surveys;
- (b) Establish a unitary and homogeneous network of control points of adequate density, preferably using dynamic technology such as GNSS; and
- (c) Improve mapping standards in general boundary areas so that they fit into a computerized system.

3.5.5 Cadastral Principles

156. An efficient system of land delivery requires adequate capacity for the preparation and maintenance of cadastre indicating not merely who owns what interest in land, but other details such as land suitability, uses, size, distribution and topographical characteristics. Due to various constraints such as the use of paper records and the slow pace of land titling, the Kenyan cadastre remains in-optimal.

157. The Government shall:

- (a) Modernize the land delivery infrastructure, through computerization and use of other electronically linked systems;
- (b) Create human resource capacity to operate the modernized infrastructure; and
- (c) Remove constraints to the realization of an optimal cadastre.

3.5.6 Land Information Management Principles

158. Kenya lacks up to date information on different land uses such as agriculture, forestry, wildlife, water and infrastructure. Lack of this vital information complicates effective planning, zoning and overall management of land.

159. Land information consists of datasets for decision making in land administration and management. These include data on geo-referencing, mapping, land ownership, land rights, land use planning, valuation and inventories of different categories of land.

160. A Land Information Management System (LIMS) is an information system that enables the capture, management, and analysis of

geographically referenced land-related data in order to produce land information for decision-making in land administration and management.

- 161.** Land information is currently held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making.
- 162.** Other deficiencies of the existing LIMS include expensive cadastral surveys, centralization of cadastral processes, and slow, cumbersome procedures.
- 163.** To facilitate the establishment of an efficient land information management system, the Government shall:
 - (a) Establish a comprehensive, computer based, efficient, user friendly, accessible, affordable, transparent and gender sensitive land information management system;
 - (b) Ensure that the land information system facilitates the accurate classification and mapping of all categories of land including land claimed by minority groups, pastoral communities, disputed land, and land identified to have been irregularly allocated;
 - (c) Establish national guidelines on land information, to govern matters such as land information standards, security, dissemination and pricing;
 - (d) Make land information available in a form and language that can be understood by most citizens, including accessible and clear hard copy information products and simple maps;
 - (e) Re-organize, update and authenticate existing land records;
 - (f) Establish a National Spatial Data Infrastructure (NSDI) to ensure integration of and access to spatial data sets held by different national and sectoral agencies;
 - (g) Provide necessary infrastructure, such as electricity, computers and internet connectivity at all levels of land administration;
 - (h) Promote the growth of a viable land information market;
 - (i) Enact a land information law to facilitate access to and management of land information;
 - (j) Facilitate the sharing of information across Government departments;
 - (k) Encourage public-private partnerships in the setting up of and administration of the LIMS;

- (l) Create human resource capacity to develop, operate and maintain a modern LIMS;
- (m) Establish a regulatory body for Geo-Information professionals to generate and develop a code of ethics and to standardize training of professionals; and
- (n) Establish mechanisms for the incorporation of traditional land information in the LIMS.

3.5.7 Land Market Principles

164. The development of vibrant land markets is hindered by inadequate information, political interference, bureaucratic inefficiencies, corruption, speculation, insecure and unclear land tenure arrangements, and the absence of innovative market mechanisms such as real estate investment trusts and community land trusts. The emergence of new land markets including rental markets should be encouraged. These new land markets have the potential to facilitate better access to land.
165. In order to enhance the efficiency of land markets, the Government shall:
- (a) Decentralise land registries;
 - (b) Facilitate allocation of serviced land for investment purposes;
 - (c) Facilitate and promote land market operations particularly in community land;
 - (d) Encourage the development of new land markets by, among other things, providing better information about land transactions; and
 - (e) Regulate land markets to ensure efficiency, equity and sustainability.

3.5.8 Fiscal Aspects of Land Management

166. A clear fiscal framework for land management serves a number of functions, namely: generating public revenue, providing a stable fund for the acquisition of land for banking, servicing land, facilitating the efficient utilization of land, providing incentives for appropriate land uses, and discouraging speculation. Existing laws empower the State and local authorities to assess and collect taxes such as stamp duty, estate duty and rates.
167. Land taxation assessment and collection procedures under existing laws do not provide effective fiscal management frameworks that encourage generating public revenue, discouraging land speculation,

servicing land, efficient utilization of land, incentives for appropriate land uses.

168. To facilitate the efficient utilisation of land and land-based resources, the Government shall:

(a) Establish a land taxation regime that facilitates efficiency in revenue collection, utilization and servicing of land, provides incentives for appropriate land uses, and discourages land speculation; and

(b) Improve the capacity of public institutions including local authorities to assess and collect taxes.

3.5.9 Dispute Resolution Principles

169. There is a need to ensure access to timely, efficient and affordable dispute resolution mechanisms. This will facilitate efficient land markets, tenure security and investment stability in the land sector.

170. In order to facilitate effective, fair and efficient dispute resolution, the Government shall:

(a) Establish independent, accountable and democratic systems backed by law to adjudicate land disputes at all levels;

(b) Establish appropriate and inclusive institutions for dispute resolution and access to justice with clear operational procedures, and clear record keeping for making decisions on specific matters; and

(c) Encourage and facilitate the use of Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to facilitate speedy and cost effective access to justice.

3.6 LAND ISSUES REQUIRING SPECIAL INTERVENTION

171. Several land related issues deserve special attention. These include:

(a) Historical injustices;

(b) Pastoral land issues;

(c) Coastal region land issues;

(d) Land rights of minority and marginalized groups;

(e) Land rights of women;

(f) Land rights in informal settlements and for informal activities;

(g) Land rights of children; and

- (h) The impact of the HIV and AIDS pandemic on agricultural production and access to land rights.

3.6.1 Mechanisms for Resolving Special Land Issues

172. In the interest of social and economic development, the Government shall put in place measures to resolve land issues requiring special intervention taking into account the land reform principles of redistribution, restitution and resettlement in order to facilitate access to, and utilisation of, land and land-based resources.

3.6.1.1 Redistribution

173. The purpose of land redistribution is to facilitate equitable access to land for residential, commercial and other productive purposes. There is a need to establish a clear legal and planning framework for identifying, verifying and recording genuine land use needs, and to establish clear and equitable criteria for redistribution.

3.6.1.2 Restitution

174. The purpose of land restitution is to restore land rights to those that have unjustly been deprived of such rights. 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.

3.6.1.3 Resettlement

175. The resettlement principle seeks to procure adequate land for the reorganization of both rural and urban settlements in light of expanding populations, conflicts, historical injustices and disasters. The Government shall: (i) establish criteria for the determination of who qualifies to benefit from resettlement programmes; (ii) ensure that it is carried out in a transparent and accountable manner; and (iii) provide them with infrastructure and basic services.

3.6.1.4 Land Banking

176. The implementation of the principles of redistribution, restitution and resettlement will depend on the availability of land.

177. To avail land for redistribution, restitution and resettlement, the Government shall:

- (a) Establish land banks and make land available for investment and development;
- (b) Formulate and implement a government buy-back policy;
- (c) Procure land for land banks through purchase and donations; and

- (d) Institute a programme for land reclamation, as provided for in section 3.4.2.4 of this Policy.

3.6.2 Resolution of Historical Land Injustices

178. Historical land injustices are grievances which stretch back to colonial land administration practices 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, and 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.

179. 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 protectorate under the British East African Protectorate with the power to enact policies and laws under the Crown. It is these colonial practices 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, document and determine historical land injustices and recommend mechanisms for their resolution;
- (c) Review all laws and policies adopted by post independence Governments that exacerbate the historical land injustices;
- (d) Establish suitable mechanisms for restitution of historical land injustices and claims; and
- (e) Specify a time period within which land claims should be made.

3.6.3 Pastoral Land Issues

180. Pastoralism is a livestock based economic activity. Pastoralism has survived as a livelihood and land use system despite changes in life styles and technological advancements. This tenacity of pastoralism testifies to its appropriateness as a production system.

181. 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 in the access, control and exploitation of land based resources including grazing lands, water and salt licks among others.

182. Women play diverse roles in pastoral systems, yet they face special problems such as lack of access to land use rights.
183. To secure pastoralists livelihoods and tenure to land, the Government shall:
- (a) Recognize pastoralism as a legitimate land use and production system;
 - (b) Review the Land (Group Representatives) Act and provide for pastoralism in the “Land Act”;
 - (c) Establish suitable methods for defining and registering land rights in pastoral areas while allowing pastoralists to maintain their unique land systems and livelihoods;
 - (d) Establish a legislative framework to regulate transactions in land in pastoral areas;
 - (e) Ensure that the rights of women in pastoral areas are recognized and protected;
 - (f) Provide for flexible and negotiated cross boundary access to protected areas, water, pastures and salt licks among different stakeholders for mutual benefit; and
 - (g) Ensure that all land uses and practices under pastoral tenure conform to the principles of sustainable resource management.

3.6.4 Land Issues Peculiar to Coast Region

184. The land question within the Coast region is complex due to its peculiar historical and legal origins. The processes of land adjudication and registration under the Land Titles Act (Cap 282) deprived many members of the indigenous Coastal Communities of their land. This led to the area having the largest single concentration of landless indigenous people living as squatters. It also gave rise to the problem of absentee land owners. There is also a need to regulate the rights of land owners and tenants in the context of the prevalent practice of “tenancies-at-will” and good planning practice.
185. The slow land adjudication process and delay in finalization of settlement programmes have denied the communities secure access to land.
186. The grant of freehold and leasehold tenure on beaches has hampered public access, movement along the beaches and fishing.
187. The ownership of beaches and some islands within the Indian Ocean by foreigners also poses a threat to national security.

188. Salt mining along the coast has not been rationalized with other land uses. As a result, salt harvesting companies have acquired large tracts of land suitable for agricultural production but which they have left idle. The coastal region hosts unique and strategic government institutions which include the Kenya Ports Authority (KPA), the Kenya Navy Base (KNB) and the Kenya Marine and Fisheries Research Institute (KEMFRI). Some of the land owned by these institutions has, however, been allocated to private developers without due consideration of the future development plans of the institutions.
189. Private developments along and around navigation beacons, ship leading lights and other control points have negatively affected the maintenance of these installations.
190. The KPA has in the past reclaimed land from the sea for specific public uses. However, some of the land reclaimed by KPA has been allocated to private developers without due consideration for the intended use, or security of the port facilities. Increasingly private developers have also engaged in land reclamation without authority.
191. The Tana and Sabaki rivers have their deltas in the coastal regions of Kipini and Malindi respectively. These deltas are Kenya's key oceanic ecosystems and important wetlands housing unique varieties of mangrove trees among other life species. In spite of their ecological importance, speculative land allocation, inappropriate land uses as well as inadequate conservation measures are rampant.
192. Lamu Island is a famous World Heritage Site. Unfortunately current land use and ownership practices are undermining the sustainability of the heritage. In addition, land transactions are now taking place on the island with the result that many local inhabitants are rendered landless.
193. To address the Coastal land problems, the Government shall:
 - (a) Establish suitable legal and administrative mechanisms to address historical claims arising from the application of the Land Titles Act (Cap 282) of 1908;
 - (b) Take an inventory of all Government land along the '10 milecoastal strip' and other parts of the province where the problem of squatters is prevalent and come up with a framework for conversion to community land for eventual adjudication and resettlement;
 - (c) Provide a legal framework to protect the tenants at will;

- (d) Establish convenient public utility plots along the coastline to serve as landing sites and for public recreation, and open up all public access roads to the beach;
- (e) Regulate the construction of walls along the high water mark;
- (f) Provide a framework for beach management and the protection, conservation, and management of land that has been created through natural recession of the sea or through reclamation from the sea;
- (g) Establish a framework for consulting indigenous occupants of land before establishing settlement schemes and other land use projects;
- (h) Protect and conserve the Tana and Sabaki Delta ecosystems in collaboration with contiguous communities;
- (i) Sensitize and educate people on their land rights and land administration and management procedures;
- (j) Provide a framework for sharing benefits from land and land based resources with communities;
- (k) Initiate and support the preparation of an integrated coast resource management plan;
- (l) Regulate ownership and use of islands by foreigners taking into account public policy considerations such as national security;
- (m) Rationalize salt mining with other land uses; and
- (n) Establish mechanisms to regulate all forms of disposal of strategic public institutional land to take into account the future development plans and needs of these institutions.

3.6.5 Land Rights of Vulnerable Groups

- 194.** Vulnerability is 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 disabilities. The most vulnerable persons in Kenya include; 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.
- 195.** 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.

196. The land rights of vulnerable individuals and groups are not adequately protected and are subject to bias and discrimination. Further, the vulnerable lack cohesive institutions to represent their interests.
197. To secure access to land and land based resources for vulnerable groups, the Government shall:
- (a) Develop mechanisms for identifying, monitoring and assessing the vulnerable groups;
 - (b) Establish mechanisms for redistribution of land and resettlement;
 - (c) Facilitate their participation in decision making over land and land based resources; and
 - (d) Protect their land rights from unjust and illegal expropriation.

3.6.6 Land Rights of Minority Communities

198. Minority communities are culturally dependent on specific geographical habitats. Over the years, they have lost access to land and land-based resources that are key to their livelihoods. For example, such loss of access follows the gazettement of these habitats as forests or national reserves or their excision and allocation to individuals and institutions, who subsequently obtain titles to the land.
199. These communities are not 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 administration also led to the marginalization of other minority communities both urban and rural, such as hunter-gatherers. To protect and sustain the land rights of minority communities, the Government shall:
- (a) Undertake an inventory of the existing minority communities to obtain a clear assessment of their status and land rights;
 - (b) Develop a legislative framework to secure their rights to individually or collectively access and use land and land based resources;

- (c) Provide legal and institutional frameworks for restitution; and
- (d) Support their resource management systems to ensure sustainability of land and land based resources.

3.6.7 Disaster Management

200. Kenya experiences disasters that should be managed in order to avoid the loss of human and animal life, the negative impacts on agriculture, the natural environment and the destruction of property. Such disasters include floods, earthquakes and landslides. There are no legal, policy and institutional frameworks for the prevention and 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:

- (a) Establish legal, policy and institutional frameworks for the prevention and management of land-related disasters; and
- (b) Establish a suitable legal and administrative framework for resettlement in the event of natural disasters.

3.6.8 Refugees and Internally Displaced Persons

3.6.8.1 Refugees

202. Kenya hosts a large number of refugees as a result of civil strife in neighbouring countries.

203. Due to the unpredictable nature of refugee influxes, resources such as land, fuel wood, water and pasture are overstretched in already stressed environments. Widespread underdevelopment of infrastructure in the affected areas exacerbates the situation.

204. The location of refugee camps in fragile ecosystems causes systematic ecological degradation.

205. The Government shall:

- (a) Ensure that the establishment of refugee camps is subject to development planning and control;
- (b) Put in place a legislative and administrative framework for establishing, planning and managing refugee camps taking into account this Policy, the Environmental Management and Coordination Act and other sectoral laws on natural resources;
- (c) Build the capacity of relevant ministries, communities and the private sector to appreciate and address land-related environmental concerns in refugee camps;

- (d) Involve host communities in setting up, planning and managing refugee camps; and
- (e) Ensure the provision of adequate resources for the maintenance and rehabilitation of refugee camps.

3.6.8.2 Internally displaced persons

206. A significant number of Kenyans have been displaced from their land as a result of tribal and land clashes. These people are currently hosted in camps for internally displaced persons, roadside settlements, market centres and colonial villages established as community concentration centres.

207. There are no legal, policy or institutional frameworks for dealing with the issues that arise from internal displacement.

208. The Government shall:

- (a) Undertake an inventory of all genuine internally displaced persons;
- (b) Identify problems associated with the presence of internally displaced persons such as additional land pressure and competition for land based resources;
- (c) Establish legal, policy and institutional frameworks for dealing with the issues that arise from internal displacement;
- (d) Resettle as appropriate all internally displaced persons; and
- (e) Resettle as appropriate all internally displaced persons.

3.6.9 Informal Settlements

209. The essence of 'informal' or 'spontaneous' or 'squatter' settlements is the absence of security of tenure and planning. Many Kenyans live as squatters, in slums and other squalid places. Squatters and informal settlements therefore present a challenge for land planning and development.

210. Squatters are found on all categories of land.

211. To deal with the challenges presented by squatters and informal settlements, the Government shall:

- (a) Take an inventory of genuine squatters and people who live in informal settlements;
- (b) Determine whether land occupied by squatters is suitable for human settlement;

- (c) Establish appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement;
- (d) Facilitate planning of land found to be suitable for human settlement;
- (e) Ensure that land subject to informal settlement is developed in an ordered and sustainable manner;
- (f) Facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land;
- (g) Facilitate the regularization of existing squatter settlements found on public and community land for purposes of upgrading or development;
- (h) Establish a legal framework and procedures for transferring unutilised land and land belonging to absentee land owners to squatters and people living in informal settlements;
- (i) Develop, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems;
- (j) Put in place measures to prevent further slum development;
- (k) Facilitate the carrying out of informal commercial activities in a planned manner;
- (l) Regulate the disposal of land allocated to squatters and informal settlers; and
- (m) Establish an appropriate legal framework for eviction based on internationally acceptable guidelines.

3.6.10 Cross-Cutting Issues Requiring Special Intervention

212. This Policy recognizes the following as cross-cutting issues requiring special intervention: poverty, HIV and AIDS, youth and gender issues, and corruption.

213. The Government shall:

- (a) Adhere to and enforce the principle of non-discrimination to ensure that these cross-cutting issues are adequately dealt with;
- (b) Facilitate the channelling of resources to address poverty-related and HIV and AIDS occasioned problems;
- (c) Facilitate the empowerment of youth and women;
- (d) Mainstream youth and gender concerns in anti-poverty programmes; and

- (e) Mainstream anti-corruption measures and facilitate public education and awareness creation programmes for all stakeholders.

3.6.10.1 HIV and AIDS

- 214. The HIV and AIDS pandemic has had a significant impact on economic productivity, specifically on utilisation and production from land based resources. It has affected the most productive age bracket. The pandemic has thus raised the need to reorganise rural settlements with a view to rationalising agricultural production systems. Further, it has adversely impacted on the land rights of widows and orphans, who are invariably disinherited of their family land whenever male house heads succumb to illnesses occasioned by the pandemic.
- 215. The HIV and AIDS pandemic underscores an urgent need to reform cultural and legal practices that discriminate against women and children with respect to access to and ownership of land.
- 216. The Government shall:
 - (a) Protect the land rights of people living with HIV and AIDS and ensure that their rights are not unfairly expropriated by others; and
 - (b) Facilitate public awareness campaigns on the need to write wills to protect land rights of dependants.

3.6.10.2 The Rights of Children and Youth

- 217. Children and youth require special protection in matters related to land rights because they are minors under the law and may not be considered as grantees of land rights. Additionally, culture and tradition exclude children and youth from accessing, and making decisions over land.
- 218. In view of this precarious position and considering the problems related to HIV and AIDS, children and youth require special protection with regard to their land rights.
- 219. To protect the rights of children and youth, the Government shall:
 - (a) Enhance the enforcement of the Children's Act (Cap 586) and supervise the appointment of guardians for orphans to safeguard their land rights;
 - (b) Review the legislative framework to provide that being a minor does not constitute a barrier to proprietorship where

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

- (c) 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;
- (d) 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; and
- (e) Carry out public education campaigns so as to encourage the abandonment of cultural practices that bar children and youth from inheriting family land.

3.6.10.3 Gender and Equity Principles

- 220. Culture and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws. There is a conflict between the constitutional provisions and international treaties on gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance.
- 221. 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.
- 222. Few women have land registered in their names and lack of financial resources restricts their entry into the land market. Moreover, International Conventions on women's rights relevant to women's land rights ratified by the Government of Kenya have not sufficiently been translated into policies or laws.
- 223. To protect the rights of women, the Government shall:
 - (a) Enact appropriate legislation to ensure effective protection of women's rights to land and related resources;
 - (b) Repeal existing laws and outlaw regulations, customs and practices that discriminate against women in relation to land;
 - (c) Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources;
 - (d) Make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure;

- (e) Secure inheritance rights of unmarried daughters;
- (f) Facilitate public awareness campaigns on the need to write wills to protect dependants;
- (g) Carry out public education campaigns to encourage the abandonment of cultural practices that bar women from inheriting family land; and
- (h) Ensure proportionate representation of women in institutions dealing with land at all levels.

3.6.10.4 Matrimonial Property

224. The existing laws and practices governing matrimonial property discriminate against spouses whose contribution to the acquisition of such property is indirect and not capable of valuation in monetary terms. Further, the courts have been inconsistent in determining what amounts to such contribution, with the result that some spouses have unfairly been denied of their rights to land.
225. 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 gender equity;
 - (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 a law on co-ownership of matrimonial property;
 - (d) Establish appropriate legal measures to ensure that men and women are entitled to equal rights to matrimonial property; and
 - (e) Establish mechanisms to curb selling and mortgaging of family land without the involvement of spouses.

3.6.10.5 Corruption

226. Corruption has had serious negative effects on the distribution and management of land as a resource. Existing laws dealing with corruption provide for prosecution of offenders and recovery of assets. In practice, however, there has been an emphasis on prosecution of offenders. As a result, there has been limited recovery of land acquired through corruption. Further, public education on corruption in the land sector has been minimal.

227. In order to address the problem of corruption in the land sector, the Government shall:

- (a) Pay due attention to the recovery of assets as an anti-corruption measure;
- (b) Facilitate development and implementation of public education and awareness creation programmes targeting:-
 - (i) Members of the public;
 - (ii) All officers in the Ministry of Lands;
 - (iii) Institutions envisaged in the NLP (National Land Commission, District Land Boards, Community Land Boards, Local Authorities, Land Property Tribunals, District Land Tribunals, Land Courts and Land Reform Transformation Unit).

CHAPTER 4: INSTITUTIONAL FRAMEWORK

228. The existing institutional framework for land administration and management is highly centralized, complex, and exceedingly bureaucratic. As a result, it is prone to corruption and has not been able to provide efficient services. In addition, it does not adequately involve the public in decision making with respect to land administration and management, and is thus unaccountable.
229. The Government shall overhaul the existing institutional framework for land administration and management to:
- (a) Facilitate the delivery of efficient, cost-effective and equitable services;
 - (b) Ensure devolution of land administration and management;
 - (c) Facilitate access to land administration and management by the poor so that the sector can contribute to poverty reduction; and
 - (d) Ensure adequate stakeholder participation and accountability in land administration and management.

4.1 Structural Reform Principles

230. The institutional reform process will therefore be guided by the following key principles:
- (a) Devolution of power and authority;
 - (b) Stakeholder participation;
 - (c) Operational autonomy;
 - (d) Effective surveillance and performance monitoring systems;
 - (e) Access to justice;
 - (f) Gender and inter generational equity;
 - (g) Appropriate enforcement mechanisms;
 - (h) Environmental sustainability; and
 - (i) Smooth transition from the current to the proposed arrangements.

4.2 Policy Framework for Land Management Institutions

231. 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)

232. The NLC shall be a constitutional body. Its composition shall take into account the need to ensure broad representation, expertise, integrity and equity. The nominees shall be vetted by Parliament and

appointed by the President. The NLC shall be operationalized by an Act of Parliament.

233. The NLC shall have the following functions:

- (a) Hold title to and manage public land on behalf of the State;
- (b) Establish and maintain a register of all public, private and community land in the country;
- (c) Ensure the realization of the multiple values of land, namely, economic productivity, equity, environmental sustainability and conservation of national heritage;
- (d) Exercise the powers of compulsory acquisition and development control on behalf of the State and local authorities or governments;
- (e) Levy, collect and manage all land tax revenues except rates which shall be collected by local authorities or governments;
- (f) Develop the capacity of both DLBs and CLBs;
- (g) Provide technical services and coordinate the work of DLBs and CLBs through establishment of NLC district offices;
- (h) Ensure the development and operation of effective digital Land Information Management Systems at all levels;
- (i) Establish a Land Policy Research Centre (LPRC) in partnership with universities and research institutions to coordinate land policy research;
- (j) Establish and manage a National Land Trust Fund (NLTF) to mobilize and pool financial resources for implementing this Policy. The NLTF shall be administered by the NLC; and
- (k) Provide technical support to the Ministry in-charge of land in preparation and implementation of a national land use policy and other land related policies.

234. Within two years of its establishment, the NLC shall initiate the process of formulating necessary legal and administrative reforms to facilitate timely implementation of this policy including resolution of historical land injustices.

4.2.1.1 Independence and Accountability of the NLC

235. The existing legislative practice of giving Ministers the “power to give directions of a general nature” to public agencies has invariably compromised their independence including agencies dealing with land.

236. The NLC should be accorded sufficient autonomy and independence to perform its functions effectively and fairly. It should, however, be accountable to the people of Kenya.
237. In order to ensure the independence and accountability of the NLC, the Government shall enact a 'National Land Commission Act' to:
- (a) Grant the NLC operational autonomy;
 - (b) Require the NLC to be accountable to Parliament for its operations;
 - (c) Require ministerial policy directions to the NLC to be laid before Parliament in writing; and
 - (d) Facilitate public participation and application of democratic principles in the establishment and management of the NLC.

4.2.1.2 The NLC District Offices

238. The NLC district offices will have several technical sections that are needed to facilitate land administration and management including land use planning, land adjudication, settlement services, surveying and mapping, recording of transactions, land information management, issuance of titles, and land valuation for operational land markets.
239. The transactions of the district land registry will cover private, public and community land.
240. The personnel of the NLC district offices shall be appointed on the basis of established guidelines, standards and appropriate qualifications.

4.2.2 The District Land Boards (DLBs)

241. The DLBs shall act as agents of the NLC at the district level and be accountable to the NLC in the performance of their functions.
242. The DLBs shall be composed of democratically elected community representatives and supported by officers appointed by NLC.
243. The DLBs shall be managed according to the structural reform principles outlined in this Policy while paying special attention to the needs of different communities.
244. The officers of the DLBs shall be appointed by the NLC on the basis of established guidelines, standards and appropriate qualifications.
245. District Land Boards shall have the mandate of promoting equitable access to land, conservation of cultural sites, and protecting minority land rights. They will administer public and private land on behalf of the NLC.

246. Other functions of DLBs shall include:

- (a) Facilitating the efficient operation of land markets at the district level;
- (b) Determining area of jurisdiction of CLBs; and
- (c) Monitoring and evaluating land reform programmes at the district level.

4.2.3 Community Land Boards

247. Community Land Boards (CLBs) shall constitute the third tier of the devolved land administration and management.

248. The CLBs shall be composed of democratically elected community representatives and supported by officers appointed by NLC

249. The elected members of CLBs shall be people ordinarily resident in an area as determined by the DLBs in consultation with the affected communities. Membership criteria shall respect ethnic diversity, gender, socio-political dynamics, and environmental sustainability.

250. The functions of the CLBs shall include:

- (a) Holding and managing community land;
- (b) Documenting all community land;
- (c) Regulating all transactions relating to community land; and
- (d) Facilitating the recording and issuance of title for community by the NLC.

4.3 Supporting Agencies

251. Other important institutions in the land sector shall include the ministry in charge of land, local authorities, land property tribunals, district land tribunals, Land Courts and a Land Reform Transformation Unit.

4.3.1 The Ministry in charge of Land

252. The Ministry in charge of Land shall, within its rationalised roles and reorganized structures undertake to devolve land administration and management functions to the NLC, DLBs, CLBs and local authorities.

253. The functions of the Ministry shall include:

- (a) Giving policy direction to the NLC;
- (b) Making policies on land and coordinating their implementation;
- (c) Mobilising additional resources for the land sector;
- (d) Undertaking policy advocacy and providing political leadership;

- (e) Facilitating implementation of the land policy reforms;
- (f) Coordinating the management of the National Spatial Data Infrastructure (NSDI);
- (g) Rationalising its functions with a view to privatising delivery of services such as, surveying, valuation, physical planning and revenue collection;
- (h) Setting service standards, regulating providers, ensuring quality control and capacity building;
- (i) Monitoring and evaluating land sector performance in collaboration with civil society, the private sector and other stakeholders; and
- (j) Coordinating and overseeing the statutory bodies established to regulate land planners, surveyors, valuers, estate agents and other land related professionals.

4.3.2 Local Authorities

- 254. The land use planning functions of local authorities shall be reviewed and harmonized to conform to this Land Policy.
- 255. The functions of local authorities set out in existing legislation on agriculture and land based natural resources shall be harmonized with this Policy.

4.3.3 Property Tribunals

- 256. Currently there are two tribunals that regulate rents for residential and business premises, namely the Rent Restrictions Tribunal and the Business Premises Rent Tribunal.
- 257. The Rent Restriction Act shall be reviewed in order to ascertain its relevance in view of changes in market conditions.
- 258. The continued relevance of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act shall be reviewed in light of the liberalisation of investment and trade.

4.3.4 Land Acquisition Compensation/ Land Arbitration Tribunals

- 259. The Land Acquisition Compensation Tribunal was created under the Land Acquisition Act (Cap 295). The Tribunal deals with appeals arising from compensation of compulsorily acquired land. The functions of this Tribunal shall be reviewed in order to assert its relevance in the changed environment.
- 260. The Land Arbitration Tribunal is established under the Government Lands Act (Cap 280). The mandate of the Tribunal is to arbitrate

disputes arising from land rent revision. The mandate of this tribunal shall be expanded to cover other aspects of disputes.

4.3.5 Land Disputes Tribunals

261. The Land Disputes Tribunal Act (No. 18 of 1990) shall be repealed and replaced by a more appropriate legislation for dispute resolution at the District and Community levels.

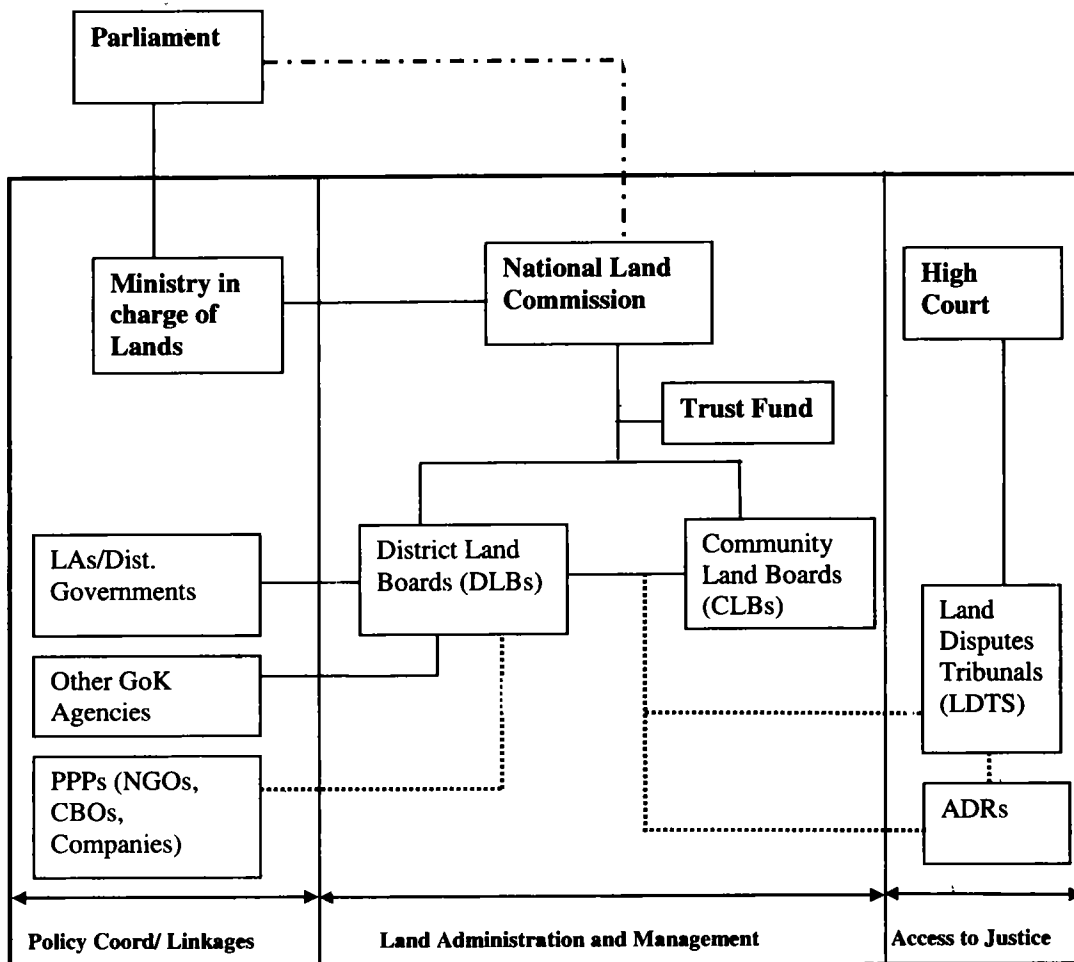
262. The DLBs and CLBs shall, as far as possible use Alternative Dispute Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to facilitate fair and accessible justice on land matters.

4.3.6 Land Courts

263. Land disputes may, in addition to being addressed by DLBs and CLBs, be referred to the land division of the High Court.

Proposed Organization Structure

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



KEY

—— Direct Linkage Consultation Linkage - - - - Operation Linkage

CHAPTER 5: LAND POLICY IMPLEMENTATION FRAMEWORK

264. The Ministry shall, in consultation with other sectoral agencies and development partners, set out a framework for the implementation of this Policy. The envisaged Framework will provide for the establishment of an interim administrative mechanism to operationalize this Policy pending the establishment of the NLC. In addition, the Framework will provide for capacity building and mechanisms for financing the implementation of this Policy.

5.1 Land Reform Transformation Unit

265. The Ministry of Lands shall establish a Land Reform Transformation Unit (LRTU) to prepare for the implementation of the land reform programme.

266. The LRTU shall be accorded sufficient autonomy to enable it perform its functions.

267. Pending the establishment of NLC the LRTU shall be led by a "Land Reform Coordinator" with the specific tasks of facilitating:

- (a) The drafting and enactment of the legislation necessary to implement this Policy;
- (b) The establishment of relevant institutions;
- (c) The recruitment and training of required personnel;
- (d) The mobilisation of financial and other resources;
- (e) The organization of civic education on land reform; and
- (f) A smooth transition to this Policy.

268. The Land Reform Coordinator shall be guided by the programmes and priorities outlined in the "Land Policy Implementation Framework" under this Policy.

5.2 Capacity Building

269. Training shall be undertaken to build capacity of ministerial staff, staff of the LRTU, national and local level institutions that will be involved in policy coordination, land administration and management, and arbitration functions.

5.3 Policy Enforcement

270. In order to instil good governance in land administration and management, there will be a need to establish integrated enforcement measures and protect the Policy from political and/or other interference. This policy will form the basis for, and be recognized as the overall guide to all other land related policies.

5.4 Financing the Land Reform Programme

271. The envisaged Land Sector Reforms will cost approximately Kshs. 9.6 billion over the first six year period.
272. A significant proportion of the estimated costs will be financed by internal revenue sources that will be available to the NLC. It is expected that effective implementation of the proposed land sector reforms will more than double the Ministry's annual collection of revenue currently estimated to be Kshs. 6.0 billion.

GLOSSARY OF TERMS

Absentee Land Owners refers to:

- (a) Entities whose land is under occupation or use by others but who themselves are not regularly in residence or supervision of the land;
- (b) Entities whose conduct amounts to abandonment of the land. In this case periodicity in relation to absence is important in determining the fact of abandonment; and
- (c) Owners of land along the Coast of Kenya who seldom use land of which they are the registered owners; such land, where managed at all, being ordinarily under agents who may or may not have been validly appointed by the registered owners.

Alienation of Land refers to the sale or other disposal of the rights to land.

Allocation of Land refers to the legal process of granting rights to land.

Community refers to a clearly defined group of users of land, which may, but need not be, a clan or ethnic community. These groups of users hold a set of clearly defined rights and obligations over land and land-based resources.

Corruption refers to any act or omission by any person involving dishonesty or lack of integrity including bribery, fraud, embezzlement or misappropriation of public funds, abuse of office and breach of trust.

Customary Land Rights refer to rights conferred by or derived from African customary law whether formally recognized by legislation or not.

Fragile Ecosystems are those ecosystems that are key to the survival and sustainability of flora and fauna and include forests, arid and semi-arid lands, water bodies, wetlands and all areas hosting threatened biodiversity.

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

Hunters and Gatherers refer to forest dwelling communities whose primary livelihood is derived from hunting wild game and gathering forest products such as fruits and honey.

Idle Land refers to registered land that is either unutilized or grossly underutilized for a considerable period of time.

Informal Settlements refer to occupation of land without formal recognition and that does not comply with physical and land use planning requirements.

Land Management refers to the establishment of goals and mechanisms to influence land use to achieve desired policy objectives.

Landlessness refers to a situation in which a person has no access to land necessary for their sustainable livelihood and has no means of acquiring such access.

Matrimonial property refers to land rights acquired by parties to a marriage during the subsistence of their marriage.

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

Optimal Land Use, in the context of land use planning and land development programmes, refers to putting land to the highest and best possible use taking into account zoning regulations.

Peri-Urban refers to areas lying at the interface between designated urban boundaries and contiguous rural areas.

Radical Title refers to the ultimate ownership of land as an incident of sovereignty.

Reparation refers to redress by way of indemnity in instances where restitution or monetary compensation is not possible or appropriate.

Resource Tenure refers to the manner in which the land based natural resources such as water, forests, minerals, mineral oils, wildlife and biodiversity are held, accessed and controlled.

Restitution refers to the restoration of individuals or communities to areas from which they were unfairly removed or evicted.

Squatter refers to a person who occupies land that legally belongs to another person or institution without the owner's consent.

Urban Agriculture refers to the production, processing and distribution of food and non food items through cultivation of plants, tree crop, aquaculture, and animal husbandry, within urban and peri-urban areas.

Wildlife migration and dispersal areas and corridors refer to land seasonally used by animals for migration and breeding.

Zoning refers to the designation and control of the use of land.



