



**3RD DRAFT RECOMMENDATIONS ON NATIONAL
LAND POLICY**

OCTOBER, 2023

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BACKGROUND INFORMATION

1.1 Introduction

The backdrop to the *Recommendations on Kenya National Land Policy, 2023* by the National Land Commission is the review of the *Sessional Paper No. 3 of 2009 on National Land Policy*. The policy, which was the inaugural land policy in Kenya and promulgated in 2009, sought to guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity. The policy provided a framework through which the Country would address the land administration, access to land, land use planning, restitution of historical land injustices, among others.

The recommendations have been prepared pursuant to Article 67 (2) (b) of the Constitution of Kenya that requires the Commission to recommend a national land policy to the national government. In addition, the land policy provides a review after ten years. The purpose of the review is to give Kenyans an opportunity to reflect on the performance of the policy in transforming the land sector and introduce new measures to ensure that the policy continue to serve their interests and is effective.

The policy recommendations have focused on key land thematic areas thereby broadening the scope of the land policy in line with the broad definition of land in Constitution of Kenya, 2010. Therefore, besides relooking at the themes that were incorporated in the 2009 policy such as land tenure, land use management, land administration, institutional and implementation framework issues, the recommendations cover land information management, food security and agriculture, natural resources, environment and conservation, investment, infrastructure and economy, and climate change. The recommendations are aimed at building on the achievements of the previous policy as well as accelerating land reforms.

1.2 An Overview of Achievements of NLP, 2009

The National Land Policy, 2009 has led to a wide range of fundamental positive changes in the manner in which land and land resources are administered and managed. The policy was very comprehensive and was formulated through a structured all-inclusive and consultative process that brought together stakeholders drawn from across the board.

Consequently, it defined the existing constitutional, legal and institutional framework that guides the land management and administration in Kenya. Specifically, the policy provided a framework that was incorporated in Chapter Five of the Constitution of Kenya, 2010, consolidation of land laws into the Land Act, 2012, Land Registration Act, 2012, National Land Commission Act, 2012

and the Community Land Act, 2016. The policy also led to the creation an elaborate institutional framework including establishment of the National Land Commission as one of the fifteen Constitutional Commission, to oversee, among others, the management and administration of public land in Kenya.

There are laws that relate to land that are aligned to the constitution that seek to ensure equitable and sustainable use of land and natural resources. These are Urban Areas and Cities Act, 2011, Physical and Land Use Planning Act, 2019, Community Land Act, 2016, National Spatial Plan 20115-2045, Environmental conservation policies, Maritime Policies, among others.

1.3 Rationale and Philosophy of the new National Land Policy

The NLP 2009, provided for a ten-year review mechanism of the Policy. Thus the need for a review of the NLP is both by design and default.

This review is based on the realization of the gains of the NLP 2009 and a rallying call for a paradigm shift from prioritization of land ownership to optimal land use. The legal basis for this shift is the anchoring three -fold rights enshrined in property, i.e. *usus* (use), *abusus* (severance) and *fructus* (benefit). The move from owning to optimal use and access of land, is envisioned to inform sustainable use and management of natural resources, protection and conservation of the environment and above all help mitigate climate change whilst providing adaptation mechanism.

In the current wake of land degradation, climate crisis and population growth/explosion, it is obligatory for the National Land Policy to substantively and sustainably address the surface of the earth and the subsurface rock; any body of water on or under the surface; marine waters in the territorial sea and exclusive economic zone; natural resources contained on or under the surface; and the air space above the surface.

This Policy embraces use of technology, research and data to make informed administrative and management land decisions that are in the Public interest. The Policy will be guided by Constitutional and environmental policies at the global, regional and municipal levels to provide Kenyans with an effective, efficient and economical policy anchor in all matters land.

1.4 Vision

A National Land Policy that sustains Kenya's pathway towards efficient, equitable, productive and sustainable ownership, use and management of land for prosperity and posterity.

1.5 Mission

To promote accountable and transparent land reform agenda to ensure efficient, equitable, productive and sustainable utilization of Land and Land Based resources for shared national prosperity and improve livelihoods.

1.6 Objectives

The overall objective of the National Land Policy is to provide a mechanism through which land is held, used and managed in an equitable, efficient, productive and sustainable manner. Specifically, the policy seeks to:

- a) Reform and streamline land rights administration to ensure the efficient, effective and equitable delivery of land services
- b) Identify the emerging constitutional and legal provisions gaps for the sustainable land ownership and management in Kenya
- c) Promote institutional linkages for improved land governance
- d) Improve efficiency and transparency in land administration and management
- e) Address emerging imperatives in land administration and management.

1.7 Guiding Principles

The policy will be guided by the following principles and values:

- a) Equitable access to and use of land;
- b) Security of land rights;
- c) Sustainable and productive management of land resources;
- d) Transparent and cost effective administration of land;
- e) Sound conservation and protection of ecologically sensitive areas;
- f) Elimination of gender discrimination in law, customs and practices related to land and property in land; and
- g) Encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.
- h) Public Trust Doctrine a legal principle establishing that certain natural and cultural resources are preserved for public use/ recognition of the public right to certain natural and cultural resources.

1.8 Methodology

The Commission used research and consultations through internal processes to generate land policy issues relevant in formulation of the revised policy. The process involved multiples approaches including review of various documents to inform the proposals. Key among them were the existing national land policy, Taskforce Reports on various land issues, Research Papers, and inference of topical issues. Secondary information and data (from both published and unpublished literature) were reviewed. Experts views/opinions, knowledge and

experience were gathered through brainstorming and discussions as well as benchmarking with existing good industrial practices. The draft revised policy recommendations were subjected to stakeholders' validation through workshop(s) engagement.

In addition, it is noted that the Commission had drawn an elaborate methodology contained in the *Framework for Formulating a National Land Policy for Kenya, Concept Paper 2018* which is applicable and shall be adhered to deliver the final new national land policy for Kenya.

REVISED

SITUATIONAL ANALYSIS AND POLICY ISSUES

2.1 Territory and Land Potential in Kenya

Kenya territory comprises approximately 582,646 sq. km. of land and water surface. According to the Land Policy under review eighty percent of the land area is arid and semi-arid while the rest can be categorized as agricultural or arable land. This means overbearing pressure on land exerted by the astronomically growing population.

The country's topography though diverse is generally favorable although it influences and determines rainfall patterns. Thus, rainfall patterns are varied with the bigger proportion of the country receiving low rainfall throughout the year. Climate change and weather unpredictability has exacerbated reliability on rain-fed agricultural activities. This call for more efforts in land management measures such as conservation.

2.2 Population

The Kenyan population according to the 2019 population and housing census was 47.6 million with an inter-censal population growth rate of 2.3 percent (KNBS). The population is expected to be 91.6 million by the year 2050.

Rural population in Kenya is reported to be 71% while urban population is 29%. The growth of urban areas' population is projected to double by 2035 and triple by 2050. This means there will be close to 50 million people living in urban areas by the year 2050.

It is imperative that the Land policy focus on proposals that can influence population distribution to curb the rapid urbanization that is creating urban areas that are not livable. At the same time, land policy measures must ease pressure on rural agricultural land by discouraging undesirable settlement.

2.3 Land Use Patterns

The land use pattern is determined largely by the ecological zones' potentialities. Major land-cover types in Kenya are forests, savannahs, grasslands, wetlands, fresh and saline water bodies, and deserts. The land uses are agriculture, pastoralism, water catchments, nature reserves, urban and rural settlements, industry, mining, infrastructure, tourism and recreation. Other uses include cultural sites, fishing, forestry and energy (NLUP, 2017). Rangelands comprise 80% of the total land cover in Kenya and have the capability to support large scale livestock production as well as other economic activities. Land for settlements is 15%. The water bodies, woodlands, forests and unutilized land cover the rest of the land which is 5%.

Approximately 20% of Kenya land mass is agriculturally productive and employs approximately 40% of the total population. It is also estimated that agriculture employs more than 70 % of the rural populace.

The ASALs account for 30% of the rural population while having 80% of the Kenya land mass (Agriculture Sector Survey, CBK, 2023). The agriculture sector continues to play a critical role in Kenya accounting for 20% of GDP and 27% indirectly through its linkages with other sectors.

In spite of the scarcity of productive land, fragmentation into uneconomical sizes is a major concern in both high and low rainfall agricultural areas.

Faced by this scenario the country's land policy shall remain geared towards revitalizing optimization of use of the ASALs areas to boost the economy. Safeguarding agricultural land remains key.

2.4 Constitutional, Policy and Legal Contexts

All policies and laws enacted have to be in conformity with the Constitution. The land laws enacted post-Constitution 2010 are operationalizing the provisions in Chapter Five of the constitution. It is therefore noted that there are several provisions of the constitution that have direct bearing on the new land policy.

The definition of land which took cognizance that land is the interface of biological and physical resources will expand the scope of land policy to include the biophysical and the outlined five dimensions of land. Therefore, the new policy shall regulate access and use rights to the five facets of land.

The national values and principles of governance shall not only apply when interpreting the constitutional tenets but also to inform the policy measures. This is for instance with regard to principles of devolution of power and assigning responsibilities to each level of government, entrenching equity, non-discrimination and protection of the marginalized, and sustainable development as they apply to land.

The environment, economic and social rights have been granted by the Constitution. Given that land as a factor of production is the enabler of attainment of the rights, the policy has to introduce measures to protect the environment, guarantee high standards of health, adequate housing, and sanitation and more importantly, prescribe measures that support food security among other social rights such as social security as well as education. The new policy's basic principles and classifications of land are espoused under Article 60 and Article 61 of the constitution respectively. They formed the basis of the policy measures prescribed.

Sectoral policies such as Vision2030, Bottom-Up Economic Transformation Agenda (BETA) - framework, NLUP, NSP, Agriculture, and Environment policies among others are interpreted and linked to land policy since they are

interdependent. For instance, the policy anticipates the impact on land to be occasioned by implementation of the programs outlined in Vision 2030 and the national government manifesto framework.

2.5 Contemporary and Emerging Issues

Since the ratification of the Sessional Paper No. 3 of 2009 on the National Land Policy numerous changes of diverse magnitude have occurred in the country. These have had sundry impact on the land resource and will inform the possible future trends and how to mitigate or enhance them as they affect land.

A number of changes in the global environment politics and economy are exerting significant impacts on land resources and hence the need to have them factored in the new Kenya's Land Policy. The Constitution of Kenya 2010 made fundamental changes to the management of the land resource. These changes revolve around the guiding principles for the management of resources in the country.

These include:

- Inhibitive cultural practices

The Kenyan constitution provides for protection of heritage sites and ancestral lands for economic, social and cultural well-being. It also recognizes the application of customary practices governing property rights or relations in determining the ownership and extent of use. Indigenous communities' interpretation of property rights over identified areas often conflict with concession rights. In some cases, duplicity in ownership usually triggers conflicts.

- Demographic shifts and urbanization

Kenya's High Population growth rate of approximately 2.3% per annum, coupled with rapid and uncontrolled urbanization, high demand for rural and urban settlements and agricultural activities has caused intense competition for land. Currently, 20% of land in Kenya is high potential and supports 75% of the total population (GoK, 2013).

This exerts tremendous pressure on its usage thus triggering:

- Rural- urban and intra rural migration.
- Subdivision of land into uneconomical units
- Urban sprawl into prime agricultural land
- Unsustainable agricultural practices
- Encroachment into fragile ecosystems and protected areas; and
- Resource use conflicts among others.

In urban areas, the rural-urban migration has exerted pressure in the provision of employment, housing, education and other services leading to development of

informal settlements. As a result of the rapid population growth, unplanned settlements have emerged encroaching on the marginal and fragile ecosystems thus compromising sustainable land use resulting in degradation. There has been haphazard housing development which calls for urgent land use planning in the country.

- Unsustainable land use

Whereas the sector has prepared physical development plans, they are isolated and their implementation has been hampered by weak enforcement. The weak implementation of the National Land Use Policy, 2017 has contributed to emergence of other problems such as congestion, pollution and environmental degradation.

The situation is further complicated by:

- Multiplicity of planning agencies on land use management;
- Lack of integrated spatial and economic planning;
- Lack of a National strategy for land development;
- Institutional weaknesses
- Lack or inadequacy of most basic input survey data
- Inadequate, outdated, and scattered land use information;
- Inadequate land use planning at the national, county and sectoral levels.

- Encroachment on strategic locations

Presently, there is weak enforcement of laws and regulations on the management of land within the vicinity of strategic locations and installations. The strategic locations include: security installations, airports and airbase, public game parks and reserves, the water towers and water bodies; public beaches, islands, and the continental shelf.

- Manual Land Information Management System

The country lacks updated land information management systems that are coordinated, and integrated for planning and decision making. The volume of land records and the manual system used in land transactions have made it untenable for expeditious land transactions. In addition, there exist multiple players with overlapping mandates leading to jurisdictional, legal and policy conflicts and poor sharing of information.

- Food supplies, prices and changing land uses

The recent surge in world food prices and food supply bottlenecks have tended to affect Africa the most, given the continent's current food production deficits and increasing dependence on imports and food aid. Rising food prices are the result of complex interactions between a number of major factors including the diversion of land resources and farm inputs towards the production of food

grains and oil seed for agro-fuel stock feeds in North America, and Europe, the failure of African countries to pursue policies that promote increased agricultural productivity and persistent inequities in the global trade system. Land policy reforms will have to address these issues.

- Globalization

In recent times, the significance of bio-fuels, minerals and oil has gained prominence. The accelerated exploitation of resources by, together with the establishment of, industries and processing infrastructure in these countries, have led directly to a 'new scramble' for Africa's land resources. The concept has become more widespread, as demonstrated in relation to demand for land for a wide range of investments in timber, tourism, commercial development, and lately food production for consumption abroad. The question to be asked is whether these foreign demands can be met while observing sustainability guidelines and without marginalizing the land rights of African communities. Discovery of Oil and other minerals has led to competing land uses and speculation.

- Regional co-operation and integration

Increasingly African countries are embarking upon regional cooperation and integration, under the auspices of various pan African and sub-Regional organizations. A growing number of cross-border developments point to the need for co-operation over many issues including migration, the movement of pastoral communities, refugees, trans-boundary ecological stresses (land and water degradation, desertification, and deforestation). Thus, Regional Economic Communities currently have agreements on the management of shared water, forest resources and desertification. Civil society organizations are also mobilizing in a bid to influence land and resource management policies across national boundaries. Regrettably, however, these ongoing regional cooperation and integration initiatives have not resulted in binding convergences in land policy frameworks, processes and management systems.

- Emerging jurisprudence for land governance – judgments from the courts indicate the shifting burden of proof (innocent purchaser, and due diligence going beyond a search and getting to the root of a title); e.g. Court of Appeal Mombasa Civil, Appeal no. 150 of 2019.

Other emerging imperatives includes:

- Alternative Justice systems (ADR, TDR)
- Historical land injustices
- Epidemics- (Covid-19) and Invasive species
- Inheritance and Succession
- Compulsory land acquisition

- Emerging technologies
- Carbon trading
- Public health, land and environment linkages e.g. concept of land contamination (Owino Uhuru case on lead poisoning), raw sewage for agriculture, artisanal miners using mercury for gold production.

2.6 Emerging Policy Issues

From the foregoing, the revised Land Policy shall focus on the following broad issues or themes:

- 1) Land Use Planning
- 2) Land Tenure and rights
- 3) Conflicts and dispute resolution
- 4) Historical Land Injustices
- 5) Land Administration and Management
- 6) Land Information Management
- 7) Food Security and Agriculture
- 8) Natural Resources, Environment and Conservation
- 9) Investment, Infrastructure and Economy
- 10) Climate Change
- 11) Institutional Framework

LAND TENURE AND RIGHTS

3.1 Introduction

In Kenya, Article 260 of the Constitution (2010) defines land to include all vital life support systems on earth; including the surface of the earth, water bodies, marine waters, all natural resources as well as the air space. It has a very high premium due to the socio-cultural and economic value attached to it by various communities. It is therefore held collectively by the people of Kenya as a Nation, community and as individuals (Article 60), that is to be managed and administered in accordance with the values and principles and principles governing the land policy.

Land is a fundamental natural asset that belongs to God. People don't own land, but hold recognizable interests in land which bequeath them different rights that are well defined. Recognition of such interests and rights by the people is what the law registers and issues a title for. Recognition that defines ownership lies in the popular knowledge, and later in law. Thus, customary laws, though not recorded, are recognized by the people and the constitution.

Article 61 of the Constitution (2010) classifies all land into three categories – Public, Community and Private. Consequently, these categories give rise to four distinct land tenure systems namely Leasehold, Freehold, partial interest (such as easement) as well as customary forms of tenure. The latter tenure constitutes what ensues from customarily held land by communities.

Customary tenure systems have significant cultural and historical relevance in our society, and recognizing their importance is essential. Customary tenure is defined as the traditional systems of land ownership, use, and management practiced by indigenous communities and local populations. The instant must therefore protect the rights of individuals and communities holding land under customary tenure, while also ensuring sustainable land use practices. Additionally, the land policy must recognize the need for a comprehensive and inclusive approach to customary land tenure that respects the rights of indigenous communities and ensures their active participation in land management decisions.

Prescribing suitable policies for customary tenure within a national land policy is essential to recognize and protect the rights and practices of indigenous communities and local populations. The policies relating to customary tenure can help foster social justice, protect cultural heritage, and promote sustainable land use practices within indigenous and local communities. Customary tenure should be viewed as an integral part of a comprehensive national land policy that respects the diversity of land tenure systems within a country. In order to realize

effective communal land tenure, the state shall:

1. Officially recognize customary land tenure systems within the legal framework of the country.
2. Clearly define customary land rights and ensure they have legal recognition and protection on par with other forms of land tenure.
3. Affirm the communal ownership of land by indigenous and local communities under customary tenure.
4. Specify the mechanisms through which community land ownership is established and maintained.
5. Encourage sustainable land use and management practices within customary tenure areas to ensure the long-term viability of natural resources.
6. Promote local governance and decision-making processes for land management and resource allocation.
7. Establish transparent and equitable processes for allocating land within customary tenure areas.
8. Ensure that these processes consider the needs of vulnerable and marginalized groups within communities.
9. Develop mechanisms for resolving disputes related to customary land use and ownership.
10. Encourage alternative dispute resolution methods that respect local customs and traditions.
11. Facilitate the documentation of customary land rights, with an emphasis on maintaining culturally sensitive records.
12. Ensure that these records are accessible to community members and relevant authorities.
13. Pay special attention to protecting the land rights of vulnerable groups, including women, the elderly, and marginalized communities within customary tenure areas.
14. Enforce policies that prevent land grabbing and exploitation of vulnerable community members.
15. Promote the active participation of indigenous and local communities in decision-making processes related to their customary lands.
16. Encourage the establishment of Community Land Management Committees or similar structures to facilitate community engagement in land governance.
17. Encourage customary landowners to adopt sustainable land management practices that protect natural resources and ecosystems.
18. Develop policies that incentivize and support sustainable agriculture, forestry, and conservation efforts within customary tenure areas.

19. Invest in education and capacity-building programs to empower communities to understand and assert their customary land rights.
20. Ensure that communities are aware of the legal protections and mechanisms available to them.
21. Ensure that customary tenure is integrated into the broader national land policy framework, emphasizing the coexistence of different forms of land tenure.
22. Create mechanisms for coordination between customary land authorities and national land management agencies.

Legally, all these tenures have equal enforcement in law. In this regard, the promulgation of the Constitution of Kenya 2010 brought a paradigm on land governance and introduced a completely new tenure system – customary- which largely deals with and secures all land under the rangelands/community lands.

3.2 Land tenure

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. Land tenure is about the manner in which access to land, including the ways in which it is held, controlled and interests and rights granted. Different interests grant different rights and limitations. All these vary, creating different tenures.

In Kenya, currently, there are four main and distinct land tenure forms, birthed by the Constitution of Kenya 2010, as informed by the National Land Policy 2009. These include: Freehold, Leasehold, Partial interest, and Customary land tenure forms. In addition, there are other tenure systems including usufructs (use of land), Temporary Occupation License (ToL) and social tenures, among others. Customary tenure is the most prevalent and this is secured by social recognition, rather than, by title.

Tenure Security (TS) is dynamic, interpreted differently, perceived differently, in response to adaptation, organization and strengthening of people's lives around these aspects. Consequently, the scenarios that revolve around security of tenure relate to social attachments to tenure rather than titles or land ownership documents. In this regard, it is critical that this instant Land Policy recognizes the values of economic productivity, equity, environmental sustainability and the conservation of culture, and seeks to facilitate their protection.

This land policy proposes a plural approach to land tenure, 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 shall facilitate the reconciliation and realization

of the critical values which land presents in totality, in line with the Principles of land policy in Kenya under Article 60 of the Constitution.

While significant progress has been made to realize the achievement of these principles, there are inherent gaps and challenges relating to equitable access to land as well as security of tenure. In order to establish a firm foundation for more resilient and transformative land tenure and governance, the laws should focus on;

1. Access to and use of land, rather than ownership.
2. Sustainable and productive management and use of land and land resources.
3. Equitable sharing of benefits from the proceeds of land and land-based resource development and exploitation.
4. Sound conservation and protection of ecologically sensitive lands.
5. Protection of rights and interests of minority and marginalized groups (MMGs) as well as other vulnerable populations including women, children, widows, PWDs and youth.
6. Improve the understanding of the citizenry to appreciate that the radical title to land belongs to the people of Kenya, from which members of the public draw and bequeath interests and rights to land.

3.2.1 Social security of land tenure

Security of tenure is about the strength of recognition rather than title. The more you occupy land or the more you associate with it without any interruption, the more you build popular recognition as the owner of that Land. Popular recognition is also recognized by courts, and the recognized occupier or user may win adverse possession and defeats the title of the registered owner. It's clear that title does not provide better security of tenure than social recognition through occupation and use. Evidently, recent jurisprudence has continuously challenged the principle of indefeasibility of a title. Instead, several titles to land have been impugned by the Courts in a bid to restore sanity and promote transparency and rule of law regarding land governance. Article 40 (6) of the Constitution of Kenya provides the ground and exception under which a title can be impeached. Specifically, the Constitution and the law provide that a title can be impeached on grounds of unlawful and unprocedural acquisition of such.

Security of tenure is therefore stronger when based on three pillars:

- Ownership documents,
- continuous uninterrupted occupation
- Continuous use.

3.2.2 Land tenure and politics

Land tenure has been perceived differently across generations. Among pastoral communities, mobility is used as strategy to mitigate the impact of climate change. Today, politics define the kinds of relationships people have with land, including the institutions that prescribe, manage, and oversee land rights. In addition, in Informal Settlements, residents may have no legal right to land they reside on, but feel relatively secure because local politicians offer *de facto* protection. It is therefore central that land related policies and laws tactfully weave together politics and land matters as two mutually reinforcing variables.

3.2.3 Tenure as a mindset and the shifting paradigms

Security of tenure is perceived as a psychosocial concept rather than legal. Tenure security has foundations in the minds of the people. However, secure tenure rights are questionable and connote different meanings. There are numerous instances where individuals have titles to land but are not able to occupy land due to perceived or real insecurity. Conversely, there are citizens who own land and property within informal settlement areas and feel more insecure in terms of tenure as others occupy and use their land. This implies that none of them have security of tenure psychosocially.

Generally, tenure can be regarded as a state of mind (it's actually a mindset), which does not matter whether one has a title or not. In fact, the amount of land secured through adjudication titling is merely about 19.43% (11,288,916.12 hectares) according to a recent report (2022) on national land monitoring, implying that a big chunk of land (ca 80%) mass in Kenya is untitled. The variance of 46,742,403.88 hectares (80.57 percent), comprise of ongoing adjudication sections, community land, land in other urban areas, large scale land under leases, water bodies, forests and roads, which could not be ascertained. Yet, people feel differently in terms of security of tenure. A paradigm shift in the mind-sets is required to shape these new discourses in land administration and management including the changing patterns and viewpoints in relation to commodification of land, especially by the youths.

3.3 Gender and land rights of minority, marginalized and vulnerable groups

While there is substantial literature on women and land/property rights at the global scale especially in Asia and other developed nations, very little is available in Kenya. The paucity of literature and data on women and land is a clear indication of the interest, focus and resourcing as well as capacity related aspects.

In Kenya, like the rest of Africa, land is a social, cultural, economic, political and ecological asset that is crucial for cultural identity, political power and participation in decision making. Women's ownership of property extends their capabilities, expands their negotiating power, and enhances their ability to address vulnerability. It builds their confidence and self-esteem. It is also serving as a critical factor of social protection against gender-based violence. Therefore, women's equal right to land is also a human rights issue.

At the apex of this discourse on the nexus between women and land rights, is recognizing and facilitating women's participation in the process of developing a land policy, as a fundamentally critical move to increasing women's right to land. Policies and laws are like souls, in fact tissues that must be fed and watered to provide the much needed impetus for securing rights and achievement of sustainable development. A land policy needs to be based on the principle of gender equality land right and have clear objectives/goals on equal right to land. According to gender Tool Box on women and Land Rights (March 2015), there is a direct relationship between women's right to land, their economic empowerment, food security and poverty reduction. Further, the document advocates for a gender approach to land rights that enable paradigm shifts in gender power relations, and assure that all people, regardless of sex, benefit from, and are empowered by, development policies and practices to improve people's rights to land. For instance, while Women represent over 70% of the agriculture labour force, they rarely own the land they are working on, have no tenure securities or control over the land and land resources.

Women's right to land is regulated either by the formal legal system or through customary law; and that there are many examples of how the two systems can both prevent and promote women's right to land. Notably, the formal legal systems in many countries have constitutions or land laws that grant gender equality in access to land, and at the same time laws for marriage, divorce and inheritance that contradict these laws by discriminating against women and girls. Indeed, while systems of customary law regarding land tenure in pre-colonial Africa often granted women access to land, this right was lost in many cases with the introduction of the idea of individual ownership (individualization and commodification of land).

In Kenya, there exist two legal documents: (i) the Matrimonial Property Act, 2013, that provides for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes. It also has specific provisions on gender and women land rights. (ii) The Law of Succession Act, Cap 160, is the main legal framework governing inheritance in Kenya. It gives protections for widows and children in regards to land rights.

A recent National Land Monitoring Report (2022) revealed a paucity of data on the proportion of women and men with legally recognized documentation or evidence of secure rights to land could not be retrieved as the land ownership data was not segregated at the point of collection.

According to the State Department for Gender, Kenya's women land rights continue to trail men, despite the existing policy and legal provisions; Implementation of the legal provisions on land at national and county levels towards women is ineffective; there exist retrogressive/ discriminatory cultural norms and practices at institutional and community level-including cultural laws on land that are patriarchal in nature; there is low literacy/education levels and awareness among women that compounds their lack of knowledge and awareness of their rights; and that there is inadequate women's participation and representation in land governance structures and decision-making among other impediments.

In Africa, customary systems of property tenure account for at least 75 per cent of the land in most countries. In reality and in practice, Women's *de facto* access to, and control of land is restricted by lack of implementation of existing laws, by customary law, traditional and social practices, norms and power structures within communities and households, and by lack of legal security systems to protect women against land grabbing etc. Yet, a number of countries such as Kenya have developed robust pro-gender and Constitutions and laws that protect and safeguard women and their right to property as part of the *de jure* gender equality rights of women to property. In this regard, there is a disconnect between the *de facto* and *de jure* women's rights to land and property as what is provided in law is not practiced.

Despite these gaps, women's right to land and property is central to women's economic empowerment, as land is a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Supporting women to beat these odds in access to, ownership and control over land and land resources is therefore imperative. The Constitution emphasizes the principles of land policy including equitable access to land, security of land rights, sustainable and productive management of land resources and elimination of gender discrimination in law, customs and practices related to land and property.

The Constitution of Kenya 2010 is the supreme law that governs land administration and management including the right to property. Under Article 40, it enshrines the rights of every Kenyan to acquire/own property of any description and guarantees protection of all interests in land, including protection against arbitrary deprivation of property. The progressive Constitution bestows powers on the state with duty to address the needs of vulnerable groups

within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. Marginalized group is defined as a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4) of the Constitution. In order for women, minority, marginalized and vulnerable groups realize meaningful rights to land, the state shall:

1. Strictly adhere to and monitor women's participation in land governance, access to and ownership of land and make such disaggregated data available to the public
2. Eliminate processes that stereotype and stifle women's access to land and acquisition of land rights
3. Demystify the underlying myths and retrogressive perceptions and attitudes relating to women's access to, control and ownership of land; Engage and negotiate with culture and religious custodians that promote patriarchy and hence increase inequality in land rights
4. Eliminate poverty in its entirety and tackle socio-economic developmental challenges including increasing awareness and conscientization of women, minority, marginalized and vulnerable groups to own land and property
5. Bolster women's confidence in relation to land rights and ownership through transparent and accountable information systems for land transactions and succession
6. Improve economic empowerment of women in order to enable them access credit and buy land for themselves and their families
7. Fast-track adjudication and titling of lands customarily owned by minority and marginalized groups and other disadvantaged populations.
8. Encourage and facilitate communal land ownership rather than individualized tenure, where appropriate
9. Encourage alternative dispute resolution on land matters and support traditional land tenure systems.
10. Identify and allocate public land to women, minority and marginalized groups within the ambit of affirmative action.
11. Actualize/action gender mainstreaming in land related institutions including creation of gender desk officers.

3.4 Parcellation, Individualization and commoditization of land

Parcellation is the process by which collective ownership and management of productive assets such as land evolves into a new set of property rights

involving at least some degree of individual management and/or ownership. While, recognized as a socially desirable pathway to securing property rights, it has some challenges that reflect on the imperfect market and biases that come with small-sized parceled lands.

Individualization of land rights in Africa fails as a result of its inability to provide impetus for realization of the benefits of increased investment and wealth creation as postulated in the capitalistic philosophy, rather than in its provision of security of tenure. The importance of individualization of rights on community land is well illustrated by the increased land acquisitions by foreign private companies of communally owned land in various parts of Kenya, which partly forestalls food insecurity in this area (Bomuhangi, Doss & Meinzen-Dick, 2001).

The National Land Policy (2009) noted that individualization of tenure on community land has affected traditional tenure in two fronts: Firstly, it has undermined traditional resource management institutions; and secondly, it has ignored completely customary land rights not deemed to amount to legal/formal ownership, such as family interests in land, the rights of “strangers”, and communal rights to land. This has generally undermined community control over land and land-resources resulting in many social governance challenges including uncontrolled sale that ignores family rights and hence causing and contributing to landlessness; and misuse of fragile and ecologically sensitive lands and ecosystems.

Further, the ownership system based on the English registration model has tended to give absolute power of control to the primary title holder to the exclusion of other deserving interests. As proposed in the first land policy 2009, rules for regulating the power of the primary freehold rights holder to dispose of land or to use it in any manner that satisfies their whims should be enacted to take care of other interests on that piece of land.

Clearly, while the Community Land Act 2016, attempts to provide for group/family/clan-based ownership as akin to customary tenure, it has failed to recognize the wholesome approach to community rights to land including access to vital natural assets that support community livelihood and well-being such as grazing areas and watering points.

Evidently, Konet (2014) established that adjudication of group ranches in Kajiado has led to subdivision of the ranches to individual members, leading to transfers to outsiders/strangers. Equally, this has led to other emergencies and socio-ecological chaos including loss and blockage of wildlife and livestock movement corridors and dispersal areas. Hence defeating the original purpose

of commercial ranching, preservation of cattle culture and minimization of environmental degradation. This has led to increased human-wildlife conflicts and poses a threat to food security and sustainable livelihood in these regions. The original purpose of group ranching concept was achievement of a balance between ecological sustainability, livestock productivity and minimization of inter-clan conflicts over grazing land (Davis, 1971).

The situation described here suggests an impending social and ecological calamity which should be forestalled by policy and addressed appropriately. Rutton (1995) described the outcome of subdividing the Maasai pastoralist group ranches in Kajiado District Kenya as a major tragedy for the commons and therefore a poor governance of land and land-resources.

Land is not just a commodity that can be traded in the market. It represents the several multiple values which should be protected by both policy and law, thus:

a) Land is an economic resource that should be managed productively;

Land is a significant resource to which members of society should have equitable access for livelihood and social development;

b) Land is a finite resource that should be utilized sustainably;

Land is a cultural heritage which should be held in trust and conserved for future generations. Land is a finite resource. Therefore, it is not possible for every person to own land.

c) It is often necessary to restrict the rights of ownership to facilitate sustainable resource utilization.

To deal with these issues, the state shall:

1. Manage and conserve fragile landscapes such as hills, riparian reserves, watershed, swamps and water catchments that result from land adjudication process.
2. Strengthen protection of community land under communal tenure.
3. Empower and facilitate Community Land Management Committees (CLMCs) to manage and administer registered community lands.
4. Monitor rights and interests over all registered community land in Kenya and provide technical support and capacity building to the established governance structures.
5. Recognize all undocumented ownership that is not under dispute and save the vulnerable groups from the long court process of succession.
6. Exercise oversight responsibility and regulate use of all land

7. Document and secure unregistered community land especially fragile lands and ecosystems
8. Encourage land consolidation for purposes of improving productivity
9. Provide incentives to discourage land fragmentation/parcellation and individualization.

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LAND ADMINISTRATION AND MANAGEMENT

4.1 Introduction

Land administration is broadly defined as the process of determining, recording and disseminating information about ownership, value and use of land. While the National Land Policy (2009) emphasized on the need for an efficient land administration system that guarantees the recording of land rights, promotes tenure security, and guides land transactions, these aspirations still remain largely on paper. A good land administration system aims to effectuate and support:

- a) Ascertainment and registration of land rights;
- b) Allocation and management of land;
- c) Accelerate the proportion with security of tenure
- d) Promote efficient land market
- e) Efficient transactions in land;
- f) User friendly interfaces/interactions;
- g) Land use control and development;
- h) Development and maintenance of an efficient and accurate land information management system;
- i) Flexible recordation;
- j) Establishment of mechanisms for the assessment of land resources for fiscal management and revenue collection; and
- k) Establishment of efficient and accessible mechanisms for resolving land disputes.

However, realizing meaningful and effective land administration system has been stifled by lack of goodwill, characterized by poor prioritization, budgeting and development of requisite capacity to effectively administer and manage land. Additionally, these challenges are compounded by weak accountability systems and measures that are unable to detect multiple land allocations and tackle overlapping claims. These permeate the entire land administration and management continuum. Therefore, systemic delays in processing land registration and ownership documents are still marred with opaque, stressfully longer and bureaucratic processes and procedures that run through the whole thread of land administration and consequently, jeopardize land reform agenda in Kenya.

Thus in order to tackle the inherent problems relating to land administration and management, the state shall:

1. Fast track digitization of land records and create a web-based information management system for effective land administration and management.
2. Prioritize sensitization and education of citizenry on the existing land laws, processes and procedures of land administration.
3. Mobilize adequate resources, support and goodwill and towards efficient land administration and management.
4. Bolster human resource capacity and technology towards land administration reforms and achievement of efficiency.
5. Encourage and promote traditional systems of land administration including conflict resolution.
6. Re-tool the existing land professionals to appreciate the dynamics of new imperatives in land administration including mainstreaming of climate change.
7. Ensure that land records are authenticated, documented, and their custody and sanctity secured.

4.2 Standards for due diligence

Effective and efficient land administration is accompanied by specific instruments. The certificate of titles is the main instrument that guarantees security of tenure, land rights and largely, the indefeasible proof of land ownership. Therefore, to confirm ownership of land, the practice is conduct a search at the land registries. Article 40 (6) of the Constitution of Kenya 2010 has brought a new paradigm that impugns a title that is unprocedurally and/or unlawfully acquired. Currently, several titles to land have been impeached following decisions by the Courts in various parts of the Country including the Supreme Court (e.g. the Dani land case, Petition No. 8 (E010) of 2021). In addition, the Court of Appeal at Nyeri, Civil Appeal No 239 of 2009 (Munyu Maina V Hiram Gathiha Maina (2013) eKLR., held that “when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal, and free from any encumbrances.

In this regard, the court went further to state that the title may not be

indefeasible. Consequently, it is very critical to underscore that the authority on the root of title becomes more important than the title itself. Additionally, there are other interesting authorities that have impeached and challenged titles to land, thereby defeating the whole concept of indefeasibility of titles. Hence, the authority on the root of title has been elevated and standards for due diligence, completely expanded to take care of emerging imperatives and dynamics within the land sector. Therefore, in order to deal with this challenge, the state shall;

1. Review the laws to clearly capture the expanded due diligence standards including provision of guidelines on due diligence.
2. Sensitize and educate the citizen on the due diligence standards in order to enhance their understanding and awareness.
3. Promote accountability and institutionalize due diligence including establish due diligence body.

4.3 Allocation of public land in rural and urban areas

Allocation of land means the legal process of granting rights to land. Traditionally and under the old land laws, this process was executed by the then Commissioner of lands, acting on behalf of the presidency/executive. However, with the promulgation of the Constitution of Kenya 2010, this function was inherited by the National Land Commission (NLC). Hence, public land can be allocated as long as the same is available and not committed for other uses.

The procedure for allocating public land including restrictions on sensitive and unavailable lands that are not to be allocated, is elaborately provided for under Section 12 of the Land Act 2012; the law that also safeguards public land allocation from abuse as well as fosters environmental stewardship and climate resilience. Further, this law unequivocally, removes custodianship and ownership of ecologically sensitive lands from the hands of private entities and places this responsibility on the people of Kenya.

Despite these legal provisions, there are challenges relating to implementation, largely due to competing land needs for various uses. Further, this challenge is compounded by a lack of robust inventory relating to public land including vital natural resources such as ecologically sensitive areas that are to be conserved and not allocated. This therefore hampers decision-making relating to allocation of public land. Thus the need for strict adherence and enforcement of these provisions in order to halt any illegal and/or irregular allocation of public land including ecologically sensitive lands.

4.4 Land adjudication and settlement

Land adjudication is the process of ascertaining and recording rights and interests in land that are 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.

While the state has ensured seamless harmonization and consolidation of laws relating to land registration and ascertainment of rights, land adjudication, which is currently underway in various parts of ASAL Counties, have not achieved much due to delays relating to operationalization of community land Act. These challenges relate to the delayed development of the substantive law that effect community land registration in line with Article 63 of the Constitution, lack of goodwill, resource and budgetary constraints to mobilize and organize communities, profile and submit community land inventories as well as gazzettement of community land registrars and adjudication teams. There is therefore need to fast-track and complete adjudication in the unadjudicated areas in order to enhance seamless land registration and recording of rights to land

In terms of Settlement, while the state has provided mechanisms of human settlement for displaced person, squatters etc. under Section 134 of the Land Act 2012, there is lack of genuine and authentic list/inventories of squatters and landless people in the country, making settlement of squatters and land people cumbersome because of such fluidity and elusivity. In addition, there are numerous cases of unsettled squatters and landless people and challenges relating to their settlement including:

- Lack of guidelines for identifying, verifying and recording of genuine landless people;
- Cumbersome and expensive process of land acquisition for establishment of settlement schemes,

Therefore, to deal with such matters, the state shall;

1. Cause to undertake profiling of genuine landless people;
2. Cause to undertake planning, survey and demarcation of land in settlement schemes;
3. Ensure equitable and accountable allocation of settlement scheme land;
4. Review and streamline the documentation process of settlement

- plots;
5. Repossess and reallocate abandoned /unutilized settlement plots;
 6. Discourage settlement on fragile and disaster prone areas;
 7. Enforce community land law to foster recognition of communal land tenure.

4.5 Land Surveying and Mapping

The processes of land surveying and mapping are integral to achievement of 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 and management. Survey 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. Similarly, delayed review of the Survey law, immensely contribute to weak governance in land administration and management. There is urgent need to harmonize, consolidate and improve on existing policies and legislations on land surveying and mapping discipline in line with the Constitution of Kenya. Subsequently will provide legal, institutional and technological framework for sustainable, efficient and effective land surveying and mapping service delivery both at the county and national levels.

Key strategic areas in land surveying and mapping for policy recommendations include:

- Constitutional alignment;
- Proper framework for decentralization of Survey services;
- Geo-referencing of all surveys under uniform co-ordinate reference system;
- Provision of survey control points;
- National administrative and electoral boundaries survey and mapping;
- Fast track international boundaries survey and mapping;
- national cadaster;
- Slow uptake of sectional properties survey and registration;
- Existence of different guidelines and definitions of riparian reserves;
- Lack of clear topographical mapping standards;
- Outdated geographical names (national gazetteer);
- Lack of clear framework for national addressing system (NAS);
- Outdated national atlas of Kenya;
- Ineffective Kenya National Spatial Data Infrastructure (KNSDI);

- Timely access to accurate geospatial data

To address all these, the state shall:

1. Fast-track the Amendment/review of 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;
2. Establish a unitary and homogeneous network of control points of adequate density, preferably using dynamic technology such as GNSS; and
3. Prioritize geo-referencing in general boundary areas
4. Establish a robust institutional framework to carry out the identified mandate, roles and functions that will ensure clear linkages between the various institutions performing Surveying and Mapping functions including hydrographic and engineering surveys as well as geospatial data acquisition and management;
5. A clear mechanism for coordinating surveying and mapping activities; and to accommodate the participation of the private sector in delivering surveying services;
6. Cause harmonization of guidelines and definitions of riparian reserves;
7. Fast track international boundaries survey and mapping;
8. Establishment of national cadaster;
9. Enhance uptake of sectional properties survey and registration;
10. Cause harmonization of guidelines and definitions of riparian reserves;
11. Develop and implement topographical mapping standards;
12. Frequent update of geographical names (national gazetteer);
13. Establishment framework for national addressing system (NAS);
14. Periodic update national atlas of Kenya;
15. Operationalize the Kenya National Spatial Data Infrastructure (KNSDI);
16. Cause provision for timely access to accurate geospatial data.

4.6 Cadastral Principles

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. Therefore, to address this challenges, the Government shall:

1. Modernize the land delivery infrastructure, through computerization and use of other electronically linked systems;
2. Create human resource capacity to operate the modernize infrastructure; and
3. Remove constraints to the realization of an optimal cadaster

4.7 Land revenue

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 law empower the State and local authorities to assess and collect taxes such as stamp duty, estate duty and rates.

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.

To facilitate the efficient utilization of land and land-based resources, the state shall:

1. 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
2. Improve the capacity of public institutions including local authorities to assess and collect taxes.

4.8 Corruption and ethical issues in land

Corruption and ethical issues are intimately linked. In the land sector, these are major issues that affect and undermine the achievement of land reforms in Kenya. They are manifested in different ways, for instance, large scale land-leases, with significant negative effects on food security in the Country. Similarly, public grabbing continues in the face of a robust Constitutional dispensation (2010). At the bigger scale, the land cartels and power brokers continue to thrive on illegally acquired land. Because of fear of intimidation, harassment and exclusion/isolation and even, death; the public is not able to report corruption and ethical issues to the state in order to deal with these glaring governance challenges.

For corruption prevention in land sector, the state shall:

1. Improve corruption monitoring and tracking in the land sector.
2. Heighten individualized, rather than institutionalized accountability for crimes of omission or commission committed by the public officers.
3. Fast-track development of public land inventory and requisite information management systems to enhance transparency in land governance.
4. Review laws to effectively provide higher penalties for corruption in land including enactment of laws to deal with recovery of public land that were illegally acquired by private entities (review of grants).
5. Support local communities to establish land vigilance committees at the local scale.

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LAND USE PLANNING

5.1 Introduction

Land use planning is concerned with orderly management of human activities on land or space. It is the process of regulating the use of land by a planning authority. Usually, this is done to promote more desirable social and environmental outcomes as well as a more efficient use of resources. Effective land use management is dependent on land use planning.

The constitution under Article 60 requires that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with set principles. This can only be actualized through land use planning.

5.2 Importance of Land Use Planning

The economic and social rights granted under Articles 42 & 43 regarding clean environment and high standard of health, access to adequate housing, reasonable standards of sanitation, freedom from hunger, clean and safe water, and adequate social security and education can only be delivered through spatial planning frameworks.

In line with this, Article 66 provided for regulation of the use of any land, or any interest in or right over any land, in the interest of land use planning among others, thus buttressing land use planning in the constitution.

The Sessional Paper No.3 of 2009 on National Land Policy provided overall framework and key measures necessary to address the critical issues in land use management such as rapid urbanization, unsustainable production and low levels of land utilization, environmental degradation, conflicts in land use, unplanned proliferation of informal urban settlements, outdated legal framework, weak institutional framework and poor information management.

5.3 Implementation of Provisions on Land Use Planning:

Review NLP 2009 in relation to land use planning begin with taking stock of the level of implementation of the policy provisions. The national land policy recognized that land use planning is essential to the efficient and sustainable utilization and management of land and land-based resources. The failure to effectively prepare and implement plans in Kenya was noted and the main causes identified.

The policy addressed these problems by proposing several measures that recommended:

- a) Preparation of land use plans at national, regional and local levels and integration of rural and urban development,

- b) Review and harmonization of existing land use planning laws;
- c) Actualization of planning or spatial frameworks,
- d) Review of strategies for human settlement in relation to service,
- e) Efficient and sustainable utilization and management of land and land-based resources;
- f) Establishment of framework for public participation in the development of land use and spatial plans,
- g) Establishment of an effective framework for coordination of land use plans.
- h) Review and harmonize the then existing planning laws; Physical Planning Act (Cap 286) and Local Government Act (Cap 265), and other relevant legislation,
- i) Develop a national land use policy as a basis for land use management,
- j) 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
- k) Facilitate appropriate institutional and technical capacity building initiatives for accelerating plan implementation at national, regional and local levels.

Implementation of the policy recommendations on preparation of land use plans at the three levels has been partially accomplished. A long-term national spatial plan was prepared (NSP 2015-2045) while all counties have been mandated to prepare county spatial plans for each county. The subsisting planning law provides for preparation of inter-county physical and land use development plans.

However, there is a gap with regard to land use planning at regional level. Regional Development Authorities such as Lake Bain, Tana and Athi Rivers, Kerio Valley, Ewaso Ng'iro South & North and Coast Development authorities still exist as planning authorities, yet planning law does not recognize them. This occasions functional conflicts and duplications between the authorities and the county governments.

The policy required that laws related to land use planning provide for rural land use planning to cater for rural settlement, sustainable resource management, alignment of infrastructure and provision of public sites and to achieve optimum productivity. This has not been realized.

Equally effective land use planning to facilitate coordinated development in peri-urban areas has not been instituted as per the policy recommendations. This is in terms of provision of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities. Poor or lack of planning in peri-urban areas continue unabated in the midst of rapid

growth of human settlements and activities resulting in unmitigated urban sprawl and inadequate provision of infrastructure.

Review and harmonization of laws relating to land use planning was largely achieved through enactment of Physical and Land Use Planning Act, 2019. The Local Government Act (Cap 265) was repealed and replaced by County Government Act, 2012. Nevertheless, at least three laws (PLUPA 2019, CGA 2012, UACA 2011, and Regional Development Acts) exist concurrently providing for spatial planning thus creating duplications and overlaps. The laws require further harmonization to remove the inconsistencies and duplication. For instance, while UACA provides and recognizes municipalities and towns' management boards as planning authorities, PLUPA identifies Cabinet Secretary and CECMs as the planning authorities. In addition, each of the three laws have adopted different nomenclatures for the different arrays of land use plans prepared under each, yet they are essentially not distinct.

In spite of the enabling policy and legal frameworks supporting preparation of land use plans at various levels implementation remains a challenge. Most plans remain unimplemented due to lack of prioritization, weak and inadequate institutional capacity in terms of enforcement.

A national land use policy as recommended in NLP, 2009 has been developed as a basis for land use management. Framework for implementation of the policy provisions and follow up is necessary. Additionally, the policy should be reviewed regularly to keep abreast with emerging planning issues like climate change and rangeland management.

The policy proposed planning for urban agriculture and forestry to optimize urban land use and productivity. However, this has not been regulated and facilitated. There is need for further research to establish the viability of these land uses within specific urban setups. This is necessary to promote multi-functional urban land uses and regulation of urban agriculture.

The policy recognized the importance of planning for informal sector activities. However, this has not been institutionalized during the policy implementation period. Most informal sector activities remain unaccommodated in formal land use planning. This is a grey area that needs to be revisited through policy.

The policy prescribed measures to deal with regulation of use and development of land. This was also anchored in the Constitution 2010, Article 66 which expressly provided that the state may regulate the use of any land in the interest of land use planning.

Legislations have been enacted in this respect including PLUPA, Land Act 2012 and other land use planning laws. However, development of effective administrative mechanisms for the regulation of developments on freeholds

tenure especially in the peri-urban areas is a challenge. Equally development control in some planned urban areas that rely on obsolete plans is ineffective. Measures such as the provision of appropriate incentives and sanctions to ensure that landowners use their land productively and sustainably, were proposed. In addition, the policy proposed establishment of a legal framework for periodic reviews of land use practices to facilitate the re-organization of rural settlements and to control excessive land parcellation into uneconomic units. Other proposed policy measures included determining appropriate land sizes according to use and productivity of land; enhancing both large scale and small-scale production of food for the maintenance of food security in the country, provision of incentives to stimulate voluntary readjustment of land sizes, a regulatory framework for land rental markets improvement and reviewing laws to encourage shared proprietorship, time sharing of land and property as opposed to individual ownership only. Although these were policy measures that would have been instrumental in curbing fragmentation of agricultural lands, they remain largely unimplemented.

To achieve sustainable production, and to maintain good land quality and productivity it is extremely necessary that these issues are once again addressed in the revised national land policy. Measures such as ensuring that all land, including large tracts of land which are not utilized optimally, are put into productive use and that all sub-divisions of land are tied to land sizes specified for different ecological zones, predetermined as economically viable minimum size for specified different ecological zones.

Land reclamation, restoration and conservation were matters addressed in the land policy. Land reclamation was viewed as the process of extending or improving land to support a specific end use and was considered for purpose of 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. The policy required that a regulatory framework be developed to ensure sustainable utilization of reclaimed, rehabilitated and restored land. Thus there is no clear policy or legal framework guiding use and allocation of such lands.

On the other hand, Kenya needs to reflect on the purpose of reclaiming land from the unique ecosystems such as the lakes, swamps, wetlands, riparian areas and the ocean-fronts. This must be examined through lenses that not only consider scarcity of suitable land but also the option of maximizing and optimizing utility of available land. Caution must be put in place through policy measures to ensure that reclamation does not lead to unintended loss of biodiversity and degradation.

5.4 Issues and Recommendations:

The following are critical issues identified and the proposed policy measures are outlined.

5.4.1 Inadequate Land Use Planning

There is marked low level of uptake of land use planning both in regional, urban and rural areas. Most urban areas in Kenya lack or have outdated development plans, while only a half of the counties have accomplished preparation of county spatial plans. This issue ought to be addressed as a policy issue by adopting the following policy measures.

Proposed policy measures:

1. Prioritize land use planning as the pathway to facilitate efficient use of land and other natural resources.
2. Provide explicit provisions in the law on tying development projects and expenditure approvals to land use plans and not national or county economic blueprints.
3. Amend section 104 of the County Government Act, 2012 (CGA) to explicitly link county development expenditure to County Spatial Plan which should inform the CIDP.
4. Rationalize and harmonize provisions of section 107, 109 and 110 of CGA to remove ambiguity relating to scope and purpose of various types of plans.

5.4.2 Unsustainable Growth and Development

There is a need to manage growth and development of urban and rural areas for sustainability. The problems manifest themselves in terms of unmitigated urban sprawl, land use conflicts, environmental degradation, spread of slum developments and lack of optimal land utilization among others.

Proposed policy measures:

1. Ensure institutional capacity and good governance to institute plan-led development in the country
2. Implementation and enforcement of approved plans, policies and strategies.

5.4.3 Deficiency in implementation of land use plans

In spite of recognition of the critical role of physical and land use planning in realization of sustainable development there is apathy in implementation of land use development plans at all levels (national, regional/ county and local). Provisions contained in national spatial plan, counties spatial plans and local plans are not fully regarded during implementation of development projects.

Proposed policy measures:

1. Establishment of financing mechanisms to support plan preparation and implementation.
2. Plans preparations and proposals (programs and projects) to be based on implementation financing capacity.
3. Clear and unambiguous assigning of implementation roles to respective agencies.
4. Stiff penalties on duty-bearers (CSs, Governors, development agencies heads).
5. Facilitation of the NLC to effectively undertake monitoring and oversight role to enhance implementation of the land use plans in the country.
6. Enact laws to ensure national budget and CIDPs are based only on approved national and county plans (spatial, sectoral, city/municipal plans).

5.4.4 Uncontrolled Land Uses

The issue of uncontrolled use of land has created incompatibility of land uses, environmental degradation, insecurity and conflicts, reduced productivity among others.

Measures:

1. Categorization and mapping of all existing land uses as a basis of rationalizing land use and planning.
2. Periodic review of the land use maps at county and local levels.
3. Planning authorities to be penalized or compelled to enforce power of development control to regulate land use.
4. Ensure effective public participation in exercise of development control.

5.4.5 Unplanned and Unsustainable Change of Land Use

Change of use on land has been misused to promote conversion of agricultural land into other 'more profitable' urban-related uses causing adverse effects on land quality and compatibility of uses. In many instances such unwarranted change of use has been permitted in peri-urban areas and on agricultural land along transportation corridors. This exacerbates urban sprawl, encroachment and loss of arable agricultural lands and environmental degradation.

With effective land use planning change of use should only be applicable where there is necessity for *material change* or change of a planned use and therefore amendment of a development plan. Change of use ought to be preceded or occasioned by comprehensive land use planning and must be in public interests.

The revised land policy shall institute measures that thwart adverse change of land use. This should be supported by land tenure(s) that incorporate necessary safeguards to land use.

Measures:

1. Ensure all changes of land use are subjected to comprehensive public participatory planning process.
2. Enact legal tools to check on wanton change of use especially on agricultural land and environmentally fragile areas.
3. Land use policy to embed and safeguard environmental conservation, riparian and buffer zones as planned development zones both in urban and rural settings.
4. All land tenures including freehold/ absolute ownership of land must designate allowable land use.

5.4.6 Expand Scope of Conventional and Recognized Land Users

With regard to both rural and urban spaces, the physical and land use planning standards have over the years remained static and unresponsive to dynamic and emerging land use trends. Consequently, important land uses have not been recognized or earmarked in the various categories of spatial or land use development plans in the country. The upshot of this omission has been undesired conversion of existing land uses at the detriment of the natural ecological zones, natural habitat (ecosystems) and loss of irretrievable flora and fauna. Failure to safeguard significant land cover result in incongruent land uses and conflicts.

The planning authorities shall revise the planning Hand Book to ensure that the following Land user are designated and incorporated as conventional land use planning categories:

- Conservation Areas
- Wildlife Corridors and Routes
- Green spaces and Parks
- Land Banking
- Marine Spatial Planning

5.4.7 Promotion of planned and regulated urban agriculture and forestry

With adoption of technology urban agriculture and forestry can be incorporated as planned subsidiary urban land uses for multiple benefits. There is a gap in information to support implementation.

Measures:

1. Carry out research to inform modern urban agriculture.

2. Incorporate urban agriculture and forestry in urban plans to promote urban agriculture and forestry.
3. Encourage County Governments to embrace urban agriculture in their development plans.

5.4.8 Lack of Planning for Informal Activities

Informal activities remain key in the national economy yet no mechanism has been put in place to support the sector. Land use planning both in urban and rural areas.

Measures:

1. Include informal sector activities as a planned user.
2. Designate land for informal activities

5.4.9 Balancing human livelihood needs and sustainable use of land

Kenya faces a challenge of how to optimize use of land while using it sustainably. The country must strike a balance between satisfying the human livelihood needs and sustainable use of resources for posterity. Land use planning and management shall adopt innovative measures to achieve this.

Measures:

1. Planned land uses proposals to embed sound land use practices, conservation and enhancement of the quality of land and land-based resources.
2. All land use development plans must include proposals to manage demographic trend based on assessment of carrying capacity.
3. All levels of government to establish mechanisms to persuade land owners to put their land to productive use
4. Encourage the application of efficient technology for the intensification of land use including cluster human settlements.

5.4.10 Pastoralism and Rangeland Management

Pastoral areas are the new frontiers of immense natural resources, socio-cultural and economic resources. Pastoralism has been recognized as the most viable and appropriate livelihood and production system on pastoral lands. Government has put several measures to promote this land use as well as secure community land rights.

There is need to upscale land use planning and management of rangelands where pastoralism is practiced. Besides assessing and unlocking the great potential, this will also provide a framework for utilization of land and development of sustainable human settlement.

Towards this the state shall:

1. Plan and develop rangelands according to potential in livestock production, tourism and energy production.
2. Undertake research in the carrying capacity of rangelands.
3. Encourage participatory rangelands management (PRM) planning approach which recognizes and adopt traditional practices.
4. Infuse life-style changes and technology with local practices to ensure environmental and land quality preservation.
5. Ensure rangelands are planned and managed as natural ecosystems through ecological rather than agronomic methods.
6. Ensure that the land use planning process is systematic and that multiple and often overlapping or even conflicting interests are considered through profound public participation and negotiation of competing land uses.
7. Plan infrastructure development that is strategically located to avoid disturbance but rather to support indigenous production systems and practices including livestock keeping.
8. Ensure the often dispersed and mobile populations access public services and facilities.

5.4.12 Demographic pressure on Land and Land based Resources

Kenya has experienced high and constant population growth which has impacted negatively on the land productivity and caused environmental degradation. This demographic pressure also occasions conflicts that a new policy ought to mitigate.

Using current and future projection, redistribution of population between urban and rural areas requires policy re-focus. This is to identify where to allow human settlements and urbanization in order to free viable and arable lands through land use planning re-zoning tools.

In this regard policy measure recommendations shall include:

1. Targeted population redistribution from rural to urban areas to ease pressure on land experiencing high population density.
2. Measures to encourage nucleated human settlements and designated urbanization especially in ASAL areas.
3. Programmes on rural land use planning to enforce zoning or reservation of crops-cultivation, grazing and built-up areas at household level.

5.4.13 Contradicting/ Multiplicity of Policies, Sector and agencies

There exists a challenge of contradiction between various government sectors and agencies, sectoral laws and policies rendering land use planning and management ineffective.

Measures;

1. Revise and harmonize various land related acts of parliament and sectoral policies; the Physical and Land Use Planning Act 2019, Urban Areas and Cities Act 2011, the Land Act 2012, the National Land Commission Act 2012, the County Governments Act, 2012, the Land Registration Act 2012, Wildlife Conservation and Management Act, 2013, Kenya Maritime Authority Act Cap 370, the National Land Use Policy 2017, the National Urban Development Policy, Maritime policies and Environmental Conservation policies among others.

LAND INFORMATION MANAGEMENT

6.1 Background

Kenya has progressed with land digitization by creating a legal framework to support the Land Information Management System. Digitization derives its legality from the Land Registration Act No. 3 of 2012 which mandates land registrars to maintain land registers and documents relating to land in a secure, accessible, and reliable format including electronic files. The Land Registration (Electronic Transactions) Regulations, 2020 and the Business Laws (Amendment) Act. No. 1 of 2020 outline the legal framework relating to digitization. With the required legislation in place, the National Land Information System commonly dubbed as Ardhisasa was launched in April 2021. Ardhisasa is a platform through which land transactions, previously done manually, can now be done online. Some of the services offered on Ardhisasa include land registration e.g., registration of transfers and charges, land administration e.g., payment of land rent, physical planning applications, valuation, survey and mapping.

Identification details provided by individuals and companies must tally with the details in the Integrated Population Registration System (IPRS) and the Business Registration Service (BRS) respectively as the systems are interlinked.

The launch and roll out of Ardhisasa comes amidst other digitization processes such as i) conversion of titles issued under the repealed land laws to titles that conform to current land laws; and ii) conversion of long-term leases for developments to sectional titles under the Sectional Properties Act, 2020.

6.2 Issues

1. System implementation approach. Conversion of titles to conform to new laws, development of system and conversion and update of manual records and maps needed to be phased out to facilitate smooth transition.
2. There is need to develop a system that would integrate with Counties, NLC and other actors.
3. Low Uptake of Technology and cost to the public to access the system.
4. Low Cadastral Coverage within the country. There is need to support SOK to undertake this task.
5. Change Management to internal and external users of the system to allow smooth transition from manual to digital.

6.3 Recommendations

6.3.1 System Implementation Approach

1. Piloting of NLIMS before full-scale deployment is proposed to ensure teething problems are addressed.
2. It is recommended that the NLIMS adopts a Distributed Database Management System (DDBMS) within the confines of a National Spatial Data Infrastructure (NSDI).
3. It is further recommended that the NLIMS data and information be presented to the user through a unified interface.

6.3.2 Survey and Mapping

1. There is need of reorganizing the records at the Survey of Kenya as well as the field stations so as to ensure that the data is converted to digital data in order to improve on data storage, access and cross referencing of records;
2. There is need to fast track the geo-referencing of the general boundary maps so as to ensure all land parcels can have defined coordinate systems;
3. There is need for the densification of the CORS network so as to reinforce real time digital positioning in the field through the use of GNSS technology.

6.3.3 System Access

1. The electronic system should be reliable, secure, transparent, sustainable and accessible
2. There is need to develop a system that gives access to users according to defined hierarchy of access rights-the following categories of persons may have user access rights.
3. Access to the system should be through biometrics, national identity, alien identity, military ID, and certificate of incorporation in case of corporate entities and business registration number for businesses that are not incorporated; Plus a PIN.
4. The system should maintain a comprehensive audit trail of all processes capable of being retrieved by authorized officers.
5. The system should have a robust system security commensurate with sensitivity of land registration information e.g. data security will need to employ encryption and access should have rigorous user access authentication;

6.3.4 System Scale and Capacity

1. The system design should take a distributed but integrated approach;
2. The system should be available nationwide and not experience any downtime arising from breakdown of some components or crash. It should be able to recover itself using backup;
3. The system should be scaleable and capable of being upgraded;
4. The need to have a user manual, demos and tutorials in place for better user experience.

6.3.5 Security

1. The digital platform will need to be protected from emerging trends in cyber-crimes and hacking by design and practice in form of elaborate Intrusion Prevention and Detection Systems. As such there will be need to develop an information security policy. Security of the system will ensure integrity and public trust.
2. Deliberate efforts will need to be made to ensure integrity and confidentiality of personal data throughout the land management cycle. This should be done in full compliance to the Data Protection Law.
3. To ensure security of the records there is need for in built checks and verifications of the documents lodged into the system.

6.3.6 Change Management

6.3.6.1 Training & Capacity Building

1. The success of the electronic system will be hinged on capacity building and sensitization of both the operators and end-users. Adequate training will therefore be necessary before and after deployment of the digital LIMS.
2. There will be need to carry out capacity building for the professionals, public servants and relevant stakeholders to ensure seamless and smooth operations, borrowing from most of the case studies.

6.3.6.2 Civic Education

1. There ought to be mass civic education on the guidelines and the online platform. Information and user manual ought to be developed.
2. The civic education exercise ought to be conducted in a simplified format to enable the general public understand and easily comprehend electronic conveyancing and the system.

6.3.7 System Financing

There is need for the Ministry in charge of Lands to consider the following options for funding the system development:

1. Internal funding as a flagship project through the national budgetary process as well as appropriation in aid from revenue generated from services.
2. External funding from donors and development partners
3. Funding supplemented by revenue from appropriation-in-aid from the NLIMS services.
4. Public private partnerships.

6.3.8 NLIMS Guidelines

1. The existing National Land Information Management System (NLIMS) guidelines should be reviewed and updated.
2. The guidelines should provide a roadmap on system development and integration with relevant agencies.
3. Establishment of a Multi-Stakeholder Standing Committee on NLIMS. There is need for the establishment of a multi-stakeholder standing committee comprising of major stakeholders (Ministry, NLC, Counties and Professional Bodies). Their role would be to ensure the transition from manual to digital system is fully achieved. The committee would also be necessary for system improvement in light of a dynamic environment particularly technological changes and policy regimes among others. This Committee will be domiciled in the Ministry in charge of Lands.

RESOURCES, ENVIRONMENT AND CONSERVATION

7.1 Background

Land and Environment are intimately linked variables, existing like a web and completely inseparable. Land plays host role to many vital resources that under current the Constitution, are also regarded as and constitute (public) land. Land and Environmental matters have been elevated in the Constitution, the apex governance architecture; and currently enjoys a dedicated chapter (Five). Land management and administration directly have a significant bearing on natural resources and environmental management and resource tenure. The entire management and administration of land must therefore be weaved together in the context of rapidly changing environment and natural resources discourses.

Kenyans derive their livelihoods and well-being from the mani-fold natural resource assets that they access and use, on a daily basis. Their lives therefore, resonate around these resources. The management, use and conservation of the resources become key in the achievement of socio-economic well-being as well as ecological and resilient development, especially in the wake of climate change. Similarly, the environment and natural resource space is dotted with many sectoral legislations and polices that are somewhat conflicting and lack harmony. These have resulted in fragmentation and silo-decision-making within the sector, occasioning loss of vital natural resources including biodiversity and genetic resources, jeopardize water quality and quantity as well as contribute to environmental degradation.

Emerging economies such as the blue economy and the extractives (minerals, petroleum and gas) portend critical areas that can spur socio-economic development. However, weak governance in this sub-sectors continue to contribute to revenue spillages or under reporting; which have a huge consequence on the national accounting and reflection of the natural resource sector's true worth and contribution to the national budget. Lack of natural resource inventories and inadequate data compound these challenges and jeopardize sound decision-making, planning and sustainable management and development of the Country's blue, green and brown natural capital. In this regard, **policy interventions are required to;**

1. Foster coordination, communication and harmonization of natural resources sector players' policies, laws, strategies and actions; aimed at achieving complementarity rather than fragmentation and conflicts.
2. A paradigm shifts on land and natural resource rights and tenure issues that encourage access and user rights rather than (absolute) ownership;

and effectuation of equity and benefit sharing from land and natural resource development and exploitation, aimed at tackling endemic poverty and marginalization.

3. Data-driven development and approaches to sustainable management and conservation of natural wealth through land-landscape scale integration and connectivity and the meaningful people's participation and inclusion, as collaborators, in the governance of resources. Studies relating to attribution that provide evidence on land/environmental contamination, climate change and people's health and well-being are critical starting points in order to promote sound environmental and land management, build resilience and support achievement of environmental and climate justice.
4. Development and implementation of climate-smart policies and laws to attract and leverage on climate finance through the existing global, regional and national climate finance architectures/mechanisms in order to enhance resilience and adaptation to the vagaries of changing climate.
5. Re-plan the country in order to bring order as well as tackle the inherent natural disasters that affect Kenyans in diverse areas and scales.
6. Bolster citizens' capacity, awareness and education including re-tooling of professionals and stakeholders in the land and natural resource sector spaces to align their thinking, adapt to, and accommodate new and emerging imperatives.

The specific issues and intervening policy measures are discussed hereunder;

7.2 Kenya's natural capital: painting the picture

Kenya's natural resource endowments contribute directly or indirectly to the socio-economic wellbeing of its people. These resources include wildlife, forests, water, minerals, fisheries, marine, and the land itself including the airspace. Other resources include biodiversity and genetic resources such as plants, small and large mammals, naturally occurring in the terrestrial, aquatic and the airspace; cultural heritage, paleontology, archaeology, and indigenous knowledge. Sustainable management of these natural resources depends on, to a large extent, on the governance systems, which define the relationship between people and their resources. However, gaps relating to the information asymmetry (data and information is held and known by a few leaving out the masses), lack of integration and democratization of natural resources data. In order to secure access to land based natural resources data and information, the state shall:

1. Fast-track the development and updating of inventory of all natural resources through establishment of an easy-open access portal.
2. Incentivize equitable access to and sustainable use and management of resources.
3. Establish a repository of traditional and indigenous knowledge systems for land-based resources management and conservation and support and facilitate local level governance and infusion of ITK in formal systems of natural resources management and governance.
4. Facilitate public access to beaches, lakes, rivers and fish landing sites unless restricted due to environmental fragility or due to security reasons;
5. Provide incentives for communities and individuals to invest in income generating resource conservation programmes.

7.3 Benefit-Sharing from Land – Based Natural Resources

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. While the Constitution has already provided for overarching framework for Benefit-sharing, realizing meaningful benefits from land and natural resources exploitation and use, remain largely on paper based on the charity principle through cooperate social responsibility that signifies and promotes self-pity and dependency syndrome. In this regard, the state shall;

1. Devise new Strategies, tactics including laws and conditions for realizing meaningful sharing of benefits taking into account the nature of the resources involved and the contribution that diverse actors make to the management and development of the resources.
2. Establish legal frameworks to recognize 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;
3. 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;

4. 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;
5. Encourage and supervise meaningful people's participation in the management and utilization of land-based natural resources.

7.4 Restoration and Conservation of Land Quality

To restore the environmental integrity of land and facilitate sustainable management of land based resources, the state shall:

1. Introduce incentives to encourage the use of technology and scientific methods for soil, water and air conservation and monitoring including detection and elimination of contaminants;
2. Encourage and incentivize use of functional traditional land conservation methods and approaches;
3. Establish measures to monitor and control land degradation through abuse of inputs and inappropriate land use practices; and provide periodic state of land degradation (SoLD) reports for informing policy and action;
4. Strengthen institutional capacities for proper enforcement of environmental and public health laws and standards.

7.5 Restoration of degraded Landscapes

Land restoration is the process of executing actions of improving land quality and integrity. 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. Degraded landscapes especially from mining and quarrying activities, require urgent restorative measures in order to make the land available for other compatible uses including conservation. In order to promote optimal land use and ecological integrity, the state shall;

1. Take stock of the extent of land degradation and institute measures and policies for restoration, rehabilitation and support land and environmental healing;
2. Encourage and support measures including incentives for greening the mineral, petroleum and gas sector value chains and make this climate resilient;
3. Establish and empower quarry committees at the county level to monitor and infuse sustainable land and environmental management principles
4. Fast-track development and operationalization of sand harvesting regulations.

7.6 Environmental Management Principles

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.

To conserve and manage the environment, measures on conservation and sustainable management, ecosystem protection, urban environment management, environmental assessment and audits, shall be undertaken in line with internationally agreed environmental principles and good industry practices (GIPs).

7.7 Conservation and Sustainable Management of Land Based Natural Resources

At the core of the principle of sustainable development under Article 10 (2) of the Constitution, is sound environmental conservation and climate action. However, challenges relating to land tenure and poor attitudes, marked by NIMBY (Not in my backyard) contribute to huge pollution and degradation of various ecosystems that supply humanity with essential benefits (goods and services) including water, food, and regulated climate. Unsustainable human practices within the landscape, alongside natural induced factors simultaneously contribute to environmental vulnerability and lack of resilience.

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 harmonized and aligned with the framework environmental law - Environmental Management and Coordination Act (EMCA), 1999. In addition, the state shall:

1. 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 pressures to these resources;
2. Identify, map and gazette critical wildlife migration and dispersal areas and corridors in consultation with the local communities, County Governments and individual and community land owners;
3. 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;
4. Provide mechanisms for resolving grievances arising from human/wildlife conflicts including through land acquisition for wildlife conservation;
5. Increase areas under tree and forest cover as well as halt degazettement of forests and protected areas to foster the realization of their multiple

- values and ensure that they are protected for their ecosystem values and not merely to physically exclude human activities;
6. Strengthen effective institutional capacity to implement International Conventions and treaties especially those touching on access to land based natural resources; and
 7. Facilitate partnership and inter-county collaboration (through inter-county natural resource committees and dialogues) as well as with neighbouring countries to foster Trans (and cross)-Boundary Natural Resource Management (TBNRM) in the interest of national, regional and international conservation and development goals.

7.8 Ecosystem Protection and Management Principles

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 rules and guidelines.

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

1. Undertake a survey of all critical ecosystems to determine their sustainable land uses;
2. Establish measures to ensure that healthy ecosystems are protected through land use controls; and
3. Establish and demarcate high and low water marks for various water bodies.
4. Ensure conservation and protection of ecologically sensitive areas by; Developing a comprehensive and an inventory and registers for information decision-making, planning and sustainable management; placement of visible beacons including ringroad-type social boundaries to ecosystems and fragile landscapes; and gazettelement
5. Developing procedures for co-management and rehabilitation of forest resources, recognizing traditional management systems and sharing of benefits with contiguous communities and individuals;
6. Establishing participatory mechanisms for sustainable management of fragile ecosystems in partnership with public, private and community stakeholders; and

7. Declaring all national parks, game reserves, islands, front row beaches and all areas hosting threatened biodiversity as fragile ecosystems.
8. Develop guidelines and rules for management and conservation of ESAs including providing clear definition of what constitutes an ESA;
9. 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 including Strategic Environmental and Social Impact Assessment and audits.
10. The protection of watersheds, lakes, drainage basins and wetlands shall be guided by the following principles: Prohibition of settlement and agricultural activities in the water catchment areas; Identification, delineation and gazettement of all water courses and wetlands in line with International Conventions and good industry practices; and integrated resource management based on ecosystem structures regardless of administrative or political boundaries.
11. 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.

7.9 Management of fragile urban landscapes

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. To address urban environmental problems, the following measures shall be implemented:

1. Identify and map pollution hotspots and enforce environmental and public health laws and standards
2. Prohibit discharge of untreated solid and liquid waste into rivers, lakes and the ocean by providing appropriate waste management methods and alternatives;
3. Encourage and require waste segregation and labelling right from the household-level for easier management;
4. Regulate all quarrying and excavation activities including management and restoration of burrow pits;
5. Encourage urban waste re-use and recycling; and
6. Develop a framework for rehabilitation of dumping sites and land that has been subjected to environmental degradation.

7.10 Environmental Assessment and Audit as Land Management Tools

To promote environmental impact assessment and audit as tools for land management, the state shall:

1. Carry out continuous surveillance and 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;
2. Monitor urban and rural environmental degradation and quality regularly;
3. Encourage public participation in the monitoring and protection of the environment; and
4. Institute enforcement mechanisms such as the “polluter pays principle”, and provide incentives to promote cleaner production and prevent pollution of soil, water and air.

7.11 Sectoral and Cross-Sectoral Land Use

Effective land and natural resources management require 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 and blue economy. To achieve this objective of effective land management, the state shall:

1. Facilitate an integrated and multi-sectoral approach to land use;
2. Encourage integrated land use planning through the use of appropriate information technology and participatory processes;
3. Identify areas of interest for sharing/merging resources and expertise through Public-Private Partnerships;
4. Ensure that all public and private institutions whose functions are associated with land are involved in the implementation of this Policy;
5. Rationalize and harmonize all relevant sectoral policies touching on land with this Policy.
6. Incorporate strategies to spur sustainable use of Blue economy resources and Marine spatial Planning.

7.12 Managing the Airspace

Kenya’s airspace constitutes a rich area and constitutes part of the state’s territorial boundary. It constitutes that citizens’ breath and an integral land for socio-ecological development. Legally, Article 260 of the Constitution defines land to include the airspace. However, management and operatives of the

country's airspace faces immense challenges including pollution, conflicts and lack of orderliness. In this regard, the state shall;

1. Develop and execute a comprehensive master plan for the airspace
2. Put mechanisms for greening aircrafts and other port related operations including air quality monitoring.

REVISED

CLIMATE CHANGE

8.1 Background

The Intergovernmental Panel on Climate Change (IPCC) defines “climate change” as “a change in the state of the climate that can be identified by changes in the mean and / or the variability of its properties, and that persists for an extended period, typically decades or longer”. Climate Change may be due to natural internal processes or external forces such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use.

Climate change and land are inextricably intertwined. Climate change is a development concern and it has profound effects on the efficacy of land as an instrument for development. It is critical that land management practices integrate climate change mitigation and adaptation interventions to secure Kenya’s short, medium and long term development objectives of the nation.

Kenya has shown commitment to protect the climate system for the benefit of the present and future generations by supporting the United Nations Framework Convention on Climate Change (UNFCCC) process, ratifying the Kyoto Protocol in 2005, and contributing to continental and regional climate change initiatives. Further, the country’s Constitution has set out a legal commitment to attain ecologically sustainable development; hence providing a firm basis to address the challenge of climate change while striving to attain the development goals set out in Kenya Vision 2030.

Kenya has numerous frameworks that relate to climate change e.g. Climate Change Act 2016, Sessional Paper No. 3 on National Climate Change Framework Policy, *Climate Change Amendment Bill 2023*. It is therefore important that the country implements and enhances climate resilience and adaptive capacity. Building climate resilience requires that Kenyan systems of governance, ecosystems and society have capability to maintain competent function in the face of climate change.

8.2 Issues

Some of the issues that relate to climate change are;

1. Climate hazards and vulnerability –more frequent and intense extreme weather events (floods, sea level rise, drought) which adversely affect food production, water supply, housing access, livestock production, wildlife and general livelihoods. Climate change can also create conducive conditions for the establishment and spread of invasive species.

2. Unsustainable land use practices that have led to accelerating land degradation or productivity loss E.g. Unplanned expansion of the peri-urban area also leads to challenges of service delivery and conflicts in the utilization of the different tenure systems. The quality of life in majority of urban centers is characterized by expansive informal settlements and serious environmental degradation.
3. Protecting the citizens in the vulnerable areas (flood prone areas, earthquake known zones, wetlands etc.)/ ecologically sensitive areas and improving the resilience of the existing ecosystems to cope with the impacts of climate change and subsequent disaster risk management. It may be necessary for the African governments to relocate citizens from flood prone areas, earthquake known zones.
4. Nomadic pastoralism is a major land use tenure system in the arid and semi-arid rangelands. The arid environment in which the pastoralists find themselves is characterized by erratic rainfall distribution and varying climatic conditions under which plant growth is seasonal.
5. Integration of Indigenous knowledge on issues of climate change and protection of the environment.
6. Structured and meaningful Public participation on change matters including different adaptation strategies across time, tenure systems, and social contexts.
7. Carbon credits schemes in mitigating the Impacts of Climate Change through Emission Reductions and the Protection of indigenous communities' rights and environments. Indigenous people have managed their land sustainably for years. While carbon trading programmes are well intentioned it is important to note that the information on the subject is limited particularly to the public. Carbon credit and market is dotted with numerous challenges related to pricing, and that this scheme encourages pollution of the environment through emissions. Similarly there are issues relating to soil, land and tree tenure in the climate change and carbon credit schemes. There is also a general concern regarding the threshold for qualification to benefit from voluntary carbon markets through the approved certification processes.
8. Climate finance is needed for mitigation, because large-scale investments are required to significantly reduce emissions. Climate finance is equally important for adaptation, as significant financial resources are needed to adapt to the adverse effects and reduce the impacts of a changing climate.
9. Mechanisms for linking climate change data and information with national and county planning processes.

8.3 Recommendations

In view of the issues relating to climate change, the state shall;

1. Enhance multi-level governance consisting of national, county and non-State actors) in response to climate change mitigation and adaptation.
2. Secure land tenure rights to ensure the effective participation of all people in climate action; e.g. by investing in climate adaptation interventions to ensure the sustainable use of their land and natural resources, including environmental conservation, preservation of biodiversity, and reduction or reversal of land degradation.
3. Set, commit, monitor and report against land-related Sustainable Development Goals (SDGs) indicators and National Land Degradation Neutrality (LDN) target aiming to mitigate and adapt to the adverse impacts of climate change and halt or reverse land degradation.
4. Engage local stakeholders, including land professionals, government officials, community leaders, religious and traditional leaders, youth, researchers, grassroots representatives and members of the academia, to achieve and improve land governance, securing land rights and advancing land degradation neutrality and land restorations. And integration of indigenous knowledge on climate mitigation activities.
5. Public awareness on climate change should integrate knowledge on critical and crosscutting policy issues such as mainstreaming of gender, youth and special needs. This is important to allow an active role of the people in governance, at the lowest possible level of public administration. Climate change interventions, such as those relating to building resilience or enhancing adaptive capacity are closely related to how people understand the impacts of climate change. These interventions can support the transition of people from victims of and contributors to climate change, to positive agents working against climate change.
6. The complex and dynamic nature of climate change and its impacts requires Kenya to expand and maintain systems for targeted and continuous research and technology advancement. This requires generation and utilization of climate change knowledge and information, combined with effective communication strategies.
7. Build and strengthen research capacity in climate change and related environmental issues; strengthen approaches to climate change research and development training and technology transfer.

8. Implement disaster awareness programs that sensitize the communities on best land use practices that incorporate disaster mitigation, incorporate climate change, adaptation and preparedness.
9. Re-orient the school curricula to include climate change adaptation as a cross cutting issue.
10. Develop climate proofing of infrastructure. Climate-proofing is a process that integrates climate change mitigation and adaptation measures into the development of infrastructure projects.
11. Build the capacity of land planners in climate change land use planning. Integrate climate change scenarios into spatial planning (climate resilient spatial planning). Build the capacity of land managers in climate change adaptation. Update land-use plans with climate scenarios.
12. Develop and up-scale specific adaptation actions towards building resilience to climate change - promotion and bulking of drought tolerant traditional high value crops; water harvesting for crop production; index-based weather insurance; conservation agriculture; agro-forestry; Integrated soil fertility management; Expand Climate smart Agriculture and Safety net programmes- Vulnerable households.
13. Implementation of benefit sharing from carbon credits schemes with host communities and environmental protection.
14. Climate finance flows and carbon asset mechanisms present an opportunity to access new and additional levels of funding. For government, this means accessing international financing for ambitious climate resilient and low emission development programmes. For the private sector this can entail developing financial and insurance services, engaging in projects to generate carbon credits for sale in international markets, exploiting new green economy opportunities and creating green jobs.
15. Reversing the effects of climate change for instance through de-siltation, reforestation, proper use and management of the riparian areas and catchment areas

FOOD SECURITY AND AGRICULTURE

9.1 Background

Land is an important resource and is at the centre of social, economic, political development in most countries. Land is an essential natural resource, both for the survival and prosperity of humanity and for the maintenance of all global ecosystems. In Kenya, the ever-increasing demand in agricultural and urban development has led to subdivision and fragmentation of land leading to changes in land use patterns. Land use variations and growth in human population have increased the demand for land especially in and around urban centers.

The agricultural sector is a major support in the Kenyan economy, contributing approximately 33 percent of Kenya's Gross Domestic Product (GDP). The agriculture sector employs more than 40 percent of the total population and 70 percent of the rural population. However, agricultural productivity has stagnated in recent years even with increase in population. About 20 percent of Kenyan land is suitable for farming and in these areas maximum yields have not been achieved, leaving considerable potential for increases in productivity.

The Kenya National Land Policy, 2009 identifies land fragmentation as one of the greatest threats to agricultural productivity, food security and sustainable land use. The Policy recommend a system to determine the economically viable land sizes. The Constitution of Kenya 2010 Article 68 (c) (i), states that the parliament shall enact legislation to prescribe minimum and maximum landholding acreages in respect to private land. The provision for maximum land holding provision was meant to promote equity and offload excessive land that is not in productive use to the land market. The minimum provisions also seek to ensure that land is not subdivided into small uneconomical land sizes. It is noted that parliament made effort towards actualization of these proposals but this was curtailed by lack of data.

9.2 Issues

- i. Land has been fragmented into small portions that are threat to food security.
- ii. Due to climate change, agricultural production has been low due to lack of enough rainfall, this has led to people sourcing alternatives to water and boreholes have been sunk in various areas without proper planning and regulations.
- iii. The issue of optimal use of idle land.
- iv. Inheritance of agricultural land leading to very small parcels.
- v. Optimal use of land for public agencies.

- vi. Provision of Dams for Irrigation.
- vii. Management of boreholes to support agriculture
- viii. Support of pastoralism amidst climate change.
- ix. Land consolidation of fragmented land.
- x. Lack of data to support prescription of minimum and maximum land sizes.

9.3 Recommendations

9.3.1 Agricultural Reserves

The Ministry in charge of Agriculture should work with the County Governments to identify the suitable areas within the respective counties to be gazetted as agricultural reserves.

The following measures are proposed to conserve the agricultural landholding;

- Ban on the subdivision in this area,
- Regulation of the permissible developments on such areas through plans,
- Mandatory buffers,
- Introduce Purchase Development Rights and Transfer Development Rights programs;
- Land Conversion Tax to discourage landholders from converting their agricultural farms to other uses.

9.3.2 Land consolidation for fragmented parcels

Voluntary consolidation schemes should be introduced where all participants must agree fully with the proposed project.

Individual consolidation should be encouraged to allow benefit sharing to all.

The government shall an appropriate legislation to provide a legal basis for consolidation of fragmented parcels.

9.3.3 Guidelines on viable minimum agricultural land sizes for all counties

The Ministry of Agriculture jointly with respective County Governments, in collaboration with the Ministry of Lands and National Land Commission to establish the minimum viable agricultural land size in all Counties.

The following considerations to be factored in;

- a. Land productivity for livestock, crops, fisheries and forestry
- b. Agro-ecological zone
- c. Household size for particular area
- d. Per Capita Food Consumption
- e. Rainfed/irrigated agriculture
- f. Topography
 - Each County shall use the gazetted minimum land sizes as the basis of the land use plans and zoning policies

- The Land Control Boards shall ensure compliance to the set minimum agricultural land sizes through the powers granted to them by the Land Control Act, Cap 302.
- The landowners who do not meet the minimum set land sizes shall be encouraged to consolidate their farmlands.
- Monitoring and reporting of the status of fragmentation to be done using medium to medium/high-resolution satellite images at an interval of five years and coordinated by National Land Commission in collaboration with the Ministry of Agriculture and Directorate of Resource Surveys and Remote Surveys.

9.3.4 Unregulated/uncoordinated urbanizations and development control

- Counties should formulate and implement comprehensive Land Use Plans and development control policies in Counties to address rampant land fragmentation.
- The National Government should support the County Governments to develop requisite zoning policies to guide the land use within the County.

9.3.5 Inheritance of Agricultural Land

- a) Encourage joint tenancy and use of ancestral land; family members can voluntarily agree to work on family land as a single production unit and each family member receives shares of returns based on their initial land sizes
- b) Educate youth and the public on other forms of inheritance.

9.3.6 Optimize use of land for public agencies

The National Land Commission as managers of public land should monitor that land for public agencies is used optimally.

9.3.7 Optimal use of idle land

The government should come up with a legal framework to tax idle land and enforce the conditions under the lease to enable Idle Land to be put into productive use.

9.3.8 Provision of Dams for Irrigation.

The government should put up measures to harvest rain water and construct dams in every county to reserve water for farming during the dry seasons.

9.3.9 Management of boreholes to support agriculture

Every County should do hydrological mapping to advice where to locate sustainable boreholes.

CONFLICT AND DISPUTE PREVENTION AND RESOLUTION

10.1 Background

Conflicts and disputes on land still remain pervasive in the country. There is need to evaluate existing dispute prevention and resolution frameworks and determine their successes or otherwise. There is also need to leverage on technology to make access to justice a more reality to Kenyans.

10.2 Issues

However, of keen interest are the peculiar areas of disputes that have their unique characteristics relating to:

- a) Absentee Landlords
- b) Historical Land Injustice.
- c) Tenants at will.
- d) Coastal land problems.
- e) Temporary occupation license-TOL
- f) Pastoralism/NFD land issues.
- g) Youth and Gender.
- h) Land Rights of Vulnerable Groups.
- i) Land Rights of Minority Groups.
- j) Refugees and Internally Displaced Persons
- k) Informal Settlements.

10.3 Recommendations

We recommend that the government shall:

1. Develop a legislative framework for Traditional Dispute Resolution mechanisms.
2. Develop a legislative framework on Dispute Prevention.
3. Develop approaches to conflict prevention and management.
4. Develop tools and strategies for prevention of disputes.
5. Introduce tools to help in conflict management that touches on peculiar disputes such as absentee landlords, tenants at will, youth and gender, informal settlements and related cases.

INVESTMENT, INFRASTRUCTURE AND ECONOMY

11.1 Background

The Sessional Paper no.3 of 2009 on National Land Policy was formulated to provide an overall framework and define the key measures required in addressing the critical questions 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. The vision of the policy was to “***guide the country towards efficient, sustainable and equitable use of land resources for prosperity and posterity***” leading to socio-economic development and sustainability.

The overall objective of the National Land Policy (NLP) 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.

The policy also aims at addressing various constitutional issues such as;

1. Compulsory land acquisition
2. Development control
3. Tenure.

The policy recognizes the need for security of tenure for all Kenyans and designates all land in Kenya as Public, Community or Private. The policy recognizes and most importantly protects customary rights to land as well as protecting private land rights and therefore providing for derivative rights from all categories of land rights holding.

The policy also recommended for establishment of institutional framework such as the National Land Commission among others to ensure devolution of power and authority, participation and representation, justice, equity and sustainability.

The Commission has played a vital role in facilitation for land acquisition for public projects and infrastructure since it came to office and in particular has ensured that any projects that necessitate compulsory land acquisitions do not lead to:

1. Economic displacement leading to loss of livelihood,
2. Physical displacement of households
3. Displacement of farmers from their fields,
4. Destruction of social networks and cultural practices,

5. Delayed compensation
6. Environmental degradation

The commission has also had challenges especially with challenges with long protracted long court cases that delay the compulsory land acquisition process. The commission has also faced lack of documents from land owners, multiple land ownership documents that touch on one land and challenges related to land owners who have died that lead to succession disputes.

11.2 Recommendations

To address these challenges the commission proposes the following to the national government:

1. The national government and the National Land Commission (NLC) shall come up with strategies that will address the challenges relating to lack of documents from land owners including strategies of fast-tracking registration of land and granting of ownership documents to land owners.
2. The national government and NLC should also come with strategies to address challenges that come with land owners who have land succession disputes.
3. The national government and the National Land Commission should digitize the land acquisition processes to make it more efficiency and cost effective.
4. The national government should grant financial resources to the commission to enable it conduct this mandate.
5. The national government shall ensure that rehabilitation and resettlement of the affected households is done where compulsory acquisition of land results to mass displacement.
6. The national government and NLC shall ensure that the public is sensitized on the need to file disputes related to compulsory acquisition before the Land Acquisition Tribunal so that their cases are fast-tracked.

INSTITUTIONAL FRAMEWORK

12.1 Background

There are various institutional players in the land sector with the major ones being the Ministry of Lands, the National Land Commission (NLC) and the courts. While the National Land Policy of 2009 sought to address issues related to bureaucracy, complexity of transactions, centralization and corruption, these have not been achieved with a measure of success. Moreover, we now have new challenges that have emerged. Services still remain inefficient and the public are not at the center of land administration and management.

However, it is important to point out that service delivery has also been affected due to intra-institutional conflicts due to duplicity of roles as a result of constitutional and statutory overlaps. Moreover, it is for this reason that in 2014 the Supreme Court issued an advisory in relation to mandate (Supreme Court Advisory opinion No. 2 of 2014). There is need to identify these constitutional and statutory overlaps and address them fully.

There have also been conflicts that have emerged between the national government and county governments in terms of what categories of public land fall under each. Article 62 states that un-alienated government land shall vest and be held by the county government. This has created implementing challenges as this category of public land was held by the national government under the repealed Government Land Act (Cap 280). Another category of public land creating this squabble between the national and county governments are land transferred to the State through reversion, surrender or sale that is also held and vested in the county government. This also applies to land in respect of which no heir can be identified which is vested in and held by the county government.

Leases over public land has also created conflict between the Ministry in charge of Lands and the National Land Commission. Whereas Articles 62 (2) and 67 (2) (a) of the constitution allows the commission to administer and manage public land there appears to be an interpretation problem as to what “administer and manage public land “means. This is because Article 64 of the constitution goes ahead to define private land to include land held under leasehold tenure yet when it comes to leases over public land the management aspects that are imposed in terms of conditions and the term of the lease presupposes that land held under leasehold tenure is public land.

Moreover, this challenge continues as the statutes do not make it any better. A good example is when addressing the subject of renewal of leases and extension

of leases. Section 13 of the Land Act grants NLC the function of extending a lease and renewing a lease yet section 23 (2) of the Land Act imposes the obligation of issuing a lease on private land and extending or renewing such lease to the Ministry on the basis of Article 64 (b) of the Constitution.

Therefore the commission makes the following recommendations;

1. Ensure that institutions do not have duplicating roles or overlap in their legislative mandates to reduce institutional conflicts that affect service delivery.
2. Ensure that devolution of land management and administration for services that are yet to be devolved is completed.
3. Ensure that digitization of land administration and management and creation of a cost effective and user friendly end to end digital system in place so that services to the public are efficient, cost effective and seamless.

12.2 National Land Commission

The constitutional and legislative functions of the commission have been more of advisory in their functional areas making it not meet its objectives as intended. Amendments in the law should be carried out to ensure that the commission is more effective in service delivery. We recommend:

1. That the legislative mandates of the commission be clearly spelt out in the legal framework to avoid conflict and overlaps with the Ministry in charge of Lands.
2. That the legislative framework be reviewed to address conflict between the county and national governments in terms of categories of public land that is vested and held by both.
3. That guidelines and changes in the law be effected to define clearly the roles of the Commission and the Ministry in charge of lands in terms of allocation of public land, issuance of leases, renewal of leases and extension of leases.
4. That the legislative framework is amended to allow the commission to assess and collect tax on land and premiums on immovable properties.
5. The government strengthens the NLC's role of preparing and recommending the NLP.
6. That the government amends existing legal framework so that the commission investigates present and historical land injustices and implement or execute its decisions without recommending its decisions to another body.

7. That the government amends existing legal framework so that the commission shall carry out research on land and natural resources and implement its decisions.
8. That the government amends existing legal framework so that the commission ensures comprehensive registration of title to land throughout Kenya.
9. That the government gives the commission sufficient funding to carry out digitization of its processes and develop a cost effective and user friendly end to end digital platform to enhance service delivery and efficiency.
10. That the government gives the commission institutional and financial independence by creating a commission fund charged directly from the consolidated fund.

12.3 Ministry in Charge of Lands

We recommend that:

1. That the legislative mandates of the Ministry in charge of land be clearly spelt out in the legal framework to avoid conflict and overlaps with the National Land Commission.
2. That the government gives the Ministry sufficient funding to carry out digitization of its processes and develop a cost effective and user friendly end to end digital platform to enhance service delivery and efficiency.
3. That the national government shall put into place a framework for the implementation of the land policy.
4. That the Ministry will establish and resource a National land Reform Transformation Unit to implement the national land policy.

12.4 Land Control Board

The Land Control Board is established under the Land Control Act (Cap 302) to control land transactions in agricultural land. The national government should review the effectiveness of the board and the Act so as to address emerging threats to agricultural land and in particular we recommend that:

1. Strategies and a framework be put in place to ensure that agricultural land is not subdivided leading to land fragmentation leaving agricultural land with uneconomical units.
2. The extent or sizes of agricultural land should be limited so as not to affect food security in the country.
3. The Land Control Board application processes and issuance of the necessary consents be digitized so as to make the Boards more efficient and people friendly.

12.5 National Land Reform Transformation Unit

1. The Ministry in charge of Lands in consultation with the National Land Commission and with the support of the national government shall establish a National Land Reform Transformation Unit (NLRTU).
2. The NLRTU shall implement the national land policy and shall be accorded sufficient personnel, resources and autonomy.
3. The national government shall ensure that all the resources necessary is accorded to NLRTU to fully implement the National Land Policy.
4. The NLRTU shall implement reform programs in the land sector as per the national land policy.
5. The NLRTU shall propose new legislation or change of legislation where necessary in order to fully implement the National Land Policy.
6. The NLRTU shall carry out carry out civil education on land reform and ensure smooth transition to this policy.
7. The NLRTU shall remain in operation after the National Land Policy is fully implemented in readiness for the next cycle of review of this policy.

IMPLEMENTATION FRAMEWORK

The previous land policy 2009 was a major turnaround to the entire land governance in Kenya. It provided very clear and good policy recommendations towards achievement of better land management, administration and reforms. In addition, the policy made a significant influence to the Post Independent Kenya Constitution of 2010; which ideally elaborates the key land policy principles and institutional architecture for land governance. Indeed, it is the policy statements and ideals, philosophies of the NLP 2009 that birthed the National Land Commission (NLC) under Article 67 (1) of the Constitution 2010. Consequently, there were significant milestones and successes (the hit gains) of the previous and first land policy for Kenya. However, the major bottleneck that strangled the aspirations and achievement of the well-intentioned policy provisions in the NLP 2009 were largely due to lack of implementation, occasioned by the various competing interests and lack of commitment to realize meaningful positive transformation in the land sector. Further, lack of good will, as demonstrated by sporadic / intermittent financing, curtailed effective implementation of the NLP 2009. Subsequently, the policy provisions in NLP 2009 that are still relevant to the people of Kenya have been utilized to inform the instant land policy 2023.

In this regard and to ensure that NLP 2023 is implemented and given the much needed prominence and impetus, the state shall:

- 1) Establish a dedicated financial resource, dubbed as ***the Land Fund***; that specifically seeks to facilitate and resource land management and administration and promote seamless reform agenda including tackling the mammoth land related disputes. The fund is expected to support both national and grass-roots level organizations dealing with land matters including sustainable land management (SLM) initiatives
- 2) Establish an inter-agency and multi-stakeholder inclusive implementation team that oversees, monitors and tracks the implementation of the policy; with clear feedback mechanism for accountability, reporting and budgeting. This body should be empowered to raise revenue for land management and reforms in Kenya.
- 3) Establish a due diligence body of professionals with capacity and integrity beyond reproach in order to provide comfort and confidence to the public while conducting due diligence for land. This body shall also be made accountable in the due diligence value chain in provision of accurate and

credible land information through searches; and shall act as the indemnity architecture to mitigate against losses incurred as a result of due diligence on matters land.

- 4) Organize and facilitate seamless capacity building and awareness on land matters and create transparent systems for land management and administration in order to bolster public confidence and enhance wealth creation on land and use of land-based resources.
- 5) Cause to undertake on annual basis - periodic reviews - and reporting of progress on the implementation of NLP 2023.

REVISED