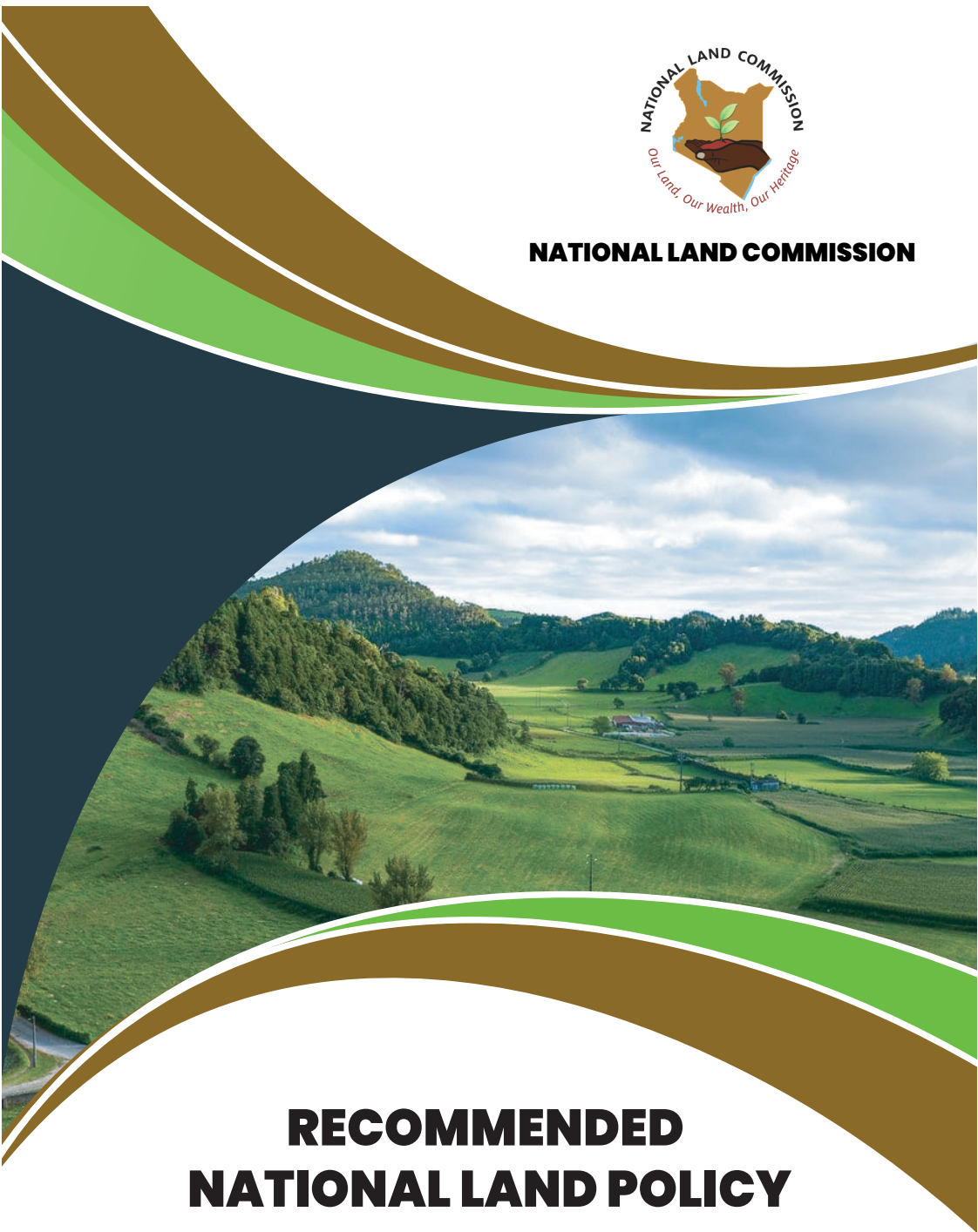




**NATIONAL LAND COMMISSION**



# **RECOMMENDED NATIONAL LAND POLICY**

OCTOBER 2023

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*Our Land, Our Wealth, Our Heritage*



RECOMMENDED NATIONAL LAND POLICY | 2023





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**RECOMMENDED  
NATIONAL LAND POLICY  
OCTOBER 2023**



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## ACRONYMS

ADR	Alternative Dispute Resolution
ASALs	Arid and Semi-Arid Lands
BETA	Bottom-Up Economic Transformation Agenda
BRS	Business Registration Service
CBK	Central Bank of Kenya
CECM	County Executive Committee Member
CGA	County Governments Act,
CIDP.	County Integrated Development Plan
CLA	Community Land Act
CLMC	Community Land Management Committee
CS	Cabinet Secretary
DDBMS	Distributed Database Management System
EMCA	Environmental Management and Coordination Act
EPZ	Export Processing Zone
ESA	Ecological sensitive areas
GDP	Gross Domestic Product
GIPs	Good Industry Practices
GIS	Geographical Information Systems
GNSS	Global Navigation Satellite Systems
GoK	Government of Kenya
IPRS	Integrated Population Registration System
KNBS	Kenya Bureau of Statistics
KNSDI	Kenya National Spatial Data Infrastructure
LDN	Land Degradation Neutrality
LGA	Local Government Act
LRA	Land Registration Act



MMGs	Minority and Marginalized groups
NAS	National Addressing System
NCCAP	National Climate Change Action Plan
NIMBY	Not in my backyard
NLC	National Land Commission
NLIMS	National Land Information Management System.
NLRTU	National Land Reform Transformation Unit
NLUP	National Land Use Policy
NSDI	National Spatial Data Infrastructure
NSP	National Spatial Plan
OVCs	Orphans and other vulnerable children
PLUPA	Physical and Land Use Planning Act
PWDs	People Living With Disability
ROW	Right of Way
SDGs	Sustainable Development Goals
SLM	Sustainable Land Management
SoLD	State of land degradation
TBNRM	Trans-Boundary Natural Resource Management
TDR	Traditional Dispute Resolution
ToL	Temporary Occupation License
TS	Tenure Security
UACA	Urban Areas and Cities Act
UNFCCC	United Nations Framework Convention on Climate Change
ELC	Environment and Land Court

## FOREWORD

Article 67 (2) (b) of the Constitution of Kenya, 2010, bestows on the National Land Commission the responsibility of recommending a national land policy to the National Government. Taking cognizance that the inaugural National Land Policy was due for review in 2019 after ten years, the National Land Commission recommends this National Land Policy, 2023, as a revision and an update to the Sessional Paper No. 3 of 2009 on National Land Policy.

The recommendations in the National Land Policy, 2023, are based on views and expert opinions collected and collated through a consultative process that brought together stakeholders drawn from the public, private, academia, development partners, professional bodies and civil society organizations.

It is the National Land Commission's firm belief that this Recommended National Land Policy, 2023, will not only hasten the process of reviewing the National Land Policy by the national government but also ensure a comprehensive and enriched land policy that encompasses the aspirations of Kenyans.

Notably, the Commission had earlier on prepared and submitted to the Ministry in charge of Lands "A Framework for Formulating the National Land Policy for Kenya" in November, 2018. In view of the time lapse since 2018 the Commission found it prudent to revise and update the recommendations, taking into consideration the various changes that have taken place in land sector.

We look forward to working together towards finalization of the policy that will enhance sustainable use of land and enhance service delivery in land sector. The Commission also remains committed to support implementation of the policy.



**Gershom Otachi Bw'Omanwa,**  
**Chairman, National Land Commission**



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The preparation and publication of the Recommended National Land Policy, 2023 was made possible through a collaborative, consultative, and participatory approach that involved diverse stakeholders.

I wish to acknowledge the leadership and support by the Chairman and Commissioners of the National Land Commission (NLC) towards the formulation of the Recommended National Land Policy, 2023. Specifically, I appreciate the relentless efforts and professional guidance by the Land Use Planning, Research and County Coordination Committee of the Commission.

I acknowledge the efforts made towards preparation of this report by the Commission Secretariat, with special mention of the technical team that spearheaded the process. The team was instrumental in the realization of the recommended policy document.

I recognize the contributions of various Government Ministries, Agencies, County Governments, Development Partners, Academia, Professional bodies, Civil Society Organizations and the general public. I also wish to express our gratitude to all those who participated in the public fora and/or submitted comments and inputs to the document within the timelines provided. We value your insights that enriched this document.

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Kabale Tache Arero  
**Secretary/CEO, National Land Commission**

## EXECUTIVE SUMMARY

The Constitution of Kenya, 2010 defined how land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and through the application of key principles of land policy. Sessional Paper No. 3 of 2009 on National Land Policy (NLP) having been adopted before the promulgation of the Constitution, it is imperative to realign the land policy to the Constitution and to other sectoral policies whilst leveraging on the gains realized in the course of implementing the policy since 2009.

The recommended National Land Policy 2023 is based on an evaluation of the NLP, 2009 and the necessity to address the shortcomings that curtailed full implementation of its well-intentioned provisions. The provisions of the NLP 2009 that are still relevant to the people of Kenya have been utilized to inform this land policy.

The Policy adopts a new philosophy based on a rallying call for a paradigm shift from prioritization of land ownership to equitable access and optimal use for sustainability. The Policy embraces use of technology, research and data to make informed administrative and management decisions over land to advance the public interest. Besides the Constitutional of Kenya, 2010 the Policy is guided by relevant and appropriate global, regional and municipal level imperatives to ensure effective, efficient and economical utilization of land and land-based resources.

The chapter on Security of Land Tenure and Rights builds on the provisions of Article 61 of the Constitution of Kenya, 2010 regarding Public, Community and Private land. It articulates policy options on the land tenure systems under the three constitutional classifications of land in Kenya. The chapter also addresses issues of gender and land rights as well as the land rights of minorities, marginalized and vulnerable groups.

The chapter on Land Administration and Management underscores the need for an efficient land administration system that guarantees the integrity of land records, promotes tenure security, and guides land transactions in Kenya.

Land use planning is concerned with orderly management of human activities on land.



This chapter highlights the importance of land use planning, identifies the critical issues on land use planning and recommends policy options for effective land use planning in the country.

The success and challenges to implementation of the National Land Information System which was launched in April, 2021 provides the basis for the chapter on Land Information Management. Commonly known as *Ardhisasa*, the system seeks to integrate all land registries within the country, County governments and other government agencies to improve efficiency and transparency in the management of land information systems.

The chapter on Natural Resources, Environment and Conservation explores emerging economies such as the blue economy and extractives that can spur socio-economic development. In exploiting these new nature-based opportunities, the prudent management, use and conservation of natural resources become key to ensure achievement of socio-economic well-being as well as ecological and resilient development, especially in the wake of climate change. The chapter on Climate Change makes the link between land management and addressing the climate crisis. Climate change 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 imperatives to secure national short, medium and long term development objectives.

The chapter on Land and Food Security highlights how the ever-increasing demand on land for agricultural production and urban development has led to subdivision and fragmentation of land leading to changes in land use patterns that have significant implications for food security due to the impacts on agriculture and livestock production.

The chapter on Management and Resolution of Land-related Conflicts and Disputes explores on the need to evaluate existing frameworks preventing, managing and resolving land-related conflicts and disputes to determine their strengths and weaknesses, and propose more effective mechanisms. The chapter also makes the case for leveraging on technology to improve access to land justice for Kenyans.

The last two chapters are on Institutional Framework and Implementation Framework respectively.



The chapter on Institutional Framework reviews the functions of various institutional players in the land sector, with a particular focus on the Ministry of Lands, the National Land Commission (NLC), County Governments and the courts, and proposes measures for improving delivery of land services to all.

The chapter on Implementation Framework proposes establishment of an inter-agency and multi-stakeholder inclusive implementation team that will monitor and tracks implementation of the Policy, with clear feedback mechanism for accountability, reporting and budgeting.



## CHAPTER ONE: BACKGROUND INFORMATION

### 1.1 Introduction

The National Land Commission (NLC) has developed the *Recommendations on Kenya National Land Policy, 2023* (hereinafter 'Recommended National Land Policy 2023') following a review of the *Sessional Paper No. 3 of 2009 on National Land Policy* (hereinafter 'NLP 2009'). The inaugural National Land Policy sought to guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity. It provided a framework through which the country would address, among other things, the challenges of land administration, access to land, land use planning, and restitution of historical land injustices.

The Recommended National Land Policy 2023 has 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, and in line with the stipulation in the National Land Policy for 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 continues to serve their interests effectively and sustainably.

The provisions of the Recommended National Land Policy 2023 have focused on key thematic areas and broadened the scope of the land policy in line with the definition of land in the Constitution of Kenya, 2010. Thus, besides relooking at the themes that were incorporated in the NLP 2009 such as land tenure, land use management, land administration, and institutional and implementation framework, the Recommended Policy covers land information management; land and food security; natural resources, environment and conservation; investment; and climate change. It recommends policy options that build on the achievements of the NLP 2009, while also introducing necessary reforms.

### 1.2 An Overview of Achievements of NLP, 2009

The NLP, 2009 was quite comprehensive in its coverage, and was formulated through a structured all-inclusive and consultative process that brought together stakeholders drawn from across the board.

It defined the existing constitutional, legal and institutional framework that guides land management and administration in Kenya, and triggered a wide range of fundamental positive changes in the manner in which land and land resources are administered and managed.

Specifically, the Policy provided a framework for governance of land, environment and natural resources that was incorporated in Chapter Five of the Constitution of Kenya, 2010, and inspired the 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 of an elaborate institutional framework that includes the NLC as an independent Constitutional Commission whose functions include overseeing the management and administration of public land in Kenya. In addition, the policy provided for creation of Environmental and Land Courts to handle environment and land related cases.

Other laws, policies and strategies that relate to land, environment and natural resource management have been aligned to the Constitution in line with the stipulations of NLP 2009.

These include Urban Areas and Cities Act, Physical and Land Use Planning Act, National Spatial Plan 2015–2045, Environmental Management and Coordination Act, Wildlife Conservation and Management Act, among others. Such alignment is done to ensure equitable and sustainable use of land and natural resources.

### **1.3 Rationale and Philosophy of the new National Land Policy**

The fundamental justification for developing the Recommended Policy is the stipulation in the NLP 2009 that it be reviewed after ten years to take into account current and future needs in view of social and economic dynamics in the land sector. The review seeks to consolidate the gains of the NLP 2009 and is underpinned by the call by Kenyans for a paradigm shift from prioritization of land ownership to equitable access and optimal land use. Such a shift is consistent with the push for sustainable use and management of natural resources, protection and conservation of the environment and implementation of measures for mitigation of and adaptation to the impacts of climate change.

In order to facilitate effective management of the challenges of land degradation, climate crisis and population growth, the National Land Policy must propose options and measures to manage land in its totality, including 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 the 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 decisions on land that are in the public interest. The Policy is guided by Constitutional and environmental policies at the global, regional and municipal levels to provide Kenyans with an effective, efficient and economical policy foundation for land governance.

#### **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 governance that ensures efficient, equitable, productive and sustainable utilization of land and land-based resources for secure livelihoods and shared national prosperity.

#### **1.6 Objectives**

The overall objective of the National Land Policy is to ensure that land is held, used and managed in an equitable, efficient, productive and sustainable manner. To this end, the policy seeks to:

- a) Reform and streamline land rights administration for transparent, efficient, effective and equitable delivery of land services
- b) Identify the emerging priorities for constitutional and legal reforms to ensure sustainable land ownership and management in Kenya
- c) Promote institutional linkages across sectors for improved land governance
- d) Establish the framework for efficient and effective utilisation of land-based resources

- e) Address emerging challenges in land administration and management.
- f) Establish effective land-related conflict and dispute management.

## 1.7 Guiding Principles

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

- a) National values and principles of governance enshrined in Article 10 of the Constitution;
- b) Principles of land policy enshrined in Article 60 of the Constitution; and
- c) The Public Trust Doctrine that secures certain natural and cultural resources for public use.

## 1.8 Methodology

The process used in reviewing the NLP 2009 draws from the elaborate land policy formulation methodology recommended by the NLC in the *Framework for Formulating a National Land Policy for Kenya, Concept Paper 2018*, with appropriate modifications to accommodate developments over the intervening period.

The NLC used research and consultations to generate land policy issues relevant for formulation of the Recommended Policy. Secondary information and data was generated through desk review of relevant published and unpublished sources, among them the NLP 2009, Taskforce Reports on various land issues, and relevant research papers to identify critical issues to inform consultations. Experts were invited to contribute their expertise and experience through brainstorming sessions convened for this purpose.

The initial draft of the Recommended Policy was subjected to stakeholders' validation through workshops. The feedback from these workshops have been integrated into the final Recommended Policy.



## CHAPTER TWO: 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 NLP 2009 eighty percent of the land area is arid and semi-arid while the rest can be categorized as agricultural or arable land. This implies sustained pressure on limited land to satisfy the demands of the rapidly growing population.

The country's diverse topography influences and determines rainfall patterns, which are varied across the country, with the bigger proportion receiving low rainfall throughout the year. Agriculture is mostly rain-fed, and productivity has declined progressively in the face of climate change that has exacerbated unpredictability of the weather. In order to address these and other emerging challenges, the country will need to invest efforts in land management measures such as conservation and use of technology

### 2.2 Population

The 2019 Kenya Population and Housing Census puts the population of the country at 47.6 million with an inter-censal population growth rate of 2.3 percent. The population is expected to reach 91.6 million by the year 2050.

The rural population in Kenya is reported to be 71 percent while the urban population is 29 percent. The urban population is projected to double by 2035 and triple by 2050, meaning that there will be close to 50 million people living in urban areas by the year 2050. This huge population needs to be planned for through requisite investments.

The National Land Policy has a critical role in this regard, as appropriate land policy measures can influence population distribution to curb the rapid urbanization that is creating urban areas that are not livable.

At the same time, appropriate land policy measures are needed to discourage undesirable settlement patterns in rural areas ease pressure on rural for agriculture and pastoralism.

### 2.3 Land Use Patterns

Land use patterns are determined largely by the potentialities of ecological zones. The National Land Use Policy, 2017 identifies major land-cover types in Kenya to be 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. Rangelands comprise 80 percent 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 percent, while water bodies, woodlands, forests and unutilized land cover the rest of the remaining 5 percent of the land.

According to the Agriculture Sector Survey, 2023 approximately 20 percent of Kenya land mass is agriculturally productive and employs approximately 40 percent of the total population. It is also estimated that agriculture employs more than 70 percent of the rural populace.

The ASALs account for 30 percent of the rural population while taking 80 percent of the Kenya land mass. The agriculture and livestock sector continues to play a critical role in Kenya economy accounting for 20 percent of GDP and 27 percent indirectly through 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 and pastoralism areas. Faced by this scenario the country's land policy shall remain geared towards safeguarding agricultural land while enabling optimal use of the ASALs to boost food security and economic development.

### 2.4 Constitutional, Policy and Legal Contexts

All policies and laws enacted in Kenya have to be in conformity with the Constitution. Land laws enacted since the promulgation of the Constitution operationalize the provisions of Chapter Five of the constitution. In the same vein, this Recommended Policy is aligned to the Constitution.



By taking cognizance that land is the interface of biological and physical resources, the Constitution expanded the scope of land policy to include the biophysical. The Recommended Policy articulates policy measures to regulate access and use of the five dimensions of land listed in Article 260 of the Constitution.

The Recommended Policy applies national values and principles of governance. Thus, for instance, the Policy pays due regard to principle of devolution of power by assigning land governance responsibilities to each level of government, while entrenching imperatives of equity, non-discrimination and protection of the marginalized, and sustainable development.

Since the Constitution has entrenched environmental, economic and social rights, and given critical role of land as a factor of production in enabling achievement of these rights, the Recommended Policy introduces measures to protect the environment, guarantee high standards of health, adequate housing, and sanitation.

It also prescribes measures to support food security and other social rights. The policy measures proposed are underpinned by the principles and classifications of land espoused under Article 60 and Article 61 of the Constitution.

The Recommended Policy also draws on other framework and sectoral policies, including Kenya Vision 2030, the Bottom Up Economic Transformation Agenda (BETA), National Land Use Policy (NLUP), National Spatial Plan (NSP) 2015–2045, agriculture, environment and natural resource management policies among others.

## 2.5 Contemporary and Emerging Issues

Numerous developments, with significant implications for land governance have occurred in the country since the adoption of the NLP 2009. The developments will shape future trends and pressures on land and land-based resources and appropriate measures are needed to manage their impacts.

Apart from developments at the national level, there are also developments at global and regional levels that are exerting significant impacts on land resources, and which have been factored in the Recommended Policy. The major developments and factors of relevance include:



- **Inhibitive cultural practices**

The 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 have triggered conflicts.

- **Demographic shifts and urbanization**

Kenya's high population growth rate of approximately 2.3 percent 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 percent of land in Kenya is high potential and supports 75 percent of the total population, exerting immense pressure on land usage thus triggering among others, rural-urban and intra-rural migration; subdivision of agricultural land into uneconomical units; urban sprawl into prime agricultural land; unsustainable agricultural practices; encroachment into fragile ecosystem and protected areas; and resource use conflicts.

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 and haphazard, unplanned housing development.

As a result of the rapid population growth, unplanned settlements have emerged encroaching on the marginal and fragile ecosystems thereby compromising sustainable land use and engendering degradation. There is a clear need for comprehensive land use planning in the country.

- **Unsustainable land use**

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

The situation is further complicated by multiplicity of agencies on land use planning and management; lack of adequate 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; and inadequate land use planning at the national, county and rural 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.

These 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 make it impossible to expedite land transactions. In addition, there exist multiple players with overlapping mandates leading to jurisdictional, legal and policy conflicts exacerbated by poor sharing of information.

- **Food supplies, prices and changing land uses**

The recent surge in world food prices and food supply bottlenecks affected Africa the most, given the continent's current food production deficits and increasing dependence on imports and food aid.

Rising global food prices are the result of complex interactions between a number of 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 by 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 by emphasizing on optimal land use to support food security through enhanced production.

- **Globalization**

In recent times, the significance of bio-fuels, minerals and oil has gained prominence. The accelerated exploitation of resources together with the establishment of industries and processing infrastructure in African countries have led directly to a 'new scramble' for Africa's land resources. Demand for land for a wide range of investments and discovery of oil and other mineral resources often lead to competing land uses and speculation.

It is important that sustainability guidelines are observed and land rights of local communities are protected even as these demands are met.

- **Regional co-operation and integration**

African countries are increasingly embarking upon regional cooperation and integration, under the auspices of various pan African and sub-regional frameworks. A growing number of cross-border developments point to the need for co-operation over many issues including migration and movement of pastoral communities, refugees, trans-boundary ecological stresses (land and water degradation, desertification, and deforestation).

To facilitate this, Regional Economic Communities (RECs) are negotiating and adopting agreements on the management of shared resources such as water and forests and meeting common challenges such as climate change desertification. Civil society organizations (CSOs) 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**

Courts are increasingly developing jurisprudence in support of sustainable land governance and to secure land rights of individuals as well as public interest in land and land-based resources. Judgments from the courts in recent years are increasingly questioning legal orthodoxies about land rights such as the sanctity of title, by shifting the burden of proof with regard to acquisition of land and going beyond the search certificate to ascertain the basis of title.

## 2.6 Policy Issues

The emerging policy concerns have been grouped into the following broad issues or themes:

- 1) Land use planning
- 2) Security of land tenure and rights
- 3) Conflicts and dispute resolution
- 4) Land administration and management
- 5) Land information management
- 6) Land and food Security
- 7) Natural resources, environment and conservation
- 8) Climate change



## CHAPTER THREE: LAND TENURE AND RIGHTS

### 3.1 Introduction

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. This definition captures the total essence of land, including the socio-cultural and economic value attached to it by various communities.

Article 60 of the Constitution provides that all land in Kenya belongs to it people collectively by the people of Kenya as a nation, as communities and as individuals. The Constitution thus envisages a land governance system that facilitates both collective (national, communal) and individual interests in land. To this end, the principles of land policy enshrined in the same Article of the Constitution speak not to “ownership of land” but rather to “equitable access”, “land rights”, “sustainable and productive management”, and “sound conservation and protection of ecosystems”.

Thus, the Constitution establishes the foundation for a land governance system that privileges access to land for productive use rather than its ownership as such. The focus of land policy is thus to define and recognize interests in land, and facilitate the transfer or transmission of those rights through transparent, efficient and equitable mechanisms.

It is therefore interests and rights that people can hold over land, and it is to such interests and rights that titles issue. This understanding of land tenure and rights is consistent with the way communities in Kenya have organized their land relations since time immemorial.

Article 61(2) of the Constitution classifies all land into three categories – Public, Community and Private. These categories give rise to four distinct forms of land tenure systems, which are specified under Section 5 of the Land Act, 2012, namely Leasehold, Freehold, partial interest (such as easement), and customary land rights.

### 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 interests and rights in land are accessed, held, and controlled.

Different forms of tenure confer different rights and limitations.

There are four main land tenure forms in Kenya, namely Freehold, Leasehold, Partial interest, and Customary. Customary tenure is the most prevalent across the country. Other interests in land recognised by law include usufructs (use of land), Temporary Occupation License (ToL) and social tenures.

Security of tenure is a critical consideration in land governance, as it shapes the manner in which holders of land rights interact and how they invest in land management. Tenure is thus more about relations and interactions between people over interests in land rather than it is about land itself. It is these man-land relationships that define tenure security, and which the Recommended Policy aims to define and protect.

The Recommended Policy proposes a plural approach to land tenure, in which different systems of tenure co-exist and enjoy equal guarantees of 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 enshrined in 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 derived from development and exploitation of land and land-based resources;
4. Sound conservation and protection of ecologically sensitive lands; and
5. Protection of rights and interests of women, children, widows, persons with disability, youth, and other minority and marginalized groups (MMGs).



6. Improving citizens' understanding that the rights to land that they hold derive from the radical title to land, which vests in the people of Kenya collectively and is held by the State on their behalf.

### 3.2.1 Customary Tenure

Customary forms of tenure have significant cultural, spiritual and historical relevance in our society, and recognizing their importance is essential. Customary tenure refers to traditional systems of land ownership, use, and management practiced by indigenous communities and local populations.

The Recommended Policy aims to protect the rights of individuals and communities holding land under customary tenure, while also ensuring sustainable land use practices. In addition, it calls 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.

The Policy positions customary tenure as an integral part of a comprehensive national land policy that respects the diversity of land tenure systems within the country.

Although the Community Land Act 2016 provides a legal framework for administration and management of land under community land category, a lot more needs to be done in order to effectively secure and protect the rights and interests of local communities as well as their resources.

In order to effectively secure and protect communal land tenure, the government should:

1. Encourage sustainable land use and management practices within customary tenure areas to ensure the long-term viability of natural resources.
2. Establish transparent and equitable processes for allocating land within customary tenure areas.
3. Ensure that these processes consider the needs of vulnerable and marginalized groups within communities.
4. Develop mechanisms for resolving disputes related to customary land use and ownership, giving priority to alternative dispute resolution methods that respect local customs, norms

and traditions.

5. Facilitate culturally appropriate documentation of customary land rights, and that such records are accessible to community members and relevant authorities.
6. Pay special attention to protecting the land rights of vulnerable groups, including women, the elderly, and marginalized communities within customary tenure areas.
7. Enforce policies that prevent land grabbing and exploitation of vulnerable community members.
8. Promote the active participation of indigenous and local communities in decision-making processes related to their customary lands.
9. Strengthen the capacity of Community Land Management Committees to facilitate community engagement in land governance.
10. Encourage customary landowners to adopt sustainable land management practices that protect natural resources and ecosystems.
11. Develop policies that incentivize and support sustainable agriculture, forestry, and conservation efforts within customary tenure areas.
12. Invest in education, awareness creation and capacity-building programs to empower communities to understand and assert their customary land rights.
13. Create mechanisms for coordination between customary land authorities and other land management agencies.

### **3.2.2 Social security of land tenure**

Security of tenure manifests in how strongly the interests and rights of an individual are recognized by others and secured by authorities. The more one occupies or associates with land without any interruption, the more the person builds popular recognition as the owner of the land. Popular recognition is also recognized by courts, and the recognized occupier or user may, in appropriate circumstances, win adverse possession and defeat the title of the registered owner.



It is therefore clear that title is not the only basis for security of tenure. Instead, such security is strongest when title documents are backed by continuous uninterrupted occupation and continuous use of the land. Courts have in recent years issued jurisprudence challenging the principle of indefeasibility of title.

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. Such court decisions have applied Article 40 (6) of the Constitution, which provides the ground and exception under which a title can be impeached.

Specifically, a title can be impeached on grounds that it was acquired without due regard to legal procedures.

### 3.2.3 Land tenure and politics

Politics is proving to be a critical factor in tenure security in the manner that it defines and shapes relationships people have with land, including their attitude towards institutions that prescribe, manage, and oversee land rights. 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 important that land related policies and laws tactfully weave together politics and land matters as two mutually reinforcing variables.

### 3.2.4 Tenure as a mindset and the shifting paradigms

Security of tenure is both a legal and psychosocial phenomenon, with foundations in the minds of the people. What constitutes secure tenure will thus be a function of context.

There are numerous instances where individuals have titles to land but are not able to take possession due to perceived or real insecurity. Conversely, there are many instances where individuals use their land without any fear even though they do not have title documents. In each of these cases, the perception of security of tenure (or the lack thereof) derives from psychosocial considerations.

Psychosocial considerations play an even more important role in tenure security than legal considerations.



According to a recent report on national land monitoring, the amount of land secured through adjudication titling is merely about 19.43% (11,288,916.12 hectares), meaning that nearly 80% of the mass in Kenya is untitled. This situation calls for a paradigm shift in the mind-sets to manage 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

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 also serves as a critical factor of social protection against gender-based violence. This makes women's equal right to land a human rights issue. Recognizing and facilitating women's participation in the process of developing a land policy is critical to increasing women's 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. It is not right, for instance, that 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 rights to land are regulated by either formal legal system or through customary law, and in both systems there are examples of how women's right to land are prevented or promoted. Formal legal systems in many countries have constitutions or land laws that grant gender equality in access to land, which exist side by side with laws for marriage, divorce and inheritance that contradict and undermine these rights. Indeed, systems of customary law regarding land tenure in pre-colonial Africa often granted women access to land, which rights were lost with the introduction of the idea of individual ownership and commodification of land.



In Kenya, two statutes, the Matrimonial Property Act, 2013 and Law of Succession Act are critical to women's land rights. The Matrimonial Property Act provides for the rights and responsibilities of spouses in relation to matrimonial property, and contains specific provisions on gender and women land rights. The Law of Succession Act is the main legal framework governing inheritance. It gives protections for widows and children in regards to land rights.

The 2022 National Land Monitoring Report found that 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. Other factors that undermine women's land rights include retrogressive/discriminatory cultural norms and practices at institutional and community level; low literacy/education levels and awareness among women that compounds their lack of awareness of their rights; and inadequate women's participation and representation in land governance structures and decision-making among.

Because women's right to land and property is central to their economic empowerment, supporting women to beat these constraints to accessing, owning and controlling land and land resources is imperative. The foundation for this has been laid in principles of land policy entrenched in the Constitution, which call for elimination of gender discrimination in law, customs and practices related to land and property. Furthermore, Article 40 of the Constitution entrenches 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 Constitution also bestows powers and duties on the state 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.

In order for women to realize meaningful rights to land, the government should:

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 cultural and religious leaders to promote equality of land rights.
4. Increase awareness about the rights of women, minority, marginalized and vulnerable groups to own land and property.
5. Improve economic empowerment of women in order to enable them access credit and buy land for themselves and their families.
6. Identify and allocate public land to women within the ambit of affirmative action.
7. Actualize/action gender mainstreaming in land related institutions including creation of gender desk officers.

### **3.4 Land Rights for Minority, Marginalized and Vulnerable Groups**

The Constitution defines a marginalized group as a group of people who have historically been disadvantaged by discrimination on one or more of the grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. In line with Article 21 of the Constitution, the state is obligated to respect and promote full enjoyment of fundamental rights and freedoms, including the right to land by minority and marginalized groups. In this regard, the national government should:

1. Take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization by minority, vulnerable and marginalized groups of economic and social rights guaranteed under Article 43 of the Constitution.
2. Enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.



3. Develop guidelines to secure and promote the land rights of hunter-gatherer communities in accordance with the provisions of Article 63 (2) (d) (ii) of the Constitution
4. Establish and document rights and secure tenure in the informal settlements
5. Ensure that land rights of child-headed households as well as Orphans and other vulnerable children (OVCs) are protected.
6. Document and secure tenure rights for colonial villages

### 3.5 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 has failed to provide impetus for realization of the benefits of increased investment and wealth creation as postulated in the capitalistic philosophy. In certain instances, it has in fact fostered tenure insecurity, as illustrated by way individualization of rights on community land has increased land acquisitions by foreign private companies of communally owned land in various parts of Kenya.

The NLP 2009 noted that individualization of tenure on community land has affected traditional tenure in two ways.

It has undermined traditional resource management institutions and it has ignored 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 challenges including uncontrolled sale that ignores family rights and cause or contribute to landlessness, and misuse of fragile and ecologically sensitive lands and ecosystems.

Individualization is part of the ownership system based on the English registration model that has tended to give absolute power of control to the primary title holder to the exclusion of other deserving interests. This runs against traditional values of land relations. The NLP 2009 proposed that 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.

The Community Land Act 2016 attempts to provide for group/family/clan-based ownership akin to customary tenure, but 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.

Adjudication of group ranches in Kajiado has led to subdivision of the ranches to individual members, leading to transfers to outsiders/strangers. It has also engendered other challenges including loss and blockage of wildlife and livestock movement corridors and dispersal areas, thereby defeating the original purpose of commercial ranching, preservation of cattle culture and minimization of environmental degradation.

This has resulted in increased human-wildlife conflicts and poses a threat to food security and sustainable livelihoods. Thus, the subdivision of group ranches in Kajiado has proved a major tragedy for the commons.

To manage subdivision of land and ensure that titling does not undermine productive and sustainable use of land and land-based resources, the government should:

1. Manage and conserve fragile landscapes such as hills, swamps, riparian reserves, watershed, 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. County Governments to fast-track submission of community land inventories to the National Government for purposes of registration of community lands and safeguarding community interest
6. Recognize all undocumented ownership that is not under dispute and save the vulnerable groups from the long court process of succession.
7. Exercise oversight responsibility and regulate use of all land
8. Document and secure unregistered community land especially fragile lands and ecosystems
9. Encourage land consolidation for purposes of improving productivity and tackle inherent natural resource based conflicts
10. Provide incentives to discourage land fragmentation/ parcellation and individualization

### **3.6 Land Registration and Tenure Security**

Land registration is a critical component of a well-functioning land tenure system. It ensures that land rights are officially recognized and recorded, providing security and facilitating transactions. In Kenya, land registration has undergone significant changes and reforms over the years. The most significant of these reforms involved the consolidation of all land registration functions into a unified system in line with the stipulations of the NLP 2009.

#### **3.6.1 Consolidation of Land Registration Functions**

The NLP2009 called for the consolidation of all land registration functions into a single, efficient system. The consolidation has been effected through the Land Registration Act, 2012. However, the conversion of all registers under the repealed registration acts into the new system is yet to be done. To address this challenge, the government should:

1. Fast-track the conversion of registers under the repealed registration acts into the unified system established under the Land Registration Act, 2012 in an efficient and transparent manner.

### 3.6.2 Legal Recognition of Customary Tenure and Formalization of all Land Rights

The legal recognition of customary tenure and formalization of all land rights is crucial to strengthening land tenure security. Customary tenure systems are deeply rooted in Kenyan society and play a significant role in land governance.

To ensure that customary and informal rights are recognized without the necessity of individualization of title, the national government should:

1. Establish a mechanism for the recognition of customary land rights and other informal rights without requiring the individualization of titles.
2. Introduce a form of documentation known as a “Community Land Use Certificate”, to be issued by Community Land Registrars to parties within communities exercising land rights under communal tenure. This certificate will provide official recognition of a party’s rights within the communal land rights fabric without the need for individualization of tenure.

### 3.6.3 Distinction in Certificates

In the land registration system, there should be a clear distinction between various types of certificates, each serving a specific purpose. These distinctions include:

1. Certificate of Title: Applicable to freehold land and is equivalent to title deeds. It represents full ownership rights over the land.
2. Certificate of Lease: Represents leasehold land and denotes a lease agreement between the landowner and the holder. Leasehold rights are different from freehold and have specific terms and conditions.
3. Certificate of Reservation: Issued by the National Land Commission (NLC) to public institutions for specific purposes. It designates land for public use, such as schools, hospitals, and infrastructure development.



### 3.6.4 Policy Prescriptions

To ensure efficient land registration and tenure security, the national government should:

1. Implement a clear and transparent process for the issuance and management of certificates of title, lease, and reservation, including clearly defined criteria for each.
2. Promote public awareness and education on the distinctions between various certificates, ensuring that landowners understand their specific rights and obligations.
3. Strengthen the role and capacity of Community Land Registrars and Community Land Management Committees in the issuance of Community Land Use Certificates.
4. Regularly review and update land registration policies to accommodate changing land governance needs and to address emerging challenges in the tenure system.
5. Establish an efficient dispute resolution mechanism for land-related conflicts, ensuring that conflicts related to land registration and tenure are resolved promptly and fairly.
6. Invest in technology and systems that enhance the security and accessibility of land registration records and ensure the efficiency of land transactions.

### 3.7 Evictions, human displacement and mobility

Eviction is the act of depriving or removing a person from the possession of land or property which they hold unlawfully, whether executed on the strength of a court order or otherwise. Evictions can thus be either lawful or unlawful. In either case, eviction results in displacement as individuals, families and/or communities are removed against their will from the homes and/or land which they occupy.

The current constitutional order in Kenya and international human rights law require that evictions and displacements are underpinned by provision of, and access to, appropriate forms of legal or other protection.



Eviction of unlawful settlers on public or community land leads to displacement, but the process has to be fair, justifiable and done in humane manner. Similarly, in instances where human displacement and mobility become inevitable, it is imperative that the affected persons and communities are supported within the ambits of human dignity and welfare.

Part XI of the Land Act, 2012 (Sections 152A – 152I) prescribe and establishes principles with respect to eviction, which are as follows:

- i. Eviction must be preceded by the proper identification of those taking part in the eviction or demolitions and that formal notification must be given prior to eviction taking place
- ii. A government official (or their representative) must witness the eviction
- iii. Eviction is to be completed in a manner that respects the dignity, right to life and security of those affected
- iv. The eviction process should include special measures to protect vulnerable people (e.g. women, children, the elderly and people with disabilities)
- v. The physical act of eviction should not lead to the damage of property or possessions of the evicted – evictees
- vi. The eviction process must protect the property or possessions involuntarily abandoned by the evicted
- vii. The eviction process gives first right of refusal to the evicted to demolish or salvage their property.

In order to deal with these complex issues of evictions, displacement and human mobility:

- i. The government shall ensure full implementation of the provisions of Part XI of the Land Act, 2012 to secure the human rights of persons affected by evictions
- ii. The NLC shall fast track the development of regulations to guide evictions and regularize squatters found in uncommitted public and community land in accordance with section 160 (2) (e) (iv) of the Land Act 2012.



### 3.8 Land acquisition for socio-economic development

Extinguishing of rights to land through compulsory land acquisition is provided for under Articles 40 and 66 of the Constitution subject to prompt payment in full, of just compensation to the person whose land rights are so extinguished.

Property owners may also be restricted in the enjoyment of their rights by the creation of rights or benefits over their land through rights of way. Both compulsory land acquisition and creation of rights of way require compensation of extinguished or diminished rights to land.

Demand for compulsory land acquisition and creation of right of way has increased as the government enhances investments in infrastructure and other projects to spur economic development.

However, the processes have faced various challenges including delays in compensation for compulsory land acquisition and for rights of way; missing land records; lack of uniformity in compensation of occupiers in good faith; boundary overlaps; informal land markets and land disputes.

Notably, while national projects developed through donor financing incorporate payment of occupiers in good faith as part of implementation of social safeguards, the same does not apply to government funded projects.

The impacts of compulsory land acquisition and creation of rights of way may cause severe social, economic and environmental risks if not mitigated.

To address these challenges, the government should:

1. Develop 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. Develop strategies to address challenges that come with land owners who have land succession disputes.
3. Work with the NLC to digitize land acquisition processes to make them more efficient and cost effective.

4. Ensure that rehabilitation and resettlement of affected households is done where compulsory acquisition of land results in mass displacement.
5. 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.
6. Develop Land Value Indices for each county.
7. Develop guidelines for preparation of Re-settlement Action Plans.
8. Provide clarity through guidelines for compensating occupants of land in good faith in accordance with Article 40(4) of the Constitution.



## CHAPTER FOUR: LAND ADMINISTRATION AND MANAGEMENT

### 4.1 Introduction

Land administration and management, which encompass the determination, recording, and dissemination of information about land ownership, value, use, and resource management constitute the cornerstones of equitable, efficient, and sustainable land governance.

In Kenya, where land holds immense cultural, social, and economic significance, the effectiveness of land administration and management is critical for social order and development.

The NLP 2009 underscored the need for a robust land administration system that guarantees the recording of land rights, promotes tenure security, and facilitates land transactions. It emphasized that effective land management plays a pivotal role in ensuring that land resources are utilized optimally, sustainably, and for the benefit of all Kenyan citizens.

Land administration and management priorities include measures to:

1. Rationalize, harmonize and implement all relevant sectoral policies touching on land in line with a national land policy;
2. Ensure that all land is put into productive use on sustainable basis through integrated land use planning and provision of incentives to induce land owners to use their land sustainably;
3. Determine appropriate land sizes according to use and productivity of land and providing incentives to stimulate voluntary readjustment of land sizes i.e. ensure effective land use planning and development control.

However, realizing meaningful and effective land administration system has been stifled by lack of goodwill, characterized by poor prioritization, budgeting and failure to develop the requisite capacity to effectively administer and manage land. These challenges are further compounded by weak accountability systems and absence of systems to detect multiple land allocations and tackle overlapping claims.

Systemic delays in processing land registration and preparation of ownership documents and opaque, stressfully long and bureaucratic processes and procedures that run through the whole thread of land administration and consequently have frustrated and jeopardized land reform agenda in Kenya.

### ***Land Administration Objectives***

The Recommended Policy calls for establishment of a land administration system that will achieve the following objectives:

1. To provide individuals and communities with clear and indisputable land ownership rights, and thereby ensure that landholders have clear, unchallengeable rights to their land and secure claims to their property.
2. To optimize land use and minimize underutilization or overexploitation.
3. To support efficient and transparent land markets to facilitate investment and economic growth.
4. To simplify and expedite processes related to land acquisition, transfer, and registration.
5. To promote user-friendly systems that make land information easily understandable and available to all.

### ***Land Management Objectives***

The Recommended Policy will promote the following land management objectives:

1. To extend land management to land use control and development, emphasizing sustainable practices, environmental conservation, and responsible development.
2. To create and maintain land data and information systems that are up-to-date, accurate, and readily accessible to support decision-making.
3. To ensure that recordation and documentation processes are agile and responsive to changing needs.
4. To implement land resources assessment for effective fiscal management, revenue collection, and sustainable land use.



5. To establish and implement effective, efficient, transparent and cultural appropriate land disputes resolution mechanisms that will prevent prolonged legal conflicts, and promote conflict resolution in land management.

### ***Sustainable Land, Environment and Natural Resource Management Objectives***

The Recommended Policy will seek to achieve the following sustainable land, environment and natural resource management objectives:

1. To promote sustainable land use planning and ensure that land is allocated and used in ways that support long-term environmental conservation and community well-being.
2. To ensure sustainable management and utilization of natural resources such as water, forests, and minerals in accordance with environmental and social objectives.
3. To conserve and protect ecologically sensitive areas, wildlife habitats, and biodiversity.
4. To put in place effective measures for disaster risk reduction, particularly in areas prone to natural disasters to safeguard both the environment and human settlements.

#### **4.1.1 Policy Recommendations**

To ensure a robust and effective land administration and management system that will achieve the above objectives, the government should:

1. Accelerate the transition to a web-based information management system to enhance the efficiency and accessibility of land data.
2. Implement a comprehensive programme of sensitization and education of citizens on existing land laws, processes, and procedures so that they can actively participate in land administration and management.
3. Mobilize and allocate adequate resources to enable efficient land administration and management.
4. Implement a comprehensive programme of training and skill development to support efficient and effective land

administration and management.

5. Encourage and promote traditional systems of land administration, including conflict resolution mechanisms.
6. Retrain and retool land professionals to understand the evolving imperatives in land administration, including the integration of climate change considerations.
7. Develop a clear land leasing framework to support setting aside of land for investment purposes.
8. Purchase suitable land to support urban renewal and redevelopment.

#### **4.2 Standards for Due Diligence and Professional Responsibility**

Effective and efficient land administration is accompanied by specific instruments. The certificate of title or lease is the main instrument that is intended to guarantee security of tenure, land rights and largely, is the indefeasible proof of land ownership. Therefore, to confirm ownership of land, the practice is conducting a search at the land registries.

Article 40 (6) of the Constitution of Kenya 2010 introduced a new paradigm that impugns a title that is unprocedurally and/or unlawfully acquired.

Courts have since impugned a number of titles to land on these grounds, asserting that when a registered proprietor's title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership.

The registered proprietor has go beyond the instrument and prove the legality of the process by which he acquired the title. In effect, courts have determined that a title is not necessarily indefeasible, and that the root of title is key to establishing its sanctity, and thus to the security of the property right.

This means that due diligence in the process of issuing title to land has become even more critical than was the case in the past.

The Recommended Policy underscores the need to articulate and implement standards of due diligence for individuals and institutions involved in issuance of land titles, including but not limited to surveyors, valuers, land administrators, property managers and lawyers.

Institutions responsible for regulating these professionals will be



responsible for developing and enforcing standards of due diligence to ensure that all land transactions are executed fairly, transparently, and within the bounds of the law.

To this end, it is imperative to entrench the role of the Institution of Surveyors of Kenya (ISK), which is responsible for regulating and overseeing the conduct of these land professionals in the legal framework by enacting the Institution of Surveyors of Kenya Act.

It is also necessary to enact the Land Administration and Management Act to set out the principles and mechanisms for effecting due diligence in the processing of land titles and other land transactions.

#### **4.2.1 Institution of Surveyors of Kenya Act**

The Institution of Surveyors of Kenya Act shall serve as a pivotal legal instrument to empower and regulate the ISK in its role as the professional body for surveyors, valuers, land administrators, and property managers. The Act shall provide for:

1. **Mandatory Membership:** The Act shall make ISK membership mandatory for professionals in the land sector, to ensure that professionals adhere to the highest standards of professional conduct.
2. **Due Diligence Standards:** The Act shall reinforce the significance of due diligence in all aspects of land administration, and set stringent guidelines for its application, emphasizing the need for uncompromising diligence.
3. **Professional responsibility:** The Act shall define and enforce professional responsibility for ISK members, making them legally accountable for professional misconduct and any failure to exercise due diligence.

#### **4.2.2. Land Administration and Management Act**

The Land Administration and Management Act shall regulate the practice of land administration and management as a profession and discipline. To this end, it shall:

1. Define Land Administration and Management, and clearly articulate the scope, responsibilities, and functions of land administration and management professionals, distinguishing them from other land-related professions.



2. Set out requirements and mechanisms for professional licensing and oversight of land administration and management professionals, to ensure that only qualified and competent individuals are permitted to practice in this discipline.
3. Detail due diligence and ethical standards for land administration and management professionals, to promote fair and transparent land transactions and reduce the risk of procedural irregularities.

#### **4.2.3 Recommendations to the National Government**

To ensure due diligence in land administration and management that will guarantee the sanctity of land titles and promote integrity of land transactions and markets, the government should:

1. Expedite the process of enacting the Institution of Surveyors of Kenya Act to institutionalize its critical role in maintaining the professionalism and accountability of land administration and management professionals.
2. Enact the Land Administration and Management Act to define the practice of land administration and management as a distinct profession and discipline and provide for its effective regulation.
3. Actively engage with professional bodies, including the ISK, to ensure that they align their training and discipline to the objectives and standards of the Land Administration and Management Act.
4. Establish mechanisms for monitoring and enforcing the standards set for land professionals through regular audits, investigations, and imposition of penalties for violation.
5. Initiate public awareness and education campaigns to ensure that all stakeholders understand the significance of due diligence, ethical standards, and the role of professional bodies in safeguarding their interests.
6. Invest in capacity-building programs for professionals in the land sector, with a focus on improving their understanding and implementation of due diligence standards and ethical conduct.



### 4.3 Allocation of Public Land

Section 12 of the Land Act 2012 provides for allocation of public land in both rural and urban areas. In the past, allocation of public land was done by the Commissioner of Lands, acting on behalf of the President.

Following the reforms introduced by the NLP 2009 and the Constitution, this function was taken over by the NLC.

The allocation of public land in Kenya is a complex legal governed primarily by the Land Act 2012. While the process has undergone significant changes as a result of the aforesaid reforms, a lot more remains to be done as discussed below.

The Recommended Policy proposes measures to consolidate the reforms and further streamline the process to make it more transparent and user-friendly for citizens.

#### 4.3.1 Legal Framework

Section 12 of the Land Act 2012 outlines the following key steps and requirements for allocation of public land:

1. It sets out guidelines for individuals, institutions, or entities seeking land for various purposes to formally request to be allocated public land.
2. It excludes ecologically sensitive areas, lands committed to other purposes, and those required for public interest and conservation from being allocated, in order to safeguard critical environmental and social resources from unplanned or hasty allocation.
3. It sets out procedures for availing land for investment projects, emphasizing the need for land to be properly planned, surveyed, and serviced to facilitate productive use.
4. It provides for allocation of public land to diplomatic missions through reciprocal arrangements in line with Kenya's international engagements and diplomatic relations, and obligation to ensure that missions are provided with suitable premises.

### 4.3.2 Regulations for Tenure Regularization

The Land (Allocation of Public Land) Regulations 2017 provide guidance, mechanisms and procedure for regularization of land allocations made under repealed law in order to secure the tenure of allottees.

Tenure regularization bestows legal recognition to secure property rights of existing occupants and users of land who may not have formal land title deeds. The Regulations also address the formalization of land occupied by public institutions.

Notwithstanding the legal provisions in the Regulations, the implementation of public land allocation and tenure regularization continues to face challenges. Key challenges include competing land needs, the lack of a comprehensive inventory of public land, and the need for robust environmental stewardship.

To address these challenges, the Recommended Policy proposes that the government should, through the National Land Commission:

1. Develop a comprehensive inventory of public lands, including details on land type, intended use, and environmental considerations to facilitate informed decision-making regarding land allocation.
2. Strengthen transparency measures in the allocation process, ensuring that the public has access to information regarding land allocation decisions to prevent irregular and illegal land allocations.
3. Emphasize the role of local communities in public land allocation, particularly for public land within communally held land by establishing and implementing mechanisms for community input and consent in the allocation process to ensure that the rights of communities are recognized.
4. Prioritize the conservation of ecologically sensitive lands and implement strict safeguards to prevent their allocation for non-conservation purposes.
5. Provide training and capacity-building programs to relevant institutions and individuals involved in land allocation and tenure regularization to enhance their efficiency and effectiveness.



### 4.3.3. Settlement of Landless Kenyans

The National Government has established framework and mechanisms for settlement of displaced persons, squatters and landless Kenyans under Section 134 of the Land Act 2012, in line with its obligations to promote the right to housing enshrined in Article 43(1)(b) of the Constitution.

However, implementation of this framework has faced challenges, with concerns being raised about the transparency and integrity of procedures used to identify and validate beneficiaries. The challenges of managing settlement programmes are compounded by the fact that landlessness continues to increase as the national population grows.

The demand for land by a growing population calls for comprehensive measures to improve land governance.

To ensure effective and transparent management of settlement programmes, the Recommended Policy proposes that the Government takes the following measures:

1. Develop and implement guidelines for identifying, verifying, and recording genuine landless individuals and squatters
2. Streamline the process for acquisition of land for resettlement of landless citizens to ensure transparency, equity and accountability in the identification of suitable lands for resettlement and the allocation of land within settlement schemes.
3. Ensure that planning policies and regulations are adhered to when preparing settlement plans.
4. Conduct sensitization and awareness campaigns to inform landless citizens about their rights and the National Government's commitment to providing land for those in need.

### 4.4 Securing Community Land Rights

The recognition of community land as a tenure category ranks among the pivotal achievements of the NLP 2009, the Constitution of Kenya 2010 and associated land sector reforms.

The Community Land Act, 2016 provides the legal framework for administration and management of community land, implementing the imperatives of the NLP 2009 and the Constitution.

The Act provides for Community Land Regulations, which were adopted in 2017 to make detailed provisions for its implementation.

In as much as some progress has been made in implementing the Act following the adoption of the Regulations, its full operationalization is yet to be realized.

Among the major challenges to full implementation include lack of goodwill, resources and budgetary support to implement key actions necessary to realize the objectives of the Act, including mobilizing and organizing communities, profiling and submitting community land inventories, gazetting of Community Land Registrars and creation of community land registration sections.

As a result, notwithstanding the enactment of a constitutional and legal basis for recognition and protection of communal land rights, the security of these rights continue to be undermined and land related disputes and conflicts persist within and between communities.

It is through full and effective implementation of the Community Land Act that the security of communal land tenure will be strengthened.

To this end, the Recommended Policy proposes the following measures to the Government:

1. Establish clear mechanisms for communal land tenure and land rights registration.
2. Facilitate the development of community land inventories to document land rights, land use, and land history within communities
3. Provide support and capacity building for local community leaders and institutions to manage and protect community land effectively.
4. Resolve disputes over communal land through alternative dispute resolution mechanisms and provide clear legal guidelines to prevent and/or manage emerging conflicts.
5. Promote community involvement in the decision-making and management of community land.



6. Establish and build capacity of Community Land Management Committees to enable local communities to participate in the administration and management of their land.
7. Encourage local participation in land adjudication processes, allowing communities to provide information and insights about their land use and history.
8. Expedite the adjudication of community land to ascertain and record land rights and interests within communities.
9. Ensure that ecologically sensitive areas within community land are safeguarded by prohibiting their allocation or degradation
10. Promote the use of ecologically sensitive community lands for conservation and sustainable resource management, considering both traditional and scientific knowledge.

#### 4.5 Land Surveying and Mapping

Processes of land surveying and mapping are fundamental to achieving an efficient and effective land administration and management system. Beyond supporting land registration, they underpin land use planning, land resource management, and geographical data access.

The existing surveying and mapping practices in Kenya face numerous challenges, including outdated methods, a lack of regulatory mechanisms. They also need to be aligned to the new constitutional and policy landscape.

This calls for a comprehensive approach encompassing policy, technology, and spatial data quality improvements.

The Recommended Policy proposes that the National Government should initiate the development of a comprehensive national land surveying and mapping policy that will, among other things:

- a) define the strategic direction for land surveying and mapping practices in Kenya.
- b) embrace modern technologies such as Global Navigation Satellite Systems (GNSS) and Geographical Information Systems (GIS).
- c) streamline survey authentication procedures and standardize surveying practices.

- d) regulate non-title surveys to ensure compatibility and data integration.
- e) enable cross-institutional collaboration for effective land data management.
- f) provide for periodic mapping of the entire country, to ensure up-to-date and accurate geospatial data for effective land administration and management.
- g) facilitate better land use planning, infrastructure development, and disaster management.
- h) Encourage the regular revision of topographical mapping standards, keeping them relevant and reflecting the evolving landscape.

To this end, the National Government should take the following measures:

1. Expedite the amendment or review of the Survey Act to enable the use of modern technologies such as GNSS and GIS; streamline survey authentication procedures; and regulate non-title surveys to ensure data compatibility.
2. Create a consistent and integrated network of control points throughout the country to serve as a reference for accurate surveys, using dynamic technologies such as GNSS. These control points will serve.
3. Emphasize the importance of geo-referencing surveys, especially in areas under general boundary surveys to enhance data consistency and reliability.
4. Create a strong institutional framework to coordinate the various entities responsible for surveying and mapping functions with a view to facilitating effective data acquisition, management, and sharing, including hydrographic and engineering surveys.
5. Ensure consistency in guidelines and definitions, particularly regarding riparian reserves, to eliminate ambiguities and enhance the accuracy of land surveying and mapping.
6. Expedite the surveying and mapping of Kenya's international boundaries to ensure political and administrative stability.



7. Implement a national cadastral system to streamline land-related processes and enhance land administration efficiency.
8. Promote the registration of sectional properties to improve land parcel identification and ownership records.
9. Regularly update geographical names through a national gazetteer to ensure accurate referencing and location-based services.
10. Establish and regularly update topographical mapping standards to support land use planning and management.
11. Create a National Addressing System (NAS) to enhance location-based services, infrastructure development, and efficient service delivery.
12. Periodically update the national atlas of Kenya to provide comprehensive geospatial information for informed decision-making.
13. Activate the Kenya National Spatial Data Infrastructure (KNSDI) to facilitate data sharing and accessibility among government agencies and the public.
14. Ensure that geospatial data, including land-related information, is made available to relevant government agencies and the public in a timely manner to support decision-making, land management, and development.

#### 4.6 Cadastre and Cadastral Principles

Cadastre is intrinsically connected to the principle of specialty. It serves as the methodically arranged public inventory of data concerning properties within a specific country or district. Through systematic parcel identification with unique parcel identifiers and large-scale maps, cadastre succinctly represents the legal object associated with the parcel, addressing the question of “where” and “how much.”

Cadastral principles serve as the foundation for efficient land administration, providing a comprehensive understanding of land ownership and usage.

The Recommended Policy should articulate the core principles and aspects of cadastre, address the challenges posed by various types of boundaries and weaknesses in the general boundary system, and



provide for measures to modernize the system, with a specific focus on geo-referencing.

#### **4.6.1 Components of Cadastre**

Cadastre comprises two essential components: the geometrical and the descriptive or alphanumeric parts. The geometrical aspect involves the delineation of parcel boundaries on maps, each bearing a unique parcel identifier.

The alphanumeric part encompasses a register containing physical attributes of parcels, including their identifier, local location, area, type of use, and abstract attributes like data for land tax, such as value, proprietor, and taxpayer. Additionally, the alphanumeric part often includes references to the land register.

#### **4.6.2 Parcel Definition and Boundary Data**

A land parcel can be defined as a continuous area of land within which unique and homogeneous interests are recognized. For legal cadastral purposes, this reflects homogeneity in legal interest, while for land use purposes, it signifies homogeneity in land use.

However, challenges arise due to various types of boundaries, such as general and fixed boundaries. The general boundary system relies mainly on physical boundary features, man-made or natural.

The precise position of the boundary within these physical features depends on the understanding of neighbours in the area. Fixed boundaries, on the other hand, are determined through precise survey data entered in the land register.

The choice between “general” and “fixed” boundaries hinges on various factors, including accuracy considerations, potential disputes, and costs. The weakness of the general boundary system lies in the lack of legal fixation, leading to potential conflicts and uncertainties.

#### **4.6.3 Parcel Identification and Geo-referencing**

Parcel identification is a critical aspect of the cadastral system. It must be simple, easy to understand, unambiguous, reliable, and flexible,



enabling compatibility with various parcel-oriented information systems. An emerging trend in parcel identification includes the use of coordinates referring to real world space, allowing seamless integration with other systems and improving cartographic representation.

The Recommended Policy proposes that the National Government takes the following measures to streamline, strengthen and modernize the national cadastre, taking advantage of emerging technologies:

1. Computerize the cadastre system, integrating modern surveying and mapping technologies, such as Global Navigation Satellite Systems (GNSS) and Geographic Information Systems (GIS) to streamline survey authentication procedures and enhance the efficiency of the system.
2. Establish a homogeneous network of control points using dynamic technology like GNSS to ensure accuracy and consistency of cadastral data.
3. Harmonize boundary guidelines and definitions to avoid discrepancies and conflicts.
4. Promote parcel geo-referencing to ensure that boundaries are well-defined
5. Establish and maintain a nationwide cadastre that cuts across the various categories of land and harmoniously embraces geo-referenced boundaries.

#### **4.7 Revenue from Land and Land Based Resources**

A clear fiscal framework for land management is essential to ensure that land serves as a catalyst for economic development. As a fundamental factor of production, land is an important resource for spurring economic development in Kenya.

Revenue from land may be from tax or non-tax sources. Non-tax sources of revenue include stand premium and annual rent assessed during land allocation, extension, or renewal of lease, as well as statutory fees for services relating to land administration and management.

Land taxation provides funds for the development of public infrastructure, regulates land use, deters speculation, and contributes to equity, among other objectives. Various taxes are levied either on land or on land transactions.

Taxes on land are levied on land transactions as a percentage of the assessed capital value. Already, revenue from land and land-based resources accounts for 30% of County Governments' income and there is potential for exponential increase if more land areas and tenure categories are included.

Existing land taxation assessment and collection procedures often fall short in providing effective fiscal management frameworks that encourage generating public revenue, discourage land speculation, promote efficient land use, incentivize appropriate land utilization, and unlock "dead capital."

In many cases, the inefficiencies and barriers created by these systems contribute to the perpetuation of "dead capital".

Stamp Duty is charged on any conveyance or transfer on the sale of immovable property and assessed either by the Chief Government Valuer or a private qualified valuer.

Capital Gains Tax is levied on the net proceeds of a transaction in property and paid to the Kenya Revenue Authority following declaration and self-assessment computation by the transferor of the property.

Land rates are levied primarily in urban areas under the jurisdiction of county governments.

Freehold land and land outside cities and municipalities are not assessed for land rates.

Article 67(2)(g) of the Constitution mandates the National Land Commission to assess tax on land and premiums on immovable property in any area designated by law.

However, the legal framework is yet to be reviewed to align with the constitution and facilitate the implementation of the Commission's mandate.

To facilitate the efficient utilization of land and unlock the potential for revenue collection, the Recommended Policy proposes that the Government should align the legal framework with the Constitution for enhanced revenue generation and collection through the following measures:



1. Have the National Treasury incorporate land and property taxes in the National Fiscal Policy.
2. Review land taxation laws to align with constitutional provisions and enhance revenue generation and collection from land and property.
3. Have County Governments develop and enforce laws and regulations for change of use and enhanced land rent.
4. Expand the land tax bracket to include land outside urban areas and freehold land in non-agricultural zones.
5. Modernize land taxation by implementing fair, transparent, and progressive property tax systems; streamlining property valuation and assessment for efficiency and accuracy; utilizing technology-driven solutions for transparency and anti-corruption measures; and encouraging productive and sustainable land use while discouraging speculation.
6. Formalize property rights by regularizing tenure and providing secure and legally recognized land certificates
7. Facilitate investments by enabling landowners to use their property as collateral for loans and investments, and encourage access to credit to stimulate entrepreneurship and economic activity.
8. Enhance technical and institutional capacity for efficient land tax assessment, collection and management

#### **4.8 Stemming Corruption in Land Administration**

Corruption and unethical practices pose significant challenges to the implementation of land reforms in Kenya. The effects of corruption and unethical practices in land administration and management manifest in various forms, such as large-scale land leases, with adverse effects on food security, continued grabbing of public land grabbing, and land cartels and power brokers that thrive on illegally acquired land. Due to fear of intimidation, harassment, exclusion, and even physical harm, the public is often hesitant to report corruption and unethical practices.

The Recommended Policy proposes that the National Government and other actors within the legal justice system should take the following measures to combat corruption and improve ethics in land administration and management:

1. Strengthen the capacity of the Ethics and Anticorruption Commission (EACC) to effectively combat corruption in the land sector through effective investigation and prosecution of cases involving corruption and unethical practices in land dealings.
2. Develop and enforce accountability measures to ensure that those involved in corrupt practices are held personally responsible for their actions.
3. Fast-track the development of a comprehensive public land inventory and information management system to provide easy access to information regarding land ownership, transactions, and land-use planning and enhance transparency in land governance.
4. Review existing laws to provide for more stringent penalties for corruption in land matters, and enact new legislation to address the recovery of public land that was illegally acquired by private entities. This should include mechanisms for the review and potential revocation of land grants and titles obtained through corrupt means.
5. Support local communities to establish land vigilance committees at the grassroots level to act as watchdogs, monitoring land transactions and reporting any suspicions of corruption to relevant authorities.
6. Strengthen cooperation and information-sharing among the different actors within the land justice system, including the judiciary, the police, the EACC and other investigative bodies to streamline the process of investigating, prosecuting, and adjudicating corruption cases related to land.



## CHAPTER 5: 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.

Article 60 of the constitution 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.

Land use planning is essential for achieving the economic and social rights enshrined in 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.

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 NLP 2009 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.

### 5.2 Implementation of Provisions on Land Use Planning:

The NLP 2009 proposed measures to ensure development and implementation of land use plans. Implementation of the policy recommendations on preparation of land use plans 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 engenders functional conflicts and duplications between the authorities and the county governments. The Policy also 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, which has not been done.

Effective land use planning to facilitate coordinated development in peri-urban areas has not been instituted as recommended by the Policy. 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.

The policy proposal for planning for urban agriculture and forestry to optimize urban land use and productivity has not been implemented, and there is need for further research to establish the viability of these land uses within specific urban setups, in order to promote multi-functional urban land uses and regulate urban agriculture.

Other major measures proposed by the NLP 2009 that have not been effected include:

- Institutionalization of planning for informal sector activities. There is need for greater clarity in the Policy about this.
- Regulation of use and development of land. Although laws have been enacted for this purpose, development of effective administrative mechanisms for regulation of developments on freeholds land especially in the peri-urban areas is proving to be a challenge
- Provision of appropriate incentives and sanctions to ensure that landowners use their land productively and sustainably
- 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



- Determining appropriate land sizes according to use and productivity of land
- Provision of incentives to stimulate voluntary readjustment of land sizes
- Establishment of a regulatory framework for land rental markets
- Reviewing laws to encourage shared proprietorship, time sharing of land and property

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. However, the process of harmonization is incomplete as Regional Development Acts continue to operate alongside the legislation enacted to implement the NLP 2009, creating duplications and overlaps with regards to spatial planning.

Finally, implementation remains a challenge, as most plans remain unimplemented due to lack of prioritization, and weak and inadequate institutional capacity for enforcement.

The Recommended Policy provides an opportunity to revisit the proposals of the NLP 2009 on land use planning consolidate the gains made, and address the gaps, including through strengthening implementation mechanisms.

Among the issues that needs to be revisited and clarified in land reclamation, restoration and conservation. Land reclamation was considered for the 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.

Moreover, Kenya needs to reflect on the purpose of reclaiming land from unique ecosystems such as 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.

Policy measures are required to ensure that reclamation does not lead to unintended loss of biodiversity and environmental degradation.

### **5.3 Issues and Recommendations:**

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

#### **5.3.1 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.

To address this issue the Recommended Policy proposes the following measures.

1. Prioritize land use planning as the pathway to efficient use of land and other natural resources.
2. Align county economic blueprints to land use plans and use both as the basis for development projects and expenditure approvals.
3. Amend section 104 of the County Government Act, 2012 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 County Governments Act to remove ambiguity relating to scope and purpose of various types of plans.

#### **5.3.2 Unsustainable Growth and Development**

There is a need to manage growth and development of urban and rural areas for sustainability, in order to avoid urban sprawl, land use conflicts, environmental degradation, and the spread of slums.

To this end, the government should:



1. Strengthen institutional capacity and good governance to implement plan-led development in the country
2. Strengthen implementation and enforcement of approved plans, policies and strategies.

### 5.3.3 Poor 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.

To ensure that land use plans are implemented, the government should:

1. Establish financing mechanisms to support plan preparation and implementation, and ensure that approved plans include adequate financing provisions for implementation, and clear and unambiguous assigning of implementation roles to respective agencies accompanied by clear accountability mechanisms for duty bearers.
2. Facilitate the NLC to effectively perform its monitoring and oversight role to enhance implementation of the land use plans in the country.
3. Enact laws to ensure national budget and CIDPs are based only on approved national and county plans (spatial, sectoral, city/ municipal plans).

### 5.3.4 Uncontrolled Land Uses

Uncontrolled use of land has created incompatibility of land uses, environmental degradation, insecurity and conflicts, and reduced productivity. To remedy this situation, the government should:

1. Categorize and map all existing land uses as a basis of rationalizing land use and planning.

2. Conduct periodic reviews of land use maps at county and local levels.
3. Strengthen the capacity of planning authorities to enforce the power of development control to regulate land use.
4. Ensure effective public participation in the exercise of development control.
5. Ensure that planned land use proposals embed sound land use practices, conservation and enhancement of the quality of land and land-based resources.
6. Ensure that all land use development plans include proposals to manage demographic trend based on assessment of carrying capacity.
7. Establish mechanisms to incentivize land owners to put their land to productive use
8. Encourage the application of efficient technology for the intensification of land use including clustering of human settlements

### **5.3.5 Unplanned and Unsustainable Change of Land Use**

Change of use on land has been abused to facilitate conversion of agricultural land into other 'more profitable' urban-related uses with adverse impacts on land quality and compatibility of uses.

In peri-urban areas such changes have been effected on agricultural land along transportation corridors, thereby exacerbating urban sprawl, encroachment and loss of arable agricultural lands and environmental degradation.

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 various 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.



It is proposed that the revised Land Policy should institute measures to thwart adverse change of land use, and to this end government should:

1. Ensure that 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. Safeguard environmental conservation, riparian and buffer zones as planned development zones both in urban and rural settings.
4. Designate allowable land uses in all land tenure systems including freehold/ absolute ownership.
5. Revise the Planning Handbook to designate and incorporate conservation areas, wildlife corridors and routes, green spaces and parks, land banking, and marine parks and spaces as recognized land use planning categories.

### **5.3.6 Planning and Regulation of Urban Agriculture and Forestry**

With adoption of technology urban agriculture and forestry can be incorporated as planned subsidiary urban land uses for multiple benefits.

To facilitate orderly and sustainable uptake of urban agriculture and forestry, the government should:

1. Carry out research to understand the opportunities, challenges and best practices for implementing urban agriculture and forestry.
2. Incorporate urban agriculture and forestry in urban land use and development plans.
3. Encourage and facilitate County Governments to embrace urban agriculture and forestry in their development plans.

### **5.3.7 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. To address this gap, the government should:

1. Establish a legal and institutional framework for planning and regulation of informal activities in urban and rural areas
2. Include informal sector activities as a planned user of land.
3. Designate land for informal activities

### 5.3.8 Pastoralism and Rangeland Management

Rangelands 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 in the rangelands, and Government has put effected measures to promote it as a land use and production system, including by securing communal land rights.

There is need to upscale land use planning and management of rangelands in order to assess and unlock their potential, and provide a framework for their sustainable utilization, including for human settlement. To consolidate the reforms, secure pastoral land rights and promote sustainable utilization of land and development in the rangelands, the government should:

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 comprehensive public participation and negotiation of competing land uses.



7. Plan infrastructure development in a manner that supports indigenous production systems and practices including livestock keeping.
8. Prepare land use plans that safeguard ecologically-friendly practices in the rangelands including mapping livestock and wildlife transhumance corridors and routes
9. Ensure the often dispersed and mobile populations access public services and facilities.

### **5.3.9 Demographic pressure on rural land and land based resources**

Kenya has experienced high and constant population growth which has impacted negatively on land productivity, caused environmental degradation, and occasioned conflicts. To manage the pressure and mitigate its adverse impacts, the government should:

1. Develop and implement a comprehensive plan for managing population redistribution from rural to urban areas to ease pressure on land experiencing high population density.
2. Encourage nucleated human settlements and designated urbanization especially in the rangelands.
3. Integrate zoning or reservation of crops-cultivation, grazing and built-up areas at household level in rural land use plans.
4. Ensure that rural land use planning is an integral part of land adjudication process.

### **5.3.10 Cross-sectoral coherence of institutional mandates and policies**

A major challenge to land use planning and management derives from contradictory imperatives between various government sectors and agencies, sectoral laws and policies.

To address this challenge, the government should revise and harmonize the different land related laws and sectoral policies, including; 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 Management and Conservation Act.

### **5.3.11 Fragmentation of agricultural land to uneconomical sizes**

In the past physical and land use planning profession has not aided good practices in managing agricultural lands, as evidenced by continuous fragmentation of land to uneconomical sizes.

This has been exacerbated by informal subdivisions attributed to succession and cultural practices, and failure to apply conventional physical planning standards and to pursue formal approvals.

Land use planning should augment efforts towards adoption of prescribed minimum and maximum landholding acreages in respect to private land all over the country. Preparation of all categories of Physical and Land Use Development Plans should also comply with this requirement for approval and give effect to the requirement of section 159 of the Land Act, 2012. To this end, the government should

1. Outlaw *ad hoc* subdivision of agricultural land and enforce compliance with approved land use plans including County Spatial Plans.
2. Through advocacy, initiate programmes to consolidate uneconomical agricultural land parcels guided by focused land use planning to promote optimal use.
3. Amend section 159 (2) of the Land Act, 2012 to vest the responsibility of publishing guidelines on the penalties for noncompliance with the provisions of the section on County Executive Committee Members responsible for land.

### **5.3.12 Weak enforcement of land use planning monitoring and oversight**

Article 67 (2) (h) of the Constitution and section 9 (a) of the Physical and Land Use Planning Act, 2019 vest the responsibility of monitoring and overseeing land use planning throughout the country on the NLC.

To-date the NLC has not been able to play this role effectively, resulting in poor compliance with and enforcement of land use plans. County governments routinely ignore the Commission, which for its part has inadequate capacity to undertake the function country wide.



Moreover, the Commission does not have powers to compel County governments and other planning authorities to comply.

To address these bottlenecks, the national government should:

1. Ensure that the Commission is adequately resourced to undertake monitoring and oversight function on land use planning throughout the country.
2. Require County Assemblies not to approve any land use plan that has not been cleared by the Commission.
3. Formulate Regulations under the Physical and Land Use Planning Act to prescribe guidelines on the monitoring and oversight function of the Commission.
4. Require every planning authority to obtain clearance or certificate of compliance from the NLC before approval of any given physical and land use development plan.



## CHAPTER 6: LAND INFORMATION MANAGEMENT

### 6.1 Background

Kenya has progressed with land digitization by creating a legal framework to support the Land Information Management System (LIMS). 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 establish the legal framework relating to digitization. The National Land Information Management System (NLIMS) commonly dubbed *Ardhisasa*, launched in April 2021 is a platform through which land transactions previously done manually can now be done online.

Some of the services offered on *Ardhisasa* include registration of transfers and charges, payment of land rent, physical planning applications, valuation, survey and mapping.

The system is linked to the Integrated Population Registration System (IPRS) and the Business Registration Service (BRS).

The implementation of *Ardhisasa* has faced a number of teething and systemic challenges that call for further policy action.

The most critical among these are: operational challenges (specifically delays in verification of properties, system access and weak system integration and inter-linkages); inadequate and/or poor data quality; inadequate technological infrastructure; security; change management; system financing; and absence of guidelines on access, use and administration of the NLIMS.

### 6.2 Policy recommendations

To address each of these challenges, the government should implement the measures proposed below.



### 6.2.1 System Implementation Challenges

1. Undertake periodic audit of the implementation of NLIMS to establish the challenges and provide redress.
2. Establish Multi-Stakeholder Standing Committee on NLIMS comprising of major stakeholders (Ministry, NLC, County Governments and Professional Bodies) to oversee implementation and administration of the system
3. Fast-track land titling in both rural and urban areas, to ensure that all the legally recognized land rights are captured in the NLIMS
4. Ensure that the NLIMS is reliable, secure, transparent, sustainable and accessible
5. Ensure that the system gives access to users according to defined hierarchy of access rights.
6. Ensure integration of the NLIMS with other systems at the County and National Level including the Public Land Information Management System, as well as with banks.
7. Ensure that all land records are digitized and standardized to facilitate seamless land information management.

### 6.2.2 Inadequate and poor data quality

1. Re-organize records at the Survey of Kenya as well as the field stations to ensure that the data is digitized in order to improve data storage, access and cross referencing of records.
2. Ensure timely updating of land records including the survey maps
3. Fast-track geo-referencing of the general boundary maps so that all land parcels may have defined coordinate systems.
4. Densify the Continuously Operating Reference System (CORS) network so as to reinforce real time digital positioning in the field through the use of GNSS technology.

### 6.2.3 Inadequate technological Infrastructure

Ensure provision of adequate technological infrastructure including the requisite hardware and software and auxiliary facilities.

### 6.2.4 Security

1. Ensure that the NLIMS is protected from emerging trends in cyber-crimes and hacking.
2. Ensure data integrity and confidentiality of bio-data and records throughout the land management cycle, in full compliance with data protection law.
3. Promote the use of block-chain technology in land administration and management process to boost security and user confidence.

### 6.2.5 Change Management

1. Undertake continuous training and capacity building of both the operators and end-users (professionals and public servants) and relevant stakeholders to ensure seamless and smooth implementation of the system.
2. Roll out civic education on the NLIMS and the guidelines, using appropriate tools and methods, including user manual, user circulars, demos and tutorials.
3. Make land information available in a form and language that can be understood by most citizens, including accessible and clear hard copy information and simple maps.

### 6.2.6 System Financing

1. Ensure adequate funding for the implementation of the system, through the following options;
  - Internal funding as a flagship project through the national budgetary process as well as appropriation in aid from revenue generated from services.
  - External funding from donors and development partners



- Funding supplemented by revenue from appropriation-in-aid from the NLIMS services.
- Public private partnerships.

### **6.2.7 NLIMS Guidelines**

Develop guidelines/regulations on the use and implementation of the NLIMS to guide and enable integration with other systems at the County and National Level including the Public Land Information Management System, as well as with banks, and ensure that the guidelines are regularly reviewed and updated

## CHAPTER 7 : NATURAL RESOURCES, ENVIRONMENT AND CONSERVATION

### 7.1 Background

Land and Environment are intimately linked variables. Land hosts many vital natural resources which the Constitution includes under the category of 'public land'. The Constitution makes land and environment constitutional categories with a dedicated chapter (Chapter Five).

Land administration and management have a direct bearing on access, control and sustainable use of natural resources and the environment.

It is therefore critical that the values, principles and imperatives of land administration and management take into account and are underpinned by discourses on sustainable natural resource management and environmental conservation

Kenyans derive their livelihoods and well-being from the manifold land-based natural resources that they access and use, on a daily basis, making the management, use and conservation of the resources key in the achievement of socio-economic well-being as well as ecological and resilient development, particularly in the wake of climate change.

Yet the environment and natural resource space is dotted with many sectoral laws and polices some of which are underpinned by competing and even conflicting imperatives.

This situation engenders fragmented and silo-based decision-making that undermines achievement of equitable and sustainable outcomes.

Emerging economies such as the blue economy and extractives (minerals, petroleum and gas) have the potential to spur socio-economic development. However, the realization of that potential and its utility in contributing to the economic wellbeing of the population is conditional upon the existence of a functional system of land administration and management. Such a system should include mechanisms for computing accurate and up to date natural resource inventories to inform 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 and harmonization of natural resources sector policies, laws, strategies and actions to achieve complementarity and stem fragmentation and conflicts.
2. Inculcate a paradigm shift on land and natural resource rights towards a focus on access and user rights rather than (absolute) ownership; and to foster equity in the sharing of benefits that accrue from land and natural resource development and exploitation.
3. Promote data-driven and evidence based approaches to sustainable management and conservation of natural wealth through land-landscape scale integration and connectivity and meaningful participation and inclusion of citizens as collaborators, in the governance of resources.
4. Development and implementation of climate-smart policies and laws to attract and leverage on climate finance through existing global, regional and national climate finance mechanisms in order to enhance adaptation, mitigation and resilience to climate change.
5. Harness Kenya's immense dryland natural assets including through development of policy frameworks for their management, conservation and restoration of degraded dryland landscapes
6. Ensure that infrastructure development programs prioritize and consider environmental and social safeguards to enhance environmental sustainability

The specific policy proposals are detailed below.

## **7.2 Strengthening the data and evidence base for sustainable natural resource and environmental conservation**

Sustainable management of natural resources and the environment depends on effective use of accurate data and evidence as the basis for sound decision-making.

This requires that the data and evidence is properly generated, managed and availed not only to duty bearers but also to citizens.

In order to secure access to land based natural resources data and information, the national government should:

1. Fast-track the development and updating of inventory of all natural resources through establishment of an easy-open access portal.
2. 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 indigenous traditional knowledge (ITK) in formal systems of natural resources management and governance.
3. Facilitate public access to beaches, lakes, rivers and fish landing sites unless restricted due to environmental fragility or due to security reasons;
4. Provide incentives for communities and individuals to invest in income generating resource conservation programmes.
5. Encourage and support community level governance and collaboration for natural resources management and conservation.

### **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.

The Constitution provides an overarching framework for benefit-sharing, to ensure equity in the distribution of benefits from land and natural resources exploitation and use. However, the framework remain largely unimplemented.

The national government should implement the following measures to ensure that the constitutional provisions are implemented:

1. Devise new strategies and guidelines for realizing meaningful sharing of benefits taking into account the nature of the resources involved and the contribution that diverse actors make to their management and development.



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. Encourage and supervise meaningful people's participation in the management and utilization of land-based natural resources.
5. Work with private entities on how to harness revenue benefits emanating from carbon credit that form part of nature base solutions and fund climate resilience at local level

#### **7.4 Restoration and conservation of land quality**

To restore the environmental integrity of land and facilitate sustainable management of land based resources, the national government should:

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 national government should:

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 the imperatives of the Constitution, the Environment Management and Coordination Act, 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 naturally 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 should be harmonized and aligned with the framework environmental law - Environmental Management and Coordination Act (EMCA), 1999. In addition, the national government should:

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 and 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 laws regulations and guidelines.

To ensure the protection of ecosystems and their sustainable management, the national government should:

- 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;
- 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 inventory and registers for information decision-making, planning and sustainable management; placement of visible beacons including ring road-type social boundaries to ecosystems and fragile landscapes; and gazettlement
5. Develop procedures for co-management and rehabilitation of forest resources, recognizing traditional management systems and sharing of benefits with contiguous communities and individuals;
6. Establish participatory mechanisms for sustainable management of fragile ecosystems in partnership with public, private and community stakeholders;
7. Declare 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. 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. Ensure that the protection of watersheds, lakes, drainage basins and wetlands is guided by the following principles: prohibition of settlement and agricultural activities in the water catchment areas; identification, delineation and gazettlement 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. 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 should 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 Protection and conservation of wildlife and biodiversity resources

Kenya is endowed with the variety of wildlife resources that are not only part of the cultural identity and heritage for the people but also a major source of revenue through tourism and related activities.

The country's wildlife and biodiversity resources are recognized globally, making it a key touristic destination.

Despite their importance, wildlife conservation is under immense pressure, as their dispersal and connectivity corridors have shrunk steadily over the years due to encroachment. .

In order to ensure effective and sustainable conservation of wildlife resources and biodiversity, the national government should:

1. Recognize wildlife as a land Use and provide legislation to this effect.



2. Map and secure wildlife spaces corridors connectivity routes
3. Incentivize private and community land owners to accommodate wildlife
4. Where need be compulsory acquire community and private land for wildlife uses
5. Sensitize the citizenry on wildlife conservation as an economic venture and support peace human wildlife interactions within the land scape.

### **7.11 Environmental Impact Assessment and Audit as Land Management Tools**

To promote environmental impact assessment and audit as tools for land management, the national government should:

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.

### **7.12 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 national government should:

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.

### 7.13 Managing the airspace

Article 260 of the Constitution defines land to include the airspace, and thus makes it an integral issue for land administration and management. Kenya's airspace constitutes part of the state's territorial boundary, and is integral to socio-ecological development.

Management of Kenya's airspace faces immense challenges including pollution, conflicts and lack of orderliness. To address these challenges, the national government should:

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

### 7.14 Managing refugee's impacts on land and natural resources

Kenya has long played host to refugees from troubled countries in the Horn of Africa region, with refugee camps mostly located in the ASAL areas.



The unpredictable nature of refugee influxes means that resources such as land, fuel wood, water and pasture are overstretched in already stressed environments.

Most refugee camps are unplanned, and lack solid waste management, water supply and sanitary provisions. This leads to pollution of the environment. For energy usage, refugees rely on wood based fuel, thereby putting further pressure on the forests.

Similarly, their presence also leads to land degradation and unsustainable ground and wildlife decline due to poaching cases.

In order to safeguard against the adverse impact imposed to the natural resources by the refugees the national government should:

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



## CHAPTER EIGHT: 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 national development objectives.

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, signing the Paris Climate Change Agreement in 2015, , 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, thereby 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 made significant efforts and progress towards addressing climate change in the Country.

A robust regulatory framework comprising of laws, policies, plans, and institutions has been established both at the national and county levels. The Climate Change Act, 2016 (Amended in 2023) is the main legislation guiding Kenya’s climate change response in the Country.

Kenya has also developed a National Climate Change Adaption Plan (2018-2022), National Climate Change Response Strategy (2010), National Adaptation Plan (2015-2030), Kenya Climate Smart Agriculture



Strategy 2017–2026, and National Policy on Climate Finance (2016) among other sector plans and policies to address aspects of climate change.

These policies, laws, plans, and strategies emphasize the need to mainstream climate change in all sectors of the economy. Climate Change Act, 2016, for instance, seeks to among other things “mainstream climate change responses into development planning, decision making and implementation.”

The National Climate Change Action Plan (NCCAP) 2018–2022, requires the state departments and national public entities are required to establish climate change units to mainstream NCCAP 2018–2022 into strategies and implementation plans, and to report to the Council on an annual basis on performance and implementation.

## 8.2 Land issues in climate change

The Key issues that relate to climate change and land and natural resources are:

1. Adverse impacts of climate-induced hazards such as droughts and floods on land-and-natural resource-based livelihoods, particularly in the ASALs
2. The link between unsustainable land use practices and accelerated land degradation, which in turn increases climate vulnerabilities among communities.
3. Carbon credit schemes and their implications for land rights of indigenous peoples. While carbon trading programmes are well intentioned it is important to note that the information on the subject is limited particularly to the public. In particular, there is need for policies to manage challenges related to pricing, and other concerns such as the potential for the schemes to encourage pollution of the environment through emissions, issues relating to soil, land and tree tenure in the climate change and carbon credit schemes, and the threshold for qualification to benefit from voluntary carbon markets through the approved certification processes.
4. Inadequate mainstreaming of climate change in Land Governance and Administration, and land governance concerns in climate change programmes. Land governance issues related to climate change include the need to address land use and settlement especially in areas facing

significant risk from climate change, tenure security issues, and strengthening the negotiation position of communities to secure their land rights in the development and implementation of carbon credit schemes.

### 8.3. Policy recommendations

The policy measures that the national government should implement to manage the key issues in the interaction between climate change and land are detailed below.

#### 8.3.1 Climate hazards and vulnerability

1. Prioritize restoration of livelihoods for communities affected by climate hazards.
2. Implement a multi-dimensional landscape approach for integrated risk management
3. Build adaptive capacity among the communities leveraging on indigenous knowledge.
4. Enhance multi-level governance consisting of national, county and non-State actors) in response to climate change mitigation and adaptation.
5. Secure land tenure rights to ensure the effective participation of all people in climate actions; 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.
6. Ensure the County Physical and Land Use plans incorporate climate resilience, clearly delineate disaster prone areas and provide clear land use and physical planning guidelines to mitigate against the vulnerabilities.
7. Ensure public awareness on climate change integrate knowledge on critical and crosscutting policy issues such as mainstreaming of gender, youth and special needs.
8. Strengthen research capacity in climate change and related environmental issues.
9. Reverse the effects of climate change for instance through de-siltation, reforestation, proper use and management of the



riparian areas and catchment areas.

### **8.3.2 Unsustainable land use practices**

1. Prioritize integrated natural resource management plans to foster sustainable utilization of natural resources.
2. Activate both the criminal and civil jurisdiction for climate justice.
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.

### **8.3.3 Low carbon climate resilient development**

1. Implement benefit sharing from carbon credits schemes with host communities to enhance environmental protection.
2. Promote transparency and accountability to the communities on the negotiation and sale of carbon credits.
3. Secure and register communal land rights and interest to enable communities have structured engagement and negotiation on carbon credits.

### **8.3.4 Mainstreaming climate change in land administration and management**

1. Mainstream climate change in all land administration processes at the national and county level including policies, plans, and County Physical and Land Use Plans.
2. Develop a framework and tools for mainstreaming climate change responses into land administration and management in the Country.
3. Establish the institutional framework and build capacity, coordinate and enhance mainstreaming of climate change at the various levels.
4. Build the capacity of land professionals to implement climate resilience through the land administration and management process.
5. Put in place mechanisms linking climate change data and information with national and county planning processes.

## CHAPTER NINE: LAND AND FOOD SECURITY

### 9.1 Background

Kenya has a total land area of 57.6 million hectares, of this about 16% or 9.4 million hectares is classified as high and medium potential land for agriculture. The remaining area estimated at 84% makes up the arid and semi-arid lands (ASALs).

Out of the ASALs 48 million hectares, about 9 million hectares can support crop production, 15 million hectares is adequate for livestock production while the rest is dry and only useful for nomadic pastoralism. The ASAL supports about 20% of the population, 50% of livestock and 3% of current agricultural output and 7% of commercial output.

Kenya food systems and livelihood follow very distinct cultural patterns and denotes their way of life.

These include the fishing, agriculture, agro-pastoralism, pastoralism, hunting and gathering as well as mining. There is need to foster sustainable livelihood diversification and provide food and nutrition security.

The NLP 2009 identified land fragmentation as one of the greatest threats to agricultural productivity, food security and sustainable land use, and recommended a system to determine the economically viable land sizes. Article 68(c)(i) of the Constitution mandates Parliament to enact legislation to prescribe minimum and maximum landholding acreages in respect to private land.

These provisions seek to promote equity and offload excessive land that is not in productive use to the land market.

The provisions on minimum land size aim to ensure that land is not subdivided into small uneconomical sizes.

Parliament made effort towards actualization of these proposals but the efforts were frustrated by lack of data.

### 9.2 Land and food security: the issues

The major land issues that have a bearing on food security in Kenya are:



- 1) **Land fragmentation** - Land has been fragmented into small portions that are threat to food security. A recent research by the NLC established that land in traditional food basket counties and ASAL areas have undergone significant fragmentation, largely driven by population growth, inheritance, speculation and inadequate policy framework.
- 2) **Sub-optimal use land** - Kenya has huge tracts of land that are underutilized. This include land held by Public Agencies, communities and individuals including special trusts.
- 3) **Unregulated/uncoordinated urbanization and development control** - This has led to encroachment of the urban development into agricultural rich peri-urban areas.
- 4) **Inadequate access to water for agricultural use** - This has led to unregulated abstraction practices and sinking of boreholes.

### 9.3 Policy recommendations

The following policy measures are proposed to address the identified challenges so as to ensure that land administration and management facilitates agricultural production to enhance food security

#### 9.3.1 Land Fragmentation

To stem land fragmentation, the National Government should:

1. Establish and enforce guidelines on viable minimum agricultural land sizes for all counties in line with the provisions of the Constitution, taking into account land productivity and other relevant factors.
2. Stipulate in the guidelines that each County shall use the gazetted minimum land sizes as the basis of the land use plans and zoning policies
3. Mandate and facilitate the NLC in partnership with the Ministry of Agriculture and Directorate of Resource Surveys and Remote Surveys to monitor and report on the status of fragmentation every five years using medium to medium/high-resolution satellite images.

4. Review the Land Consolidation Act, Cap 283 to enhance mechanism for voluntary consolidation schemes.
5. Encourage families to adopt joint tenancy and use of ancestral land instead of subdividing into individual plots.
6. Educate youth and the public on other forms of inheritance.
7. Align Succession Act with Article 60 of the Constitution of Kenya.

### 9.3.2 Agricultural Reserves

The Ministry in charge of Agriculture should work with the County Governments to identify suitable areas within counties to be gazetted as agricultural reserves, and secure such areas for use to enhance agricultural production through the following measures:

- Ban on land subdivision in the area,
- Regulation of the permissible developments on such areas through plans,
- Establishment of mandatory buffers,
- Introduction of Purchase Development Rights and Transfer Development Rights programs

### 9.3.3 Unregulated/uncoordinated urbanization and development control

1. Support County Governments to formulate and implement comprehensive Land Use Plans and development control policies to protect agricultural land
2. Support County Governments to develop requisite zoning policies to guide land use within the Counties.

### 9.3.4 Sub-optimal use of land

1. Establish a framework to define and identify underutilized land in Kenya
2. Establish guidelines for sustainable, productive use of all categories of land



### **9.3.5 Access to water for agricultural use**

1. Identify and reserve land for construction of multi-purpose dams in each County
2. Undertake hydrological mapping to protect aquifers and inform sustainable underground water abstraction.

### **9.3.6 Enhancing access and use of land for agricultural purposes**

1. Develop a regulatory framework for reclamation, rehabilitation, restoration and use of reclaimed land.
2. Establish leasing framework and standard operating procedures to enable land commercialization.



## CHAPTER TEN: MANAGEMENT OF LAND-RELATED CONFLICTS AND DISPUTES

### 10.1 Background

Conflicts and disputes on land still remain pervasive in the country. There is need to evaluate existing formal and informal dispute prevention and resolution mechanisms and frameworks and determine their successes or otherwise.

There is also need to leverage on technology to make access to justice a reality to Kenyans.

#### 10.1.1 Formal Dispute Resolution Processes

The formal processes for resolving land disputes in the country are through the court systems and tribunals established under the Constitution and legislation.

The main challenges the public face in making use of the court system are the costly nature of litigation, the length of time it takes to conclude a court case and the technical nature of proceedings.

There are no formal guidelines in the country to help prevent disputes. Dispute prevention helps because disputes can be stopped from being full blown given the organic nature of disputes and conflicts.

#### 10.1.2 Informal Dispute Resolution Processes

Informal dispute resolution processes include traditional dispute resolution mechanisms as well as other informal dispute resolution mechanisms such as mediation, negotiation and conciliation.

These informal mechanisms are attractive to the public given that they are less costly, less formal and not technical.

However, the country does not have documented scientific data on the successes or failures of these systems in resolving land disputes. A major weakness of informal dispute resolution processes is the fact that they cannot ordinarily be enforced.

### 10.2 Special categories of land disputes

However, of particular interest are the special categories of land disputes that have unique characteristics, and require specific approaches to resolve.



These include land disputes related 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.
- l) Pastoralism
- m) Occupiers of land in good faith.

### 10.3 Policy recommendations

To improve the management and resolution of land and natural resource related disputes, the national government should:

1. Develop guidelines for implementing Traditional Dispute Resolution mechanisms and where appropriate legislation to help with enforcement of decisions or awards.
2. Develop guidelines and legislation for other informal dispute resolution mechanisms such as mediation, conciliation and reconciliation.
3. Develop legislation and guidelines to help make access to justice less costly and less technical and to devolve courts and tribunals.
4. Develop a legislative framework, tools and mechanisms for conflict and dispute prevention.
5. Develop and implement special mechanisms to help in conflict management and dispute resolution to deal with special categories of land disputes listed above.

## CHAPTER ELEVEN: INSTITUTIONAL FRAMEWORK

### 11.1 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 unalienated 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.

## 11.2 National Land Commission

The fact that the constitutional and legislative functions of the Commission are mostly advisory undermine its capacity to deliver intended land administration and management outcomes. Amendments to the law should be effected to enable make the Commission more effective.

In this connection the following measures are proposed:

1. Spell out clearly in the legal framework the legislative mandates of the Commission to avoid conflict and overlaps with the Ministry in charge of Lands.
2. Review the legislative framework to address conflict between the county and national governments in terms of categories of public land that is vested and held by both.
3. Review and amend the law to define clearly the roles of the Commission and the Ministry in charge of lands in the allocation of public land, and issuance, renewal, and extension of leases.
4. Amend the legislative framework to allow the commission to assess and collect tax on land and premiums on immovable properties.
5. Strengthen the role of the Commission in preparing and recommending the NLP.
6. Amend the existing legal framework to enable the Commission to investigate present and historical land injustices and implement or execute its decisions directly.
7. Amend existing legal framework so that the commission may ensure comprehensive registration of title to land throughout Kenya.
8. Provide the Commission with sufficient funding to digitize its processes and develop a cost effective and user friendly end to end digital platform to enhance service delivery and efficiency.
9. Enhance the institutional and financial independence of the Commission by creating a Commission Fund charged directly from the Consolidated Fund.

### 11.3 Ministry in Charge of Lands

To ensure that the Ministry plays its rightful role to provide policy and strategic leadership in support of land administration and management, the following measures should be implemented:

1. The legislative mandates of the Ministry be clearly spelt out in the legal framework to avoid conflict and overlaps with the National Land Commission.



2. Allocate sufficient funding to the Ministry 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. The Ministry should establish and resource a National Land Reform Transformation Unit to spearhead implementation of the national land policy.

#### 11.4 County Governments

1. Spell out clearly all constitutional and legislative mandates with respect to public land to avoid conflict between national and county governments as to which category of public land either owns.
2. The national government should ensure that all devolved functions on land set out under the law are transferred to county governments.
3. County governments should ensure that registration of all unregistered community land is fast tracked and finalized.
4. County governments shall carry out digitization of land administration and management processes and develop cost effective and user friendly end to end digital platform to enhance service delivery and efficiency to the public.

#### 11.5 Land Control Board

The Land Control Board is established under the Land Control Act (Cap 302) to control 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:

1. The national government should overhaul the Land Control Act (Cap 302) to make it conform to post-modern challenges and needs of the country.
2. Digitize Land Control Board application processes and issuance of consents to make the processes more user-friendly and improve efficiency
3. Put in place strategies and a framework to ensure that agricultural land is not subdivided to uneconomical units.

4. Reserve and protect agricultural land to secure food production in the country.

## 11.6 Environment and Land Court and Magistrates Courts

The Environment and Land Court (ELC) and magistrate courts play major roles in resolving disputes in the land sector. There is need to consolidate the gains so far including the benefits accrued from separating the ELC into separate divisions for environment and land, and also to address existing gaps. In this connection, the national government should:

1. Reviews existing legislation to mainstream the critical role of experts in the land sector to help the courts.
2. Reviews existing legislation to allow courts to give deference to the land sector tribunals and quasi-judicial bodies to resolve the disputes in the first instance before aggrieved parties can move to court on appeal.
3. Review existing legislation and procedures to enhance access to land justice by members of the public.
4. Develop and implement Guidelines to encourage and facilitate the use of informal dispute resolution mechanisms in resolving land disputes.

## 11.7 Tribunals & Quasi-Judicial Bodies

Tribunals and quasi-judicial bodies in the land sector help the courts to deal with the perennial backlog of land cases due to their fast nature of dispensing justice and their specialization. It is important to strengthen their role in land disputes resolution. To this end, the national government should:

1. Appoint persons with specialized knowledge and experience on land and environment issues as members of these tribunals.
2. Reviews existing legislation to allow tribunals and quasi-judicial bodies resolve disputes within their jurisdictions in the first instance before aggrieved parties can move to court on appeal.
3. Develop guidelines on the need for tribunals and quasi-judicial bodies to employ the use of Traditional Dispute Resolution Mechanisms.



4. Review existing legislation to allow tribunals and quasi-judicial bodies have the powers to enforce their decisions.

## 11.8 National Land Policy Implementation Unit

To ensure that the Recommended Policy is fully implemented and the challenges that undermined full implementation of the NLP 2009 are avoided, the national government should:

1. Establish the National Land Policy Implementation Unit (NLPIU) through an Act of Parliament.
2. Membership of the NLPIU shall be drawn from the Ministry in charge of Lands, the County Governments, the National Land Commission, the Ministry of Finance and non-state actors in the land sector.
3. The NLPIU shall implement the national land policy and shall be accorded sufficient personnel, resources and autonomy.
4. The NLPIU shall propose new legislation or change of legislation where necessary in order to fully implement the National Land Policy.
5. The NLPIU shall carry out carry out civil education on land reform and ensure smooth transition to the Recommended Policy.
6. The NLPIU shall remain in operation after the National Land Policy is fully implemented in readiness for the next cycle of review.



## CHAPTER TWELVE: IMPLEMENTATION FRAMEWORK

The adoption of the NLP 2009 marked a major turning point in land governance in Kenya. The Policy made clear and concrete recommendations for achievement of better land management, administration and reforms. The Policy influenced the Land chapter of the Constitution, which entrenched the key land policy principles and institutional architecture for land governance.

The policy vision, philosophy and ideals informed the creation of the National Land Commission (NLC) under Article 67 (1) of the Constitution. Thus, the NLP 2009 marked a major milestones despite challenges that undermined its full implementation.

The major bottleneck that frustrated full realization of the aspirations of the NLP 2009 arose from the various competing interests and lack of commitment to realize meaningful positive transformation in the land sector. Furthermore, lack of political good will, as demonstrated by sporadic / intermittent financing, curtained effective implementation of key tenets of the Policy.

The Recommended National Land Policy 2023 draws heavily on the NLP 2009, updates its provisions to reflect emerging opportunities and challenges, and seeks to fill any gaps that have become manifest over the years. . Nevertheless, a comprehensive audit of the NLP 2009 is needed to establish the extent of its implementation.

In this regard and to ensure that NLP 2023 is implemented and given the much needed prominence and impetus, the National Government should:

- 1) Establish a dedicated **Land Fund** to facilitate and resource land management and administration and promote seamless reform agenda including tackling the mammoth land related disputes. The fund will 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 to oversee, monitor and track 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 to provide comfort and confidence to the public while conducting due diligence for land.
- 4) 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.
- 5) 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.
- 6) Cause the Commission to undertake reviews and provide public reports on progress in implementation of the Recommended Policy on annual basis.



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**OUR LAND, OUR WEALTH, OUR HERITAGE**





## **RECOMMENDED NATIONAL LAND POLICY | 2023**

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