



**LAND SECTOR  
NON STATE ACTORS**

**THE LAND SECTOR NON-STATE ACTORS (LSNSA)**

**MEMORANDUM ON CONTINUED ENGAGEMENT  
WITH THE MINISTRY OF LANDS ON LAND  
REFORMS**

**PRESENTED TO:**

**THE MINISTRY OF LANDS**

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## **A. INTRODUCTION**

1. The approval by the public of the Constitution at the referendum on August 4, 2010 and its promulgation on August 27, 2010 heralded a new dawn of governance in Kenya. Through its broad provisions, it is expected that it will spur social and economic development and secure the land rights of all Kenyans, by among others guaranteeing them ownership, control and access to natural resources. It is also expected to ensure their participation in decision-making processes. Significantly, it is also expected to introduce governance structures that are projected to improve Kenya's democracy. The many references to land, natural resources and environment within the Constitution of Kenya, 2010 and the provisions carefully crafted to deal with these issues are clearly indicative of the very high value that Kenya attaches on the question of land and associated resources. The adoption of the Sessional Paper No. 3 of 2009 on National Land Policy attests to the same. And this is with very good reason. Land is indeed a critical resource for economic growth, social development, and poverty reduction. Thus, the terms on which land is held, used and transferred have important consequences for economic growth, the distribution of wealth, social cohesion and reduction of poverty.
2. The Land Sector Non-State Actors (LSNSA), as a network of civil society organizations and professional bodies with interest in land reforms in this country is keen to ensure that what the National Land Policy and the Constitution have provided is further safeguarded through the enactment of laws that give true meaning to the aspirations of Kenyans. It is in this regard that the LSNSA has through its many processes collected and collated the views of many of its members, partners and constituencies on the operations of the Ministry of Lands and the on-going preparation of Land Bills. However, LSNSA is concerned with the different line Ministries efforts to develop legislations touching on land without any form of central coordination by the Land Reform Transformation Unit based in Ministry of Lands which is mandated to ensure coordinated and systematic land reform implementation process before the National Land Commission established by Article 67 of the Constitution is operationalized. There is indeed a danger of the uncoordinated processes going on to draft legislations that touch on the purview of the National Land Commission such as the Minerals and Mining Bill, Wildlife Conservation and Management Bill and Matrimonial Property Bill among others. These views, presented through this Memorandum are further given pursuant to the constitutional obligation (Article 3) of the LSNSA to respect, uphold and defend this Constitution.

## **B. THE URGENCY OF NOW: THE CASE FOR LAND REFORMS RESTATED**

3. The several clashes between various ethnic communities in Kenya has had its root cause in ownership, access to and competition over access to land and related natural resources. Indeed, the diagnosis of the latest large scale conflict in Kenya following the disputed General Elections of 2007 placed a heavy emphasis on distribution of land and related resources. Thus, land reform was identified as the first of the six key elements among the intractable issues, which included constitutional, legal and institutional reform; poverty, inequality and regional imbalance; unemployment – especially of the youth; transparency, accountability, impunity and national cohesion under the famous Agenda 4. Additionally, it has been noted that lack of access to and/or control of land, insecure tenure to land, and inequitable access to other resources are fundamental causes of poverty and vulnerability in Kenya and East Africa generally. Above all, however, lack of ownership and access to land has been considered the most contributors to poverty. On the other hand, lack of ownership and secure access to land is also an indicator of poverty and vulnerability. Poverty and vulnerability levels have disproportionately manifested themselves among women, youth and marginalised communities. Indeed, the excesses of the Executive arm of government has been manifested in the manner it dealt with land and natural resources- illegal allocation of public land, state-sanctioned degazettement of forests and subsequent creation of land titles in individual names, further widening the inequality gap. It follows therefore that improving the governance of land and land-based natural resources is an imperative for the future development and tranquillity of Kenya.
4. Indeed, recent protests by the Institution of Surveyors of Kenya and demonstration by the Law Society of Kenya epitomize the frustrations that Kenyans have with the slow pace of land reforms in this country especially with regard to the administration of land. Appeals and demands made by the LSNSA in its recent press briefings and advertisements have been informed by these concerns. In the circumstances read together with Paragraph 29 (1) of the Constitution under the Sixth Schedule (*Article 262*) on Transitional and Consequential Provisions, the fierce urgency of now cannot be overemphasized. Paragraph 29 (1) herein referred to requires that all appointments to fill vacancies arising in consequence of coming into force of the Constitution must have been completed within one year after the promulgation of the Constitution. This includes the filling of vacancies of the National Land Commission which is already established under Article 67 of the Constitution.
5. Consequently, the Commissioner of Lands who ought have lost his powers of administering public land at midnight on August 26, 2011 continues to issue titles on public land and perform other statutory duties under the Government Lands Act,

which is due for repeal under the new constitutional dispensation as provided by Article 68 of the Constitution which requires Parliament to revise, consolidate and rationalize existing legislations on land. Article 68 of the Constitution further buttresses the point on urgency of land reforms as Parliament is required to enact legislation on land within 18 months from the effective date August 27, 2010. As it is 15 months have lapsed already yet we do not have Acceptable Bills on land ready for tabling when Parliament resumes from recess on October 11, 2011. Key among these Bills is the Matrimonial Property one which the Ministry is yet to release the Zero draft. LSNSA will not accept the First Anniversary of the Constitution confusion when Bills were rushed through Parliament to beat the 12 month-deadline.

### **C OPERATIONS OF THE MINISTRY OF LANDS**

6. With regard to the existing institutional framework the National Land Policy candidly states as follows: “The existing institutional framework for land administration and management is highly centralized, complex and exceedingly bureaucratic. As a result it is prone to corruption and has not been able to provide efficient services” In addition, it does not involve the public in decision making with respect to land administration and management and is thus unaccountable” It is for this reason that under the new constitutional and land policy dispensation overhaul of the institutions was found to be imperative so as to (a) facilitate the delivery of efficient and cost effective and equitable services, (b) ensure devolution of land administration and management, (c) facilitate access to land administration and management by the poor so that the sector can contribute to poverty reduction and (d) ensure adequate stakeholders participation and accountability in land administration and management.
7. Accordingly in line with the National Land Policy, the Ministry in-charge of land should rationalize roles and reorganize its structures to undertake devolution of land administration and management functions of land to all levels of devolution.
8. The functions of the Ministry should be giving policy direction , mobilizing additional resources for the land sector, undertaking policy advocacy and providing political leadership and setting service standards, regulating providers, and ensuring quality control
9. The establishment of Land Reform Transformation Unit (LRTU) was to ensure that changes are implemented in a coordinated and systematic manner, within set time-lines to reflect the priorities of the land reform agenda. Indeed the National Land Policy in section 266 in Chapter 5 on Land Policy Implementation Framework provides that the LRTU shall be accorded sufficient autonomy to enable it perform its functions. Contrary to this provision LRTU has not been able to engage citizens to strengthen democratic tenets in land governance that is transparent, responsive and

capable of improving the lives of citizens. LSNSA through LRTU Technical Working Groups have supported efforts to make the Ministry of Lands more effective and accountable by partnering with visionary organizations and by building networks that channel popular desires for reforms. But we see no hope for realizing the provided land reforms in the National Land Policy and the Constitution through the LRTU as structured today.

10. In many parts of the country, people are not only demanding land reforms from the government but forging new roles for themselves in making change in land sector a reality. We are therefore encouraged not to let this hope die but rather to concentrate LSNSA energies to increase opportunities for the public to be active citizens by engaging more in building lasting democracy.

#### **D STAKEHOLDER INVOLVEMENT IN LAND REFORMS AGENDA IN KENYA**

11. One of the key developments in the land sector under the present government was the formulation and eventual passage of the Sessional Paper No. 3 of 2009 on the National Land Policy (hereinafter referred to as the National Land Policy). As is acknowledged in the Executive Summary of the said Policy **‘stakeholders from public, private and civil society contributed towards the policy formulation through thematic groups based on discussions, regional workshops and written submissions’**. Indeed, the noted successes of the National Land Policy were largely attributed to the engagement framework agreed upon between the government and its partners within the civil society. It was an engagement process that recognized that everyone had an important role to play in reforming the land sector in Kenya.
12. If the engagement framework for the formulation of the National Land Policy was based on mutual understanding and accommodation, the engagement framework for the implementation of the land provisions within the constitution is presently a matter of both constitutional right and obligation. Thus, LSNSA need no longer be accommodated in the land reform processes. Its role is specifically ordained in the Constitution pursuant to article 10 among others, which requires that stakeholder perspectives are sought through consultations and incorporated in the implementation process. Indeed under Article 232 of the Constitution the values and principles of public service include ‘involvement of the people in the process of policy making’. The issue of how those consultations are conducted within tight time-frames will need to be dealt with. Reiterating the point that both the process and the products of the land reform process are equally important to ensure its success, and it is important that a way of engaging the public be designed. This can be through a new mechanism (not LRTU as constituted) which would serve as the outreach to diverse categories of stakeholders.

## **E WAY FORWARD**

13. In view of the foregoing, it is our humble view to state that the existing institutional operation of the Ministry of Lands is not capable of coordinating the land reform implementation process. As a result it does not endear nor facilitate our continued engagement which is stopped forthwith until the following are done:
  1. A proper and acceptable Land Reform Framework for the Implementation of the Constitution and the National Land Policy is put in place
  2. The Land Reform Transformation Unit is reconstituted and accorded sufficient autonomy to enable it perform its function pending the operationalization of the National Land Commission established by Article 67 of the Constitution
  3. Immediate fast tracking of the National Land Commission Bill into Law
  
14. LSNSA will in the meantime to participate in the process of making Land Bills when they reach the Constitution Implementation Organs at the Attorney General, the Kenya Law Reform Commission and the Commission for the Implementation of the Constitution.
  
15. While recognizing that the engagement process for the drafting of the land reform laws has not been optimum, we nevertheless state that the reforming of the land administration in this country cannot afford any further delays. We must move with speed to enact the National Land Commission Bill into law to operationalize the Commission. To dither would be to roll back the reform agenda.