

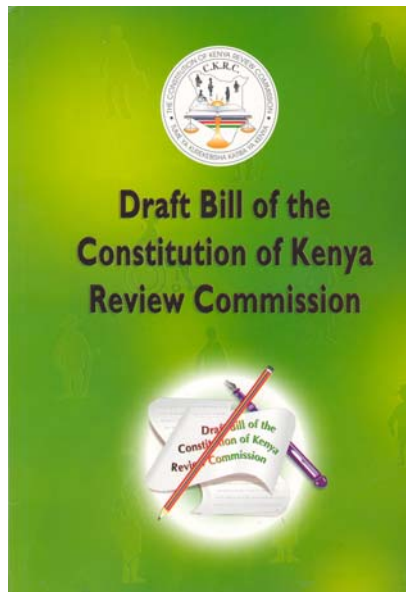


Chapter Eleven of the Kenya Draft Constitution Bill at Close Scrutiny

It is significant that for the first time land is specifically recognized as a constitutional category in the Draft Constitution Bill. This is important because it gives the issue of land the level of visibility that is always associated with constitutional matters, and unlike other ordinary legislations, a Constitution can only be amended by a special majority.

The chapter that deals with land in the Draft Constitution Bill is Chapter Eleven under the title **Land and Property**.

- It recognizes the primacy of land as the source of livelihood for all Kenyans and therefore seeks to provide a policy framework to ensure an equitable, efficient, productive and sustainable management and use thereof.
- It implicitly acknowledges the absence of a National Land Policy and accordingly imposes on the State the duty to ensure that such a policy is promulgated although no specific timeframe is set out within which such policy document ought to be in place. Given the critical position of land in our livelihood and the constant controversies and conflicts associated with it, it would be important to have a definite framework within which a National Land Policy ought to be in place and also to impose a defined review timeframe to ensure that this obligation does not just remain salutary.
- The Bill very explicitly declares that the land belongs to the people of Kenya. This is very significant as it is a clear departure from the present system, which regards land as if it is the private property of a few 'politically correct' individuals. The ideological principle underlying this policy principle is that land is the common heritage of all of us and nobody has a right and/or privilege



to deny us this inalienable right. The restriction imposed on ownership by non-citizens is similarly based on the above thinking. Although proponents of the free market economy may find this proposal unpalatable, it needs to be emphasized that the primary duty of every Government is to safeguard the interests of its citizens, and if this demands that in certain circumstances specific protective measures have to be undertaken, then that is absolutely legitimate.

- We find the classification of land to be reasonably adequate although in the domain of public land there may be need to address the issue of previous alienations which were blatantly done in flagrant disregard to public interest and in clear and arrogant abuse of power by the then political ruling class. This is an issue which, not only for the purposes of redressing past wrongs but also in order to regain vital public resources for our future, must be addressed within the new constitutional dispensation. We do

not think that this is sufficiently covered by section 253(4) (b)(ii). We believe that practices like wanton allocation of forest land and other public utilities should be squarely addressed without any equivocation. Adherence to the basic tenets of constitutionalism demands that in cases where the principal actors had no respect for the same, the current beneficiaries cannot be heard to appeal to the same principles to protect their ill-gotten public wealth.

- The requirement that relevant legislations would have to be enacted within two years to address the various pertinent issues relating to land is, in our view, very reasonable and vital as it gives a concrete and justifiable monitoring mechanism to which citizens can resort in case the incumbent Government reneges on this obligation.
- The section dealing with the protection of property of land needs to be looked at again. In view of the fact that there is a consensus on the fact that there has been blatant abuse in the management of land and other national resources by the previous Governments, a new constitutional order must be bold enough to challenge the positivist jurisprudential position which exalts the sanctity of private property without making any reference to the concrete historical conditions under which some of those properties were acquired. The new constitutional order must provide a flexible mechanism which would enable the new Government to look afresh at the sanctity of private property with a view to ensuring that compulsory acquisition is guided by the overall objective of achieving a land reform

(Continued on page 7)

Kenya Land Alliance Supports Campaign for the Protection of Forestlands

The Kenya Land Alliance (KLA) appreciates the on-going campaign for the protection of forestlands at all levels. It is the Alliance's view that the campaign, that is currently spearheaded by the Ministry of Environment, Natural Resources and Wildlife, should be seen as a significant public advocacy effort to uphold the right of all Kenyans to a healthy and clean environment, and above all, the right of the rural poor communities over their natural resources. This campaign also reflects the concern for protecting the biodiversity of the forests of Kenya.

During the recent workshop held at Nairobi Safari Club (Lilian Towers) on January 17, 2003 on Government Policies vis-à-vis people's priorities, over a hundred representatives of Social Action Groups, Environmental Organizations and concerned citizens discussed the possible consequences of the former government's move to open up degraded forestlands for settlement, commercial and industrial interests. Out of this discussion, they decided to launch a nation-wide campaign to protect the forestlands. The workshop was addressed by Prof. Wangari Maathai, the Assistant Minister for Environment, Natural Resources and Wildlife.

From the time the former government gazetted the excision of large tract of forestlands, the Civil Society Coalition of Social Action Groups have been instrumental in channeling and co-ordinating the efforts to resist the excision exercise. As part of the initiatives, KLA and a number of other groups moved to court to block the excision and question the legality of the former government's action. We still hold the position that the proposed excision of forestland would adversely affect the livelihoods of millions of rural poor who are critically dependent on forestlands for their very livelihood and survival.

True as the present Minister put it, Kenya cannot afford to import soil and biodiversity. Therefore, we stand to lose if the excision is allowed to continue, hence we urge the government not to

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relent to the pressure from any quarter because that would indeed be one of the most anti-people move of the policy makers.

Majority of communities that live in the forests have lived in harmony with nature for centuries and have a very strong symbiotic relationship with the forest eco-system. The pending Forest Bill which was not processed by the 8th Parliament clearly recognizes the fact that the life of rural poor communities living within 5 square kilometers and near forests revolves around forests. Therefore, any move to excise forestlands would deprive them of the traditional rights over their natural resources. It would also spell an environmental disaster to the people of East African Region since they depend on the same forests as major water catchment towers.

We stand to lose if the excision is allowed to continue, hence we urge the Government not to relent to the pressure from any quarter because that would be one of the most anti-people move of the policy makers.

The targeted forestlands yields wood for cooking, fodder for domestic animals, a variety of edible products, fibres, medicinal plants and herbs, small timber and other materials for housing and making simple implements, and other minor forest products which provide cash income, often at a time of the year when no other source of livelihood is available to communities within forest areas. Field research and studies by KLA members such as FAN, ILEG and GBM have clearly demonstrated that communities within forestlands depend mainly on natural resources to meet their basic needs, thus, they often help regenerate the forests.

KLA holds the view that 'using forests for satisfaction of land hunger of the political and economic elites will be a major setback and an indication that we have not learned from our past mistakes of creating man-made forests which are an

ecological disaster, besides completely alienating people and leading to faster degradation.'

The KLA fraternity has been on record for resisting the move by the former government to excise forestlands on the following grounds:

- The community rights of access and control of forestlands are fundamental to the management of forests in Kenya
- Extinguishing the rights of local communities in favour of any other entity will have negative consequences besides our proposed new constitutional review proposal that the people are owners of the land and natural resources in Kenya, and not the government of the day.
- The excuse of settling squatters in forest areas does not hold water in a country with less than 3% of its land under forest against the international accepted percentage of 10%.

Therefore, we call upon the Ministry of Environment, Natural Resources and Wildlife to revoke any forestland allotment obtained by twisting the existing laws or by those who succeeded in getting a back-door entry to the forestlands.

In conclusion, we remind you all that unless the socially and environmentally conscious people come together as a people's movement against the policy of giving away forestland and products for vested interests, both the subsistence of forest communities and sustainability of biodiversity of forests would be in peril. So let us seize the moment and support the Minister of Environment, Natural Resources and Wildlife in the important campaign against forest excision and environmental degradation and pollution. This does not require us to go to court, but rather, we need the Minister to revoke his predecessors gazette and legislative notices at the very least and only to resort to court as a last recourse.

Acknowledgement

Hon. Amos Kimunya, Minister for Land and Settlement
 Prof. Anyang' Nyong'o, Minister for Planning and National Development
 Odindo Opiata
 Kimani Wa Wanjiru
 Njonjo Kihuria

Plans to Modernise the Ministry of Lands and Settlement

He has a dream! Honourable Amos Kimunya, the new Minister of Lands and Settlement has a dream that when he is done with reforming the Ministry, he will certainly have fast-forwarded its operations from their current medieval status to the futuristic and more efficient *dot com* position.

In his dream, the Minister envisions a situation where Kenyans will be able to store, retrieve, process and disseminate land-related information with the help of all the modern technology and, of course, take advantage that comes with the information superhighway. He wants the method of storing the Ministry of land records to be structured in such a way that at the click of a button, one will be able to access all the information on a given piece of land. Besides storing Maps in more durable materials, the Development Plans, Deed Plans and other similar information will be stored in electronic format to make its retrieval fast and more efficient.

'I want to have information in one Master Database, where at a click of a button, I will be able to browse all the entries,' said the Minister in an exclusive interview with the *Land Update*. *'The time is gone when Surveyors went out into the field with chains and all those other archaic equipment. It is time for electronic survey that will use the new and sophisticated equipment to produce very accurate findings.'* He added: *'With this new technology, you will be able to tell who is paying their land rates, who has defaulted or has fallen behind in their payment. You will be able access the history of any piece of land, identify which piece of land has problems and this way you will be able to advice any prospective buyer accordingly.'*

In his view, it is time to embrace technology and modernity because it will not only ensure that records are well kept and offer a break from the past, but also it will enhance transparency and openness in all land transactions. It has been done in other countries such as Rwanda and the Minister is convinced that it can be done in Kenya also. This is pleasant music in many people's ears, especially those who have had land problems.

However, to realise this pleasant dream, Honourable Kimunya will have to come to terms with a very grim past that he has just inherited. In this past, a number

of land transactions were characterised by irregularities that have turned the records department into an incomprehensible mosaic. Land grabbing was so rampant that one got the feeling that it was almost institutionalised. Land set aside for agricultural research was sub-divided amongst the blue-eyed boys and girls of the old regimes. Trust land was not spared. Forests were targeted. Road reserves and any other land that had been set aside as either playing ground or for important public affairs was grabbed. Land allocation was influenced by nepotism, cronyism and in total disregard of the rule of law. Land has been a source of clashes that left many people homeless. Corruption has resulted in the marginalisation of some communities who find themselves living as squatters in their own land.

Forty years after independence, many people are living in very poor conditions in the numerous informal settlements that have mushroomed in almost every major town in the country. This has resulted in a past that there is hardly anything to write home about. It is a past that needs to be handled with a lot of sensitivity and caution. It is a past that needs a multi-pronged approach but it should be based on a firm legal and constitutional framework so that all the problems can be tackled comprehensively.

In trying to correct the wrongs of the past, we need to look at not just who did it, rather, we need to be able also to build the checks and balances at the moment for the future so that people don't abuse their position under the pretext that they are using mistakes of the past.

The Minister acknowledges that the task ahead is not going to be easy and he agrees that a firm legal and constitutional base is important if the task has to be done successfully. *'The task ahead will be guided by fairness in the distribution of resources and the respect of the rule of law,'* pointed out the Minister. *'Those found to have been wrong will be dealt with accordingly.'* He added: In trying to correct the wrongs of the past, we need to look at not just who did it, rather, we need to be able also to build the checks and balances at the moment for the future so that people don't abuse their position under the pretext that they are using the mistakes of the past. There should be a very strong signal that crime does not pay.

The wrongs of the past will not be used as a precedent for future wrongs.

Hon. Kimunya was certain that we will have a comprehensive land policy and well-structured land laws that will help to make optimal use of this natural resource. That is why he is keenly studying the report by the Njonjo Commission on land and he is very keen to make it public. When we visited him at his Ardhi House office for the interview, the report was on his desk and it was also being studied in other departments, and he promised that it will be released because he would like to have it debated. *'I hope people are not just asking for the report to be released for the sake of having it out in the public and then let it pass without making any comments like the Akiwumi report that was released late last year,'* said the Minister while challenging all stakeholders to make sure that the report is discussed extensively and comprehensively.

'The Njonjo commission report is not the only thing they are studying. They have been studying the draft by the Constitution of Kenya Review Commission, the land report made by the Law Society of Kenya and other stakeholders but they will not stop there.' The Minister was categorical that they will consult extensively in the search for sustainable solutions and especially in this instance where they want to come up with a legal framework and policies that will ensure land is used as a sustainable source of wealth for many and is also used as a means for tenable development. *'The NARC Government derived its strength from the people and we will continue to talk to them, explained the Minister. It is supported and driven by the people and I hope that we will continue that process in all the stages of intervention.'* He added: There are sound initiatives going on at the moment and our task will be to talk to all the stakeholders to consolidate all these initiatives to work in tandem so that they can all achieve the desired results.

With a strong and fair constitution and policies, the Minister is keen that they would like to resettle all displaced persons. They will not settle only those who lost their land due to the land/ethnic clashes but even those who were displaced by the colonialists, development structures such as the hotels along the beach, game parks or even dams.

(Continued on page 7)

A Planner's Perception of Land Issues in Kenya: Minister for Planning and National Development



Idle large tracts of land like this one should be taxed or handed over to the government for re-distribution to those who deserve it

Question: Is land reform the key to sustainable rural development in this country?

Prof.: It is necessary but not an end in itself. Land reform is necessary in the high-density areas, some pastoral areas, large commercial agricultural sector and the urban areas. In the high-density areas, there is the problem of land inheritance whereby because of customary law, a father finds it necessary to subdivide land among his sons. Continuous subdivisions end up in tiny uneconomical portions which cannot be exploited economically by the farmer. Consequently, something needs to be done to curb this irrational sub-division of land in high-density peasant agricultural areas.

In the pastoral areas, there is conflict between private ownership and group ownership because the pastoralists have all along regarded land as a community property. In areas like Enosupukia, capitalist methods of production encroached on a pastoral area where people just went and acquired land as private property. They then fenced it, an act that pushed out pastoralists from this grazing land, thus losing their means of

livelihood. In view of this, a land reform process need to be devised to guarantee pastoralists means of livelihood without necessarily keeping them out altogether from the benefits of market economy which includes being able to rear cattle and selling them for economic value.

As regards large commercial agricultural areas, people have for decades been buying large tracts of land and holding it without utilising it. They hold it as security for the future or as status wealth as opposed to economic wealth.

Question: So how do you deal with this idle land held by speculators?

Prof.: As is contained in our manifesto and as I have always said, we are going to tax that land, as this will force the owners to either rent the land or sell it. This therefore will be one of the ways to curb land hoarding in high potential agricultural areas in a bid to encourage productive land use.

Idle land that is being held by speculators in urban areas will be easy to deal with because in urban areas there is a very clear land ownership system, whereby one is required to have a title deed and

in addition, there are land rates, land rent and so on.

Unfortunately, the city and municipal councils have not collected the land rates and rent for many years, essentially due to graft. That should be cleaned up, while others who use the idle land in urban areas legitimately, such as hawkers, should be licensed and charged certain rates. These areas should be designated since in urban areas there is much more intense use of land than in the rural areas.

Introduction of land tax in urban areas, which is more progressive than the rural areas, would make a lot of sense. This would make land use in urban areas much more rational and with proper urban planning, there will be land available for other social and welfare uses. At the moment, because of the chaotic way in which land has been used in the urban areas, we do not have recreation facilities, proper land reserves and other facilities for social value. Therefore, in urban areas, the issue is how to bring in planning and managing systems that will make the use of municipal space much more sensitive to social value, that goes beyond collecting land rates and rent.

Question: But in taxing land, you are bound to step on influential toes...

Prof.: Definitely these toes will have to be stepped on, and in fact, one of the reasons that tax has never been instituted is because big land owners have been people with political power. The next 'port of call' for anybody getting to political power has been how much land they were going to own. That is why we have had this much madness at the National Social Security Fund (NSSF) where people have accumulated wealth by getting land allocated to them by the government and they have sold it to NSSF for large sums of money. With this money, they have bought large tracts of land at the high potential agricultural areas with no intention of using it.

Basically, there have been those symbiotic relationships between corruption in land transaction in urban areas and holding of land in high potential agricultural areas by the same plutocracy that has dominated the government since independence. We are not afraid of stepping on their toes as we came in with a big mandate from Kenyans to reform, and we will look keenly at what is in the NARC Manifesto with the aim of implementing its contents.

Question: So how do you tackle the issue of land as a means of production?

Prof.: Land only becomes a means of production when you mix your labour with it. It only becomes useful when you can work on it and produce wealth. The land now being held in some of the high potential areas is not useful in wealth creation as nobody is mixing labour with. Contrary to that, people in the rural areas are busy mixing their labour with land but not producing enough wealth as land has been impoverished through many years of over-use.

As a government, we will seriously consider how land is going to be used as a means of production and as a means of creating wealth by controlling land use in high-density areas. The government will also ensure that peasant farmers have enough cheap inputs, particularly fertilisers, water, energy and infrastructure to make their land productive.

Land as a means of production depends on, among others, good policy that

comes from good governance, affordable inputs and access to markets, and these are the responsibilities of the government, which must regulate the environment around which land is used.

Question: Have you seen the 'Njonjo Commission' report on land reform? How useful will it be in addressing the land question in this country?

Prof.: The 'Njonjo Commission' was set up with a lot of fanfare, but it ended with a whisper. Personally, I have not seen the report, but we need to see it and it would be useful to read what Charles Njonjo and his team had to say about land reform in this country. Only then can we absorb its contents and find out how we can use it for a progressive land policy.

To stimulate growth in the immediate, you do not need to focus on land, but rather on incentives for people to produce, but of course they cannot produce without land.

Question: What will be the NARC Government's focus on land for stimulation of economic growth?

Prof.: To stimulate growth in the immediate, you do not need to focus on land, but rather on incentives for people to produce, but of course they cannot produce without land. If people know it is possible, for instance, to go into the horticulture business using a cheaper energy tariff and production equipment for those who want to start irrigation projects, they will begin investing heavily in horticulture. At that speed, the value of land will go up and those hoarding land especially in areas where horticulture can do well will begin to search for ways and means of putting it to use. At that point in time, if you begin taxing the land, people will not be afraid of the tax because it will be worth it. The tax will enable the government to provide the necessary infrastructure and services that make business in horticulture and agriculture profitable.

Question: As pressure heavily bears on the little arable land, there is movement towards the semi arid and arid areas. Will this adversely affect pastoralism?

Prof.: I do not mind people going to the semi arid and arid areas since there is plenty of that. If they are going to those lands such as the huge tracts on the way from Nairobi to Mombasa to irrigate and use them, there is no problem.

Question: You do not sense conflict between crop farmers and pastoralists?

Prof.: I do not think there would be conflict because once you have a good land policy and irrigation for crop-growing is started in these areas, the water will be extended for the pastoralists to feed their animals. The pastoralists only require wide chunks of land if that is the only way they can get access to grass and shrubs, but if they have access to a smaller piece of land where grass, shrubs and water are available for their cattle, they would appreciate the trade-off. That is why encroaching on arid and semi arid areas is to me not as dangerous as encroaching on forestland.

Question: So how do you stem the encroachment on forests and other conservation areas?

Prof.: The Ministry of Environment and Natural Resources must come up with very tough laws on that.

Question: Only five per cent of Kenyan women, who are the main crop producers, own title deeds for the land they tend. How do you address this injustice?

Prof.: That is why we have created a Ministry of Gender, Youth and Sports, to focus specifically on some of these gender issues. However, the Ministry of Planning, which is in charge of the Poverty Reduction Strategy Programme, has a gender division. We know that women as economic producers in this country have been severely exploited and socially and politically marginalised. Therefore, women must be politically empowered and using legal mechanism and reform, we must ensure the exploitation stops. When women are given political positions it appears as if it is tokenism, but it is important that the process of political empowerment continues as it will affect reforms in production. Once women come into political power and they have the voice, they can begin to address issues of economics and social relations much more systematically than the men do.

FACTS

- ☞ Every government must show a commitment to promoting the provision of an adequate supply of land in the context of sustainable land use policies. While recognizing the existence of different national laws and/or systems of tenure, government at appropriate levels, including local authorities, should nevertheless strive to remove all possible obstacles that may hamper equitable access to land and ensure that equal rights of women and men related to land and property are protected under the law.
- ☞ The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty.
- ☞ Sustainable forest management of both natural and planted forests is essential to achieving sustainable development and is a critical means

- to eradicate poverty, significantly reduce deforestation and halt the loss of forest biodiversity, land and resource degradation, and improve food security and access to safe drinking water and affordable energy.
- ☞ One of the major causes of women's impoverishment is their lack of equal access to rights in and control over economic resources. While women in East Africa cultivate most of the land, they often don't have independent rights to access, (co-)own and control land and housing and therefore lack security of tenure.
- ☞ Women's lack of equal rights in access to and control over land, housing and property constitute a serious violation of human rights.
- ☞ Access to land and security of tenure are strategic pre-requisites for the provision of adequate shelter for all and for the

- development of sustainable human settlements affecting both urban and rural areas. It is also one way of breaking the vicious circle of poverty.
- ☞ The rules which regulate the manner in which land can be owned, used and disposed off, must always be of great importance to the state. The stability of the state and the well-being of its citizens at all times depend, to no small extent, on its land law.
- ☞ The social structure of irregular settlements is far from homogenous within a single city or even within one settlement. Irregular settlements are not always occupied exclusively by the urban poor. Middle income households settle in these areas when the formal housing market cannot meet their demands and in such cases a certain 'right to irregularity' may be recognized.



Optimal utilisation of land is the only sure way to attaining food security. The Government should ensure that peasant farmers have adequate cheap farm inputs, particularly fertilisers, water, energy and infrastructure to make their land productive.

Concerted efforts through partnerships among the government and stakeholders including the private sector, indigenous and local communities, community-based organisations and non-governmental organisations is an essential goal of sustainable development.



One way of breaking the vicious circle of poverty is by allowing full participation of women at all levels of decision-making to enable them to have a say in the formulation of sustainable development and natural resources management policy.



Land in the Draft Constitution Bill

(Continued from page 1)

system in which equity is the overriding principle and the issue of how compensation is to be handled needs to take account of such factors as how the land was acquired, how it has been used etc, so that this blanket insistence on prompt and full compensation should not be used to allow even outright grabbers to get away with theft of public property. This is of course a controversial proposal, but any attempt to comprehensively review an unjust constitution without addressing controversial issues is not worthy the effort.

- The Bill has not adequately dealt with the issue of urban unplanned settlements otherwise known as informal settlements or slums. This is one of the most teething problems we have been faced with

and in the majority of cases, is also an epitome of the most visible violation of human rights. The fact that areas occupied by these millions of people are routinely allocated to politically connected individuals is yet another testimony of the insensitivity of the previous Governments. The endemic forcible evictions of these communities is a matter of public knowledge and should be addressed in the new constitution by first recognizing the obligation of the State to ensure that land is specifically set aside for the development of low-income housing and policy to effect the same put into place, and by outrightly declaring forced eviction as a human rights violation.

- The establishment of the National Land Commission is one of the most important proposals in the Bill

and should be retained under all circumstances so that at least we begin to have an accountable and transparent framework within which land matters can be handled. Taken together with the provision of freedom to information, these would go along way in ensuring that never again would members of the public be left at the mercy of corrupt public officials operating behind closed doors.

All in all, the Draft Constitution Bill has very progressive ideas which should be supported by all of us even as we continue to make suggestions on how some areas can still be strengthened. Indeed, we must not allow ourselves to be distracted by the few problems with the Draft to make us fail to appreciate the overall significance of this Bill in our efforts to lay a foundation upon which we can continue to build our country.

Modernising the Ministry of Lands and Settlement

(Continued from page 3)

Sounding very understanding and a little bit accommodative of people who leave their land fallow for a long time, the Minister said that levying some tax on the piece of land as a punishment is not enough. *'No resource should be left to just lie idle and we would support some form of legislation that encourages people to utilise it up to the maximum,'* remarked Honourable Kimunya. We need to understand why they haven't made use of the land. Probably they need some incentives to make use of it but if all this fails, then they should give the piece of land back to the government for redistribution to more deserving people.

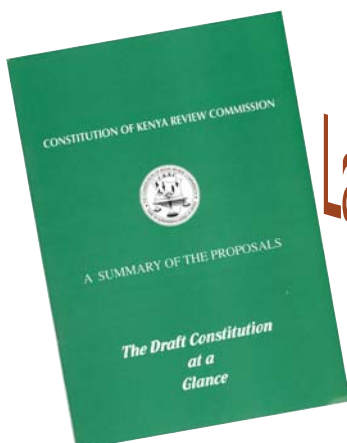
He said that they will regularise genuine

allocations but those that will be found to be faulty will not be spared. He lamented that a lot need to be done to separate the wheat from the chuff. There are investigations going on and a number of cases will be reviewed and as a matter of urgency, he has nullified all post-1999 allocations. He said that all allocations done after the ban was imposed in 1999 are null and void and were done in a fraudulent manner.

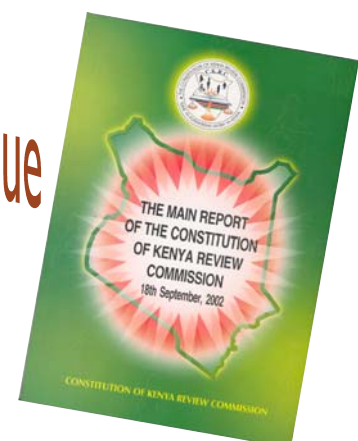
By the time we went to press, Hon. Kimunya had nullified the allocation of controversial 15,000 acre Agricultural Development Co-operation (ADC) land in Lanet. He had also nullified the 13,000 acre Banita Construction Scheme in Ongata Rongai and the controversial Karura Forest allotments.

To face the future and actualise his dream, the Minister will need to clean up the past and sanitise the records.

Recognising the fact that land is central in the development of other sectors, Honourable Kimunya has said that he will work closely with the other Ministers and departments to make sure that the resource is utilised well. *'The past should be seen as an important lesson for the future,'* he philosophised. *'Corruption and other malpractices are rampant and I would like to call upon all Kenyans to rise up and fight it. Fight it in their own small ways and report people engaging in this vice. Let them carry their whistles and they must be ready to blow them anytime they notice anything bad going on,'* summed up the Hon. Minister.



Land in Kenya is a constitutional issue



A Review of NARC's Agenda for Success on Land Issues

“we will actively pursue a ‘no land grabbing’ policy of public land and implement reforms to improve the efficiency of land utilisation and create a comprehensive land policy.”

The above quotable quote is a broad promise from the National Rainbow Coalition (NARC) Government of their wish to sanitise the craze surrounding land issues in Kenya.

In an attempt to bring home their perception of land issues in Kenya, the NARC Government analysed the land situation by producing ‘KANU’s list of failures’ as follows:

Land remains the most contentious issue in Kenya today owing to KANU’s failure to deal effectively with it. 80% of the population live in rural areas and depend on land for their food security. For them, land is life and any threat to it causes fear and panic.

Despite the importance of land, the existing land laws are conflicting. There has been wide-spread abuse of existing land laws leading to irregular allocation (grabbing of public land) to a favoured and privileged few as reward for political loyalty. Disparity in land ownership is one of the major factors of social inequality in Kenya today. Large areas of arable land are controlled by a powerful minority, with the majority of the poor having no access to land. There are some people who are squatting on land with no legal tenure and many who live on very small parcels of land which is insufficient for subsistence farming.

NARC’s position is a true fact. During the past regime, land has been used as a tool of oppression to deny majority of Kenyans their right to life as they depend on land for survival. NARC’s recognition of the critical role that land plays in sustaining the livelihoods of majority of Kenyans is a key step in reviving the economy of this country. In pursuit of its mandate, the NARC Government is striving to put first things first as the only way to achieve their vision of working together to bring about effective changes and liberate the country from bad governance and economic mismanagement.

It is the hope of Kenya Land Alliance (KLA) that NARC will keep its promise to serve and put power, wealth and opportunity in the hands of many Kenyans as opposed to the chosen few, by ensuring that all irregularly allocated land is returned to the rightful owners. The Alliance demand that the Njonjo Commission Report be availed for public debate soon enough before the National Constitutional Conference.

KLA commends the Government for recognising the interconnection between land, environment and natural resources in pursuit for sustainable development. In light of this, the Alliance hopes that the Government, through the Ministry of Environment, Natural Resources and wildlife, will continue inputting into the on-going campaign for the protection of forestlands. Regarding the former government’s gazette to excise large tract of forestlands, the Alliance urges the Minister to revoke the gazette and the legislative notices to that effect.

Specifically, as is laid down in the NARC Manifesto, the NARC Government will not rest until the following issues pertinent to land are fixed:

- *Implementation of the Land Principles in the New Constitution. This would entail a review of the existing plethora of land laws and regulation with a view to rationalising and harmonising them.*
- *Establishment of a Land Commission.*
- *Streamlining and updating efficient records in all land registries.*
- *Creating an office of the Ombudsman to look into the grievances involving displacement caused by development projects, land clashes or natural disasters.*
- *Pursuing a ‘no land grabbing’ policy of Public Land and legally investigate past allocations.*
- *Ensuring environmental recovery measures with land that has become degraded as a result of unsustainable exploitation.*

Kenya Land Alliance, in its capacity as a lobbying and advocacy organisation, has vowed to work closely with the

Government and other stakeholders in ensuring that the above issues are tackled.

Land and the underlying natural resources are key in achieving the primary and long-term objective of poverty alleviation and economic recovery in the country. In view of this fact, KLA calls upon every Kenyan to be conscious of sustainable land and natural resource use, and safeguard the environment against degradation and pollution. This is the only way to create synergy with the Government and other stakeholders to assist the Government to fulfill the promises in their Manifesto.

However, it is imperative to note that in the absence of a land policy framework, nothing much can be achieved. In Kenya, there is no policy framework from which holistic and integrated strategy for wise use of land can be generated. Instead, there are numerous sectoral policies that are laden with sectoral interests, such that the translation of these policies into practice has not been successful. This has had direct impact on natural resources and the environment, leading to depletion of the natural resources and environmental degradation.

Therefore, in view of the foregoing, an institutional re-arrangement is inevitable if all said has to be done. A national land-use policy with a well-articulated national land-use plan needs to be put in place. This will require an apex, umbrella organisation to integrate all the concerns pertinent to land and take the responsibility of implementing and enforcing the provisions of the policy. Hence, there is need to establish a National Land Commission that would enforce the national land-use policy and implement the national land-use plan. It would act a role of a watch-dog to stipulate the manner in which land resources would be accessed and used.

On its part, Kenya Land Alliance will continue to mobilise the land-based communities to input into the NARC Agenda for Success so as to come up with a people-driven National Land Policy and a National Land Commission.

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