



Kenya Finally Starts the Process of Developing a National Land Policy

The Government of Kenya through the Ministry of Lands and Housing (MOLH) has finally embarked on the process of developing a National Land Policy (NLP) that is envisaged to be in place by June 2005.

It has been a tortuous journey for many in the civil society and other stakeholders. The NLP will come, as a gratifying culmination of a battle well fought and the win will hopefully be savoured for a very long time to come.

The Minister of Lands and Housing, Hon. Amos Kimunya launched the NLP policy formulation process during a two-day stakeholders' workshop that was held at the School of Monetary Studies in Nairobi. The meeting held on 10th and 11th February 2004, drew participants from different departments in the MOLH and the civil society, private sector, academic and professional bodies. Other participants included representatives from UNEP, DFID, JICA, Oxfam GB and UN Habitat.

At the workshop, a draft NLP Policy Concept Paper was introduced and deliberation by the stakeholders and their input consequently sought. The concept paper was finalized and circulated in March. This paper is being used to provide guidelines for the formulation of the National Land Policy, a process that is expected to take about one and half-years.

The committee

The process of formulating a NLP is

spearheaded by the Ministry of Lands and Housing with the Permanent Secretary as the Chairperson of the Steering Committee. Other ministries that constitute this Committee include Local Government, Agriculture, Livestock and Fisheries Development, Water Resource

identified. Various heads of departments from the MOLH are also expected to sit in this Committee. However, since the steering committee is chaired by the Permanent Secretary, there would be replication of duties as the departmental heads from the MOLH are in the thematic groups



A National Land Policy should resolve human-wildlife conflicts

Management, Environment and Natural Resources, Tourism and Wildlife, Planning and National Development, Regional Development, Roads and Public Works, Gender, Sports, Culture and Social Services, the Office of the President and the Attorney General's Chambers.

Others who will be added to the Steering Committee include the technical advisor, the coordinator, who will also serve as the secretary, and the non-state chairpersons of the six thematic working groups which will give recommendation on the resolution of the issues

whose chairpersons are also members of the Steering Committee.

Formulating a NLP

Land has immense economical, social, cultural and political value, a factor that has led to its over-politicization. Thus the process of developing a NLP is a belated attempt to deal with the issues surrounding land, which has been a subject of abuse especially by the political elite. The formulation process is therefore expected to be a bumpy ride to rectifying issues such as squatters, informal

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The National Land Policy

The process of formulating a National Land Policy is already in progress. The successful completion of the Policy will set in motion a series of actions and activities that will have far reaching implications on land relations and land use in this country. Wide ranging changes in the institutional, normative and policy frameworks of *land ownership, use and management* will be effected by the Government.

The National Land Policy will take on added importance since it is being developed at a time when the country is likely to embrace a new Constitutional and Governance Order with the adoption of a new constitution following the Bomas Conference.

The Kenya Land Alliance takes this opportunity to reiterate that the process of formulating the National Land Policy is of crucial importance to *economic development and growth, poverty reduction and governance*. Thus, given the complex nature of the land question in Kenya which comprises of political, economic, technical, legal and institutional factors, the *primary stakeholders* of rural and urban society need to be mobilized to participate in lobbying and influencing the **land policy**. This is because land policies determine who has legal rights of *access and/or ownership* to certain resources and under what conditions, and therefore how these productive assets are distributed among diverse stakeholders.

The envisaged National Land Policy will express implicitly or explicitly, the political choices Kenyans shall make concerning the distribution of power between the state, its citizens and local systems of authority. The multiple dimensions to land issues, concerns and fears require a careful and well-thought out approach to the *land policy*

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formulation process, which places current land issues within the broader historical, political, economic and social context. All stakeholders to the National Land Policy formulation process are reminded that the aim of any land policy is to achieve certain objectives relating to the use and management of, and access and rights to land, including the forms of tenure under which it is held.

A Land Policy defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. Therefore, stakeholders are expected to discuss and come up with *details of conditions* under which land use and development can take place, its *administration* (how the rules and procedures are defined and put into practice) the *means* by which these rights are ratified and administered, and how *information* about land holdings is managed. The stakeholders need to specify the *structures* in charge of implementing legislation, land management and arbitration of conflicts.

Regardless of ideological orientation, all stakeholders shall bear in mind that gender relations in Kenya have been characterized by *discriminatory and inequitable practices* against women. These practices are embodied in the legal system and administrative structures of the Government. Despite the fact that women constitute over fifty percent of the productive land-based labour force in the country discrimination against them is firmly anchored in the laws, customs and practices of various ethnic communities, which marginalize and disempower women in terms of their right and

capacity to own, manage and transfer land.

This situation has forced reformists across the board to urge for gender equity mainstreaming in constitutional, legislative, institutional and policy regimes. This trend has dominated the constitutional and legal reform discourse during the last ten years.

The Draft Constitution contains bold provisions that outlaw *gender based discrimination* in all spheres of national life. It follows therefore that any laws or policies which by their very nature promote any sort of discrimination against women must be changed to conform to the constitution. Even where the new constitution may not come into force in the foreseeable future, it is imperative that new laws and policies embrace gender equity principles. This will be in keeping with the democratization wave that is sweeping across the African Continent.

A Land Policy must therefore embrace gender sensitive principles so that the same can be translated into legal and institutional reform. Such a Land Policy will not only redress past inequities, but it will consolidate the gains already made by women in many spheres of life in recent times.

All in all, KLA holds the view that the National Land Policy formulation process, however organized, must be based on a clear analysis of the problems to be dealt with, shared agreements amongst the principal stakeholders (both primary and secondary), and good knowledge of field situations. There is therefore a compelling need to engage in broad debate across the country among the general citizenry, within civil society and inter-ministerial departments concerned in one way or another with land matters.

Developing a National Land Policy finally starts

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settlements, restitution of historical injustices, inequitable land distribution, irregular public land allocation, insufficient institutional frameworks, environmental concerns and conflict dispute resolution.

The development of a NLP should be an *inclusive* and *consultative* process which will provide policies and laws that will ensure proper practices in the ownership, control, use and management of land and land markets. However, the **primary stakeholders**—the people directly involved with land use— such as farmers, fishermen, hawkers, squatters, among others, have not been deliberately incorporated.

It is assumed that their interests and concerns will be articulated by the six thematic working groups which consist of **secondary stakeholders** from the private sector, professional bodies, the civil society and the academia. This assumption raises questions about the possibilities of conclusively tackling the issues, fears and concerns of the primary stakeholders.

Key issues

Development of a modern Land Information System that guarantees accountability, transparency, efficiency and effectiveness in land administration alone without redressing the historical land wrongs and injustices would not address the inherent land conflicts.

The expanding population consisting of a large number of unemployed people continues to exert pressure on our limited land resources. This problem is compounded by the fact that a large fraction of arable land is owned by a very small group of the affluent and politically connected who would steer land reforms in their favour.

The issue of *inter-generational equity* in land access, control, use and ownership needs to be addressed

given the fact that land is an essential natural resource both for survival and prosperity of majority Kenyans who depend on land for their livelihoods. The land policy should focus on empowering Kenyans as stewards rather than feudal holders of scarce arable land, charged with the responsibility of safeguarding the rights of the present and unborn generations and of conserving land as the basis of our sensitive ecosystem.

The coastal land issue involving an area comprising of a ten-mile strip

especially in Kiambu, Kisii and Vihiga.

With the current estimates that agriculture and pastoralism provide livelihoods for over 75% of the Kenyan population, support 70% of all wage employment and contribute over 80% of export earnings, the continued fragmentation and skewed distribution of land will hinder economic recovery and ruin the economy.

One of the ways of releasing unused land that is being held by local and



Unused land held by absentee landlords should be released for productive use

stretching inland from Vanga in the south to Kisumu in the north deserves to be addressed once and for all. The problem of absentee landlords who acquired pre-1985 land titles that are recognized to date over land occupied and used by ancestral coastal people who have remained squatters on their land needs to be sorted out by the NLP.

Thus, the formulation of a NLP should address land as a primary resource for the generation of wealth and economic empowerment. Given that Kenya's economy is and will for a long time remain primarily dependent on agricultural and pastoral land uses, the NLP should ensure sustainable and efficient use of land.

The policy should discourage the fragmentation of land into uneconomical parcels which is on the increase in the country

international absentee landlords would be by introducing a *land tax*. However, this strategy has not been explored in the Concept Paper. The political elite in the first and second regimes as well as some allegedly in the third regime have used their positions to amass huge pieces of land.

Putting the secondary stakeholders in the mainstream of the entire NLP formulation process and sidelining the actual land users will promote the continued existence of a policy framework that favours the big private and well-heeled developer thus ensuring wealth is generated and retained by only a few people. Thus, the policy should ensure that the actual land user has access to land to generate wealth in their own unique ways. The fishermen need access to the beach without being harassed by private

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The overall concern about the adopted process of developing a National Land Policy

True, the National Land Policy Formulation Process need to be cost effective, facilitative, consultative, participatory, interactive and inclusive in addition to being timely and professional, transparent, and gender sensitive as clearly stated in the Concept Paper guiding the process. However, poor management strategy, failure to identify stakeholders with legitimate interests in the land resource and involve and empower them to participate in the planning and management process from the very beginning can spell doom to the outcome of the process.

The main concern is that whereas secondary stakeholders earmarked to participate in the thematic working groups as identified are acceptable, the absence of primary stakeholders (meaning those whose livelihoods is directly affected by their access to land and other land based resources) rises a major worry. This is so because the process as outlined in the Concept Paper is centered on the concept of stakeholders and their objectives, and the role of the government in creating the conditions within which both the rural and urban people shall deliberate the use of land productively and sustainably. This approach in principle ought to entail integration of grass-roots (primary stakeholders) participation as a key factor of success.

With an elaborate process such as the one outlined in the Ministry of Lands and Housing Concept Paper, it would have been proper to have all types of stakeholders involved i.e. **Direct or Primary Stakeholders** (those who directly depend on use of land to eke out their livelihoods), **Indirect Stakeholders** (defined broadly as those who are affected by the actions of the land users) and **Interest Groups** (defined broadly

as those concerned with influencing policy for varied reasons including conservation or scientific use of

adequately represented, and that suitable fora are provided for discussion and negotiation. The



Primary stakeholders should participate in the formulation of the National Land Policy

land). All the three types of stakeholders however identified have different goals, needs, stakes, fears and concerns. Perhaps it suffices to add that **women** constitute another stakeholder group, which needs to be considered differently given their historical marginalization.

In addition, the *direct stakeholders* who include farmers both small and large scale, pastoralists, fisher folks (fishing community), dependents of forest products (forest dwellers), hawkers and other primary stakeholders are not represented in any of the six thematic working groups. Yet, in reality, none of these can be represented by the other or any other category of stakeholders in terms of their objectives to land use needs/stakes.

All said and done the responsibility of creating the list of identified stakeholders lies within the institution or the structure coordinating the National Land Policy Formulation process. Therefore, it is the responsibility of the coordinating institution to ensure that each stakeholder is

concern here is that the government which is considered both the head of the process and stakeholder and whose role is normally to identify stakeholders, chose not only to dominate the thematic working groups but deliberately left out other direct primary stakeholders.

This implies that when it comes to defining goals, needs and stakes, the stakeholders left out will not be able to discuss and negotiate as required in a well balanced policy development process. And since the main purpose of having a participatory National Land Policy Formulation Process is to arrive at an improvement in the present land use using a rational sequence of optimization and trade-offs among different stakeholders, it becomes a major concern about what kind of policy that will be formulated at the end of the process. Empirical evidence has shown that just as objectives of various groups or individuals are likely to vary and be in conflict, those of various stakeholders are varied and in conflict, which compels the call for

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The National Land Policy and the Squatters Crisis

Apart from ensuring that there is sustainable economic growth and development in the country, the National Land Policy is also expected to assist the government to address some of the most fundamental historical land-related problems in the country, especially those that have remained unresolved for a long time.

One of the most glaring and unfortunate manifestations of the inequalities and irregularities in land allocation and mismanagement brought about by lack of a sound National Land Policy are the **squatters** found in every corner of the country. This is a most sensitive land issue and experts argue that it is an area that needs to be tackled with a lot of caution. The process of formulating a National Land Policy should therefore tackle this age-old problem once and for all as its continued existence is a sad reminder of the inconsiderateness, insatiability and injustices in our past and present.

It has been argued that apart from highlighting the inequalities and injustices associated with land in this country, the issue of squatters highlights the social, economic and political differences that need to be urgently addressed.

While other problems like land grabbing, absentee landlords or even political patronage may appear obvious, the squatter crisis in this country is the human face of the complex and debauched land question in Kenya.

The problem, in its rural and urban dimensions, appears to be getting worse hence requiring a more practical and innovative way to address it. The confrontation between the police and squatters led by the Assistant Minister in the Office of President in charge of internal security Professor Kivutha Kibwana might not be the most

recent incident but it was certainly one of the most publicized.

In the premier edition of the *Land Update* bulletin, the Kenya Land Alliance pointed out that while most of the rural squatters are former labourers from white owned farms, many of the new urban ones are displaced victims of political violence. It was written: "The slum dwellers are the largest constituent of squatters in our urban centers. The constant demolition of their dwellings is a constant reminder of the land related inequality in the urban centers."

In some of the incidents that were cited in this publication, it was noted that in Malindi, "squatters have invaded and built structures near the airport making it difficult for the facility to be upgraded." In Taita Taveta, the squatters' problem was a serious campaign issue in the 2001 by-election and it was also cited as a security threat.

The issue of squatters highlights the social, economic and political differences that need to be urgently addressed.

The coastal region was cited as the hot bed of the squatter problem. "The land crisis in the Coast province is a political time bomb ticking away to an almost guaranteed explosion," observed representatives from the region when they presented their views to the Njonjo-led Presidential Commission on Land Law System.

They noted: "*It has happened in the past in Mtondia, Likoni, Tana River and even Madunguni. The list is endless and judging by the government's ineffective approach to the crisis, violence is likely to recur. Many times instead of facing the crisis, the government has often played the devils advocate by stoking the fires of ethnic disparities which at the hands of the regions' inept political leadership,*

produces the final spark."

In their analysis of the land problem in the Coastal region, Ngumbao Kithi and Alakeem Noor pointed out that rural landlessness is most prominent in Kwale, Kilifi, Taita Taveta, Mombasa, Lamu, Tana River and Malindi districts, with the majority of the inhabitants being the Mijikenda, Taita and Taveta communities.

The squatter problem is acute in all these districts but each district has its own unique problems that range from the unresolved Mazrui **family land disputes** in Kilifi to Tana River's perennial **land adjudication** that has culminated in fighting between the pastrolist Orma and the farming Pokomo communities. Others include the issue of **compensation** in Kwale, the Swaleh Nguru family land problem in Mombasa, **land grabbers** in Lamu, who have targeted all the beach plots, the **unscrupulous politicians** in Malindi and Taita Taveta district's unique problems where 75 per cent of the land is occupied by two prominent families and **wild animals**.

These problems are not limited to these regions alone. Other areas such as Trans Nzoia, Uasin Gishu, Marakwet, Pokot districts and other North Rift regions, Central province, Western Kenya and other parts have experienced similar problems. These problems were amplified by the politically instigated ethnic clashes where many families were displaced from their land and homes.

These are problems that need to be solved quickly because they are closely linked to other numerous problems in the country. Other pertinent issues that need to be discussed once the squatter issue is resolved include restitution of historical land injustices to foster national reconciliation and stability.

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FACTS

Did you know that:

The Government of Kenya has completed the process of selection and interviews for those who were to be considered in the Land Control Boards and Land Dispute Tribunals. The training that was officially opened by the Minister for Justice and Constitutional Affairs, Kiraitu Murungi and his Lands and Housing counterpart Amos Kimunya was held at the Kenya Institute of Administration (KIA) between the 17th to 21st May 2004.

This process of building of the capacity of those in the two land structures funded by the Department for International Development (DFID) and is being mounted by the Ministry of Lands and Housing in liaison with the Kenya School of Law, Kenya Land Alliance and other stakeholders in land matters.

The US Government has extended the African Growth and Opportunity Act (Agoa) facility to the year 2015. However Agoa apparel exporters have until 2006 to build capacity for their factories since the US government will start phasing out the 3rd country fabric provision in 2007.

Beginning 2006, US will only allow 50% of exports fabrics sourced from within, or imported from the region other than far off places like China. Currently, Kenya has 40 Agoa based apparel factories that consume 64 million meters of textile imported from China.

Kenya is experiencing food shortage again! It is estimated that close to 600,000 people are starving in Coast Province, with communities in Taita Taveta being the most affected. Other parts of the country such as Turkana and parts of Ukambani are also experiencing

food shortages. The situation is likely to be compounded by the failure of the long rains in the grain basket districts of the Rift Valley.

About 50% of water in Nairobi goes to waste as a result of leaks and illegal connections and that Sh. 350 million which could otherwise be used to improve water supply is also lost through the wastage. Statistics show that water billing

order came as the Parliamentary Committee stepped into the sugar crisis and summoned the three relevant ministers to resolve their differences.

The Introduction of Genetically Modified foods (GM) in Kenya has received backing from the highest office in the land.

The Greenhouse for genetically



Wastage of water causes water shortage

is woefully inadequate and in dire need of improvement and only about 186,000 customers are metered, against a potential 450,000. The chairman of the Nairobi Water Services Board, Mr. Paul Kinyori whose board licenses water distributors in Nairobi and its surrounding districts, said that distribution and water revenue collection would be improved within the first six months of the Board's operation.

In the raging controversy over the importation of sugar, the High Court temporarily stopped the importation of duty free sugar from the COMESA region. The order will remain in force until a judicial case pending in court is determined. The

modified (GM) maize at the Kenya Agricultural Research Institute (Kari), was officially opened by the President who said that the government is committed to the development of GM, or any other technology, that will increase agricultural output. "Agricultural biotechnology is one of the modern innovative approaches that can make us increase food output".

He continued, "The increased cases of drought and disease also demands the use of modern farming methods that will increase yields, while ensuring that losses are kept to a minimum". With these statements, the President once more brought back the debate on GMO that seemed to have taken a lull!

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developers who have put up tourist beach hotels. When a ban on logging is issued, it should be applied equally.

Political reforms are necessary for a sound NLP to be formulated. Political reforms on land related matters, has been the clarion call for all stakeholders who have been agitating for land restructuring whose views were collected and collated by both the Njonjo-led Presidential Commission of Inquiry into the Land Systems in Kenya and the Constitution of Kenya Review Commission (CKRC).

“It is above all the laws governing land especially the one that puts the power over land in the hands of a central president and his arm, the provincial administration that was inherited from the colonialists that the change must begin,” pointed out Hon. Mashengu wa Mwachofi, a former member of parliament for Wundanyi to the Njonjo-led Commission.

Hon. Mwachofi added: “ It should have been done in 1963. The new system adopted the unequal unjust division of land. The total authority over land, as exercised by the colonial governor, was transferred to the president who inherited more control in the sense that under the governor aggrieved parties would resort to the governor’s boss, the British government and its democratic systems including an independent judiciary, a free parliament and press for redress. In the post-

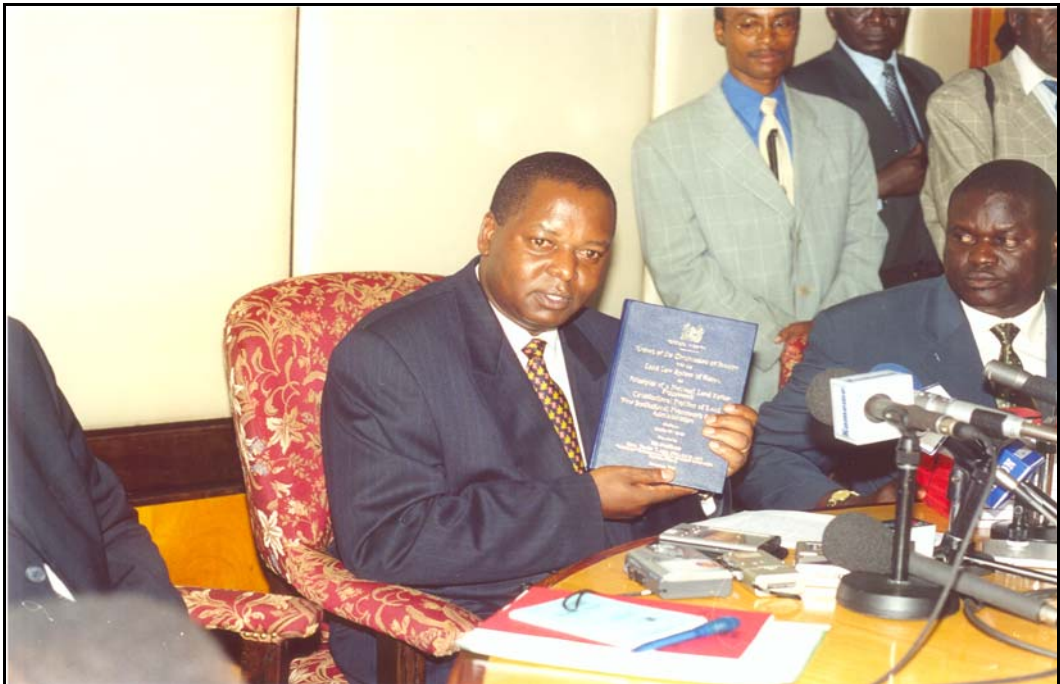
colonial era we would have no one to resort to. Two institutions of state namely Parliament and Judiciary are all subordinates to the president and the provincial administration.” Land has been the preferred weapon of power and political influence to win favours or punish those we deem to be our opponents.

There is need to address how the level and powers of the State and the President to regulate and intervene in the enjoyment of land rights shall be managed or addressed. Will the President’s

mobilize the primary stakeholders to be part and parcel of this important exercise so that the envisaged outcome will translate into a brighter future.

One way of mobilizing them would be through strong social movements around their economic activities. That is through strong movements for fishermen, pastoralists, women and other marginalized groups to lobby their interests.

Alongside this, we should also ensure that the process of formulating a NLP does not fall



Hon. Amos Kimunya, Minister for Lands and Housing presents to the public the final report of the Njonjo Commission of Inquiry into the Land Systems in Kenya.

limitless powers on land be transferred to a Land National Commission since Kenyans have clearly expressed interest in the existence of such an office?

It is envisaged that the process will lead to the publication of the Sessional Paper on National Land Policy which will lead to more integrity, efficiency, effectiveness, transparency and accountability in land management, administration and use.

There is no doubt that one of the most critical undertaking in the whole process will be how to

victim to the same kind of maneuvers, animosity, power struggles and schisms that have typified the drive for the enactment of the new constitution. The process is happening at a time many people are disillusioned by the goings-on at the Constitutional front and has without doubt made more people skeptical.

Thus, one of the challenges that will be faced is how to mobilize people to see the usefulness of the process and make their contributions so that the NLP document will have the desired outcome.

The overall concern about the adopted process of developing a National Land Policy

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the presence of direct or primary stakeholders to be involved in their own right and not be assumed to be represented by any secondary stakeholder group, however well-meaning. To illustrate this point take objectives of various stakeholders for a tract of land in a semi-arid part in Kenya. The stakeholders in this case could be the Ministry of Agriculture, Department of Wildlife Services, Ministry of Environment and Natural Resources, Office of the President, Department of Arid and Semi-Arid lands – whose objectives could be generating incomes from commercial livestock development, conservation of wildlife and provision of opportunities for economic utilization, and conservation of soil and water resources and protect environment. This is opposed to the objectives of direct or primary stakeholders - richer farmer, poorer farmer, landless peasant, nomadic pastoralist and trader/ entrepreneur-to maximize profits, meet family needs, spread risks, obtain employment, maintain access to wildlife and rangeland products, maintenance of livestock herds and increase business opportunities. Although this is far from comprehensive, it illustrates the complexity of interests in land which must be unraveled, analyzed and negotiated during the national land policy formulation process.

Reading through the terms of reference that are meant to guide the thematic working group stakeholders' deliberations as outlined in the Concept Paper reflects that adequate analysis was taken in drawing them. However, normative reality requires that in drawing the terms of reference, the participation of all the three stakeholders as explained herein must be the sure route. Otherwise, if different groups of stakeholders do not participate actively it means that the policy statements and

consequent legal framework that would emerge will not be a result of consensus reached out of discussed and negotiated stakes and needs.

It would follow that from the NLPF process the direct and primary stakeholders (whose livelihoods depend directly on land and other land based natural resources) are envisaged to be passive participants who are told what is going to happen or what has already happened. They, in return are expected to participate by giving information only by answering the questions, if any, raised by the thematic working groups. This assumed position is a cause for worry since a process that is alluded to be interactive and consultative seems not to pay attention to the primary stakeholders' active participation.

The other confounding concern about the NLPF process is the composition of the management structure whose membership is dominated by government and not representative of the three categories of stakeholders as herein outlined. Out of an elaborate Steering Committee membership of over 30 members when fully composed the Non-State Actors are only six on this management structure. The concern here is compounded by knowledge that the Ministry of Lands and Housing which is over represented on the Steering Committee with Permanent Secretary of that Ministry as the Chairperson, will also be represented by Heads of Departments who equally sit in the thematic groups. The rationale of this arrangement is not explained. But all the same, considering that the Ministry of Lands and Housing is part of the problem in land administration system, what value added is the over representation meant to address? And once again the primary stakeholders' representation on this crucial

structure of the process has been ignored.

Given the acknowledged position that land is an essential natural resource, both for the survival and prosperity of Kenya and for the maintenance of our territorial ecosystem, the participation of all stakeholders in the process as equals is paramount. Otherwise, with Kenya still grouped in the United Nations Development Programme human development index as one of the countries with worst skewed national wealth distribution and with majority of the population living below poverty line, if the land question is not examined by all stakeholders in a well represented process, the National Land Policy to be formulated shall be warped in favour of rich 20% who share 51.2 % of national wealth leaving 80% with 48.8 %.

Therefore, as long as Kenya's economy shall remain primarily dependent on agriculture and pastoral land uses, any process to discuss and negotiate stakes over land is mainly a major concern of stakeholders from this category. This is supported by statistics to the effect that agriculture and pastoralism provide livelihoods to over 75% of the population and support 70% of all wage employment apart from contributing over 80% of export earnings.

It goes without saying that if the NLPF process is not corrected to include primary stakeholders at all levels, the policy document that shall result is likely to have long-term consequences that shall impact negatively for the political, economic and social development of this country.

We would not only have wasted time but also resources while reinforcing the current skewed and unplanned use of land related natural resources.

The National Land Policy and the Squatters Crisis

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The consultative policy formulation process recognizes the immensity of this monstrous problem which is anticipated to be adequately addressed in the first and second thematic working groups. The thematic groups that will examine the squatter's problem are classified as:

1. Rural land use, environment and informal sector and;
2. Urban land use, environment and informal sector.

Both groups have a heavy representation of Ministries, related government departments and development authorities drawn from the public sector. The private sector and civil society are equally involved. On paper, it seems like the exercise will be as consultative as possible. The groups have a wide scope to cover.

Their terms of reference are numerous and while some of them capture and articulate the needs of the larger Kenyan citizenry, some basic principles have been left out. It is alright to revise and analyze the impact of sub-division in the rural areas but the review should be taken beyond the African Development Corporation farms, research institute land, group ranches and cooperative lands, as identified in the Concept Paper.

The question of sub-division should be extended to cover even land that is privately owned. As it has been clearly stated in this publication, land has been fragmented into uneconomical parcels that are a source of an emergent and contemporary land problem.

At independence, many people especially from Central Kenya were resettled in farms formerly owned

by white settlers. The farms that these families were allocated then were large but their economic viability has deteriorated over the years as families sub-divide their portions further for domestic use or to raise funds.

This has resulted in random urbanization of these areas with reduction in the economic viability of the land. The sub-divisions have

doubt, this system needs to be reviewed.

The terms of reference in the Concept Paper are silent on the question of absentee landlords who own large parcels of lands in the rural and urban areas for speculative purposes.

Hoarding of land is a longstanding problem in this country, made



The National Land Policy should resolve the issue of squatters

extended to parts set aside for cash crops such as coffee. These sub divisions have increased food insecurity in these regions and the country in general.

Families no longer have enough space to cultivate for their own domestic use let alone have surpluses for the market. To meet this shortfall, some people have cultivated in forests through the

The constant demolition of their dwellings is a constant reminder of the land related inequality in the urban centers.

shamba systems where confrontations with wild animals have been frequent. Without

worse by the political elite who perfected it as a way to instant riches. This has resulted in scarcity of the land and what is available is overpriced. The terms of reference do not mention whether a land tax regime should be introduced to ensure that tracts of land owned for speculative purposes are released for productive use.

It is common knowledge that the allocation of the ADC farms, research institute land, group ranches and cooperative lands and others public land was done by the politically correct people in all the former regimes. Revising these allocations and sub-divisions need to categorically state whether it is being done to legitimize the

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allocations or find the culprits who stole public land. It needs to be outlined if this review and analysis is being done to identify whether the land went to deserving cases or not.

The urban land use, environment and informal sector thematic group

Recently, efforts to resettle dwellers in the informal settlements in some parts of Embu became a cropper when they rented out their new houses and moved back to the slums. For these people, this was a good source of income that could well support their lives in the slums.

Such an issue is complex and

In instances where land has been set aside to resettle squatters, some corrupt officials have favoured the rich. This is one of the causes of ugly confrontations between the police and some senior government officials. The new land policy should aim at addressing this problem in its broadest and comprehensive way. As it has been noted in the Bomas



There has been rapid growth in the number of squatters and slums in rural and urban areas.

is guided by the following principles:

- ☞ Cities without slums
- ☞ Cities of enterprise
- ☞ Sustainable cities
- ☞ Safer cities

It's terms are broad and not comprehensive enough. The slum dwellers are the largest constituent of squatters in our urban centers. The constant demolition of their dwellings is a constant reminder of the land related inequality in the urban centers. The terms of reference recognize the extent of the problem and how it can be totally eradicated from our urban centers.

requires the input of the concerned communities for the perennial squatter problem to be tackled once and for all. This problem emanated from the rapid growth of the Kenyan population with a great demand for land. Due to lack of a National Land Policy, the increasing demand was not satisfied in an equitable, transparent, fair and effective manner to ensure productive and sustainable land.

The closed manner in which the process of adjudication, consolidation and registration took place was open to abuse by corrupt government officials who robbed many a chance to own land. This resulted in the rapid growth of the squatter population.

Draft Constitution, "land being a primary economic resource and the basis of livelihood for the people of Kenya, should be held, used and managed in an equitable, efficient, productive and sustainable manner for the benefit of all Kenyans, irrespective of gender, ethnic group, community or any other grouping."

It is Kenya Land Alliance position that the envisaged National Land Policy is a clear way to effectively address the squatter problem in Kenya once and for all contrary to the current practice where powers that be, have assumed that such issues can be solved through segmented and political statements that often cannot stand the test of time.

The National Land Policy and Public Land Management

One category of land that should be addressed by the National Land Policy (NLP) once and for all is *public* land, which statutorily is referred to as *government* land. Our colonial history left us with a complex and difficult legacy of conquest and dispossession of customary land, which was appropriated and made “crown land” and at independence re-named government land. To address the consequences of this legacy, the NLP Formulation Process must deliberate and propose reasonable policy and legislative frameworks within which public land can be accessed on an equitable basis.

This is so because despite the extent of government control over this category of land, public land is a national resource, the uses of which should be governed by a policy that supports the national macro-economic, human development and redistributive goals given the skewed distribution of land as primary capital asset and a basis of national wealth.

Whereas there are broad range of policy issues in relation to public land such as the concern that public land should be effectively managed in the public’s best interest, that the tenure rights of those who beneficially occupy public land should be secure, and that public land should be properly allocated for land reform and for the national development agenda, the custodians of public land continue to treat public land as a private estate which can be dished out without regard for public interest.

Therefore, the NLP Formulation Process shall provide an overarching framework within which land use and development decisions around public land should be made. Thus, government responsibilities in regard to public land shall be limited to:

- Ensuring the release of public land as a resource for sustainable development.
- Creating an accessible, accurate and comprehensive information

- system on public land holdings.
- Establishing, in consultation with other tiers of devolved governance and departments of government, clear and transparent criteria for the development and disposal of public land.
- Clarifying the roles of responsibilities of tiers and agencies of government in regard to public land.

In providing for the above proposals, stakeholders in the NLP Formulation Process need to consider a range of factors including the Bomas Constitution Draft provisions that provide for establishment of clear mechanisms and procedures to facilitate co-operative governance over land and natural resources.

The NLP should place general obligations upon all custodians and administrators of public land to the effect that whatever their mandate they are mere trustees on behalf of the general public who shall forever remain legitimate beneficiaries of public land. Thus, holding of public land by a government department or tiers of government, should not mean that the general public has extinguished interest in public land.

Therefore, responsibilities with regard to the allocation and use of public land should be regulated by public law and statute. Further still, the stakeholders should categorically provide that holding public land on behalf of the public brings with it criminal and civil liabilities and the legal competence to enter into contractual arrangements relating to the land. Thus, the holders of public land should be mandated and compelled to maintain an asset register and be accountable to the Auditor General. In view of this the NLP should outline the legal and practical consequences of holding public land, stating clear lines of responsibilities over public land.

The NLP stakeholders have no

option but to tighten the disposal and allocation procedure of public land. This is crucial because public land is important for national development, not for personal enrichment of custodians. The different levels of government in charge of public land should have a constructive attitude to the disposal of public land for development, in addition to responding positively to requests for its use. Therefore, the NLP should provide for building of capacity of land officers to identify potential developments for particular categories of public land within the context of national, provincial and local development plans as approved by the public/citizens. Each piece of public land should be examined in relation to the hierarchy of needs and uses before any disposal decision is taken. It therefore follows that the sale of public land on open market should be provided for only if the land in question is unsuitable for public-assisted development, and that the funds generated through disposal of public land should be used where possible in support of further land acquisition for public purpose.

A NLP should resolve public land allocation illegalities and irregularities to address the skewed distribution of national wealth, insecurity, continued landlessness and poverty, injustices of colonial-based land dispossession, inequitable ownership of land and lack of security of land tenure especially among the urban poor in informal settlements. In addition, there is need for sustainable use of public land, repaid release of public land for development and effective administration of public land.

The bottom line of the NLP is to guide public land management and administration to establish procedures to facilitate the release of appropriate public land for affordable housing, public services and other productive uses as well as recreational purposes.

NEWS

DRAFT MINING AND MINERALS POLICY AND LEGISLATIVE FRAMEWORK

The draft report reviewing the mining and minerals policy and legislation was prepared without the involvement of stakeholders in this country. A team of consultants from the Commonwealth Secretariat prepared the document.

While we applaud the government for undertaking the task of reviewing the policies and laws of mining in Kenya, we take issue of the fact that the civil society, private sector, non-governmental organizations and other stakeholders were not involved in the process of preparing the report.

For a review process to be all embracing and participatory, the views of stakeholders must be incorporated. All stakeholders should obtain copies of the draft Mining Policy and Legislation in Kenya from the Ministry of Environment. This will assist them to provide informed input in a meeting that will be convened soon to discuss the recommendations of the report.

CABINET- A MIXTURE OF STRANGE BEDFELLOWS

The recent cabinet reshuffle has brought in some of the individuals adversely mentioned in the Akiwumi report on land clashes in Kenya. It is our great concern that the same people who allegedly instigated land clashes in various parts of the country, which led to loss of lives and property and displacement of people, are now at the center of political leadership.

This brings into question the commitment of the government of the day in ensuring good governance and leadership that will ensure protection of the needs and interests of the landless and unemployed, peasant farmers, women, children,

persons with disabilities, those affected by HIV/AIDS, working people, among others.

What is at stake is the ongoing review on the Constitution of Kenya which will ensure every citizen is accorded honour, respect and dignity. We need leaders who will protect this country from internal and external aggression as well as support an institutional framework for the resettlement of the landless and squatters.

Leaders must remember to exercise power not for their own behalf or for themselves, but on behalf of the people. Good leaders and the government of the day have a duty to guarantee security for all in this country. Otherwise any action that negates this principle is a betrayal of the citizen's trust and can consequently lead to arraignment.

FORESTRY BILL, 2004 TO BE RE-INTRODUCED IN PARLIAMENT IN SIX MONTHS

The Forestry Bill, 2004 will be re-introduced in Parliament for debate in six months. This comes as a result of its defeat in Parliament on 2nd June 2004. Some of the controversial issues that caused the defeat of the government bill include outlawing of the *Shamba* system and the concession of private companies to plant and harvest forests in Kenya.

It is also believed that rising political tensions that have divided the House made it difficult for the bill to be passed in Parliament.

The MPs who supported the Bill believed that it would lead to increased forest cover in Kenya which is currently less than 1.7%. According to the former Environment Minister, Dr. Newton Kulundu, it is illogical to support the *Shamba* system since analyses has shown that 76% of the cases have not and can never be successful. Others who supported the Forestry

Bill include the Vice President, Moody Awori, who believes that the bill would have helped conserve forests in Kenya. The Chief Conservator of Forests, Mr David Mbugua, says that the Bill would have enabled local communities to benefit directly from conservation.

However, leaders who blocked the bill say that it would prevent local communities from participating in the management of forests. Hon. Koigi wa Wamwere believes that any laws that hands over the planting and harvesting of our forests to foreigners is a bad law. The Subukia MP says that it is illogical to terminate the *shamba* system since it only serves to hand over the planting and harvesting of forests in this country to foreigners.

Other reasons that are believed to have caused the defeat of the bill are:

- ☞ The fact that only foreign-owned" companies such as Pan Paper Mills, Rai Plywoods, Timsales and Comply are allowed to log even when there is a ban on logging.
- ☞ Lack of proper understanding by the MPs of the reasons why forestland or forests should be leased out, as spelt out in the Forestry Bill.
- ☞ Lack of a clear understanding of the need for the formation of the forest conservancies as spelt out in the bill. The MPs said that they would prefer district forest management committees since the people of Kenya easily understand the concept of "districts".

It is no secret that the Forestry Bill was defeated in Parliament largely because of differences in the ruling party's leadership. It is expected that before the bill is re-introduced in Parliament, stakeholders will work together with Parliament to enrich the bill and focus on its shortcomings so that it can be passed to law.