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# NATIONAL LAND USE POLICY

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## **Foreword**

Land represents an important resource for the economic life of a majority of people in Kenya. The way people handle and use land resource is decisive for their social and economic well-being as well as for the sustained quality of land resources. Land use however is not only a realm of those directly using it; it is exposed to part of the wider reality of social and economic development and change. Land use therefore is a highly dynamic process. This implies that policy formulation and development planning need to be based on a sound understanding of these dynamics.

Throughout human history, land has played a significant role in society. Land has been the focus of productive activities and a source of political power in any given society. All nations in the world are land based units, whose boundaries reflect social, cultural and political identity. From a human settlements point of view, land is a principle instrument in fostering social justice, development, provision of decent dwellings and health conditions; and therefore its use should reflect the interest of the society as a whole.

Key challenges face the optimal and sustainable use of land in Kenya. The judicious management of natural resources, land being one, is based on the premise that an equitable and sustainable relationship between human and natural resource is fundamental and essential for stability and progress of the land sector in a nation's development.

The biggest challenge that the country faces is to strike a balance between satisfying the human livelihood needs and sustainable use of resources for posterity. Others challenges include:

- The decline in the supply of pastures and portable water which stirs conflicts among pastoralists and between small and large-scale irrigation farmers.
- Poor quality of air and water which increases disease risks in human beings, livestock, wildlife and extinction of other life forms.
- Destruction of water catchment areas that causes shortage of water and electricity supply necessitating rationing.
- Desertification which reduces the productivity of land leading to food insecurity, reduced income and non-accumulation of economic assets.

These challenges spell a gloomy future for the country unless the status quo is changed. The formulation of a National Land Use Policy will thus seek to balance different, yet related, concerns such as food security, human settlements, environmental protection and climate change; and other economic pursuits. The policy will also take cognizance of social, cultural, economic, political and spatial dimensions of development.

## **EXECUTIVE SUMMARY**

The absence of a clearly defined land use policy in Kenya after years of independence has resulted in a haphazard approach to managing the different land use practices and policy responses. Land use continues to be addressed through many uncoordinated legal and policy frameworks that have done little to unravel the many issues that affect land use management.

The Constitution of Kenya 2010, Kenya Vision 2030 and the Sessional Paper No. 3 of 2009 on National Land Policy all call for a clear framework for effectively addressing the challenges related to land use. It is in response to this call that this Land Use Policy has been developed, incorporating all activities that are likely to have an impact on the use of land and its resources.

The overall goal of the national land use policy is to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land related resources in a sustainable and desirable manner at national, county and community levels. The policy is premised on the philosophy of economic productivity, social responsibility, environmental sustainability and cultural conservation. Key principles informing it include efficiency, access to land use information, equity, elimination of discrimination and public benefit sharing.

The policy is cognizant of numerous factors that affect land use in Kenya which include geographic and ecological features, population distribution, social, historical, cultural and economic factors. Other key factors are administrative, institutional and policy instruments, investment, urbanization and land tenure.

So as to ensure efficient, productive and sustainable use of land, key measures shall be taken by the government (both national and county) and all land users. These include: sound land use practices, conservation and enhancement of the quality of land and land-based resources and the proper management of demographic and health parameters. The Government shall institute mechanisms designed to induce land owners to put their land to productive use and encourage the application of efficient technology for the intensification of land use. Urban land use will be improved through measures such as establishing transparent, accountable, sustainable, comprehensive and participatory governance structures and decision-making processes.

Other key measures address issues of land cover, land use data and land use planning. Land use plans shall be developed at both national and county levels with full participation of all stakeholders and strict adherence to them shall be enforced. Harmonization of laws and policies, mapping and documentation of all land uses in the country, developing a framework for incentives to encourage maintenance of forest cover, land banking for industrial, commercial, agricultural, residential and infrastructure development are other critical measures that shall be taken.

# Table of Contents

<b>INTRODUCTION .....</b>	<b>7</b>
1.1 Background .....	7
1.1.1 Land and Land Use in Kenya at a glance, .....	7
1.1.2 Problem statement .....	7
1.1.3 Government Initiatives .....	7
1.2 Vision.....	9
1.3 Mission .....	9
1.4 Objectives- .....	9
1.5 Philosophy of Land Use Policy .....	9
1.6 Guiding Principles and Values of NLUP .....	10
1.7 Methodology.....	10
1.8 Policy review.....	11
<b>Chapter 2: LAND USE IN KENYA .....</b>	<b>12</b>
2.1 Geographical features and ecological zones.....	12
2.2 Population.....	13
2.2.1 Distribution .....	13
2.2.2 Population and Land use.....	13
2.3 Land Use and Land Cover.....	14
2.3.1 Land Use.....	14
2.3.2 Land use data .....	14
2.3.3 Land cover .....	15
2.3.4 Land Availability .....	15
2.4 Land use policy Aspects .....	15
2.4.1 Agricultural Development.....	15
2.4.2 Mainstreaming pastoralism .....	17
2.4.3 Industrial and Commercial Development .....	17
2.4.4 Mining and energy generation.....	18
2.4.5 Tourism .....	18
2.5 Land in socio-Economic development .....	19
2.5.1 Land and Livelihoods.....	19
2.5.2 Transport infrastructure .....	19
2.5.3 Social infrastructure.....	19

2.5.4	Human Settlement/Housing .....	19
2.5.5	Urban Land Uses .....	20
2.5.6	Natural Resources and Environment .....	21
2.5.7	Culture, Heritage and conservation .....	24
2.5.8	Socio- Cultural Aspects of Land.....	24
2.5.9	Colonial and post-colonial land injustices.....	25
2.5.10	The Land Connection to Poverty.....	25
2.5.11	Historical and cultural factors .....	26
2.6	Legal and Institutional Management.....	27
2.6.1	Legal, administrative and institutional factors .....	27
2.6.2	Administration and management factors.....	27
2.6.3	Policy and legislation factors.....	27
2.6.4	Land market and taxation factors.....	28
2.6.5	Land tenure .....	28
4.1.4	Heritage, conservation and cultural issues .....	<b>Error! Bookmark not defined.</b>
<b>CHAPTER THREE: OVERALL POLICY STATEMENTS .....</b>		<b>30</b>
General policy Statements.....		30
3.1	Land Tenure .....	30
3.2	Land Management/Administration .....	31
3.3	Land Tax and Rent (land valuation) .....	31
3.4	Population Growth and Distribution.....	32
3.5	Productive and Sustainable Use of Land.....	32
3.6	Rural Land Uses/ Agricultural Development, Production and Marketing .....	33
3.7	Urban Land Uses .....	35
3.8	Specific Land Use Policy intervention .....	36
3.8.1	Management and Development of land.....	36
3.8.2	Land Use and Land Cover .....	36
3.8.3	Land cover .....	37
3.8.4	Land availability, productivity potential and sustainability .....	37
3.8.5	Productivity .....	38
3.8.6	Population Growth and Land Fragmentation .....	38
3.8.7	Land Use Output .....	39
3.8.8	Guidelines on the Use of Space .....	39

3.8.9	Rangelands Degradation .....	39
3.8.10	Impact of climate change.....	39
3.8.11	Cultivation on Marginal Lands and Fragile Ecosystems .....	40
3.9	Natural Resources and Environment .....	40
3.9.1	Environmental Degradation.....	40
3.9.2	Bio-diversity Conservation .....	41
3.9.3	Climate Change .....	42
3.9.4	Urban Environment Management.....	42
3.9.5	Coastal Environmental Management and Conservation .....	43
3.9.6	Agriculture Environment Management .....	44
3.9.7	Pastoral Lands/ Arid and Semi-Arid Lands .....	44
3.9.8	Rangelands.....	45
3.9.9	Trans-boundary Issues .....	45
3.9.10	Information and Knowledge Gap on Natural Resources .....	46
3.9.11	Government Priorities on issues of National Heritage .....	46
3.10	Human Settlement and Urbanization .....	46
3.10.1	Adequate Planning.....	47
3.10.2	Adequate Shelter for All.....	48
3.10.3	Use of Local Construction Materials .....	48
3.10.4	Provision of Infrastructure and Services in Human .....	49
	Settlements.....	49
3.11	Land Use Management .....	50
3.12	Land use planning .....	51
	<b>CHAPTER FOUR: IMPLEMENTATION FRAMEWORK.....</b>	<b>53</b>
4.1	Institutional Framework.....	53
4.1.1	Coordination among various actors.....	53
4.1.2	Harmonization of land use and their policies .....	53
4.1.3	Dissemination of land use information.....	54
4.2	Legal Framework.....	54
4.2.1	Harmonization of laws and policies .....	54
4.2.2	Interpretation of property rights .....	55
4.2.3	Legal tools and mechanisms to support conservation of heritage and culture .....	55
4.2.4	Policies and legal mechanisms for land resource use in protected areas .....	55

4.2.5 Resource protection outside protected areas .....	55
4.2.6 Sectoral policies in industrial and commercial sectors .....	56
4.3 Regional and International Issues and Obligations (Treaty and Conventions) .....	56
4.3.1 Low level of implementation of the provisions .....	56
4.3.2 Outdated Conventions and Treaties e.g. Nile Treaty of 1929 .....	57
4.3.3 Lack of coordination in the management of trans-boundary resources .....	57
4.3.4 Un-harmonized Regional Legislations and Policies.....	57
4.3.5 National safeguards in Regional and International Obligations .....	57
4.3.6 Inadequate public participations in ratification of Regional and International legal instruments .....	58

## INTRODUCTION

### 1.1 Background

#### **1.1.1 Land and Land Use in Kenya at a glance,**

Land is the most important factor of production, besides labour and capital in Kenya. It is not only a critical resource, but also the foundation of economic development for the country.

The major land-cover types in Kenya are forests, savannahs, grasslands, wetlands, fresh and saline water bodies, and deserts. These are used for agriculture, pastoralism, watercatchments, nature reserves, urban and rural settlements, industry, mining, infrastructure, tourism, recreation. Other uses include cultural sites, fishing, forestry, energy. A larger population in the country derives their livelihoods from land based activities.

#### **1.1.2 Problem statement**

The use of land in urban and rural areas as well as in the land/water interface has been a major area of concern to all Kenyans. Problems of rapid urbanization, inadequate land use planning, unsustainable agricultural and industrial production methods, poor environmental management, poor cultural practices, inappropriate ecosystem protection and management are commonplace and require appropriate policy responses.

The absence of a clearly defined land use policy in Kenya after years of independence has resulted in a haphazard approach to managing the different land use practices and policy responses. In addition, land use issues continue to be addressed through many uncoordinated legal and policy frameworks that have done little to unravel the many issues that affect land use management.

Economic, social and political stability is determined by the extent to which instruments of governance facilitate the productive and sustainable use of land. While Kenya has made important strides towards promoting productive and sustainable use of land, there are still a number of challenges which need to be addressed at policy level. The question of appropriate and beneficial use of land in Kenya has gained prominence in the face of growing population and mounting demand for land resources. This calls for prudent and participatory planning and utilization of these resources in an equitable, efficient and sustainable manner that maximizes on production.

#### **1.1.3 Government Initiatives**

In the past, efforts on land use and environment management were uncoordinated as Kenya has not had a national land use policy. The colonial period introduced various English Laws and policies such as the *Swynnerton-*



*Plan* to manage land use and emerging conflicts. The post-independence era has witnessed rapid population and economic growth

In addition, other government initiatives to address land use planning in Kenya include the sessional Paper No 10. of 1965, Sessional Paper No. 1 of 1986 on economic management emphasized the importance of agriculture, Economic Recovery Strategy. Other government initiatives in the form of Acts and Policies included; Land Planning Act (Cap 303) Town Planning Act (Cap 134), Land Control Act,(Cap 302), Agriculture Act (Cap 318), EMCA (1999), the Physical Planning Act Cap 286 and the National Development Plan 2002-2008

However, while each of these initiatives have had measurable successes in addressing land use challenges, lack of institutional coordination and harmony in the various statutes poses a challenge in the overall management of land use in the country. Therefore one of the major aims of the National Land Use Policy is to provide institutional coordination in land use planning across all relevant sectors.

In line with the provisions of the Constitution, the objectives of Vision 2030 and Sessional No.3 of 2009 on National Land Policy, the land use policy will make proposals on how to promote and develop opportunities for investments and wealth creation; support livelihoods, as well as create an enabling environment for agriculture and livestock production; settlements and other production concerns for social and political stability.

Land Use Policy is a statement of intent that sets out long term goals on land use management. It addresses issues relating directly to the use of land, its resources and perceptions. It also incorporates all activities that are likely to have an impact on the use of land and its resources.

The Policy is important in addressing issues of optimal utilization of land and land related resources by providing principles and guidelines for:-

- Proper management of land resources to promote public good and general welfare;
- Land use planning to enhance sustainable development;
- Anchoring land development initiatives;
- Mitigating problems associated with poor land use;
- Promoting environmental conservation and preservation; and
- Preparation and review of a national spatial plan and integration of various levels of land use planning.
- Land and land related conflicts
- Categorization of land uses in the country

## 1.2 Vision

A Land use policy that guides Kenya towards an environmentally and socially responsible use of land and land based resources for socio-economic transformation of the people of Kenya.

## 1.3 Mission

To promote best land use practices for optimal utilization of the land resource in a sustainable manner.

## 1.4 Objectives-

The overall goal of the national land use policy is to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land and land related resources in a sustainable and desirable manner at National, County and local level.

Specifically the policy shall offer a framework of recommendations and principles designed to ensure the maintenance of a land use system that will provide for:

- Land-use planning, resource allocation and resource management for sustainable development to promote public good and general welfare;
- environmental management and sustainable production initiatives in the utilization of land resources
- Coordination and integration of institutional linkages in planning at sectoral and cross-sectoral levels to foster collaboration and decision making among different land users.
- Optimum utilization of land resources to meet governance, social-economic, political and cultural obligations of the people of Kenya.
- Anchoring land development initiatives that will respond positively to the market demands.
- Integrated framework for the preparation of a National Spatial Plan and review of various land use plans.
- Mainstreaming of gender and special interest groups in land use planning and management.
- A comprehensive, efficient and affordable computer based land use information management system.
- An appropriate, accountable and democratic institution for land use conflicts resolution.
- Mitigating problems associated with poor land use;

## 1.5 Philosophy of Land Use Policy

This land use policy recognizes the central place of land in the production chain and addresses issues that relate directly to the use of land, its resources, and the perceptions held towards land. The policy incorporates measures and principles to guide all activities, whether proposed or on-going, that may have direct or indirect impact on the use of land and its resources. The policy takes

cognizance too, of the benefits of planned use of land and its resources; and builds in measures for integrated, equitable and sustainable utilization for optimal production.

This policy upholds the values of economic productivity, environmental sustainability and the conservation of culture; and seeks to facilitate their protection and optimal use. Through this multi-faceted approach, a comprehensive and integrated land use framework creates the context upon which the opportunities and parameters of the use of land in Kenya are determined.

This policy and its implementation shall be guided by the philosophy outlined below.

- Land is a critical resource and important factor of production.
- Land is the foundation of economic development and transformation that should be managed productively.
- Land is a finite resource that should be utilized sustainably; and
- Land is a cultural heritage which should be conserved for posterity.

### **1.6 Guiding Principles and Values of NLUP**

The principles are aimed at guiding the manner in which appropriate use of land can be achieved. The following principles and values will be upheld:

- Efficient and sustainable land use management
- Ecological sustainability
- Integrity and adherence to the rule of law
- Food security
- Access to land use information
- Amicable resolution of land use conflicts
- Equity in decision-making
- Effective Public Participation
- Elimination of discrimination in land use.
- Public benefit and interest
- Order and harmony in land use.

### **1.7 Methodology**

This policy was generated from:

- The issues and recommendation report produced by thematic groups comprising of state and non-state actors
- Consultation workshops organized to collect views from stakeholders
- Reports documenting past initiatives on land use practices
- Submissions from individuals, groups and organizations.
- **Benchmarking**

### **1.8 Policy review**

The National land Use Policy comprises an overall framework and a set of principles to guide land use management. There will be need to review the policy every ten (10) years to take into account current and future needs in view of social economic dynamics of development .

## Chapter 2: LAND USE IN KENYA

### 2.1 Geographical features and ecological zones

The Republic of Kenya has an area of approximately 582,646 sq. km. comprising 97.8% land and 2.2% water surface (National Atlas, 2004). Only 20% of the land area can be classified as medium to high potential land and the rest of the land is mainly arid or semi-arid. Forests and woodlands occupy about 37,000 sq. km. (6.35%). Some of these form part of national reserves and game parks which together account for 10% of the country's area.

Topographically, the country may be divided into four distinct geographical and ecological regions or zones with different patterns of land use, namely; the coastal plain, the arid low plateau, the highlands, and the Lake Victoria basin. The rainfall patterns are extremely varied but generally follow those regions, with the Lake Victoria basin receiving the heaviest and most consistent rainfall. The different ecological/climatic zones and their general land uses are briefly discussed below:

- The tropical marine coastal climates with the ocean, forested islands and sandy beaches that are ideal for deep sea fishing, prawn farming, horticulture and tourism. The inland lakes basins provide similar opportunities for subsistence and commercial fishing, irrigation, transport, communication, water sports and tourism;
- The wild and expansive savannah grasslands that host a rich diversity of flora and fauna providing scope for traditional livestock rearing by pastoral communities and safari adventure for tourists;
- The rolling countryside interspersed by small hills with deep volcanic soils that support crop and animal production using seasonal rains and micro irrigation along the major river basins. This zone hosts low to medium density human settlements with 50-300 people per sq. km;
- The highlands around the mountains with rich agricultural land that support food production by large and small scale farmers mainly using the rain fed system of agriculture. This zone hosts the largest concentration of human settlements with densities ranging between 300-800 persons per sq. km;
- The mountainous parts of the highlands with equatorial type of forests hosting the remaining forest cover which provides the only water catchments for the East Africa region and wildlife sanctuaries and, therefore suitable for conservation. They were out of bounds for human activity until recently, but have now been seriously encroached by small

scale farmers resulting in wanton destruction of forest cover (Ndungu Commission Report, 2004);

- The temperate mountain tops mostly covered by tundra type vegetation and snowy weather around the year that are very attractive to mountain climbers and tourists looking for outdoor adventure and are also suitable for conservation; and
- The arid and semi-arid lands that cover more than sixty percent of the country's land mass where nomadic communities practice pastoralism raising over fifty percent (50%) of the livestock in the country and hosting a considerable proportion of the country's wildlife. The scarcity of water in these areas has a security aspect as people and animals compete for access to it and very often conflicts arise (Njonjo Commission Report, 2002).

## 2.2 Population

### 2.2.1 Distribution

Kenya's population was estimated at approximately 40 million in 2014 at an overall growth rate of 3.0% (Population Census Report, 2009). At this rate of growth the population is expected to rise to 71 million by 2030. In terms of demographic characteristics, the population remains relatively young with 53% being below the age of 18 years, and over 50.3% being female (Population Census Report, 2009). (Fertility and mortality rate)

### 2.2.2 Population and Land use

Approximately seventy five per cent (75%) of the country's population lives within the medium to high potential (20% of land area) and the rest in the vast Arid and Semi-Arid Lands (ASALs). One consequence of this is that size and distribution of land varies quite widely as does population density which ranges from as low as 2 persons per sq. km. in the ASALs to a high of over 2000 in parts of Kisii, Vihiga, Kiambu and the Eastern slopes of Mount Kenya.

By 2013, the urban population in Kenya was 11,004,417 which represented 25% of the total population. Most rapid urban growth centres are still confined to Nairobi, Mombasa, Kisumu, Nakuru, Eldoret, Kakamega and their satellite extensions. The urban population growth rate in Kenya is 4.4% as from 2010 to 2015 ([www.data.un.org](http://www.data.un.org)) implying a rapid rural-urban migration pattern. This is further reflected in the country's poverty statistics which indicate that absolute poverty in the rural and urban areas now stands at 50.1% and 53.1% of the population respectively.

In the rural areas, the high to medium potential zones are dominated by millions of small farm holdings (3.5 million). In some cases, insecure land-tenure systems have led to low investment in land improvement and productivity. Many smallholder areas are suffering continuous fragmentation of holdings into uneconomic sizes, and farms are getting smaller in the high rainfall areas and in the drier zones as a result of lack of a law prescribing minimum and maximum land holdings for different land uses in Kenya. In addition, many large farms that used to produce seed and breeding stock have been sub-divided and transferred from state to private ownership. The Development Plan (2002-2008) did propose the formulation of a National Land Use Policy that would facilitate the preparation and implementation of land use plans for all urban and rural areas.

## 2.3 Land Use and Land Cover

### 2.3.1 Land Use

Land use refers to the activities to which land is subjected to and is often determined by; economic returns, socio-cultural practices, ecological zones and public policies. In the context of this policy, land use is defined as the economic and cultural activities practiced on the land.

Land cover on the other hand, denotes the physical state of the land and describes the quantity and type of vegetation.

Land use and land cover are interconnected by human actions that directly alter the physical environment such as bio-mass burning, irrigation, deforestation and the application of fertilizer.

The intersection between physical and human behavior produce land cover changes or alterations of the properties of the land surface, taking either the form of a conversion or modification which leads to secondary environmental impacts (such as soil erosion, micro climatic changes, changes in water quality etc) and reflects human goals mirrored on land use and land use changes.

Key land uses in Kenya include: agriculture, industrial /commercial use, infrastructure, human settlements, recreational areas, pastoralism, fishing, mining, wildlife, forests, national reserves and cultural sites; among others spread across the high, medium and low rainfall areas.

### 2.3.2 Land use data

The existing land use data is outdated and inadequate. The data on land uses was developed during the colonial times and has not been regularly updated to match the changing circumstances.

Access to land use data is limited to a few institutions that generate the data with little dissemination to the public. Despite the importance of land cover

and land use to understanding national environmental changes there are challenges related to data availability and access and interpretation and dissemination, other challenges include;

- Inadequate useful data;
- there is lack of common definitions and standards of land use;
- lack of systematic and coordinated data collection activities;
- challenges in data interpretation
- Lack of comprehensive mechanisms for capturing cumulative change manifested through the geographically dispersed, progressive result of human activity such as soil loss, habitat loss and loss of biological diversity.

### **2.3.3 Land cover**

There is low vegetation cover with the current level being as low as 7.5%. This is below both the national and international standards which stand at 10% and 30% respectively.

There has been consistent loss of vegetation cover to other competing land uses such as real estate development, agriculture, infrastructure development, industrial and commercial developments and energy requirements.

The forests have been deliberately and illegally reduced to croplands, croplands changed into grasslands, while the grasslands are turning into deserts. These changes are noticeable through declining yields in crops and livestock per unit of land and longer distances covered by rural people to get fuel-wood, water and grazing areas.

### **2.3.4 Land Availability**

Land availability for other land uses has been hindered by speculative investments which have a negative impact on land use and land markets, since large tracts of land are held for speculative purposes, reducing the stock of available lands and driving the price of land up. This is one of the factors responsible for noticeable distortion between demand and supply. At present there are no mechanisms to prevent or reduce the concentration of land ownership. Of particular concerns are incidences of “active” speculation.

## **2.4 Land use policy Themes**

### **2.4.1 Agricultural Development**

The importance of land use in the economic and social activities of a society makes it imperative that land is accessible, its potential for productivity is enhanced and sustainability guaranteed. Kenya’s economy is largely based on agriculture, which contributes about 30% of the GDP and provides livelihoods to over 80% to the population living in the rural areas. However, over 80% of



Kenya's total land surface is classified under ASALS. This land supports 26-30% of the total population, 50% of the livestock sector as well as 70% of the wide variety of wildlife that form the basis for Kenya's tourism. In several parts of Kenya the agricultural potential is limited because of risks of erosion, low fertility, rockiness and acidity of the soils, and dangers of landslides. The adverse ecological and climatic conditions limit the available amount of good quality agricultural land. Sustainable land use practices are key to the provision of food security and for other economic activities for development.

Inadequate consultations and lack of common guiding principles between sectors both in land use allocation and formulation of laws has led to each sector or institution pursuing its own objectives when it comes to planning for land utilization.

Cultural practices, urbanization and growth of cities has led to subdivision and conversion of agricultural land into residential, commercial and other uses. These alternative land uses have led to conflict and disharmony over land use allocation and reduced agricultural productivity. It's therefore important that land is made available for different uses, for high production levels to be achieved and maintained and sustainability ensured.

At individual household level, land is supposed to provide basic needs such as food, firewood, etc., and its supply is fixed. Coupled with the growing population, this has led to a decrease in per capita land.

Agricultural land production is largely characterized by subsistence farming where there is low level of technology and limited farm inputs resulting in low production and poor quality products. Farming in the marginal lands has also led to the decline in land productivity, loss of biodiversity, environmental degradation and loss of moderation of the microclimate.

Climate change in the form of drought, unreliable rainfall patterns, flooding, rise in temperatures among others has led to decline in agricultural productivity, social disruption and migration.

Rangelands are severely degraded due to overgrazing, poor animal husbandry practices and conversion of rangeland to crop farming. This has led to shrinkage of land available for wildlife, reduced productivity levels and sustainability

Stringent land tenure systems where the government does not have the power to control land uses in freehold and community land leading uneconomical subdivisions and under development of infrastructure facilities in some areas.

Lack of Value addition for agricultural products and poor marketing strategies has led to lower returns to farmers which has in turn prompted conversion of agricultural land to other land uses. This has led to shrinkage of productive agricultural land, disharmony in land uses, low food production and high cost of living.

The success of the land policy is determined by the extent to which it facilitates the productive and sustainable use of land. While important strides have been made in Kenya to ensure that the land is productively and sustainably used, there are still a number of problems which need to be addressed at policy level. These are:-

- Chronic underutilization of land especially in the large farm sector.
- Land deterioration has occurred due to population pressure, massive soil erosion arising from bad land use practices and variability in climatic patterns. This has led to rapid depletion of land cover and creeping desertification in ASALs which has in turn affected the capacity for regeneration of the country's water catchment areas.
- Abandonment of agricultural activities due to poor infrastructure for agricultural produce such as rural access roads, marketing, facilities, financing and extension services;
- Incompatible land uses have resulted in land use conflicts including human wildlife and resource conflicts;

#### **2.4.2 Mainstreaming pastoralism**

Commercial farming, small scale subsistence agriculture and large-scale ranches have enjoyed the benefits of sustained land use planning and support by the State through extension services, market outlets and access to credit by financial institutions.

The pastoralists face a number of challenges during times of drought including reduced pasture and water shortage, poor animal husbandry. Pastoral land fragmentation and conversion to other uses has also led to their vulnerability to poverty and insecurity. This area is currently commanding a lot of public interest due to the challenges facing these communities. (PRSP, 2001).

#### **2.4.3 Industrial and Commercial Development**

In 2011 the industrial sector contributed 16% to the country's GDP and a further 13% in Employment. Locally manufactured goods comprised 25% of Kenya's exports.

Industrial development is majorly in the form of Processing and manufacturing. The sector is mainly agro-based with recent shift towards export oriented manufacturing. Most industries are concentrated in major towns.

Location of industries in Kenya has largely been influenced by availability of raw materials, market for products and provision of infrastructure. Recent initiatives to promote industrial development in Kenya have leaned towards allocation of large tracks of land for establishment of Special Economic Zones, Industrial parks and Industrial Clusters. These initiatives calls for the formulation of Land Use Policy to guide in their development.

Challenges facing the growth of industrial sector in Kenya include land fragmentation, poor infrastructure, and incompatibility of land uses. Further, the industrial, commercial and communications sectors place specific demands onland resources especially for industrial zones and plants. Conversely, industrial development requires that special attention be paid to environmental impacts and waste management services to mitigate pollution, environmental and land degradation.

#### **2.4.4 Mining and energy generation.**

Mining industry in Kenya is dominated by production of non-metallic minerals such as fluorspar, gemstone, soda ash and stone mining. Most of these mineral deposits lie under property that has been settled or privately owned requiring acquisition, relocation and compensation. The sector contributes to a small percentage of the country's GDP, however the contribution is expected to increase as a result of the recent discovery of coal and oil deposits in the country. These activities are unregulated with little use of technology taking the form of quarrying and direct excavations. These poses a security challenge to the mining workers and people residing near the mining areas as well as general environmental safety.

There are low returns due to the low adoption of technology in mining and wastage of land due to lack of intensification of mining methods. Further, failure to rehabilitate mining fields after depletion of minerals lead to vast waste lands.

Energy generation in Kenya has been dominated by hydro power at 52%. The recent developments in other renewable sources of energy such as geothermal solar, wind and biomass has had impact on land use in the country. The areas with the potential for energy production falls under land privately or communally owned. The process of acquisition, relocation and compensation has in most cases resulted in conflict between the resulting land uses, affected people and the developers hindering exploitation of these resources.

#### **2.4.5 Tourism**

The growth of tourism industry in recent years has created new demand for land, Generating conflicts in land use and impacting significantly on prices, land markets and land speculation. There has been a geographic concentration of tourism activity at the coast and in the arid and semi - arid areas. The tourism sector generates high demands for water, solid waste management,

and other environmental resources and services. Sustainable tourism development could be threatened by the general degradation of landscape and seascape quality caused by poor-designed urbanization, deforestation, erosion and ineffective waste management.

## 2.5 Land in socio-Economic development

### 2.5.1 Land and Livelihoods

Land is needed to provide basic social services and to support economic activities in all sectors. While there has been significant progress over the past four decades, land ownership and use patterns still contribute to poverty and inequality, as there are inadequate opportunities for poor people to access land. At the same time, good agricultural lands continue fragmented and converted to other uses, threatening the country's productive capacity as well as its long-term food security. Patterns of land use and ownership also cause large areas of land to remain as "dead capital", as these lands are not placed into productive use, and are not used as capital in the financial markets. In addition, the manner of utilization of land determines the volume of food that is available, employment opportunities, commodities available for domestic and export markets.

### 2.5.2 Transport infrastructure

Transport infrastructure require land both in clustered and linear forms for their development. There is need to continuously develop new and upgrade transport infrastructure in the country. Such upgrading process would have to take into account current and future trends in transportation. The resultant Land use conflicts, acquisition and environmental safety during the development and upgrading process calls for intervention through the Land Use Policy

### 2.5.3 Social infrastructure

Most of the human settlement areas are not adequately provided with infrastructure such as safe water, sanitation, drainage, solid waste disposal services, security, recreation, education and health facilities. This is associated with poor planning, inadequate enforcement and implementation of the plans, dispersed nature of development in rural areas, urban sprawl and cases of land grabbing. This phenomenon negatively affects the quality of environment and life in the human settlements. There is therefore a need for development that takes into cognizance the provision of basic infrastructure and services.

### 2.5.4 Human Settlement/Housing

Rural settlements are generally characterized by a dispersed pattern of homesteads and low population density while urban settlements are compact and vertical. The rural population mostly depends on the natural environment

for their livelihood through primary production in agriculture and livestock keeping among others while the urban dwellers are primarily dependent on manufacturing industry and services sector.

While the government is committed to international declarations and best practices (such as the Istanbul Declaration on Human Settlements and the Habitat Agenda), not much has been achieved in the development of adequate shelter for all. The most notable reasons are low levels of income for the majority of the population, high cost of land, shortage of skilled manpower, high cost of building materials, inadequate funding in the housing sectors among others.

Rural areas are characterized by poor social and physical infrastructure which includes roads, education, and health and recreation facilities while the urban settlements are more nucleated with higher population densities resulting in increased human settlement and urbanization challenges. Majority of urban dwellers are low income earners hence face enormous challenges in terms of lack of secure land, housing, water and sanitation. This shortfall in housing results in proliferation of squatter and informal settlements.

Many settlements and communities have become dysfunctional, either because they have lost critical public functions, or because they have been created without due attention being paid to necessary services, infrastructures and networks, especially in the case of housing partitions. Demands created by these developments on public services and utilities are very costly and taxing on government agencies and utility institutions.

The challenges of poor planning, shortfall in supply of housing, poor integration of provision of infrastructure and services in human settlements, inadequate public participation and awareness in land use issues, and unsustainable use of local construction materials continue to affect human settlements. Since land is a limited resource, it calls for a rational human settlement development plan to cater for optimal utilization of land and other natural resource within and around settlements.

### **2.5.5 Urban Land Uses**

The indiscriminate extension of urban boundaries has brought within them population clusters living in areas of land which are still used predominantly for agricultural and livestock development purposes. Land use in Kenya's urban areas is hardly in conformity with existing zoning sub-division and building regulations. This has led to concentration of urban development in good arable land, the creation of industrial estates in several areas and the conversion of land from agriculture to housing in many parts of the country.

As a result of rapid urbanization, the country is currently experiencing major problems of proliferation of urban informal settlements, insecurity and violence, environmental degradation, urban decay and deteriorating public health standards. The majority of residents in the urban areas are in the low income bracket and they earn their living in the informal economic sector, in small businesses ranging from hawking to service and production enterprises. Informal settlements are therefore an integral part of the urban economy. Since urbanization is an inevitable process, there is need for planned growth on a long term basis.

### **2.5.6 Natural Resources and Environment**

The environment includes all elements, factors and conditions that have some impact on growth and development of a society while natural resources are the physical non-human factors and components whether renewable or non-renewable. The natural resources include sunlight, surface and ground water, forests, biodiversity and genetic resources, rocks, minerals, fossil fuels and other sources of energy (CoK, 2010). According to the NLP, natural resources specifically include wildlife, forests, water and water bodies, minerals, marine and the land itself which are important in soil conservation, regulation of micro climate, water catchment and a source of income and livelihoods among others.

The required forest cover is 10% of the land cover as per UNEP.(source)However Kenya has only 6.3% forest cover due to deforestation, conversion of forest land into other land uses such as urban land, and climate change among others.

Kenya has given priority to management of the environment and natural resources as articulated in the Constitution and other developmental policies and strategies including the Vision 2030. Article 42 of the Constitution, provides for a clean and healthy environment which includes the right to have the environment protected for the benefit of the present and future generations through legislative framework. Article 69 (a) provides that the State shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits.

Recent positive developments concerning the environment and natural resource management include the enactment of the following laws: the Environment and Land Court Act (2011), the Agriculture Act(AFFA), the National Land Commission Act (2012), Environment Management and Coordination Act (1999), Wildlife Act, Forest Act, Water Act, Fisheries Act, and various Multilateral EnvironmentalAgreements (MEA).

The emerging societal demands have necessitated the review of utilization and management of natural resources and the environment in a more sustainable manner.Currently, land use and environmental management is guided by

multiple sectoral laws and guidelines which are not harmonized. Moreover they are multi-layered and sometimes in conflict, which in turn creates overlapping mandates and affects the legislative operational framework. In addition, the evolution of the legal framework has not been in tandem with the changes of population and technological needs. Furthermore the introduction of the devolved system of governance and the vesting of community lands in local communities calls for harmonization and review of environmental management and natural resource legislation and policies.

The NLUP shall address the following issues;

#### *2.5.6.1 Environmental Degradation*

Environmental and natural resources conservation is key for the realization of any socio-economic development in a country. Environmental degradation entails pollution of water, air and the land resource. It also includes the destruction of natural resources like the forest through encroachment and deforestation, destruction of wetlands, water catchment areas, cultural areas and additional damaging activities like over mining, quarrying and other excavation activities.

#### *2.5.6.2 Agriculture Environment Management*

Challenges associated with agricultural activities include cultivation on the slopes, encroachment into wetlands, salinization in the ASALS, soil erosion, landslides, eutrophication of water bodies, over grazing, deforestation and use of inappropriate technologies.

#### *2.5.6.3 Coastal Environmental Management and Conservation*

The country's coastal region is affected by erosion, encroachment of high water marks, destruction of marine breeding sites, destruction of coral reefs and mangrove forests, extinction of species, competition from infrastructure and other development projects, restricted fish landing sites and obstruction of access to the beach among others.

#### *2.5.6.4 Rangelands Degradation*

Reduction in land sizes and fragmentation due to conversion into other land uses, soil erosion and climate change leading to reduction in pastures and water supply as well as over stocking continuously affect range management.

#### *2.5.6.5 Urban Environment Management*

As the country industrializes and the population increases, more people migrate to the urban areas resulting to problems of pollution, informal settlement, strain on infrastructure, waste management, public health and safety among others.

#### *2.5.6.6 Pastoral Lands/ Arid and Semi-Arid Lands*

Arid and Semi-arid areas are threatened by land fragmentation, resource conflicts, reduced productivity, and loss of species, desertification and sedentarisation resulting in loss of livestock during droughts.

#### *2.5.6.7 Climate Change*

Global climate changes have triggered erratic weather patterns across the country. The unpredictable weather patterns have led to floods, droughts, famines, low water levels and melting of snow from mountain tops. The situation is further aggravated by the lack of an adequate, systematized information for long term predictions and planning to deal with the challenge of climate change catastrophes.

#### *2.5.6.8 Cultivation on Marginal Lands and Fragile Ecosystems*

Cultivation in marginal lands and fragile ecosystems leads to environmental degradation and other challenges among them; loose soils, destruction of ecosystem and the microclimatic, soil erosion, eutrophication and increased rainwater runoff.

#### *2.5.6.9 Bio-diversity Conservation*

Kenya is endowed with a rich biodiversity, however its natural resource and environment is threatened with various challenges like destruction of the habitat, loss of species, desertification and uncontrolled introduction of invasive species.

#### *2.5.6.10 Trans-boundary Issues*

The conservation and management of trans-national border natural resources is vital for the natural resource and environmental sustainability. Some resources like lakes and rivers are ecologically dependent on elements beyond the national boundaries. The trans-boundary natural resources and environment are affected by conflicting policies and approaches by various stakeholders.

#### *2.5.6.11 Unsustainable Natural Resource Management*

The prevalence of inappropriate land tenure systems coupled with the high population growth rate in the high potential areas has pushed a significant part of the population among farming communities away from their traditional areas to less productive lands and forested areas which have been alienated for crop production. This has eaten into the traditional forest areas with resulting deforestation and destruction of indigenous forests and water-towers. It has severely reduced the volume of water that is available in the country and changed the pattern of rain distribution. Unsustainable farming methods in these sensitive areas has resulted in severe soil erosion and degradation which has reduced the overall capacity for sustainable food production in the country.



#### *2.5.6.12 Information and Knowledge Gap on Natural Resources*

There is inadequate information and knowledge on the location, extent, level of exploitation, quality and quantity of natural resources in the country. Natural resource mapping is primarily done by Directorate of Resource Survey and Remote Sensing (DRSRS) while other natural resource mapping are done by different organizations. There is, therefore, a need for unified mechanisms for collection, storage and dissemination of environment and natural resources information.

### **2.5.7 Culture, Heritage and conservation**

Some traditional cultural practices such as farming practices, indigenous knowledge on type of crops and vegetation, heritage sites and shrines help in conservation of the natural environment. Negative cultural practices, on the other hand, impact adversely on land and natural resources. Of primary concern is the continued use of inappropriate agricultural practices, cultivation on steep slopes, overgrazing, inappropriate exploitation of traditional ASAL resources, and the abandonment of use of indigenous knowledge in management of land and natural resources. This requires that capacities in specialized fields be developed and enhanced to reduce the negative impacts of cultural practices. In addition, institutions and procedures for protection of threatened sites and resources need to be put in place.

In addition, lack of legal tools and mechanisms to support conservation of heritage and culture and low enforcement levels and poor harmonization of legal tools continue to negatively impact on conservation culture and heritage

### **2.5.8 Socio- Cultural Aspects of Land**

All the ecological zones provide a means of livelihood for the communities that have settled there over the years. Communities have attachment to the land which they consider to be a cultural inheritance from previous generations and they tend to be highly protective of their spatial jurisdictions from potential migrants. The spiritual life of the different communities is closely connected to land and local geological formations such as mountains, hills, valleys, forests and caves have traditionally been used as religious shrines, burial grounds and places of worship. The Njonjo Commission Report cited one of the fundamental aspects regarding the African and the sociology of land in human relations, which is worth quoting:

“For indigenous Kenyans, land has an important spiritual value, for it is not merely a factor of production; it is first and foremost the medium which defines and binds together social and spiritual relations within and across generations. Land belongs to a vast family of which many are dead, few are living and countless members are still unborn” (Njonjo Commission Report 2002:19).

The physical and cultural survival of indigenous people is dependent upon the protection of their land and its resources. However, the relationship between the indigenous people and their environment has been eroded because of dispossession or forced removal from traditional lands and sacred sites. Land rights, land use and resource management remain critical issues for indigenous peoples around the world. Development projects, mining, forestry activities and agricultural programmes continue to displace indigenous people.

Modern approaches on land use and management as evidenced in government policy interventions have challenged or contradicted the traditional perception to land resulting in many obstacles in policy and project implementation. Land privatization while positive in its intentions, affects the concept of shared access to land, interferes with people's livelihoods and introduces competition on already scarce resources. The Constitution provides for freedom of movement but this can result in "invasion and encroachment by intruders" to land which is attached to another community resulting in conflicts. Introduction of projects and implementation of policies without local peoples' consultation may result in conflicts with their perceptions of land, tenure structures and land use, leading to low productivity, destruction of biodiversity, sacred and historical sites. On the other hand, disaster management is usually hindered by strong attachment to land especially in relocation proposals while land planning and development are subject to traditional perceptions that each person must own a piece of land.

### **2.5.9 Colonial and post-colonial land injustices**

As a direct result of the country's colonial history, there is a weak sense of collective ownership of the landscape and of the land, and this reality is responsible in part, for the absence of traditional systems of stewardship of common property resources. Values and attitudes associated with communal land ownership and use are characterized by unclear roles and responsibilities for management of community land leading to degradation and deterioration in quality of such land.

Post-colonial is characterized by displacement of people as a result of post-election violence and clashes.

### **2.5.10 The Land Connection to Poverty**

Among the ten main causes of poverty in Kenya that were identified in the PRSP, nearly half of them had direct linkage with land uses. Low productivity in crop farming and livestock farming, lack of access to land, rural unemployment, general insecurity coupled in ethnic animosity, inadequate access to infrastructure and social services, gender imbalance and the high

incidence of HIV/AIDS were identified as direct causes of poverty (PSRP 2001:21).

Poor land tenure systems have been associated with the poor access to land by a large proportion of the population that would wish to make use of land to support their livelihoods. It has been observed that forty per cent (40%) of the large scale farms in the high potential areas are not being optimally utilized as the elite who own them are doing so mainly for social rather than economic reasons. The frequent conflicts over access to water and grazing lands around pastoral communities has affected the utilization of land for food production in large areas raising the spectre of widespread hunger and food insecurity. Gender imbalance in the control of productive assets such as land has resulted in women being more vulnerable to poverty among farming communities.

### **2.5.11 Historical and cultural factors**

#### *2.5.11.1 Historical Factors*

Patterns of land tenure, use and management are to a large extent the direct product of history and culture. The two factors explain the relationship that exists between people and land resources in Kenya and are responsible, in many respects, for the peculiar patterns of land tenure, ownership and property rights that currently prevail in the country. Colonial policies and laws determined land distribution, ownership and use from which the country has inherited highly unequal patterns of land distribution. Until recently, these laws continued to govern land administration and management, sometimes, with negative consequences.

#### *2.5.11.2 Cultural factors*

The Constitution of Kenya identifies culture as one of the key values and protects citizens from deprivation from enjoyment of such rights. In many communities, land holds high cultural significance and symbolic value. It is a source of prestige, social status, security and power. It is also a critical factor in cultural identity and in the quality of the life of all citizens. People have strong cultural and sentimental attachment to land ownership and use, as a right and as an expression of identity, autonomy and personal achievement. Cultural and heritage sites provide a source of spirituality, artistic inspiration and recreation. The relationship between culture and land use management is expressed in the value attached to historical and archeological sites. Preservation of these sites is therefore an integral component of the overall land use framework.

## 2.6 Legal and Institutional Management

### **2.6.1 Legal, administrative and institutional factors**

Lack of common guiding principles in planning and coordination among different sector such as agriculture, livestock, industry, transport, forestry, wildlife, urban development and social services that results in competing and uncoordinated land use practices. There remains however a number of issues that impact negatively on land use development, management and administration. In particular, there are overlapping institutional responsibilities, insufficient collaboration, and some degree of fragmentation of land use management authority and roles among various MDAs. This impedes effective and efficient management of land use.

In many respects, land use development and management decisions are highly sensitive, and remain directly and significantly influenced by political considerations. Important land use decisions are still sometimes being made outside established management procedures, in order to accommodate investors or to satisfy local demands from particular interest groups. There is a need to move land use development, management and administration from the realm of politics to the realm of policy.

### **2.6.2 Administration and management factors**

Land use administration is a complex process that requires effective and efficient systems and organizations. While there have been significant improvements in recent years, land use management systems remain inefficient, resulting in the distortion of property markets, the degradation of land resources, and the failure of land development schemes to live up to the expectations of developers and users. Land speculation, land ownership structure, conflicts created by family lands and the absence of tenure individualization, and the frequent absence of physical demarcation are among the many issues that need to be addressed through improved land use administration system. The importance of these issues is reflected in the current escalation in the number of disputes, and in the negative impacts that conflicts often have on land use development.

### **2.6.3 Policy and legislation factors**

Land use administration is currently governed by a range of legal instruments and policies. Generally, there is a lack of coordination between land use policy instruments. There is lack of proper administrative and legal framework on national land and information system that provide accurate, reliable and up-to-date information. There is also need for up-to-date digital maps and land use data that allows sharing of information among MDAs. Weak enforcement of and compliance with existing policies and legislation also plagues effective land use regulation and planning.

#### **2.6.4 Land market and taxation factors**

There is very little public sector intervention in the management and operation of land markets. In particular, taxation is not being used intentionally to guide those land markets and land uses in significant way. Land property taxes, which used to be payable to local government authorities, are now collected by Kenya Revenue Department.

In the field of protected area planning and management, there are scattered management responsibilities. There is need for harmonization of the functions of the various institutions and authorities in the planning and management of national parks, reserves and other protected areas in the country.

#### **2.6.5 Land tenure**

Land in Kenya is either public, communal or privately owned. The country has inherited highly unequal patterns of land distribution. The peculiar patterns of land tenure, ownership and property rights that currently prevail in Kenya have to a large extent determined the use and management of land.

Observed trends in agricultural land ownership indicate that family and the community continues to be the dominant form of agricultural land tenure, but with a significant increase in the number of parcels under individual ownership.

The communal ownership presents a number of advantages, allowing a number of heirs to have access to land providing security to all co-owners while retaining flexibility in land use, and providing a buffer as well as a number of non-monetary welfare benefits that would otherwise not be available to the weakest and poorest among the heirs.

However, it creates constraints and problems, particularly in cases of disputes, or when land is needed as collateral for access to credit. In this sense, it is an obstacle to social mobility and economic empowerment in rural areas. Communal ownership may also be an obstacle to land conservation and to the use of good agricultural practices.

Whereas it is much easier to control development, conserve and protect the environment and ensure posterity of the land Public land continues to experience notable challenges in Kenya. Cases of land grabbing, encroachment, inaccessibility of land to citizens and willing investors negatively influence this form of land ownership.

The incidence of land speculation, among private ownership of land impacts negatively on production while contributing to increase in land prices above what their production capacity justifies the need. Also, the continued fragmentation of small parcels at the expense of agricultural production and the need to diversify production is another factor.

Over the past ten years, there has been notable increase in freehold ownership of dwellings and of the land on which these dwellings are placed. There however remains a significant gap between private ownership of house and private ownership of land, with significant number of houses located on land that is not owned by the owner of the house. The demand for housing exacerbates this situation, and has encouraged some people to build houses on lands that are unsafe and prone to disasters, especially floods and landslides.

There have been a number of initiatives aimed at promoting land reform and making land accessible to the poor in Kenya over the past four decades, but these experiences have not been entirely successful. In many instances, people have not respected the terms of their lease-purchase agreements, and only a small number of intended beneficiaries have actually become owners.

#### Legal administration

There is need to formulate a Land Conservation and Improvement Act. This Act should provide for the establishment of a Land Conservation Board, and give it extensive powers in matters of land use development and management, including the issuance of protection orders, the establishment on conservation areas, the compulsory acquisition and vesting of lands, and the provision of advice to the Ministers of Agriculture and Lands.

These and other experiences suggest that:

- Land reform initiatives need to include a range of accompanying measures and substantial long-term investments in education, cultural change, extension and technical assistance, capacity-building and training, access to credit, access to markets and grant financing whenever necessary.
- Conditions of land purchase must be directly favorable to poor people.
- More attention should be given to the development of lease agreement and to progressive transitions towards freehold tenure.
- Agreements and other arrangements governing access to agricultural lands must be designed and managed by institutions that are dedicated to and experienced in rural development and agricultural production, within broad rural development frameworks.

## CHAPTER THREE: OVERALL POLICY STATEMENTS

### General policy Statements

#### 3.1 Land Tenure

All Kenyans have a right to access and use land, either through lease or freehold title, as individuals, corporations or collective trusts. However, the availability of land, particularly arable/cultivable land, is in increasingly short supply, and consequently some prudence is required in the issuing of Public Land. This situation is exacerbated by the widely accepted practice of a lessee acquiring public Land with a view to selling it in order to generate revenue; a further lease then being applied for and often obtained. With a growing population and a finite land source, this practice is leading to a shortage of productive Public Land for the Kenyan farmer and other users is an unsustainable form of land distribution.

To address the issue of unsustainable form of land distribution:

- The principle that every individual, group of individuals or company is eligible for a lease, an extension of a lease (through a fiat or certificate) or a grant of Public Land shall be maintained and the granting of a further or second lease should be contingent upon:
  - (i) The satisfactory utilization of the first lease.
  - (ii) Not infringe on the rights of others to acquire a first lease.
  - (iii) In cases of a transfer of a lease, the conditions of the original lease being sustained (unless revised in the light of an approved Local Land Use Plan).
- Areas of Public Land that have been identified as having a high intrinsic value (such as watershed protection, important botanic or wildlife habitat and/or landscape values, cultural significance, road reserves for potential future highways, etc.) will not be allocated except under leases with conditions that reflect the high intrinsic value or period by which the land may be required for a reserved use.
- Public Land that has been allocated for recreational use (parks, playgrounds and sports fields) should be promptly transferred, by lease or grant, to the relevant entity with the condition that its recreational use shall not be converted to any other use and held in perpetuity for the common good.
- Holding of land under a collective basis will be subject to conditions of lease and will require an approved and binding management plan for the leased land.
- All lands should be managed according to their actual suitability and local land use plans will be required to implement proper management.
- Areas protected for specific use by any law shall not be de-gazetted except in circumstances prescribed in the laws governing such areas.

- Squatting, or the illegal occupation of national or public lands that often leads to unsustainable land development shall not be permitted.
- The protection of land rights of illegally occupied lands shall be pursued through litigation by the owners.

### 3.2 Land Management/Administration

Land administration in the country faces challenges such as, outdated and missing cadastral information, lack of security of tenure amorphous land taxation process and inadequate information on land parcels

To address the issue of land administration, registration and dissemination of information in relation to land transactions:

- The national cadastre shall be linked to the national land tax and rent database to ensure that all users of land make their annual contributions for the use of the land.
- The national cadastre shall be open to the general public to guarantee the transparency of land tenure, land issuing and land transactions and the contribution of land tax.
- All leases of Public Land will be issued with binding conditions stating clearly the intended use of the land and which shall comply with the relevant local land use plans and the National Spatial Plan.
- Protected areas and areas of high intrinsic value such as habitat for endangered biodiversity and genetic resources, ecologically sensitive sites, national heritage, water towers, marine waters and exclusive economic zones, wetlands forests and sites with fossils fuels and energy resources among others will not be allocated for private use or de-gazetted.
- Land reserved for public utilities and infrastructure such as roads, railways, airports, seaports, housing, offices, land banks for investments among others shall not be allocated and shall remain public lands.
- Reserved areas on public land shall be determined through the National Spatial Plan, local plan or upon the recommendation of the office in charge of Physical Planning.

### 3.3 Land Tax and Rent (land valuation)

The use of land, either lease or freehold, results in the obligation to pay rent or land tax. Land tax will be paid by owners of freehold land, and rent by the leaseholder.



In the valuation of land for land tax, in addition to the usual agricultural, mineral or settlement potential of the land, factors such as the lands environmental services should be considered. As such, a framework needs to be developed to generate a system to value environmental services.

### 3.4 Population Growth and Distribution

The 2009 Census information reveals an increase in population from 33 million in 1999 to 38 million. In addition, the census shows that both rural and urban population has grown in numbers. Apart from natural growth, several migratory trends have contributed to these changes, among them factors such as influx of refugees.

To address the issues of population growth and distribution, the government shall:

- Develop a settlement plan for the country, including cities, towns, villages, communities and settlements based on the latest information on population size and expected growth.
- Propose sub-divisions for residential purposes that fit into settlement plans to prevent urban sprawl and the degradation of services to the population.
- Plan for residential lots that will be available to the population through either governmental or private initiatives and that will equitably serve all income groups.
- Encourage Public private partnerships in the provision of low income housing.
- Put in place mechanisms to cater for projected population growth, in both urban and rural areas.
- Put in place a pro-active approach to give the Kenyan population equal access to basic facilities like house lots and fundamental services like water, electricity, education, basic health care, communication and road access.

### 3.5 Productive and Sustainable Use of Land

The success of land policy is determined by the extent to which it facilitates the productive and sustainable use of land. While important strides have been made in Kenya to ensure that the land is productively and sustainably used, there are still a number of problems which need to be addressed at policy level.

These are:-

- Underutilization of land especially in the large farm sector.
- Land deterioration due to population pressure, massive soil erosion arising from bad land use practices and variability in climatic patterns. This has led to rapid depletion of land cover and creeping desertification in ASALs which has in turn affected the capacity for regeneration of the country's water catchment areas.

- Abandonment of agricultural activities due to poor infrastructure for agricultural produce such as rural access roads, marketing, facilities, financing and extension services;
- Incompatible land uses have resulted in land use conflicts including human wildlife and resource conflicts;

To address issues of proactive and sustainable use of land, the government shall develop a framework to facilitate:-

- The attainment of orderly, productive and sustainable land use through sound land use practices;
- The conservation and enhancement of the quality of land and land-based resources;
- The improvement of the condition and productivity of degraded lands in rural and urban areas;
- The development by the State, of a set of guidelines for adoption by planning authorities throughout the country in order to ensure uniformity in the exercise of the State's regulatory power.
- Appreciation of the essential linkages between the environment and development and the promotion of individual and community participation in environmental action.
- The proper management of demographic and health parameters in the country and in the rural areas.
- The provision of social, economic and other incentives to induce the sustainable use and management of land.
- Integrated land use planning through information based and participatory processes.
- The provision and maintenance of adequate infrastructure in the promotion of approved land use development.

### 3.6 Rural Land Uses/ Agricultural Development, Production and Marketing

Majority of the people of Kenya still live on and draw their livelihood from the rural areas. Consequently, land use Policy must address the major activities in the sector; namely agricultural and livestock development.

Agriculture, that is crop farming, is found mainly in the medium to high potential areas of the country and on irrigated land in the semi-arid areas. The major agricultural activities in the country include grain production, coffee, tea, sugar-cane, pyrethrum, cotton, cashew nuts, coconuts and horticulture.

Livestock development, which is responsible for the country's dairy and beef requirements, is an activity that is carried out in all agro-ecological zones. Over 50% of the country's livestock is however reared in the arid and semi-arid areas.

Agriculture and livestock development between them account for 30% of the country Gross Domestic Products (GDP), over 70% of her foreign exchange earnings, and at least 75% of employment, food security needs and raw materials for agro-based industries.

Currently the primary instrument of state regulation in rural land use is the Agriculture Act (Cap 318). The Act controls Agricultural operations right down to the stipulation of what crops and livestock specie are suitable to be grown or reared in specific areas. The Act contemplates the promulgation of land development orders and schemes in circumstances where it is considered necessary for proper husbandry.

There are also other instruments of a crop specific nature which are relevant to rural land use.

Rural land use is literally inundated with laws, institutions and bureaucratic agencies all concerned with one aspect or another of agriculture or livestock development. These instruments notwithstanding a number of problems peculiar to rural land use still remain. These include uncontrolled subdivision of agricultural land, overstocking in the rangelands, mismanagement of water resources and destruction of catchment areas, imports that threaten local farmers, limited extension services and shortage of agricultural finances and inputs and poor management generally.

A re-examination of the social, economic, legal and ecological contexts in which the rural land use operates is imperative.

To address Rural Land Uses, the Government shall:-

- Re-establish an enabling environment for agriculture and livestock development, especially as regards research, extension services, finance and infrastructure including marketing, agro-processing, rural electrification and farmers training.
- Develop policy for the management of rural population growth, particularly rural –rural migration.
- Institute mechanisms designed to induce land owners to put their land to productive use.
- Encourage the application of efficient technology for the intensification of land use.
- Control agricultural imports that threaten local farmers and industries.
- Encourage consolidation of holdings and re-organization of rural settlement as a method of controlling fragmentation of rural land.
- Consolidate the existing multiple laws and bureaucratic agencies dealing with agriculture and livestock development and marketing.
- Encourage the application of cost effective irrigation methods in areas of low agricultural potential.

- Develop a clear policy for the comprehensive development of the livestock sector.
- Disseminate agricultural research results and experience to the farming communities.

### 3.7 Urban Land Uses

As a result of rapid urbanization, the country is currently experiencing major problems of proliferation of urban informal settlements, insecurity and violence, environmental degradation and deteriorating public health standards. The majority of residents in the urban areas are in the low income bracket and they earn their living in the informal economic sector, in small businesses ranging from hawking to service and production enterprises. Informal settlements are therefore an integral part of the urban economy. Since urbanization is an inevitable process, there is need for planned growth on a long term basis.

To ensure sustainable urbanization, the Government shall:-

- Undertake an audit of the population in informal settlements and provide legal security of tenure.
- Design a comprehensive national plan for low income and high density housing with well-defined targets and financing mechanism as a strategy for minimizing informal settlements in the long run.
- Provide funding and mobilize resources for upgrading of informal settlements.
- Create an enabling environment for urban development through the establishment of transparent, accountable, sustainable, comprehensive and participatory governance structures and decision making processes.
- Harmonize urban plans with the long term national development plans so as to ensure synchrony between the urban centres and rural areas.
- Undertake the development of secondary towns, including provision of infrastructure and utilities as a means of stimulating agro-industrial development thus easing pressure on demand for urban services.
- Protect agricultural land from indiscriminate extension of urban boundaries and other encroachments and the re-planning of peri-urban areas for agricultural or pastoral communities.
- Manage spatial growth of areas in order to generate an economic and social environment for urban development.
- Consider the re-conceptualization of zoning and sub-division control, not as exclusionary mechanisms within and across residential areas, but as tools for creation of integrated viable urban communities sharing common services.
- Provide efficient amenities for urban settlements.
- Provide resources for the upgrading or **gentrification** of existing slums and discouragement of further slum development.
- Create and protect green and recreational areas within urban centres.

- Encourage sustainable urban agriculture.

### 3.8 Specific Land Use Policy intervention

#### 3.8.1 Management and Development of land

Sustainable use and management of land is the responsibility of the proprietors, occupiers and the State. In addition to the proprietors own efforts, the use of regulatory power of the State is necessary if land use problems are to be resolved.

Although there are mechanisms for monitoring and evaluations already existing in law, they are not successful due to inadequate enforcement, laxity of the implementing officers, corruption and political interference.

To address the issue of land management and development, the government shall:-

- Facilitate a planning process that will:-
  - Ensure an orderly management of both urban and rural land.
  - Empower land users and occupiers to make better and more productive use of their land.
  - Promote efficient and environmentally sound land use practices.
  - Promote participatory involvement by all stakeholders in land use planning.
  - Ensure security and equity in access to land resources.
  - Provide for inter-sectoral coordination at all levels of land use development;
  - Make use of political and administrative resources available at national, regional, county and local levels.
- Provide a clear framework for coordination and enforcement of development control.
- Establish and operationalize a nationwide land use information system.
- Facilitate design and implement an innovative framework for land auditing in rural and urban areas.
- Develop an integrated settlement policy for the management of rural-urban migration.
- Develop clear environmental standard to guide agricultural, livestock, urban, mineral and tourist development. The standards to incorporate environmental impact assessment procedure.

#### 3.8.2 Land Use and Land Cover

The uncontrolled use of land has resulted into challenges on land among them incompatibility of landuses, environmental degradation, insecurity reduced productivity, wastage of resources among others.

To address issues related to land uses the government shall;

- Map and document all land uses in the country.
- Carry out periodical updates.
- Facilitate inter county land use planning and ensure regular updating of land use planning maps.
- Develop a National land use/ land cover mapping system
- Design and fund new strategies for collecting and managing data necessary for the National land use mapping system.
- Undertake regular update of the land use data
- Modernize land use information management systems to allow for easier collection, collation, storage and dissemination of the same
- Invest in decentralized land use data centres which are easily accessible.

### **3.8.3 Land cover**

There has been consistent loss of vegetation cover to other competing land uses such as real estate development, agriculture, infrastructure development, industrial and commercial developments and energy requirements.

Land cover challenges are also noticeable through declining yields in crops and livestock per unit of land and longer distances covered by rural people to get fuel-wood, water and grazing.

To address the low vegetation cover with other competing land uses, the government shall:

- Carry out an inventory of all land cover classifications
- Establish mechanisms to ensure protection and improvement of vegetation cover over time
- Incorporate multi stake holder participation in a forestation programmes and initiatives.
- Develop a framework for incentives to encourage maintenance of forest cover.
- Promote the use of alternatives and efficient production methods to reduce demand on forest products.
- Ensure public participation in stakeholder forums in the determination of planning zones

### **3.8.4 Land availability, productivity potential and sustainability**

Unchecked population growth and demand for land for various economic activities has led to fragmentation of land into uneconomical units. Simultaneously, there are large tracts of land that are not utilized optimally. As a country, however there are is no law prescribing minimum and maximum land holdings for different land uses in Kenya.

There are inadequate consultations between sectors both in land use allocation and formulation of laws. Lack of common guiding principles has led to each sector or institution pursuing its own objectives when it comes to planning for land utilization. At individual household level, land is supposed to provide basic needs such as food, firewood, etc., and its supply is fixed. Coupled with the growing population, this has led a decrease in per capita land.

Climate change has led to decline to agricultural productivity, social disruption and migration. It is therefore necessary to put in adaptation and mitigation measures.

It is therefore important that land is made available for different uses, high production levels achieved and maintained and sustainability ensured.

### **3.8.5 Productivity**

To address decline in land productivity, the government shall facilitate;

- Making an assessment of land resources including basic soil surveys, farming systems, soil degradation surveys as well as production potentials of the soils in the country.
- Encouragement of farmers to adopt farming practices that sustains soil fertility and high crop and animal productivity on their land.
- Establish and periodically update a land productivity information data bank.
- Adopt of an internationally recognized system of soil classification and land evaluation for assessing land productivity potential, land capability and sustainability for agriculture.
- Conducting regular monitoring and recording of land use and farming systems information throughout the country.
- Dissemination of information on land availability, productivity potential, capacity, sustainability, land use changes and farming systems to farmers on a regular basis

### **3.8.6 Population Growth and Land Fragmentation**

To address the issue of rapid population growth and land fragmentation, this policy recommends that the government shall;

- Implement the Constitutional and Land Act's recommendations as far as determination of minimum and maximum land sizes are concerned
- Determine viable minimum land sizes based on ecological and land use carrying capacities
- Enforce land use planning and development controls to curtail encroachment of land uses
- Create job opportunities and other incentives in urban areas that will encourage people to move away from the fragmented rural areas.
- Formulate policies and economic instruments that will promote land consolidation.

- Discourage cultural practices that promote land fragmentation.

### **3.8.7 Land Use Output**

- Provision of incentives and sanctions to ensure that land owners use their land productively and sustainably
- Education and creation of awareness among farmers in farming practices that sustain productivity.
- Increase investment in agricultural and livestock production to realize full potential
- Build adequate capacity on quality and standardization of land use technology

### **3.8.8 Guidelines on the Use of Space**

To address the issue of lack of guidelines on the use of space beneath and above the earth surface, the government shall;

- Encourage all sectors to embrace the term 'land' as defined in Article 260 of the Constitution
- Domesticate best practices from other countries in the use and exploitation of the land resources
- Review and enact laws to protect Kenya's land-based resources and to allow their full beneficial exploitation.

### **3.8.9 Rangelands Degradation**

To address the problem of rangelands degradation, the government shall;

- Study and update the carrying capacity of rangelands.
- Establish mechanisms for enforcing adherence to the optimum stocking rates for each area.
- Establish a framework for livestock management in rangelands including provision of water, pasture and fodder development.
- Discourage open access to grazing land among the pastoralists by promoting development of Communal grazing management plans.

### **3.8.10 Impact of climate change**

To address the issue of climate change and its impact on productivity, the government shall;

- Integrate initiatives that will address issues of climate change and disaster management
- Develop disaster awareness programs that sensitize the communities on best land use practices that incorporate disaster mitigation, incorporate climate change, adaptation and preparedness.



### **3.8.11 Cultivation on Marginal Lands and Fragile Ecosystems**

To address the problem of cultivation on marginal lands and fragile ecosystems, the government shall;

- Enforce implementation of the Environmental Management and Coordination Act (EMCA) and other related environmental policies and legislations to discourage cultivation and other land uses on marginal lands and fragile ecosystems.
- Increase public awareness on the dangers of farming in marginal lands like wetlands and steep slopes as a routine activity by extension service providers.
- Encourage the use of modern farming practices that sustain crop yields and soil fertility.

## **3.9 Natural Resources and Environment**

The environment includes all elements, factors and conditions that have some impact on growth and development of a society while Natural resources are the physical non-human factors and components whether renewable or non-renewable. The natural resources include sunlight, surface and ground water, forests, biodiversity and genetic resources, rocks, minerals, fossil fuels and other sources of energy (CoK, 2010). According to the NLP, natural resources specifically include wildlife, forests, water, minerals, marine and the land itself. Other resources are biodiversity, cultural heritage, paleontology, archeology and indigenous knowledge.

Kenya has given priority to management of the environment and natural resources as articulated in the Constitution of Kenya 2010 and other developmental policies and strategies including the Vision 2030. Article 42 of the Constitution, provides for a clean and healthy environment which includes the right to have the environment protected for the benefit of the present and future generations through legislative framework. Article 69 (a) provides that the State shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits.

### **3.9.1 Environmental Degradation**

Environmental and natural resources conservation is key for the realization of any socio-economic development in a country. Environmental degradation entails pollution of water, air and the land resource. It also includes the destruction of natural resources like the forest through encroachment and deforestation, destruction of wetlands, water catchment areas, cultural areas and additional damaging activities like over mining, quarrying and other excavation activities.

To protect environmental degradation and natural resources for sustainable development, the government shall:

- (i) Identify, map, gazette the land area encompassing key national natural resources;
- (ii) Develop and implement a national wetland policy through a participatory approach;
- (iii) Ensure restoration of degraded natural resources and environment;
- (iv) Prohibit illegal settlement and other activities within sensitive ecological zones;
- (v) Enhance the capacity of regulatory and enforcement agencies ( National Environmental Management Authority(NEMA), Kenya Forest Service(KFS), Kenya Wildlife Service (KWS), Water Management Resource Management Authority(WARMA), Kenya Water Tower Agencies (KwTA), Local and Trans-boundary authorities;
- (vi) Promote and provide incentive for use of alternative sources of energy and building materials other than timber in line with NEMA Land Use Guidelines;
- (vii) Promote the use of NEMA Land Use Guidelines on Mining and Quarrying;
- (viii) Ensure enforcement and compliance to guidelines on rehabilitation of mines and quarries; waste disposal sites and wastelands.
- (ix) Increase protected forest cover area to 10% (ten percent)
- (x) Provide incentives to increase national forest cover (including private and community lands)
- (xi) Levy fees on benefits from ecosystems and ecological services for management and conservation of water catchment areas.
- (xii) Identify, map and gazette critical water catchment areas and Formulate and regularly update water towers Master Plans.
- (xiii) Prohibit settlement and other incompatible activities within water towers.
- (xiv) Rehabilitate and restore degraded water catchment areas

### **3.9.2 Bio-diversity Conservation**

Kenya is endowed with a rich biodiversity, however its natural resource and environment is threatened with various challenges like destruction of habitat, loss of species, desertification and uncontrolled introduction of invasive species.

To conserve Kenya's bio-diversity, the Government shall:

- (i) Identify, map and gazette wildlife corridors, forests, mountains and marine dispersal areas;
- (ii) Promote the use of NEMA Land Use Guidelines on Biodiversity and Invasive Species;;

- (iii) Provide incentives for community participation in conservation of natural resource and environment;
- (iv) Conduct research on natural resource and environment conservation technologies;
- (v) Establish and maintain model primary natural habitat sites;
- (vi) Promote integrated ecosystem management approaches in land use management;
- (vii) Research and develop a framework for monetizing services derived from natural resource and environmental conservation, and promote the use of payment for environmental services systems.

### **3.9.3 Climate Change**

Global climate changes have triggered erratic weather patterns across the country. The unpredictable weather patterns have led to floods, droughts, famines, low water levels and melting of snow from mountain tops. The situation is further aggravated by the lack of an adequate, systematized information for long term predictions and planning to deal with the challenge of climate change catastrophes.

To address the challenges of climate change the Government shall:

- (i) Identify and map disaster prone areas;
- (ii) Promote the use of NEMA Guidelines on Hazardous and Disaster Management;
- (iii) Strengthen capacity of institutions involved in climate change trends analysis and mitigation;
- (iv) Promote disaster preparedness by developing an integrated, improved early warning and response system for climate change and associated disasters;
- (v) Build and strengthen research capacity in climate change and related environmental issues;
- (vi) Promote land use practices that increase climate resiliency and reduce effects on climate change;
- (vii) Prioritize land use for climate change mitigation activities;
- (viii) Mainstreaming climate change curriculum in national education and values.

### **3.9.4 Urban Environment Management**

As the country industrializes and the population increases, more people migrate to the urban areas resulting to problems of pollution, informal settlement, strain on infrastructure, waste management, public health and safety among others.

To mitigate on the problems of urban environment the Government shall:

- (i) Zone urban areas for the protection of key natural resource and environmental features and amenities including, establishing green areas and recreational facilities in residential areas;

- (ii) Promote appropriate waste management technologies (reduce, recycle, reuse) including toxic, hazardous, e-waste and adopt measures to provide incentives and dis-incentives on recycling and reclamation of reusable packaging materials;
- (iii) Enforcement of existing legislation on environmental management and conservation;
- (iv) Identify and acquire sites for solid waste disposal;
- (v) Ensure appropriate formulation and implementation of Urban Development Plans;
- (vi) Develop mechanisms to minimize air, water and land pollution;
- (vii) Establish a legal framework to regulate urban agriculture and forestry;
- (viii) Establish measures to regulate urban and peri-urban mining, quarrying and other extractive activities and provide for rehabilitation and restoration of such sites.
- (ix) Develop strategy and framework for improving urban sewage sanitation systems.

### **3.9.5 Coastal Environmental Management and Conservation**

The country's coastal region is affected by erosion, encroachment of high water marks, destruction of marine breeding sites, destruction of coral reefs and mangrove forests, extinction of species, competition from infrastructure and other development projects, restricted fish landing sites and obstruction of access to the beach among others.

To ensure sustainable coastal environmental management, the Government shall:

- (i) Identify, map and gazette critical river deltas, mangroves, coral reefs, and other important coastal habitats;
- (ii) Ensure the formulation and implementation of an integrated coastal land use plan;
- (iii) Harmonize and coordinate the roles of regulatory and enforcement agencies;
- (iv) Promote and protect sustainable utilization of marine resources;
- (v) Establish and implement a framework for beach management that ensures public access to the beaches, protection and conservation of the beaches;
- (vi) Ensure enforcement of environmental protections within Exclusive Economic Zones, including multilateral environmental agreements on pollution, sea-mining and fishing;
- (vii) Promote the use of NEMA Land Use Guidelines on Protection of Coastal Zones;
- (viii) Protect, maintain and restore marine species, habitats and ecosystems of national and international importance, including islands within coastal and marine protected areas.

- (ix) Provide a framework for beach management and the protection conservation and management of beaches.
- (x) Regulation of exploitation of deep sea resources
- (xi) Establish convenient public utility plots along the coast line to serve as fish landing sites and for public recreation.
- (xii) Open up all public access roads to the beach.
- (xiii) Provide a framework and capacity for the management of spills and waste emanating from the marine industry.

### **3.9.6 Agriculture Environment Management**

Challenges associated with agricultural activities include cultivation on the slopes, encroachment into wetlands, salinizations in the ASALS, soil erosion, landslides, eutrophication of water bodies, over grazing, deforestation and use of inappropriate technologies.

To protect the agricultural environment, the Government shall:

- (i) Identify, Map and Delineate areas suitable for irrigated agriculture in ASALs.
- (ii) Zone and protect lands appropriate for agricultural uses;
- (iii) Establish, adopt and review best agricultural practices for sustainability;
- (iv) Re-establish and/or provide livestock holding grounds and livestock routes;
- (v) Formulate and implement an integrated land use framework for ASAL areas;
- (vi) Develop and implement a regulatory framework for reclamation, rehabilitation, restoration and use of reclaimed land
- (vii) Promote the use of NEMA Land Use Guidelines on Irrigation.

### **3.9.7 Pastoral Lands/ Arid and Semi-Arid Lands**

Arid and Semi-arid areas are threatened by land fragmentation, resource conflicts, reduced productivity, and loss of species, desertification and sedentarisation resulting in loss of livestock during droughts.

To protect the natural resource and environment in the Pastoral/ASAL's, the Government shall;

- (i) Recognize pastoralism as a legitimate land use and production system by establishing suitable methods of defining and registering land rights in pastoral areas while allowing pastoralists to maintain their unique land systems and livelihoods;
- (ii) Ensure that all land uses and practices under pastoral tenure conform to the principles of sustainable resource management;
- (iii) Promote the formulation and implementation of an integrated land use plan for ASALs;

- (iv) Conduct surveys to determine the carrying capacity of land in ASALs;
- (v) Provide technologies for surface water storage;
- (vi) Facilitate incorporation of indigenous knowledge and the participation of local communities in infrastructural development in pastoral areas;
- (vii) Establish flexible and negotiated mechanism for cross boundary access to protected areas, water, pasture and salt licks among different stakeholders for mutual benefit;
- (xiv) Formulate and implement an integrated land use framework for ASAL areas

### **3.9.8 Rangelands**

- i) To address the problem of rangelands degradation, the government shall;
- ii) Study and update the carrying capacity of rangelands.
- iii) Establish mechanisms for enforcing adherence to the optimum stocking rates for each area.
- iv) Establish a framework for livestock management in rangelands including provision of water, pasture and fodder development.
- v) Discourage open access to grazing land among the pastoralists by promoting development of Communal grazing management plans.

### **3.9.9 Trans-boundary Issues**

The conservation and management of trans-national border natural resources is vital for the natural resource and environmental sustainability. Some resources like lakes and rivers are ecologically dependent on elements beyond the national boundaries. The trans-boundary natural resources and environment are affected by conflicting policies and approaches by various stakeholders.

To ensure sustainability and harmonious sharing of transnational resources, the Government shall:

- (i) Identify and map the trans-boundary natural resources;
- (ii) Develop trans-boundary conflict prevention resolution mechanisms;
- (iii) Harmonize policies and legal framework for environmental and natural resource management in line with regional and international conventions;
- (iv) Enforce and/or implement existing MEAs related to trans-boundary resource use;
- (v) Promote the use of bi-lateral agreements and other instruments to facilitate sustainable trans-boundary resource use.

### **3.9.10 Information and Knowledge Gap on Natural Resources**

There is inadequate information and knowledge on the location, extent, quality and quantity of natural resources. Natural resource mapping is primarily done by Directorate of Resource Survey and Remote Sensing (DRSRS) while geological and soil mapping are done by different organizations. There is, therefore, a need for unified mechanisms for collection, storage and dissemination of environment and natural resources information.

To address the information and knowledge challenges, the government shall:

- (i) Undertake a land use classification system for Kenya and identify and map Kenya's key natural resources;
- (ii) Promote research and studies on Kenya's natural resources;
- (iii) Establish a multi-sectoral databank and develop mechanism for dissemination of information on Kenya's natural resource;
- (iv) Conduct periodic reviews of zoning or classification of natural resources.

### **3.9.11 Government Priorities on issues of National Heritage**

There has been low prioritization of issues related to the sustainable development and protection of national heritage sites such as forests, rivers, lakes, seas, cultural and historical. This has continued to hamper optimum utilization land use in the natural resource and environment sector. Inadequate budgeting allocation to this sectors demonstrated that the government has failed to prioritize the national heritage sites as matters of importance.

To promote the highest and best utilization interests of the national heritage, the Government shall:

- (i) Establish, disseminate and maintain appropriate heritage and cultural sites data bases;
- (ii) Revise and implement the legal framework that governs heritage, conservation and cultural issues;
- (iii) Mobilize more resources towards improvement and sustainability of cultural heritage and conservation;
- (iv) Protect and maintain strategic heritage and cultural sites;
- (v) Enhance research on cultural conservation issues.

## **3.10 Human Settlement and Urbanization**

Human settlements have been described as a material structure system established artificially by human beings and whose basic function is to meet social and economic needs indispensable for quality life. Human settlements both urban and rural face a number of challenges including, high rate of urbanization that is not parallel with population growth, inadequate socio-economic amenities and the physical infrastructure like housing, water, secure

land, sanitation, health and education services. Other issues facing human settlements include proliferation of squatter and slum settlements, adverse weather conditions that affect food production, low income levels especially in the rural areas among others.

To address urbanization and human settlements in-terms of land use, the policy should address the challenges of adequate planning, adequate shelter for all, integration of provisions of infrastructure and services in human settlements, public participation and awareness in land use issues, and sustainable use of local construction materials. Since land is a limited resource, it calls for a rational human settlement development plan to cater for optimal utilization of land and other natural resource within and around settlements for sustainable growth.

### **3.10.1 Adequate Planning**

There is lack of effective planning both in rural and urban areas, which has resulted into haphazard development, underutilization and inappropriate settlement systems. Inadequate urbanization policies and planning guidelines have resulted to urban sprawl and the gradual transformation of prime agricultural land into urban areas. There is also the challenge of inadequate capacity to plan and implement urban development plans.

To ensure that a comprehensive urban plan policy and guidelines are established and implemented, the Government shall:

- (i) Develop, implement and periodically review a National Urban Development Policy to respond to urbanization challenges;
- (ii) Implement the Physical Planning Act to facilitate rural settlement planning at all levels;
- (iii) Facilitate county and urban planning units to formulate integrated land use plans;
- (iv) Facilitate the integration of local, county and regional plans into a national plan;
- (v) Develop sustainable settlement systems, which suit the various urban and rural areas to create a healthy living environment;
- (vi) Ensure all land use planning institutions in the country are supported to improve and consolidate their capacity;
- (vii) Clarify the role of community governance institutions in the planning process;
- (viii) Promote use of compact sustainable urban forms (density);
- (ix) Promote and provide incentives for urban renewal and re-development for urban areas;
- (x) Regulate and upgrade existing slums, infrastructure and services;
- (xi) Designate and gazette an urban growth boundary to prevent urban sprawl;



- (xii) Implement the Urban areas and Cities Act to facilitate urban settlement and management.
- (xiii) Review planning legislation and guidelines to meet the challenges of urban planning and development.
- (xiv) Develop urban renewal strategies and enforce development control.

### **3.10.2 Adequate Shelter for All**

The housing needs both in rural and urban areas are very high. Housing in the rural areas is predominantly of low quality while that of urban areas is characterized by inadequacy in both quality and quantity. While the government is committed to international declarations and best practices (such as the Istanbul Declaration on Human Settlements and the Habitat Agenda), not much has been achieved in the development of adequate shelter for all. The most notable reasons are low levels of income for the majority of the population, high cost of land, shortage of skilled manpower, high cost of building materials, inadequate funding in the housing sectors among others.

To promote and encourage the development of adequate and appropriate shelter for all, the Government shall:

- (i) Continue to enhance poverty alleviation programs to meet housing needs;
- (ii) Develop appropriate strategies to increase the housing stock in urban and rural areas;
- (iii) Review building and planning standards with a view to making them 'user friendly' as opposed to being a deterrent to development;
- (iv) Enhance awareness on the availability of affordable proto-type plans for low-income housing;
- (v) Promote research in appropriate technology in the construction industry with a view of reducing the costs of building materials;
- (vi) Encourage developers and local authorities to invest in properties to promote planned development;
- (vii) Create an enabling environment for public-private partnerships in the housing sector;
- (viii) Develop a framework for land banking;
- (ix) Enforce measures to curb development of slums and promote slum up-grading initiatives in urban areas.

### **3.10.3 Use of Local Construction Materials**

The locally available materials used in the construction industry are in danger of being depleted if appropriate measures are not taken to utilize them sustainably. Deliberate action should be taken to restore the environment from which these materials are sourced.

To promote sustainable use of locally available materials for construction activities, the government shall:

- (i) Develop guidelines and standards for the utilization of natural resources for construction;
- (ii) Encourage development and use of alternative and affordable construction materials within the country;
- (iii) Promote the practice of environmental restoration of sites degraded by mining and quarrying for construction materials;
- (iv) Promote the application of environmentally friendly technologies and methods in mineral exploitation, quarrying and extraction.
- (v) Encourage and promote research in sustainable use of locally available natural resources for construction;
- (vi) Promote research in development of appropriate technologies and methods of construction;

#### **3.10.4 Provision of Infrastructure and Services in Human Settlements**

Most urban areas are not adequately provided with infrastructure such as safe water, sanitation, drainage, solid waste disposal services, and transportation infrastructure. This phenomenon negatively affects the quality of environment required in the human settlements. There is therefore a need for development that takes into cognizance the provision of basic infrastructure and services.

Similarly rural settlements also lack basic infrastructure and services. This is caused by high costs due to horizontal nature of developments, dispersed nature of rural settlements, high utilization of biomass energy (firewood and charcoal) for cooking that depletes tree cover, haphazard development of urban areas and fringes, and lack of integration in the provision of infrastructure.

To ensure adequate provision of infrastructure and services in human settlements, the Government shall:

- (i) Promote an integrated approach that brings together infrastructure and service providers at the planning stage of development;
- (ii) Facilitate planning units at all levels so that planning always precedes development;
- (iii) Open up more rural transportation infrastructure to provide for improved rural-urban integration;
- (iv) Promote energy saving technology and encourage the use of alternative/renewable energy sources;
- (v) Develop strategies for urban transportation systems;
- (vi) Provide initial basic services and infrastructure in pre-developed and developed areas;
- (vii) Adopt appropriate standards for infrastructure and services in human settlement planning.

### 3.11 Land Use Management

Land use management refers to the regulation of land use with the aim of:

- Preservation and sustainable use of land;
- Promotion of quality living environment; fostering vibrant economic activities; deliver of competitive urban places that attract and retain local and foreign direct investments;
- Coordination of various actors in land use management;
- Providing and maintaining infrastructure and services in both rural and urban areas;
- Guiding the management and exploitation of resources both at the national and county levels.

It also entails decision making in respect to:

- Extension of use;
- Subdivision of land;
- Conversion of use and
- Approval of commercial and residential plans in accordance to zoning plans and development standards.

Current land use management in the country is characterized by:

- Abandonment of policies before they mature hence making it difficult to evaluate their effectiveness.
- Lack of capacity within the statutory agencies mandated to undertake land use management. This undermines effective implementation and monitoring of policies, guidelines and regulations. As a result, this has caused haphazard and incompatible location of land uses, urban sprawl and decay.
- No clear guidelines on the use of public land thereby causing misappropriation and destruction of these resources. Poor natural resources management in turn has resulted to indiscriminate excision of natural resources; deforestation; over grazing; encroachment into recharge areas; coastal erosion. encroachment of high water marks, destruction of marine breeding sites, extinction of species; competition from infrastructure and other development projects; restricted fish landing sites, obstruction of access to public space and other commons; landslides; salinization in the ASALS; eutrophication of water bodies and encroachments into wetlands, and
- Insufficient and inappropriate technology which has negatively impacted on effective collating and dissemination of land use information.

To address problems related to land use management, the government shall:

- (i) Enhance preparation of strategic spatial developments plans to guide investments.
- (ii) Ensure enforcement of and Compliance to approved development plans.
- (iii) Develop a database and guidelines on usage of public land.
- (iv) Establish a devolved institutional framework for management of public land at national and county level.
- (v) Adopt modern technology in land use management.
- (vi) Develop a land use mapping system.
- (vii) Formulate a resource tenure policy

### 3.12 Land use planning

Land use planning is a deliberate public activity that assigns land uses so as to achieve efficiency, economy, harmony, convenience, environmental quality, aesthetics, coordination and order to inform the future use of land. Additionally, effective planning enhances agricultural production, facilitates marketing, preservation of produce and conservation of agricultural land.

Land use planning is intended to guide competing land uses in both urban and rural areas. It will also deliver competitive urban places that attract and retain local and foreign direct investments and sustainable human settlements.

However, inadequate capacity in terms of human resources, facilities and finances necessary to undertake plan preparations, implementation, monitoring and evaluation has led to non-delivery of land use planning services.

In addition the creation of numerous and uncoordinated statutory agencies charged with implementation and lack of political will to adequately finance the land use planning delivery institutions and mechanisms has hampered the sector. Insufficient evaluation for land use allocation and incompatible location of land use activities has compounded the problem of land use planning.

#### Key Land Issues

- Lack of adequately planned and serviced industrial and commercial land
- Lack of recreational and open spaces within human settlements
- Anticipation of emerging environment land use requirements
- Non provision of additional designated serviced lands
- Unplanned conversion of high potential agricultural land to other uses.
- Indiscriminate conversion of wildlife dispersal areas and habitats to urban development and agriculture
- Planning and developing of hospitality facilities in a manner that individualizes public spaces

- Proliferation of informal businesses within the urban centres
- Lack of proper infrastructure development to promote sustainable production on land
- Inadequate public participation and lack of awareness in land use planning
- Inadequate planning for industrial development in both rural and urban areas

To address the problem of land use planning, the government shall:

- (i) Undertake planning and land banking for industrial, commercial, agriculture and infrastructure development.
- (ii) Utilize modern methods which maximize agriculture production .
- (iii) Ensure advancement of infrastructure within the constitutional definition of 'Land' to include utilization of underground and space to address the competing land uses.
- (iv) Plan for human settlements to provide for the requisite infrastructure through setting aside land.
- (v) Enforce development control, monitoring and evaluation of development plans through modern technology.
- (vi) Provide for designated, well planned and serviced wholesale and retail sites in major and secondary towns.
- (vii) Ensure conversion and change of use is guided by development plans.
- (viii) Plan land which abuts major water bodies and provide for buffed riparian reserves which will remain for public access and use. While planning land abutting on rivers, waterways, water bodies provision should be made for buffed riparian reserves for public access and use.
- (ix) Adopt space saving architecture in designing industrial, commercial and human settlements premises.
- (x) Develop structured framework for public awareness, education and sensitization in land use planning.
- (xi) Carry out integrated inter sectoral planning to ensure balance in wildlife conservation, industrial and commercial development and agriculture sectors.
- (xii) Develop framework for coordinating various actors in land use planning as well as building capacity both budgetary and human resource
- (xiii) Plan and provide serviced land for social housing, promote public private partnership in provision of housing

## CHAPTER FOUR: IMPLEMENTATION FRAMEWORK

### 4.1 Institutional Framework

The implementation of this Policy will require a well-coordinated institutional and legal framework. The success of a good land use policy depends largely on the willingness and ability of government and other institutions to implement prescribed recommendations.

Currently, land use functions involve uncoordinated multiple players with overlapping mandates leading to jurisdictional, legal, policy conflicts and contradictions. Weak enforcement of and compliance with existing policies, legislations and regulations have compounded the implementation problem.

To address the problem of implementation of this policy, the government shall Capacitate relevant institutions to enforce land use plans and compliance with laws and regulations as per paragraph 254 of the National Land Policy.

#### **4.1.1 Coordination among various actors**

Various government agencies have different land use needs and have often conflicted due to poor coordination. Coordination among the various government agencies over the years has been found to be wanting.

Therefore to address this challenge, the Government through the Ministry of Land, shall harmonize and coordinate the roles of regulatory and enforcement agencies.

#### **4.1.2 Harmonization of land use and their policies**

Different sectors such as agriculture, industry, transport, forestry, wildlife, urban development and social services compete for land. Each sector has its own land use activities, which are not always integrated with those of other sectors. These alternative land uses have led to conflict and disharmony over land use allocation. There are inadequate consultations between sectors both in land use allocation and formulation of laws. Inadequate common guiding principles have led to each sector or institution pursuing sectoral objectives in land use planning.

To enhance coordination among various sectoral land use activities to promote integrated land use planning and management, the government shall:

- (i) Enhance harmonization of the National Land Policy and land management institutions in line with Paragraph 231 of the Land Policy consistent with the Constitution.
- (ii) Develop, review and harmonize the different sectoral laws and policies relating to land use and management.

- (iii) Develop a National Spatial Plan, County Spatial Plans and community land use plans for the country.

#### **4.1.3 Dissemination of land use information**

Despite the impressive achievements made by Government in liberalizing the information and communications sector, the level of land use related information available to the public is still low. In some cases, especially in rural areas, use of modern technology for land use information dissemination is still hampered by inadequate infrastructure such as poor power supply. Related to this is the high cost of information technology, which is beyond the reach of the majority and centralized land administration and information management systems.

To improve dissemination of land use information at all levels in the country, the government shall:

- (i) Increase the use of existing and potential avenues for disseminating land use information, including Print and electronic media, Institutional Libraries and Resource Centers, Civil Society and Religious Organizations.
- (ii) Package and disseminate land use information for use by a variety of stakeholders including county governments, landowners, land managers, land administrators, researchers, students, investors, and others.
- (iii) Develop the capacity of private extension and other service providers to provide expert advice on land use through the participations of all land actors.
- (iv) Produce a current status report on “The State of Land use in Kenya” once every 5 years for urban and 10 years for rural areas.
- (v) Fully decentralize land administration and information management systems in line with the Kenya Constitution.

## **4.2 Legal Framework**

### **4.2.1 Harmonization of laws and policies**

A number of existing policies and legislations need to be reviewed to address uncoordinated regulatory framework.

To address the problem related to lack of harmony weak enforcement of policies and regulations the government through the ministry of Land shall:

- (i) Ensure the National Land Policy forms the basis for, and be recognized as the overall guide of all other land related policies and legislations
- (ii) Strengthen enforcement institutions, through capacity building and regulation.

- (iii) Review outdated laws to conform to the Kenya Constitution and National Land Policy.
- (iv) Complete the on-going revision of the Physical Planning Hand Book.
- (v) Review the Physical Planning Act to harmonize it in line with the recommendations of the National Land Policy.
- (vi) Strengthen the land use planning and management systems provided for in the existing planning legislation.

#### **4.2.2 Interpretation of property rights**

To address the problems related to interpretation of Community property rights and inconsistency with concessionary rights, the government shall:

- (i) Undertake training in alternative uses of the environment,
- (ii) Undertake sensitization of the best environmental practices
- (iii) Clarify the rights and responsibilities of the community as given under Article 63 Section (d) (iii) of the Kenya Constitution.

#### **4.2.3 Legal tools and mechanisms to support conservation of heritage and culture**

To address the issues related to lack of effective legal tools and mechanisms that support the conservation of heritage and culture leading to encroachment of these sites, the government shall:

- (i) Create legal mechanisms to protect strategic heritage, conservation and cultural areas
- (ii) Enhance enforcement of the legal instruments.

#### **4.2.4 Policies and legal mechanisms for land resource use in protected areas**

To address the issues of restrictive policies and legal mechanisms for land resource use in protected areas, the government shall:

- (i) Revise the Protected Areas Act to be consistent with Articles 62 and 63 of the Kenya Constitution.
- (ii) Rationalize policies and regulation on public land use as per paragraph 61 (e) and (f) of the ***National Land Policy***.
- (iii) Outline the right procedures for de-gazetment of protected areas.

#### **4.2.5 Resource protection outside protected areas**

To address issues related to weak policies and legal mechanisms for resource protection outside protected areas, the government shall:

Establish clear policies on wildlife management outside parks with the intention of minimizing human-wildlife conflict.

Develop a framework to integrate wildlife keeping with other land uses.

Sensitize the population on the economic benefits of community conservation of wildlife i.e. integrating wildlife with other land use activities.

Involve all stakeholders in the formulation and implementation of legislation on wildlife management outside protected areas.



Implement wildlife use rights established under the Kenya Wildlife Service.  
Sensitize the public on the existing recommended procedures for handling problem animals and vermin.

#### **4.2.6 Sectoral policies in industrial and commercial sectors**

The operational industrial policies are contained in many disparate policy documents including Acts of Parliament, Sessional Papers, Development Plans and other sectoral policies and strategies. These policies do not give clear guidelines on how land for industrial and commercial development can be availed and utilized. This problem is further compounded by a weak legal framework, as well as, overlapping ministerial mandates, all of which have culminated into an uncoordinated and slow pace of industrialization.

To address the problem of numerous and uncoordinated sectoral policies in industrial and commercial sectors, the government shall:

- (i) Consolidate and harmonize all industrial and commercial sectoral policies and laws so as to provide appropriate guidelines for access to and use of industrial and commercial land.
- (ii) Decentralize these guidelines to County levels to foster uniform industrial and commercial land use development.

#### **4.3 Regional and International Issues and Obligations (Treaty and Conventions)**

Kenya is a signatory to a number of international treaties and conventions and regional agreements that are of direct relevance to land use. It is for this reason that the Kenya Constitution Article 2 Section (5) (6) recognizes that international law, treaties or convention ratified by Kenya form part of the supreme law of the land.

To address International and Regional issues and Obligations, the following areas of concern need to be addressed: Low level of implementation of the provisions; outdated Conventions, lack of coordination in the management of trans-boundary resources, unharmonized regional legislations/policies, lack of national safeguards and inadequate public participations

##### **4.3.1 Low level of implementation of the provisions**

To address the issues of low level implementation of provisions of both regional and international treaties and conventions, the government shall:

- (i) Implement all ratified regional and international treaties and conventions relating to land use e.g. **Treaty for the Establishment of the East African Community**, Chapter 15 (Articles 89, 90, 91, 92 and 93) on **Cooperation and Infrastructure Services**, and Chapter 19 on **Cooperation on Environment and Natural**

**Resources Management** specifically Article 111 on **Environmental issues and Natural Resources**.

- (ii) Domesticating international conventions and other protocols to ease compliance and implementation.
- (iii) Disseminate information and sensitize the people of Kenya and East Africa in general on the regional and international treaties and conventions relating to land use.

#### **4.3.2 Outdated Conventions and Treaties e.g. Nile Treaty of 1929**

To address the issues of outdated regional and international conventions e.g. Nile Treaty of 1929, the government shall:

- Devise mechanisms to revise or repeal the treaties to conform to the realities of the day to improve land use.

#### **4.3.3 Lack of coordination in the management of trans-boundary resources**

To address issues related to lack of a coordinated approach in the management of trans-boundary resources, the government shall:

- In partnership with neighboring countries, provide for a legal framework to effectively streamline the management of trans-boundary eco-systems with a view to enhancing the quality of the environment and also ensure sustainable utilization of shared natural resources in the EAC. E.g. waters of Lake Victoria, Lake Natron, Mara River, Mt. Kilimanjaro Ecosystem, and Mt. Elgon Ecosystem.

#### **4.3.4 Un-harmonized Regional Legislations and Policies**

To address issues related to lack of harmonized regional legislations/policies that relate to conflicting land use practices e.g. Serengeti Mara game reserve between Kenya and Tanzania, the government shall:

- (i) In partnership with the member states, develop a common environmental management policy for sustainable utilization of land among partner states
- (ii) Implement the provisions of the **Treaty for the Establishment of the East African Community**, Chapter 19 (Article 112) on **Management of the Environment**

#### **4.3.5 National safeguards in Regional and International Obligations**

To address the issues of lack of national safeguards in light of regional and international obligations, the government shall scrutinize regional and international treaties and conventions to ensure that they are beneficial to the country and in consistent with the national values.

#### **4.3.6 Inadequate public participations in ratification of Regional and International legal instruments**

To address the issues related to lack of adequate public participation in the ratification of regional and international legal instruments, the government shall device mechanisms for creating awareness and promoting public participation in accordance with the Constitution of Kenya Article 196 and in line with Article 2(5-6).