

# Regional Land Context for Peaceful Co-existence in Kenya

*September 2012*



## Introduction

*This Conference represents Kenya. Participants include civil, political, religious and business leaders from all over the country. They are change-agents. They have deep connections with the grassroots of their communities and they work tirelessly to better the lives of those around them.*

*This group has come together because they are concerned: concerned by the violence they have seen in recent times; concerned at the history of violence surrounding elections; and concerned at the disconnect between the actual objectives of the National Land Policy and the perceptions of it that they see and hear in their communities. Land Reform remains a deeply emotive issue.*

*Over two days participants heard from expert speakers and debated the issues amongst themselves. Their overwhelming desire is to prevent conflict marring the elections, the Land Reforms and Kenya's future. It is clear to them that what politicians say, especially in the lead-up to an election, can make the difference between whether there is a crisis or whether a crisis is averted. Politicians and policy makers are reminded that the signals they send out are very important.*

*The recommendations contained in this paper are not intended to be read as criticism, either of the Government or of any institution. Rather, they should be seen as the sage advice of concerned and well informed citizens who know their people and love their country. Policy makers ignore these voices at their peril.*

Professor Peter Kimuyu



This report provides a summary of the presentations and discussions as they took place. There were, inevitably, differences of opinion during the debates, but the conclusions and principles settled upon by participants were achieved by consensus, providing a jointly agreed basis on which to move forward.

The views expressed in this report are not necessarily those of the sponsoring organisations, the Sychar Centre, ISAR or Concordis International.

## Summary Policy Recommendations

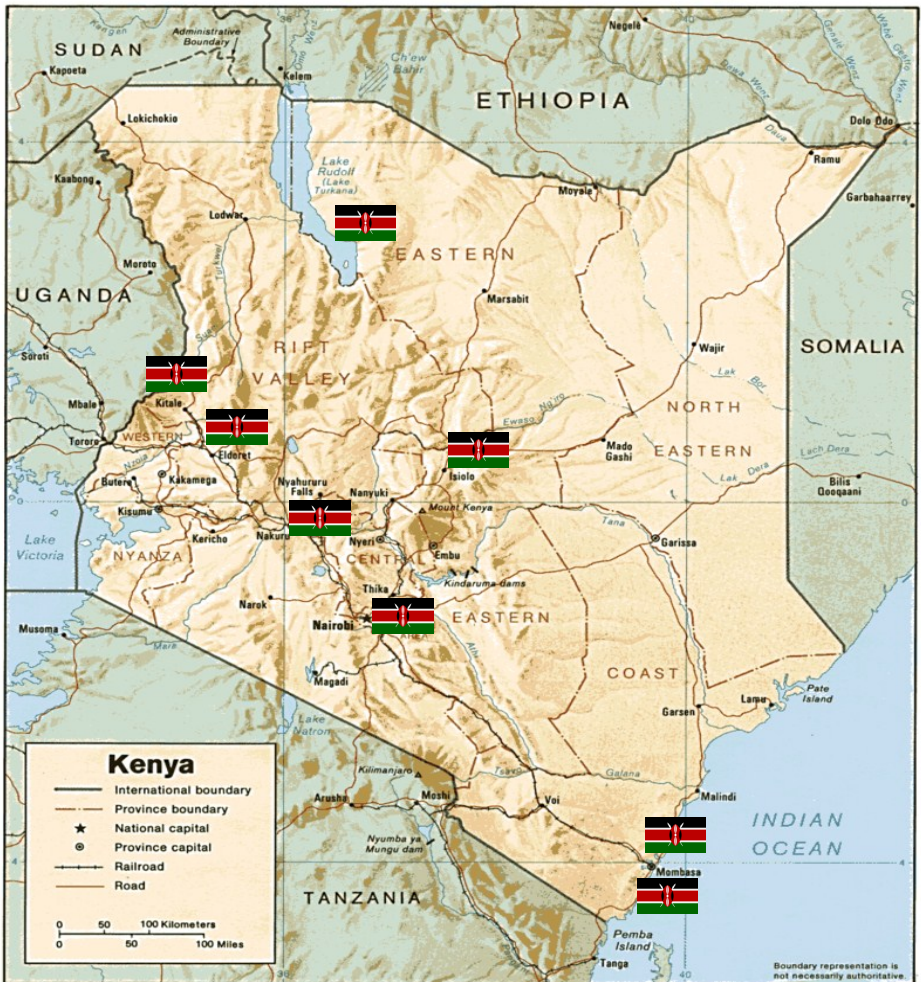
**The Conference embraces the vision and mission of the National Land Policy and the Constitution, to make one nation out of forty two ethnic groups.**

**The Conference urges the Government and/or the National Land Commission to consider hastening implementation of the National Land Policy as follows:**

- ◆ Promote transparency in all dealings in land on which slums are built. Suspend all dealings in Private Land that is occupied by slums.
- ◆ Many slums are on formerly Public Land that was granted to developers on the Special Condition that grantees develop the land within two years. When factories are not built in breach of the Condition of Grant, enforcement action should be taken, causing the land to revert to being Public Land.
- ◆ As Public Land, the National Land Commission should consider using section 160 Land Act to grant land title deeds to the tenant slum dwellers, with a view to regularising their settlements and installing utility services.
- ◆ IDPs and slum-dwellers should be resettled on Public Land.
- ◆ Fast-track the creation and implementation of the Land Information Management System in the interests of openness and accountability.
- ◆ Communicate information about the Land Reforms clearly to the grassroots, especially to the youth. Use both Swahili and English in print media, theatre, local TV and radio.
- ◆ Persuade the Youth Forums to encourage young people to be advocates of positive change instead of being proponents of violence.
- ◆ Use religious, NGO and civil society networks to communicate accurate information about the Land Reforms.
- ◆ Land Reform is a critical electoral issue and must be addressed by campaigning politicians clearly and soberly. The issues should be addressed positively, justly and in accordance with the Mission and Vision of the National Land Policy.
- ◆ The Government should consider banning from the electoral process anyone who uses their platform to stir up violence over Land Policy.

## The Participants

Conference Participants came from all over Kenya, as indicated by the flag-markers on the map below. They represent a variety of the nation's peace-building organisations, NGOs and civic, political, religious and business leaders.



## Policy Recommendations from the Grassroots

### The National Land Policy

The Conference embraces the vision and mission of the National Land Policy, the new Constitution and its attempt to make one nation out of forty two nations.

#### ***Vision***

*A National Land Policy that will guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity.*

#### ***Mission***

*To promote Land Reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, processes and systems dealing with land.*

*To secure rights over land and provide for sustainable growth, investment and the reduction of poverty in line with Government's overall development objectives.*

- ◆ **The Conference now asks that the Government take steps to hasten the implementation of the National Land Policy.**

### Informal Settlements (Slums)

The Conference is very concerned about the large and growing number of Kenyans living in slums. The situation in the slums is volatile. There are large numbers of well-educated, unemployed frustrated young people who feel disenfranchised. This presents a very dangerous situation, especially in the lead up to the election.



*Kibera slum, Nairobi Photo: Stefan Magdalinski, .*

- ◆ **The Conference urges the Government to prevent any action or rhetoric that might provoke people in the slums into violent conflict.**
- ◆ **The Conference recommends that the Government promotes transparency in all dealings in the land on which the slums are built.**



The Conference is aware that many slums are on Private Land that used to be Public Land, but was granted to developers on the special condition that grantees develop the land within two years. It was intended that the factories built would create jobs and generate national income. In many cases, these special conditions of grant have not been met.

- ◆ **When Conditions of Grant are breached by developers who fail to invest in business plant or to put the land to productive use, the Conference urges the Government to enforce these conditions, requiring developers to forfeit the land, causing it to revert to being Public Land.**
- ◆ **Once the land becomes Public Land, the Conference urges the National Land Commission to consider using Section 160 of the Land Act to granting land title to the tenant slum-dwellers living on it, with a view to regularising their settlements and installing utilities.**



*Kibera Slum Education Programme Photo: Kent Yoshimura.*

The Conference considers that it is a national disgrace having Kenyans living in slums and IDP camps when there is Public Land available that could be used to resettle them.

- ◆ **The Conference urges the National Land Commission to consider using Public Land to resettle IDPs and slum-dwellers.**

The transfer of land is a particularly contentious issue during election time. It can often result in forced clearances of the land, which increases tension and can provoke violence. The Government has already frozen all dealing in Public Land pending the election.

- ◆ **In the interests of peace, the Conference urges the Government also to consider suspending dealing in Private Land that is occupied by slums.**

The National Land Commission has been delegated power and responsibility to investigate these issues. The Conference urges them to do so as a matter of urgency, for the avoidance of potential violent conflict.

*“I went to the Kisumu Land Office. They assumed I was ignorant and treated me very rudely, tossing me back and forth from person to person and refusing to help me register my land. I got out my iPad and showed them the law under which they were obliged to serve me. At that point everything changed and I was served. When I went back there some time later the manager saw me and immediately came to help me. People need to know their rights; then they will be able to access these institutions. The information needs to filter down to the common man.”*

Conference participant

## **The National Land Policy, the Land Act and the Land Registration Act**

The National Land Policy is clear; there is an urgent need to resolve historical land injustices, shore up the rights of minority groups and resolve the Coastal land issue if further violence is to be averted.

The Land Reforms are good, but they have yet to be fully implemented.

- ◆ **The Conference urges the Government to accelerate implementation of the new Land Laws.**

*“Those in high positions who are blocking implementation of this legislation need to be held to account.”* Conference participant

In the interests of openness and accountability, there needs to be proper and accessible mapping of all land in Kenya so that it is transparent to all who owns any given piece of land, including a tracking system of all transactions.

- ◆ **The Conference urges the Government to fast-track the creation and implementation of the Land Information Management System.**

*“There are too many heart-rending stories of people saying that they have documents showing that they own the land but the courts are not helping them. They depend on the land, that’s all they know. They must have access to justice.”* Conference participant

## Communication with the Grassroots

The Conference considers that there is widespread ignorance amongst the Kenyan population about the National Land Policy and the proposed Land Reforms. There is fear and suspicion that the Land Reforms are intended to make it easier for the Government, wealthy landowners and large corporations to seize people's land.

Much of this fear comes from a lack of knowledge, or indeed of deliberate disinformation spread by those with vested interests. This fear is misplaced since the new laws are rich and very empowering if people know and understand them.

*"A lot of Kenyans feel trapped in a past that they don't know how to undo, but under the new arrangements there is a lot of room [to take action]. The reform to the judiciary is evidence that things are different and they are likely to continue changing. People need to see that they can make use of the judiciary; we need to enable people to make use of these changes."*

Conference participant

Time is critical. There is a National Land Policy in place, but if conflict is to be prevented, it is imperative to communicate the message of the Policy to the grassroots. This must be done in both the rural and urban environments.

There need to be civic education to enable people to understand their land rights under the new legislation. If they are aware of how to access these entitlements peacefully then they are less likely to seek to do so by force.



Community Centre, Nairobi Photo: Shack Dwellers International.



The National Land Policy, the associated Land Laws and indeed the Constitution itself are very full of legal jargon.

- ◆ **The Conference asks that the message be simplified so that it is more accessible to the masses. This will need to be in Swahili as well as in English.**
- ◆ **Print media should be used, as well as local TV and radio stations that could communicate the messages at a local level and in the vernacular.**
- ◆ **Theatre groups can also be used to communicate the important messages regarding the Land Reforms in a way that can easily be understood.**

*“We had a theatre group and we would write funny plays about things we didn’t like. People would laugh at these things and so the message got home.”*

Tamasha Peace Foundation Magnet Theatre

- ◆ **Cultural festivals may be used to aid national unity. The Jubilee Year could be used for this.**

*“We brought together people from different tribes and shared our traditional foods and songs to see how the others lived. It helped people to realise that there is something you can learn from that community.”*

Conference participant

Young people form a large and significant group. If there is to be violence and civil disorder, there is a high chance that poor and disenfranchised, but well-educated, youth will be involved. The message of the Land Reforms can be communicated to some young people through social media including Facebook and Twitter, with simple graphic information.

- ◆ **The Conference suggests that Youth Forums should be used to inform young people about the Land Reforms, so as to transform the young people into advocates for positive change instead of being proponents of violence.**

*“Transparency International went to the youth to talk about the effects of corruption on their community. After only three hours of teaching, the young people were mobilised to take it upon themselves to tell everyone in the community. Now everyone knows about anti-corruption. Youth could also be mobilised in this way to communicate the message about Land Reform.” Conference Participant*

Training should be offered to young people to encourage them to be economically active. The Conference calls on the youth forums to come up with practical initiatives that will enable young people to be economically independent.

*“There was a group of young men who were drinking away their limited income. They were challenged on their behaviour by someone who asked, ‘Why do you have the lake but still live like this?’ They were helped to realise that the money they could save by not drinking could buy them a bigger boat and better nets, which enabled them to catch more fish, which gave them a far more comfortable lifestyle.” Conference Participant*



*The only open square where people can play football. Mathare, Nairobi Photo: Katy Fentress.*

NGOs and networks of peacebuilders in Kenya should be encouraged and viewed as partners by the National Land Commission. The Government should be aware that the NGOs and the peacebuilders have networks of people who can communicate the message about the National Land Policy to the grassroots.

Similarly, the church and mosque networks can be a useful platform to undertake civic education on the National Land Policy. This is not the same as the religious institutions getting involved in politics; it is merely communicating accurate messages about people's entitlements so that they will not resort to violence in their frustration.

The Conference sends a message to all current and aspiring political leaders that Land Reform is a critical electoral issue and must be addressed by campaigning politicians clearly and soberly. They must not talk about Land Reform in a manner that is likely to incite people to violence. The issues should be addressed positively, justly and in accordance with the Mission and Vision of the National Land Policy.

- ◆ The Government is asked to consider banning from the electoral process anyone who uses their platform to stir up violence over the National Land Policy.

*“People rally around certain leaders who seem to promise the most. They know where to touch. For many rural folks it is the area of land. Others tap on the issue of ethnicity.”* Conference Participant

*“How many of us would vote for ideas, not just for a person who is from our community? It must start from personal conviction. We should teach our people to listen to ideas, not just supporting a person from our community.”* Conference Participant

The process of selecting leaders to represent communities should enable members of those communities to appoint people who will advocate for the community's interests. There is an issue with some community leaders disposing of Community Land, when this is not in their people's best interests. People need to select leaders who will speak genuinely for them.

*“We have a big challenge because of the idea that whoever is the leader his people will benefit. It doesn't matter if what he is doing is good or bad; his people will keep voting for him. This must stop.”*

## Session 1: The status of Land Reforms in Kenya

### Ibrahim Mwathane; Land Development & Governance Institute

*Mr Mwathane is a consultant in Surveying Land Information Management and twice received the Head of State Commendation Award for introducing reforms to the surveying profession, improving service delivery in the land sector and helping form the National Land Policy.*

### Introduction

There was an acute need for Land Reform. The previous situation had a detrimental effect on all aspects of the lives of Kenyans, including livelihoods, shelter, travel and food security.

Few Kenyans knew that there were bypasses around Nairobi until the Institute of Surveyors of Kenya raised public awareness of the issue. Houses had been built on some of these bypasses, causing people to sit for hours in traffic jams. With completion of construction of some of these bypasses, people can now avoid the city traffic.

- ◆ There is environmental destruction and pollution of watercourses due to unregulated land use.
- ◆ Many Kenyans are living in informal settlements with inadequate access to facilities.
- ◆ Access to public land has been blocked illegally by private developers.
- ◆ Land has been fragmented and become uneconomic to farm.



*Kibera Slum, Nairobi Photo: Antonella Sinopoli.*

There are issues of security of tenure. The Government had granted individuals titles to land, then declared that it was public land and evicted them, even though they bought it in good faith. This activity tends to increase during the electoral years.

There are disparities in land distribution between the very rich and the very poor, as well as historic injustices dating back to 1895. The previous land laws were very complex, with different laws for different regions. This, coupled with corruption within the institutions, restricted access to justice.

Cumulatively, this causes the issue to be very contentious and many react violently to it, yet there was inadequate participation in the consultation leading up to the reforms. There is a need to ask, calmly:

***What is the problem we are facing and how do we wish to resolve those issues?***

## **The New Kenyan Laws**

### **1. The Constitution of Kenya 2010**

Anchors the National Land Policy of 2009.

### **2. The National Land Commission**

Established by the Constitution, its functions are to manage public land, recommend a national land policy, advise on registration of land titles and research the use of natural resources. It will also investigate present or historical land injustices and recommend redress, encourage the application of traditional dispute resolution mechanisms in land conflicts, assess land tax and have over-sight over land use.

### **3. The Land Act**

### **4. The Land Registration Act**

A critical tool in creating access to justice is the Land Information Management System, which will give up-to-date access to land information anywhere in Kenya. This process is on-going but it needs to be fast-tracked.

### **5. Land Court Act**

Establishes the Environment and Land Court with the status of the High Court. This court has yet to be formed, two years later. In part this is because there had not been prior thought given to the transitional challenges and institutional demands required to operationalise this Court.



## Challenges encountered

A big challenge to progress is **poor public awareness**. The technical nature of the process limited stakeholder capacity to engage in the public consultation.

**Vested interests** have impeded implementation, leading to delay and compromise.

- ◆ Large land owners wrongly perceive that their land would be seized under the new laws and so have lobbied hard to block the Land Reforms.
- ◆ The Executive and other politicians have micromanaged the process, ensuring that decisions are made at a very high level in the Government, causing excessive delay. Many of these decision makers themselves own large tracts of land.
- ◆ The beneficiaries of irregular or illegal allocations have an interest in preventing the Land Reform.
- ◆ The electoral cycle and referenda divert attention from the core issues of Land Reform.



*Graffiti from Election violence Photo: Worth Baker.*

## Future challenges

- ◆ The need for sustained political goodwill.
- ◆ Political incitement, provoking vulnerable groups to violence.
- ◆ Lack of sustainable budgetary support, since the sector competes with popular causes such as education, health care and infrastructure for support.
- ◆ Limited technical capacity. Land Reform requires competent judges, surveyors, planners and environmentalists to see it through.
- ◆ There is not yet a plan for comprehensive implementation.
- ◆ Institutions' resistance to change.
- ◆ Insufficient public awareness. In a recent survey, 60% of Kenyans did not know about the new Land Laws. This poor public awareness limits people's ability to enforce their rights in court.
- ◆ Cultural practices that are at odds with aspects in the Land Act, such as gender parity in land ownership.
- ◆ Vested interests continue to impede progress.
- ◆ High expectations of those who are aware of the Land Reforms, who may be disappointed by the pace of implementation in the face of these challenges.

## Policy Recommendations: Using the Reforms to Promote Peace

- ◆ The National Land Policy is clear; there is an urgent need to resolve historical land injustices, shore up the rights of minority groups and resolve the Coastal land issue if further violence is to be averted.
- ◆ Section 160 of the Land Act needs to be used to resolve issues of squatters and absentee landlords, regularising squatter settlements as a priority.
- ◆ The Land Reforms are good, but they have yet to be fully implemented.
- ◆ Stakeholders need to mobilise a strong grassroots initiative to inform people about the new Land Laws. The new laws are rich and very empowering if people know and understand them.
- ◆ The new laws should be used to address the issue of gender bias. Discriminatory practices should not be tolerated.
- ◆ Advise and encourage young people about Land Reform, so they become advocates of positive change instead proponents of violence. They need to know that they now have access to non-violent solutions to their grievances.

## Session 2: The National Land Policy and Regional Issues

**Dr. Winnie Kamau**

*Dr Kamau is a Professor at Kenya School of Law in the University of Nairobi.*

### **National Land Policy Sessional Paper no 3: 2009**

#### **Vision**

A National Land Policy that will guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity

#### **Mission**

To promote Land Reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, processes and systems dealing with land.

To secure rights over land and provide for sustainable growth, investment and the reduction of poverty in line with Government's overall development objectives.

### **The National Land Policy is enshrined in the Constitution at Article 60(2)**

The Policy offers a framework to provide:

- ◆ All citizens with the opportunity to access, occupy and use land
- ◆ Economically viable, socially equitable and environmentally sustainable allocation and use of land
- ◆ Efficient, effective and economic operation of land markets
- ◆ Efficient and effective use of land and land-based resources
- ◆ Efficient and transparent land dispute resolution mechanisms

The **philosophy** of the Policy is that:

*Land is not just a commodity that can be traded in the market. It represents multiple values which should be protected by both policy and law. It is:*

- ◆ An economic resource to be managed productively
- ◆ A significant resource for equitable access of livelihood
- ◆ A finite resource to be used sustainably
- ◆ A cultural heritage that should be conserved for future generations

The Policy adopts a plural approach that respects co-existence of different tenure systems, including unwritten Customary Tenure, with equal guarantees of tenure security. Security of tenure is recognised as being of critical importance. There are currently cases of double allocation of land, where two or more people have title deeds for one piece of land. In addition, people buy land and acquire title deeds but are then forcibly removed, since they are deemed ‘foreigners’.

### **The Land Policy Principles incorporated into the Constitution at Article 60 grant:**

- a. Equitable access to land for subsistence, commercial productivity and settlement, recognising the need to achieve a sustainable balance between these uses
- b. Intra and inter-generational equity
- c. Gender equity
- d. Secure land rights
- e. Effective regulation of land development
- f. Sustainable land use
- g. Access to land information
- h. Efficient land management
- i. Vibrant land markets
- j. Transparent and good democratic governance of land

### **The Constitution must also recognise:**

- a. Rational allocation of powers and responsibility to state institutions
- b. Transparency and accountability of state institutions
- c. Participation of the citizenry in decision-making processes on land matters
- d. Security of *legitimate* interests in land
- e. Equitable access to land in the interests of social justice
- f. Resolution of genuine historical and current land injustices
- g. Regulation of the use of all categories of land in the public interest
- h. Protection of human rights, especially rights of women, children and persons with disability
- i. Sound management of land and land-based resources to facilitate efficient use and equitable distribution of land

The Constitution states at Article 1 and Art 61:

Radical title (ultimate ownership) now vests in the people of Kenya collectively (under God), as individuals and as communities.

The land used to belong to the British Crown, then was given to the State as embodied by the President, but now sovereignty is vested in the people.

The policy opens up three categories of land:

- ◆ Public land
- ◆ Private land
- ◆ Community land (new category)

## Community land

- ◆ Definition of community: a clearly defined group of users of land, which may, but need not be, a clan or ethnic community. This could possibly include a group of slum-dwellers
- ◆ Community land: land lawfully held and managed by a given community
- ◆ Recognition of customary tenure, including family interests in land and communal rights to clan land, e.g. Kaya forests among Mijikenda, ancestral lands etc. (see Art. 63 of Constitution)
- ◆ Securing community land may involve reversion of former Government land to community land.



*This self-help group in Kilimambogo farms a small plot of kale as well as maize. They work hard to increase their incomes, but both the farm and their homes are on squatted Government land, meaning they could have to move with little notice.*

*Photo: McKay Savage*



## Ownership vs Access to Land

The Policy is clear that, since land is a finite resource, it may not be possible for everyone to *own* land, but they do need *access* to it. The key, therefore, is to secure equitable access to land with rights recognised, not necessarily to grant full ownership of land to every person.

## Security of tenure

Protection of the right to property is granted by Art 40 of the Constitution. Individuals may be deprived of their property only according to the law and there must be compensation paid for loss of land or benefit in land.

It is recognised that it may be necessary to restrict land ownership to facilitate resource utilisation, hence the need for compulsory purchase by Government.

The Policy places restrictions on the minimum size of land ownership to avoid undue fragmentation. The Policy does not recommend maximum landholdings but this is in the Constitution.

## Regional Land Issues

The Policy identifies a number of land issues that require special intervention. These include:

- ◆ Historical injustices
- ◆ Pastoral land issues
- ◆ Coastal land issues
- ◆ Land rights of minority and marginalised groups
- ◆ Land rights in informal settlements
- ◆ Land rights of hunters and gatherers
- ◆ Squatters / landlessness
- ◆ Absentee landlords
- ◆ Land clashes
- ◆ Internally displaced persons



**Refugee Camps July 2011**

Photo: IHH Humanitarian Relief Foundation.

## **Land Reform principles; the 3 R's**

The Land Reform Policy has mechanisms to deal with each issue arising.

1. **Redistribution:** purpose is to facilitate equitable access to land for residential purposes.
2. **Restitution:** purpose is to restore land rights to those who have been unjustly deprived of such rights.
3. **Resettlement:** seeks to procure adequate land for re-organisation of both rural and urban settlements in the light of the expanding population, conflicts, historical injustices and disasters.
4. **Land Banking:** to enable the Government to acquire land in order to implement the 3 Rs above. Government measures include:
  - ◆ Establishment of land banks to make land available for investment and development
  - ◆ Formulate and implement a Government buy-back policy
  - ◆ Procure land for land banks through purchase and donations
  - ◆ Create a program for land reclamation
5. **Benefit sharing** from land and land-based resources.
6. **Land Taxation:** Taxing of idle or under-utilised land as an incentive for production

## **Dispute resolution**

The principle is that people need to have access to timely, efficient and affordable dispute resolution mechanisms. It also recognises that not all disputes need to be taken to court and introduces Alternative Dispute Resolution or community mechanisms for resolving disputes.

- ◆ Establishment of Environment and Land Court with the status of the High Court
- ◆ Encouragement of alternative dispute resolution, including negotiation, mediation, arbitration, and traditional dispute resolution mechanisms
- ◆ Encouragement of local community mechanisms for resolving disputes
- ◆ This is enshrined in the Constitution at Article 60(g) and Article 159(2)(c)

## Institutional Framework

The core principle of the Land Policy is that decision making should be devolved down to the local level, encouraging accountability, public participation and local representation.

Whilst the National Land Commission is in place, the District Land Boards and the Community Land Boards have not yet been formed.

The cost of implementation over the first 6 years is estimated at 9.6 billion Kenyan Shillings [£74 million] and this is due to be funded through internal revenue.

It is vital that people bring their concerns to the National Land Commission, since this is the body that is responsible for the implementation of the National Land Policy. The Commission will then be mandated to carry out further research.

## Participants in the dialogue expressed concern about a number of issues:

- ◆ There are regions in which military, wildlife and community groups are in conflict over the same land.
- ◆ The squatter issue brings to the fore the issue of competition for land. It is an issue for many people not just the tyrant slum landlord. If someone lives in Nairobi but has land in Mombasa, they may find that they cannot develop it if squatters have moved in.
- ◆ There was support for taxation on idle land, such as in the Coast Region, where landowners are absent, but there was concern expressed that, if they pay tax, then this justifies their actions. It was suggested that the Government therefore need to tax under-utilised land at a punitive rate in the hope that this will encourage people to use land productively.

It was noted that, in developed economies, people farm large tracks of land productively. It is not economically productive to farm at a very small scale.

It was recognised that the community organisations and community leaders need proper information about the rights and entitlement of the people, so they can advise the communities as to the non-violence mechanisms that are available to them. Otherwise they feel that no one is helping them.

## In the course of the subsequent discussion, Dr Kamau advised:

It is within the Government's power to convert Public land into Community Land and to convert Private Land into Public Land. Land containing oil and minerals is deemed to be Public Land under Art 62 and there is a requirement that compensation be paid if land is seized. Waterways are not necessarily included but there is a public benefit argument in favour of their inclusion.

Dr Kamau recommended that community groups should seek training in Alternative Dispute Resolution (ADR) and in implementing traditional justice mechanisms, now that this is recognised in law.

Some Public Land will be owned by local councils on trust for the people, overseen by the Land Commission. A participant suggested that, since independence from colonisation, multinationals took over, and land is still not owned by people.

Dr Kamau advised that one of the functions of the National Land Commission is to initiate investigations into historic land injustices and consider how these might be redressed. The Commission may need to have a cut-off point so they don't go too far back.

Dr Kamau advised that informed mobilisation of the people is important, so they know their rights and enforce them in an organised way. They will have a powerful voice if communities come together to make representations. There needs to be a concerted effort to consider how best to hold Government and leaders to account.

A participant expressed concern that beach plots have been grabbed or blocked by private developers, preventing fishermen access to the beaches to further their livelihood.

Dr Kamau advised that the National Land Policy emphasises **access** to land, not **ownership** of it. As such, there is policy to address this. Fishermen have right of access to the beaches unless this would cause environmental or security issues. Dr Kamau noted, however, that it is one thing to have the right of access on paper; it is another to have it enforced.

A participant stated that in the Kajiado Valley, a developer has built on land owned by the community since independence. This has caused a lot of tension between the two communities.

Dr Kamau advised that the Commission is now up and running and it must prioritise these things depending on materiality.

Professor Kimuyu closed the session by saying: ***"We all have a voice; if someone is hurting, let's not keep quiet."***

## Session 3: Urban Perspectives

Kingsley Kariuki

### The time bomb

At the time of the Mau Mau uprising (1952-1956) 50,000 people died. Half of them were under 10 years of age. We need to learn from our history.

- ◆ Kenya now has 40 million people
- ◆ Unemployment is at 40%
- ◆ Urbanisation 39.7% now and due to hit 50% by 2030

We have large numbers of well educated, unemployed, disenfranchised young people living in slums. This is a time bomb, waiting to go off.

We have already seen a glimpse of it in the **post-election violence in 2008**.

- ◆ 1,300 recorded deaths, although the real toll is probably higher
- ◆ 3,000 women raped
- ◆ 42,000 homes and businesses were burned
- ◆ 300,000 people were internally displaced
- ◆ 10 billion Kenyan Shillings lost by business
- ◆ An estimated 20bn shillings were lost in tourism



Fleeing electoral violence.  
Photo: Ibrahim Mwachane



## Kenya's Slums

### FACT BOX

- ◆ 10% slums are on uncontested public land
- ◆ 40% are on utility and riparian reserves i.e. by rivers, next to railways on pipes etc.
- ◆ 50% are on private land that was initially public land

'You can predict future by looking at the past'. The lesson from history suggests that the 2008 violence may only be the start.

There is a clear link between the post-election violence, youth unemployment and the slums. The violence mostly involved youth and mostly began in the slums.

The next election is in March 2013.

The slums are very high density; 67% of housing in Nairobi consists of single shacks, 10 feet square.

An average acre of slum land contains 318 households and 1,177 people. This compares with housing density of one to two houses per acre in the more prosperous areas of Runda or Karen.

Slum-dwellers are being charged rent at 2,000 KSH per household per month, amounting to over 7.5m KSH per year per acre [£58,000]

### FACT BOX

- ◆ 43% Kenyans are aged 0-14 years
- ◆ 35% 15-34 years
- ◆ 22% over 35 years
- ◆ Youth are well educated but unemployed. This is a dangerous combination.
- ◆ 65% Nairobi population of 4 million live in 260 slums, with Mukuru, Kibera and Mathare being larger ones.



*An open sewer lined with garbage in the Kibera Slum, Nairobi. Photo: Colin Crowley*

## Slum ownership: who benefits?

- ◆ The registered title owner who pays land rates
- ◆ Slumlord cartels
- ◆ The residents, 92% of whom are tenants

UN Habitat estimates that 57% of the title-owners of this land are well connected businesspeople and Government officials.

**Vote-bank politics** is the brand of politics that encourages the electorate to vote on the basis of narrow tribal considerations. Vote-bank politics is the reason why Kenya's politicians keep the poor poor but still win elections; they keep the people talking about tittle-tattle to distract them from the big issues.

**Land-bankers** are people who own land with no intention of developing it or putting it to constructive use. They pay the land rates to retain title. They permit people to occupy it and collect rent from them. But all the while they are just waiting for the value of the land to go up, so they can turn an easy profit.

When they come to sell, they will evict the residents with bulldozers and heavy earth-moving equipment, supported by armed police using live rounds of ammunition, teargas and attack dogs.

There are many investors who bought title to public land very cheaply on the condition that they would build factories on it, creating jobs and generating investment. It was a Special Condition of Grant of the land that they must produce proposals for their factory within 6 months and build within a year. But many of these investors appear to have no intention of building factories, they are just speculating on the cost of land. This is Land Banking.



*Kibera slum, Nairobi Photo: Antonella Sinopoli.*

## Selling off the Poor?

When these illegal tenants are no longer wanted on the land, they are evicted forcibly using heavy machinery, backed up with armed police.

How can these children have a positive hope for the future if they are afraid that their homes will be destroyed any day? What will be their view of our country when they have bullets used against them by the police of the Republic?

## Who owns these slums?

- ◆ There is a 14 acre slum in Nairobi with 12,720 households and 63,000 residents.
- ◆ There is a 2.5 acre slum with 720 households.
- ◆ There is a 100 acre slum with 30,800 households housing 159,000 people.

The ownership of these slums is a matter of public record. Senior people in the Government, industry and even the judiciary are profiting from this illegal rental income. When they decide it is time to sell or develop the land, they will have the tenants forcibly evicted.

## These people need to be held to account.

It is a condition of their licence that they must develop the land, but they have not done so. They are therefore in breach of their condition and should be penalised.



*"We need to learn from history. If we do not resolve this issue urgently, then there will be violence.*

*And we may not have long to wait."*

*Two young girls carry water on the train tracks that run through the Kibera Slum, Nairobi Photo: Colin Crowley.*

## Session 4: Lessons from Elsewhere

### Peter Dixon

*Peter Dixon is Chief Executive of Concordis International and is undertaking PhD research in the Politics and International Studies Department at the University of Cambridge.*

Peter Dixon's presentation highlighted that, whilst land issues can cause conflict, they should not be viewed in isolation, but as part of a host of interconnected conflict drivers. This presentation drew on lessons from Concordis International's experience elsewhere, offering principles that may have some bearing on Kenya.

#### Example 1: Darfur

A consultation of the same kind as the current one was run by Concordis with a focus on the issue of land in Darfur. The landscape in Darfur is semi-arid, but contains some lush pockets. Indeed, these relatively rich areas are part of the reason for the fighting.

The experience in Darfur indicates that conflict is a disruptive factor—it leads to displacement and to destruction of infrastructure, it creates refugee status, and encourages theft of land, which complicates the return of the internally displaced and refugees. Thus conflict prevention, and conflict-sensitive policies are necessary to facilitate smoother transition to more appropriate land policies, further ideas on which are provided below.

#### Example 2: Borderlands between Sudan and South Sudan

Concordis has been working for the past two years to help the border area communities to bring their perceptions, worries, and aspirations to bear in the establishment of policies on land and other issues. In addition, Concordis has been helping these communities think about what the border would or should be like in a new dispensation. At the border are pastoralists moving to green pastures, collaborating with farmers, without much conflict.

In Darfur for example, there was formerly an agreement between farmers and camel herders, whereby following harvest the camels would be allowed to graze on the stubble land. This was beneficial to farmers and herders alike. This is why it is helpful to think beyond the idea of land ownership. There are many ways of using land, and it does not always involve ownership.

Concordis' borderlands work indicates the complex and interconnected nature of conflict, with many drivers, including: land and livelihoods; seasonal pastoral migration; national politics; border demarcation; ethnicity; and oil and other strategic resources. Therefore inclusive, comprehensive, sustained, and connected dialogue is required at both the policy, national, and community level.

Concordis' experience in Sudan indicates it is possible to influence policy makers, although this is challenging and takes time.

### Example 3: 'Acholiland', Northern Uganda

The Acholi Religious Leaders' Peace Initiative in neighbouring Uganda saw religious leaders working together across boundaries. They provided an analysis of land conflict causes, such as displacement due to war, diversion of communal land, the death of elders, poverty, and population growth.

As a consequence they established six 'Land Conflict Mitigation' committees, who mediated land conflicts and informed people on land rights and nonviolent conflict resolution procedures. In addition, community leaders were trained in conflict mitigation strategies, and facilitated dialogue and collaborative working.



Maasai. Photo Ibrahim Mwathane

The example of Northern Uganda shows us:

- i. The positive role of religious leaders when committed to working together and focused on peacemaking.
- ii. The importance of inclusivity and impartiality.
- iii. That locally-owned initiatives can eventually attract financial support if a good concept is well-planned and professionally implemented.



- iv. That peacebuilding can have a very positive impact, even though it does not address all pertinent issues related to governance.
- v. The positive power of religious leaders in society lies with united efforts, unarmed strategies with ordinary people, humility as a virtue, and respect earned through honesty and service.

The drive towards such peacemaking includes the primacy of relationships; values of justice, equity, mercy, and reconciliation; and peace which means more than an absence of war but also carries the notion of wholeness (*Shalom, or Salaam*), service, and strength in weakness.

Based on the above, and in a very religious country such as Kenya, it is helpful to consider the biblical roots of peacebuilding, and to encourage appropriate responses in Christian and other faith communities.

### Constructive Ideas for Conflict Prevention and Conflict-Sensitive Land Policy

What can be done before, during, and after conflict? USAID's Issue Brief 'Land and Conflict', (April 2011) suggests:

- ◆ **Reduce Land Scarcity:** through release of public land (although in Brazil this had severe environmental consequences); Land Reform; technology (e.g. irrigation); stopping misuse.
- ◆ **Address Insecurity of Tenure:** e.g. participatory community formalisation of land rights (Mozambique, Ethiopia); governance / corruption reform.
- ◆ **Address grievances:** Financed 'willing seller: willing buyer' (Malawi); land sharing in Rwanda after the genocide was seen as a success when the returnees and the hosts shared land resources.

Interventions that are intended for good can have negative consequences, thus International Alert's (2010) exhortation to 'conflict sensitive development' contains advice that should be heeded. They advocate that interventions should:

- ◆ Have understanding of the political economy—what is the context being operated in? Where are power and wealth held? What is the nature of the institutions and key relationships?
- ◆ Demonstrate conflict-sensitive planning—what will be the impact of intended change on the conflict?
- ◆ Incorporate conflict management capacity.

Both the experience represented by the examples above and advice such as that provided by USAID and International Alert constitute a rich resource of wisdom on land grievance issues.

## Session 5: Moral Basis for Land Ownership and Distribution

### Prof. Peter Kimuyu

*Professor Kimuyu is Professor of Economics at the University of Nairobi and Chief Executive of the Sychar Centre.*

### Why be Concerned about the Moral Basis for Land Ownership?

1. Land is not merely an economic resource or an asset. It is the foundation of people's identity. Many people live with one leg in the town and one leg in the village. The land on which a person grew up is associated with their ancestral roots, which community he or she belongs to, and how people identify themselves to others.
2. Land plays a crucial role in housing provision, income generation and economic security.
3. Those who own land can grow food, graze livestock, be gainfully employed or have somewhere to retire to, and bury the remains of their loved ones.
4. Land can be a means for maximising rural employment opportunities which helps slow down the rate of urbanisation often closely associated with conditions of severe deprivation such as that found in urban slums.
5. Land tenure systems can either increase or reduce land and income disparities. Land Reform can therefore be used as instruments of redistribution.
6. Land tenure is a relational concept. Land tenure systems summarise a set of relationships that emerge during the evolution of power structures and their application. In other words, we can look at property rights over land not as relationships between people and land, but between different groups of people with regard to specific pieces of land.



*A farmer at work in Kenya's Mount Kenyon region.*

*Photo: Neil Palmer, International Center for Tropical Agriculture (CIAT)*

## What are the non-negotiable Moral Principles on Land Distribution and Ownership?

**Land belongs to God.** He holds the ultimate property rights over land, so individual property rights should be seen as subordinate to the greater rights given to all people. Such rights are not rights to possess, use and discard as people wish. Land ownership carries with it a duty of care.

Land should never be exchanged purely on account of peoples' ability to pay. Given its nature, factors other than money have to be taken into account in such exchange. Every family should own a piece of land. Such land should be rural and used not just for pursuit of material independence but belongingness.

It provides for rootedness and a point of locus, both of which are important for continuity of families and their identities.

Land ownership should facilitate co-location of relatives (i.e. relatives living close to each other) to:

- ◆ ensure effective welfare provision
- ◆ permit social insurance including emotional insurance
- ◆ encourage filial relational proximity

Ancestral land should never be liquidated but should be held in perpetuity, or else people's emotional identity with a place will be uprooted. If a particular family ceases to exist for whatever reasons, ancestral land should be passed on to the next of kin however defined.

There should be a heavy community involvement in matters of land distribution, administration and resolution of land related disputes. Bringing in outsiders to determine land disputes about which they have no clue, tears relationships.

Land outside designated urban areas should never be sold on a permanent basis, but be subject to leaseholds valid for specified periods with break clauses to protect families.

Differences in size of land holdings should be minimized, taking into account differences in land productivity. Whatever other factors contribute to wealth differentials, land ownership should act as a mitigating rather than exaggerating factor.

Land should be passed down inter-generationally to one gender in each family, with adjustments in favour of those given responsibility for aging parents.

A primogeniture (through one gender) form of inheritance is more appealing than other forms, since it avoids undue fragmentation of the land. If both a husband and a wife bring land into the marriage, one party's land may have to be liquidated.

Land should not be owned for speculative purposes. This prevents the land from being put to productive use and is a form of gambling. There should be no reward if no responsibility is taken for making the land productive.

Registering land is not very helpful as it commodifies land, but we cannot put the clocks back. The purpose of ancestral lands, the purpose of going to village, is not just to farm, it is to touch base with our families. This is why it is so important.

## Discussion:

Individual participants in the dialogue commented:

- ◆ *“There is a great deal of bureaucracy and a lack of information on land issues among common people in Kenya. There is a real need to demystify land issues, including the language in which it is presented.*
- ◆ *“There are gaps between these moral principles and current practice.*
- ◆ *“The white settlers uprooted Kenyans from their ancestral land. Other factors have also dislodged families from their ancestral lands. History has undermined the concept of ancestral land perpetuating family.*
- ◆ *“In Kajiado, amongst the Maasai people, speculators were buying land at a very low price, which has often led to conflict. The Maasai people consider that the Metropolitan Plan infringes on their land rights, since they believe that Kajiado County should not be considered part of the metropolitan. The community was not involved in the decision. There was also conflict between traditional uses of the land and the new desire to protect wildlife. The **Kajiado Declaration** sought to resolve these issues.*
- ◆ *“Have these principles and values been overtaken by the present day realities, including the Constitution and the National Land Policy?*
- ◆ *“There is an issue with some community leaders disposing of community land without consulting members of their community. People need to select leaders who will speak for them.*
- ◆ *“We need to identify real leaders who will seek the common interest of the people and not be self-seekers. There are leaders who are bribing one another, even in Parliament to defeat bills. This is a pathetic situation. A real leader will be someone who will make real sacrifices not merely amass wealth.*

- ◆ *“Bequeathing land through one gender creates emotions and conflicts, including with the Constitution. There are some communities where women don’t even think about owning land. It is more important to them to have security of property.*
- ◆ ***“What is community?”** Suppose all Kenyans thought of themselves as one people and one community? Can we not all share our country’s resources as one family? Kenyans are trying to make themselves into a nation but coming from many small communities. The Constitution states that minerals and oil are to be considered as national assets, not for individual communities, but each community thinks of them as theirs. Conflicts will brew because of such ignorance! We need to pass these issues on to our communities.*
- ◆ *“How far back in time should we go when defining ancestral land?”*
- ◆ *“I have two ancestral lands; my real ancestral land and where my parents moved to and are buried. People moved to the Rift Valley many years ago, often from Central Kenya due to overcrowding, and this has become their ancestral land.*
- ◆ *“People have mixed and intermarried. My ancestral land is different from that of my wife.*
- ◆ *“How does this notion of ancestral land relate to Kenyan’s right to buy or own land anywhere in the country?”*
- ◆ *“The population of Kenya is growing and the land available is not. This implies that some people will have no ancestral land.*
- ◆ *“Do pastoralists, who have a more nomadic existence, consider themselves to have an ancestral land?”*
- ◆ *“What is to happen to people whose ancestral land is no use for production, or has been taken over by the Government for mineral extraction? They will need to buy land elsewhere.*
- ◆ *“Placing such significance in ancestral lands presumes on a land economy and one based on increasingly fragmented land holdings, but this may not be the best model for Kenya’s future. Do we not need to use the land to maximise production?”*
- ◆ *“Is it time to demystify the concept of, ‘My grandfather was buried here?’ If land is just a place to be buried then we are not maximising its use for production.*
- ◆ *“The issue of buying and selling land was never in Kenyans’ minds until white people came.*

- ◆ *“Many people sold their ancestral lands to buy bigger lands elsewhere, like the Nandis. This transaction was subsidised by the Government.*
- ◆ *“In Mount Elgon, the clashes that caused many deaths were about land. Those who initially had ancestral land became squatters for lack of title deeds. The Government ignored giving them title deeds and this created conflict, especially when the land had to be divided among several sons. The situation was further complicated by low education, making land as the only visible resource. There is need for grassroots education, helping the people think about means of livelihood other than land.*
- ◆ *“The law states that all Kenyans are equal, but how are we equal when one person owns a small plot of land and someone else owns lots of land? The inequality of land ownership is glaring.*

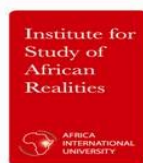


*Mount Kenyon region Photo: Neil Palmer, International Center for Tropical Agriculture (CIAT).*



## The Sychar Centre

The Sychar Centre works to bring a new perspective and fresh thinking to issues of debate in Kenyan society. By matching careful research and understanding of the issues at stake to the Biblical principles which guide it, the Centre aims to help provide moral solutions which will transform Kenyan society and many of the problems it faces. Registered as a non-profit company in 2007, the Sychar Centre has collaborated since then with Concordis International on a number of occasions, and shares a similar ethos of providing an environment in which dialogue is the key tool through which participants in its activities seek consensus.



## The Institute for the Study of African Realities (ISAR)

ISAR's Centre for Peace-Building and Conflict Transformation has an agenda of resolving conflict across Africa at all levels, from the family, through the community, to the national scale. With its focus on the Christian tradition of peace and the example of Jesus as peacemaker, ISAR works to bring that peace across the continent. It seeks to equip its students with the understanding of peace and conflict resolution necessary to intervene effectively in disputes.

## Concordis International

Concordis International is a peace-building organisation based in Cambridge, UK. It takes an actively impartial approach to conflict, providing a forum in which influential representatives from all sides may engage in dialogue and look for common ground over their disagreements. Its work is based on thorough research of the issues which need to be resolved, followed by discreet and non-partisan work with stakeholders to address the issues which divide them. By inviting participants to its activities in a personal capacity and providing them with an informal environment, it seeks to build relationships across traditional conflict lines as well as seeking out practical solutions to divisive issues.

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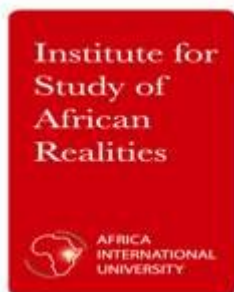
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