



# KENYA LANDOWNERS FEDERATION

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## **An Overview of the Draft National Land Policy (DNLP)**

### Executive Summary

Whilst there is undoubtedly some good in the proposed land policy particularly with regard to marginalised people, the environment and reform of land information management, the DNLP is fundamentally flawed, *ab initio*, in that it has been drafted by what appears to be a minority interest group. Without doubt the process has been resourced by non-Kenyans.

The continual reference to minority rights, children's rights, communities, gender rights *et al*/ almost exclusively at the expense of current landowners' rights; the constant use of development jargon and pejorative and emotive language; and the clearly stated underlying principles of land redistribution, restitution and resettlement with absolute disregard to sanctity of title and first registration suggest that the policy, if not driven, was drafted by minority lands rights groups.

Even on a cursory reading the document is full of inherent contradictions. Furthermore, its focus on poverty reduction almost exclusively at the cost of wealth creation is fundamentally injurious to the future of Kenya.

### **The Proposed draft land policy:**

#### **....aims to:**

- Radically, seismically and terminally change all our existing land legislation and much of the existing land rights contained therein - the very foundation of Kenyan society; and
- introduce a populist land policy in an election year

#### **....is based on:**

- Flawed premises dealing with our land law, history, demographics and ethnic groupings; and
- Fails to adequately distinguish between irregular, illegal and legitimate transactions.

**....removes:**

- Our sovereignty as a nation to decide what is best for Kenya as it is driven by donors and overseas NGOs;
- Primacy of first registration thus opening every land title to legal challenge;
- The right to free and unencumbered transfer of an individual's property rights as any future transfers of property must first take into account all other legitimate rights or interests held, or claimed, by other persons over the affected land; and
- Much of the responsibilities of existing Ministries who will devolve power on all matters relating to land to the proposed National Land Commission.

**....introduces:**

- An all powerful presidential lands "super ministry" that will have unparalleled power;
- Numerous radical, untested, undemocratic and in some cases Marxist concepts;
- NGO representation in all land statutory bodies;
- Radical new squatter's rights;
- Inheritance tax and capital gains tax on property;
- Attempts to achieve too much, too soon;
- A new body to devise, impose and collect land taxes;
- Compulsory preservation of private forests;
- A new and radical concept that all "natural resources" shall belong to the citizens of Kenya;
- New limits for ownership of land by non-citizens and foreign companies;
- New measures to limit trading of land; and
- Land redistribution and land restitution.

**....attempts to reintroduce:**

- Many of the radical land concepts that were rejected in the referendum; and
- Theft by the Government by reducing some freeholds (eg: all beach properties) to 99 year leases, and all long leases to 99 years.

**....confuses:**

- Equality of opportunity with equality, *vis-à-vis* land; and
- Community interests and National interests and in so doing further divides the country along tribal lines, forgetting the good of the whole.

**....will lead to:**

- An unbridled assault on all landowner's constitutional rights by a partisan group of mainly foreign NGO's;
- The creation of greater injustices for the many by its attempts to redress actual or perceived injustices of the few;

- The inequitable advancement of one single pastoral community at the expense of all others through restitution for “historic injustices”;
- Unlimited trespassing as the public is given access to all lakes, rivers and landing sites;
- The termination of Group Ranches;
- Increased powers for, and use of, compulsory acquisitions;
- Likely institutional abuses over the definition of private, public and communal land;
- The limitation of the right to subdivide land and the associated benefits that this often brings (group ranches/ small holdings etc);
- A huge negative impact on large scale farming;
- A massive negative impact on wildlife and on the sustainable utilisation of all natural resources;
- Banks being reluctant or unable to use property as security due to the increased rights of any other interested party claiming an interest in a property;
- The reduction in long term mortgages as they will be difficult to provide to properties with leases with 35 years or less to run;
- A reversal of decades of advances in land policy and land rights in Kenya;
- Increased powers of the State affecting the rights of the individual particularly with relation to matrimonial property, inheritance, freedom of transaction *etc*;
- The government being able to confiscate land (private or leasehold) that is considered to be “unutilised”, “idle”, “unoccupied”, “mismanaged”, “undeveloped”, owned by “absentee landlords”, or deemed necessary for “environmental or resource protection”;
- The undermining of local democratic politics and the creation of yet another tier of government;
- The reduction in value of property titles in Kenya;
- Major capital flight from Kenya as foreigners will no longer be allowed to own land in urban areas let alone rural or coastal areas;
- The reversal of much of what is considered as foundational with respect to land law - both internationally and nationally;
- Polarisation of Kenyans and further division of Kenyan society;
- Conflict with at least 17 existing laws and, more disturbingly, with the constitution;
- To chaos in the orderly business of land transactions;
- Voluminous amounts of litigation;
- Possible increased ethnic violence as groups attempt to re-assert their historic claims to land; and
- An unaffordable financial burden to the Exchequer (Ksh. 9.6 billion!!).

....ignores:

- Private land rights;
- The interests and views of the largest stakeholder in land – namely the small private landowner - and as such is a partisan document;
- The proposals of the Ndungu report;
- Remedies to existing statutes – *e.g.* in allocation of land, planning, repossession of undeveloped land, land grabbing, communal protection *etc.*; and
- Counsel from legal practitioners.

## **Conclusion**

If implemented, the provisions set out in this Draft National Land Policy will at a single stroke weaken the economic foundations of agricultural and commercial development in Kenya and thus undermine the accumulation of wealth by its citizenry. It will lead to capital flight and disinvestment, and it will create, accentuate and perpetuate both rural and urban poverty.

These are not idle suppositions, and this draft National Land Policy is already creating uncertainty and damage. Use of agricultural titles as security for short term loans and overdrafts is already being renegotiated by some Banks and mortgage lenders because of reservations over the future value of the assets they represent; and the first case has now been recorded of the cancellation of a major investment that was to be secured by agricultural title.

In the wildlife sector, it is recognised that conservation and wise resource husbandry is by definition a long term undertaking. On private land this calls for the absolute security of property rights and tenure to create and maintain the long term perspective necessary to encourage and sustain long term investment and use. Remove this security and owners and users of land will invest less in the future and more in the present, leading to the inevitable overexploitation and mining of resources rather than to their sustained use. Under such conditions conservation in any form – of soils, of land, of forests, of habitats or of wildlife – becomes increasingly difficult.

The DNLP attempts to produce a catch all piece of legislation that governs matters relating to land, wildlife, HIV issues, gender issues, children's issues, natural resources, mining, wildlife, water, forestry, local government, inheritance and succession matters, marriage, agriculture, physical planning, judiciary and finance!! This is not only a worrying assault on the democratic process but is wholly unrealistic.

The frightening negative economic, environmental and social impact of the DNLP means that it cannot and should not be allowed to become law.