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LAW FOR ACQUISITION OF LAND FOR COMMUNITY INSTITUTIONS AND
FOR MANAGING COMMUNITY STRUCTURES

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1. INTRODUCTION

The objectives of the consultancy were:

- (a) To identify the various legal formats for acquiring the land needed for public use e.g. water points, within the chain of legal landholding stretching from statelands; through trust land to individual title.
- (b) To identify specific laws which can be used in the interim as land gets adjudicated to assure that public structures and utilities e.g. sub-surface dams, are not privatised.
- (c) To investigate forms of community organisation, over and beyond groups, with legal basis for specific community development work especially ownership of the public structures they are to participate in building.

The consultancy was designed to generate information from both primary and secondary sources. The primary sources include governmental ministries/departments dealing with community work especially those involved organisational aspects acquisition of land and general administration.

Discussions with adjudication officers, land officers and other officers and social workers within the ministries have yielded vital information for the study. Given the current sensitivity on land related issues, many of the officials spoke off record. Apart from the governmental ministries and departments other useful sources are non-governmental organisations working with groups or participating in community work, were consulted. Interviews have been conducted with community development workers with women's groups project experience. Finally, informal discussions were held with community leaders, lawyers and members of groups that have not been registered.

Secondary sources relied upon include scholarly articles, dissertation, textbooks and other publications, statutes and relevant unpublished material. All persons/institutions interviewed and consulted and other sources are found in the appendices.

The report therefore deals with the objectives of the consultancy and is based largely on analysis of relevant statutes and information gathered from textbooks, articles and some of the primary sources. The consultancy focuses on land since community development projects will have to be assured of this resource both in the urban and rural settings. In the absence of any specific guidelines as to the geographical setting, within Kitui, we wish to point out that the preliminary findings herein are generalised to most areas where community work is going on.

2. BACKGROUND AND OVERVIEW OF LAND LAW IN KENYA

2.1. Colonisation

Land law in Kenya cannot be fully comprehended without reference to the colonisation process and its impact on traditional tenure arrangements.

Colonisation was spearheaded by commercial interests of several European nations and United States during the last century. Treaties with the Sultans of Zanzibar were completed granting special concessions affecting large parts of East Africa over which they claimed sovereignty. Competition among these nations led to conflicts and the subsequent holding of the Berlin Conference of 1884/5 to determine the interests of the rivals. As a result of the conference, Uganda and most of Kenya, as we know it today, was considered to be within the British sphere of influence. The British East African Association, later re-named Imperial British East Africa Company (IBEAC), was given authority to administer the territory.

A royal charter granted to the IBEAC Company enabled the Company to obtain rights of administration and to secure British interest in Kenya. The company was however ill equipped to fulfil this role and in 1885 the British government took over and established the East Africa Protectorate. The Protectorate included the present Kenya. The declaration of the protectorate provided the British government with the political control which was necessary to advance its interests. This paved way for European settlement.

In order to facilitate the administration of the protectorate and abolition of slave trade, a railway line was built from Mombasa to Uganda. This served as further encouragement to European settlement in order to make the railway pay. It was expected that the settlers would develop a successful agricultural economy that would, apart from making the railway pay, produce raw materials for the European market and on the whole sustain administration of the territory.

2.2. The Role of Land Law in the Colonial Process

From the beginning of British government administration of the East Africa region, law was used to legitimise various actions that were necessary to advance British interests. In order to enable the administration to acquire land compulsorily for the railway, government buildings and other public purposes, the Indian Land Acquisition Act 1894 was extended to the protectorate starting with Zanzibar in 1896 and later in the interior in 1897. This was done in spite of doubts as to the legality of such an action. It was however an important step towards assertion of title to the land that was necessary for agricultural development and other purposes aforementioned.

Land Regulations were made in 1897. They gave power to the Commissioner of the Protectorate to sell freeholds in land within the Sultans' dominions. In so far as land outside these dominions was concerned the Commissioner was empowered to offer certificates of occupancy in respect of land authorising occupation for 21 years. This period was later extended to 99 years. This arrangement did not however attract settlers.

In 1902 the Crown Land Ordinance was passed to allow alienation of land to settlers of freehold and ninety nine years leasehold estates. According to this legislation the rights of Africans, in the lands they historically occupied, were reduced to those of occupation. This law did not concern itself with the requirement for authorization of indigenous people through their leaders, before sale or lease of unoccupied land. The Ordinance attracted many settlers and was replaced by the Crown Lands Ordinance 1915.

The 1915 Crown Lands Ordinance declared land occupied by native tribes as Crown land. Consequently natives became tenants at will. The Governor was empowered to reserve land for the use and support of the natives who were denied rights to alienate the land. Land reserved for their use could be cancelled and alienated to settlers.

The 1915 Crown Lands Ordinance was significant in its overall effect of disinheriting Africans from their land. It resulted in creation of a series of reserves. This not only segregated the native tribes but also limited movement from one area to another which was one of the major aspects of traditional land use.

To complement the emergent land and settlement policy, it became necessary to devise labour policy in order to obtain cheap African labour for the European farmers. Legislative and administrative measures were taken in this regard. Examples of legislative measures were the Native Hut And Poll Tax Ordinance, (Act No. 2 of 1910) and the Master and Servants Ordinance (No. 4 of 1910) These measures included imposition of tax, a system of employment registration and persuasion of Africans to work on European farms.

Creation of reserves facilitated this policy. Africans were kept in employment through a formidable array of contractual obligations reinforced by criminal sanction for example those provided in the Masters and Servants Ordinance of 1910. It was an offence punishable by imprisonment if a servant, after having entered into contract, failed or refused, without lawful cause, to commence the service at the stipulated time; or without leave or other lawful cause absented himself from his employer's premises or other place designated for the performance of the duties. It was also an offence to refuse to obey any command of his master, which command it was his duty to obey.

The African population increased during the first thirty years of

colonial rule. This increase in population, together with the limits put on migration to new lands led to a relative scarcity of land in those areas designated for Africans. The forced sedentarisation led to deterioration of land as parcels were fragmented, erosion increased as land was overused and the stock numbers increased within the limited land available for each tribe. By the 1930s it was clear that the productive capacity of the land had deteriorated for the traditional land use patterns and techniques could not cope with the new circumstances.

As early as 1934, some of the affected areas such as Machakos, were singled out as requiring urgent action. Thus the 1930s saw changes in attitudes towards African Agriculture. These changes, however, assumed significant dimensions after Second World War largely because of the poor situation of the colonial economy. This state of the colonial economy was the result of the depression experienced world wide in the 1930s and the need for internal self sufficiency in cereals, horticultural products and animal products dictated by the war economy.

Okoth-Ogendo has argued and emphasized that the policy change occurring after the war were driven by the needs of the settler economy. He states " The settler economy alone was not capable at this time of satisfying the colony's demand. As such it was necessary for the African sector to assist by producing enough not only for internal consumptionbut also for export to non-agricultural parts of the empire. In order to achieve this , it was imperative that the administration should assume wide powers in regulating and directing economic activity in settler and African areas" (Land Tenure Reform 1976).

In the settler sections, for provision of public credit and subsidies to farmers were introduced and later there was control of land transactions to prevent speculative dealings during the post war depression. In the African areas , it was considered best to deal first with the issues of water supply, improvement of farming methods and so on.

A number of attempts to solve the problem of land deterioration were made. In order to improve the fertility of the land it was considered necessary to reduce the pressure in the reserves by resettling landless people, supposedly in lands which now did not belong to the tribes but to the state. An African Settlement Board was set up in 1945 to implement the policy. Work started in Taveta in Taita District, and Makueni in Machakos District and then to other parts of the country. After a short period the idea was considered unsuitable because a number of problems, in the view of the colonial state. Central among them were the unsuitability of the land earmarked for human habitation and the alleged failure of settlers to comply with rules of proper land management as defined by the colonial state.

It was considered by the colonial state best to tackle mismanagement of land which was conceived of as a major source of problems. A rehabilitation programme was embarked upon. Four million pounds were allocated for the purposes of terracing, making of water furrows, bush clearing and destocking. Areas in Ukambani such as Makueni and Yatta B 2 were covered by these activities in the post war period as is discussed in African Land Development in Kenya 1945-1962 (Consolidated ALDEV Report, 1962)

However, these measures had no impact on indigenous people who resented the authoritarianism attached to their implementation. Forced labour had become the order of the day especially with regard to terracing and water furrowing.

A number of experiments were carried out based on traditional forms of land holding and co-operation for example groups farms. Group farming of cotton was introduced in Nyanza on the assumption that indigenous customs of the ethnic groups involved were conducive to co-operation. (Okoth -Ogendo, Land Policy and Agricultural Production in Kenya 1981 and Ministry of Agriculture , Annual Report 1950.)

Most of these policies did not however have much impact on the lives of African peasants who were suspicious of the colonial regime.

As the African population increased, the demand for the rapidly declining supplies of land also increased. The effect of this was to reduce the number of people, who could have access to land; consequently leading to privatization as individuals, families and clans demarcated for themselves portions of land which had been used by their ancestors. Within the families, the clans and the tribes in general, the process of unequal access to land was deepened by the emergence of a land accumulating class. Mutiso has argued in Kenya: Politics, Policy and Society, that the land accumulators were in general stake holders in the colonial state. This led to many disputes especially in Kisii and North Tetu. In Kitui a classic example is the conflict over the land generally called Nzalae, which has gone on for over 60 years!

Moreover, as already indicated the organisation of the reserves was carefully worked out so as to generate a continuous supply of cheap labour for European agriculture. Landlessness led many African people to European farms to work. They ended up living there as squatters. The general landlessness was to be the cause of much discontent especially among the agricultural communities such as the Kikuyu. By the late 1940s, scarcity of land in the reserves had become a critical economic and political issue. (Kanongo, Squatters and the Roots of Mau Mau, 1987.) The general discontent exploded into Mau Mau in 1952. Following the revolt a state of emergency was declared and it continued until 1960, a few years before independence.

2.3. Land Reform in the 1950's

After the reform measures described earlier failed it was argued that African tenure was responsible for the problems and that therefore an overhaul of the traditional tenure was necessary. African tenure was conceived by the colonial state as basically 'communal' in nature and 'inimical' to proper land use and development. It was argued that the structure of access of rights of use encouraged fragmentation and contributed to continuous conflicts thereby undermining any secure basis for generation of agricultural surplus and credit.

An alternative pattern of land ownership was suggested for implementation within the African areas. This involved the introduction of individual title to be achieved through ascertainment of fragments of land which an individual would lay claim to. It was expected that any disputes over specific fragments would be resolved by an arbitration board created for the purpose. The process of adjudication was to be followed by aggregation or consolidation of the fragments to single parcels; and finally the consolidated parcels were to be registered under names of individuals whose claims had been recognised. Thus the register was designed to provide information on the property holder, the exact nature of rights held and encumbrances attached to the property.

Local elders were to be involved in the proposed machinery for ascertaining the individuals who "owned" land. Since this process of land consolidation started in Kikuyu areas, as part and parcel of containing Mau Mau, in the view of many, it was an unequal process and many who were identified with Mau Mau lost a lot of land. For the present, the involvement of local elders is still retained. How they serve community interests, depends on how extensively local communities have organised to defend their public and private interests.

It was argued that individual tenure would result in development because inter alia, it would generate agricultural capital and facilitate planning. This principle was embodied in the Swynnerton Plan, written by the then acting Director of Agriculture, in 1954 and echoed in the Report of the East African Royal Commission published in 1955.

According to the Plan it was anticipated that:

"Sound agricultural development was dependent upon a system of land tenure which would make available to the African farmer a unit of land and a system of farming whose production would support his family at a level comparable with the other occupations."

The plan advocated the encouragement of Africans to participate in the general agricultural planning. It was anticipated that;

"In the long term the greatest gain from the participation of the African community in its own agricultural industries would be a politically contented and stable community."

The plan was viewed as a solution to the political problems of the country which had found expression in the Mau Mau uprising. Individualization was visualized as a means towards the creation of a middle-class of African agriculturalists who would support the status quo. There were efforts towards the closer integration of African and European agriculture.

The recommendations of the Plan on the whole pointed towards consolidation of land under an absolute title. At the beginning the process of individualisation started with no legislative basis. This was later resolved through a number of enactments. Examples are The Native Land Tenure Rules (1956) and the Native Lands Registration Ordinance (1959). A fundamental aspect of the entire individualisation process was the emergence of the absolute proprietorship.

2.4. The Colonial Impact on Traditional Land Tenure

Colonialism had far reaching effects on the traditional man-land relationship which was "more than a purely economic relationship". (Masai J.W. and Munoru G.G.S. Our Road to Socialism, 1964.) Historically, land was considered to be a most important resource in the traditional economy. Environmental and technological [WHICH ONES] constraints kept agricultural activity at the subsistence level. Lack of effective pesticides and farm machinery also hampered large scale farming. Lack of mechanised equipment justified collective effort. Thus members of the community worked together in cultivation, fishing etc and:

"the product of their joint efforts was shared equally among all the participants as well as among those who because of their natural calamities could not participate in the joint venture source." (Masai and Munoru Also S.E. Migot- Adhola, Cooperatives and Rural Development in East Africa, 1970)

Control of land and its use were determined by the socio-political organization of a community. The individual's right to use depended upon the status one enjoyed in a particular family or a clan within the community. In some cases it depended on the agrarian activity of the group, the relative abundance of land and other economic factors. The main function of the controlling authority, comprising of clan elders, was to ensure that every member of the community was not denied the right of use. Thus, the right of use of the power of control was not synonymous to ownership of land. Through a system of kinship ties land was

transmitted from one generation to the next. (Masai and Munoru)

Colonialism had a tremendous impact on this man-land relationship. To begin with the creation of reserves led to the development of rigid patterns of land holding in African areas. It was no longer possible for the Africans to expand externally. They were confined to fixed territories.

Traditionally some agricultural communities, such as the Kikuyu, had accommodated the problem of landlessness through tenure arrangements that allowed allocation of temporary cultivation or building rights to strangers. (Jomo Kenyatta, Facing Mount Kenya.) As Penwill documents such arrangements were also found among the Kamba where the concept of Kutusya was recognised. Such generosity was terminated by the growing scarcity of land.

Quite apart from causing deterioration in the land held by Africans, the colonial experience disrupted social relations. For example there was a general breakdown in the economic relations within the family and certain family institutions such as polygamy. Polygamy played an important role in the traditional economy. An extra wife was an economic asset and therefore polygamy generally showed how much land man could command since where a man had many wives he had to give each a piece of it for her use. Unless he had at his disposal sufficient land such distribution would have been impossible. Indeed in Kitui, the tradition prevented one from marrying an extra wife unless one could guarantee them their own land, which they passed on to their descendants in the polygamous family.

The reduction of the amount of land which a family unit could own affected polygamous households and disputes were inevitable as each wife tried to secure land rights that she was entitled to under customary law.

Emergence of absolute proprietorship was a major element of change in the tenure systems of the various indigenous people as there was a notable shift in the security of tenure. Henceforth it was to be based on absolute title and not on use. This was brought about by registration whose main purpose was to give the title holder security and power to deal with his land as he deemed fit.

Registration gave the owner power to alienate to strangers. It was hoped that once individual ownership was registered farmers would be able to buy and sell land and to mortgage titles to land for credit. The tenure reform programme started in earnest in early 1950s and was inherited by the independent government. It continues to this day.

2.5. The Inherited Land Registration System and Post Independence Developments

The 1960's witnessed massive mobilisation of people especially peasants towards acquisition of land resources. Kanongo has observed that:

"land was all that the landless, impoverished and disgruntled squatters, whose plight had become worse during and after the Mau Mau struggle, really asked of independence, for it was through acquiring land that they gained their security and economic freedom." (Squatters and the Roots of Mau Mau).

In the post 1963 period many former squatters and farm labourers united with other landless people to create co-operatives and companies through which they could buy land in the White Highlands.

There was deliberate government support of co-operatives in the process of Africanisation of the large farm economy. With assistance from the World Bank and the British government the Land Bank was created to finance acquisition of large scale farms. A massive settlement scheme for the purpose of resettling landless people was initiated. Persons who ended up in the scheme were advised to form marketing co-operatives to assist them in sale of farm products.

Many politicians also saw in the co-operative movement an avenue to prove their service to the people. They thus encouraged them to form co-operatives in large numbers. Indeed it is on record that there were political instructions to the Department of Cooperatives to register these societies with the minimum of formalities. (Department of Co-operatives Consolidated Annual Report 1963-1967).

The haphazard manner in which these organisation were led to mismanagement of their farms. Unscrupulous persons also took advantage of ignorant landless people necessitating the government to exercise wide control on the formation and registration of the land based co-operatives and companies. This control has persisted to the present day. The government exercises extreme caution whenever a group is formed with the basic objective of acquiring land. The prevailing policy is to discourage formation and registration of any such group, in any form. This has many implications for community projects based on land resources.

The independent government inherited the colonial agrarian policies and legislation which was often passed haphazardly to meet specific needs. The inherited legislation embodied a dual system of land holding. On the one hand was the English type tenure consisting of freehold and lease hold and on the other customary system of land holding. The result is a complex structure of laws dealing with three specific categories of land namely; private land, government land and trust land which has not been subjected to the registration process. The general body of law comprises of Statutes, Customary Law, English Common Law and English Statutes of general application.

The rights of a party to a transaction are determined by the substantive law applicable to the registration system of the land in question.

In total there are five registration systems. These are provided for under the following statutes:

- a. The Land Titles Act - Chapter 282 - Laws of Kenya
- b. The Registration of Documents Act - Chapter 285
- c. The Registered Land Act - Chapter 300 - Laws of Kenya
- d. The Government Lands Act - Chapter 280 - Laws of Kenya
- e. Registration of Titles Act - Chapter 282 - Laws of Kenya

There are two systems of substantive law falling under the Registered Land Act and the Indian Transfer of Property Act 1882 applied in Kenya. The substantive law in respect to trust land is basically the customary law of the various tribes.

Transfer of land or interests in land under the four Acts listed above can be classified into two systems. These are the Deeds system and the Title Registration system.

Conveyancing under the Land Title and Government Land Act is based on the English Real Property Act of 1945 and the Conveyancing Act of 1891 which were statutes of general application as at 12th August, 1897. Conveyancing under these Acts is by Deed and Titles have to be investigated and verified back to the original Grant by the Government. Thus, on transfer of a property, the Original Grant and all subsequent instruments of transfer must be delivered to the transferee.

Under the Titles Registration system, a transfer is completed upon registration of the interest. The land Titles Act and Registered Land Act systems of conveyancing fall under this category.

The Registered Land Act was enacted in 1963 with the aim that it would eventually replace all other land law. The substantive law to the Registered Land Act is the Registered Land Act itself. It is applied to former Native Reserves which were later designated as trust land, adjudicated upon and registered. Some of the trust land has yet to undergo the adjudication process. Transfer of interests on the unadjudicated land is regulated by customary law and statutory law.

The substantive law of the Registration of Titles Act is the Indian Transfer Property Act. the latter statute governs privately owned land in the former White Highlands, and the major towns such as Nairobi, Mombasa, and Nakuru.

The Government has made some effort to convert some of the areas governed by the Registration of Titles Act to the Registered Land Act system but the process has been slow and insignificant. Rights in Private Land are governed in accordance with the Registered Land Act and the Indian Transfer of Property Act depending on how it is registered.

3. GOVERNMENT CONTROL OVER THE LAND RESOURCE

3.1. The Major Role of State Institutions

Land is critical to national development and is therefore subject to extensive government control. The control extends to land transactions. The statutory framework for control of land transactions is aimed at ensuring that land is properly managed for maximum benefit to the economy and the community.

It follows that any community project based on land resources, no matter how initiated, must be subjected to the scrutiny of the government at some point. The need to harmonise the aims of the community with development priorities would of course be paramount. To this extent a community desirous of setting up a project ought to be aware of the interface between its aims and the national development objectives articulated in a variety of policy documents.

Some of the policies have been translated into specific legislation. However, even where policies have not been thus translated, the government maintains an administrative machinery for the implementation of its policies. This is the Provincial Administration. The network of administrators in Districts like Kitui, consists of a District Commissioner, district officers as well as chiefs and their assistants. They operate as part of the executive arm of the government. Provincial Administration penetrates many spheres of development through a legislative framework that confers on it many powers that have far reaching implications for community work.

Local authorities also play an important role as will be evident from the discussion on modes of acquisition and setting aside of land for public utility. These authorities operate under the umbrella of the Ministry of Local Government and are regulated by Local Government legislation.

However, in spite of the tremendous influence exercised by the administrators and local authorities there is increasing acceptance of the participation of the community in development planning. This is articulated in the District Focus For Rural Development launched in 1983. This is supposed to be the main development strategy for planning the development of all rural areas of the republic. According to this strategy the community is encouraged and expected to identify its needs and priorities as a prerequisite to project design. The process of prioritization is achieved through Locational Development Committees and District Development Committees which consist of community representatives as well as government representatives.

Ideally, the framework of the District Focus strategy should confer tremendous authority on the community for direct utilization of

land for community benefit. It also should prevent privatization of land earmarked for public use. It is at the grassroots level that the community can have maximum influence and impact.

However, for the District Focus framework to operate effectively, the community ought to be sufficiently aware of its current and future needs. There should be continuous and active encouragement by officialdom of the community to be resourceful. The interaction of administrative authority and community participation should be done in such a way that the community is able to identify its priorities and to opt for the most suitable solutions in all circumstances. Education has of course a key role in this effort. It assumes greater importance in land matters in view of the complexities to be subsequently discussed.

It is worthy of note that legislative controls at the disposal of the government to ensure that land is well managed are pegged to the administrative machinery and local authorities. It should be noted that to date the District Focus Policy documents have not given a formal role to community development institutions other than community elders who participate in the Adjudication and Land Boards. This means that many land transactions involving the community are scrutinized and sanctioned by key state employees in the planning of relevant projects, without formal legal community representation.

A glimpse at some of the key statutes that embody the controls is illustrative of the tremendous influence exercised by the state of land transactions and land utilization. These are the Land Planning Act (Chapter 303 - Laws of Kenya) and the Land Control Act (Chapter 302).

3.2. The Land Planning Act

The objective of this statute is to ensure coordinated land use, planning and development. Land in municipalities and local authorities is divided into zones for purposes of industry, commerce, residence etc. The Act sets up a central authority empowered to consider requests for consent before land is developed. It is an offence for any person to effect development without the necessary consent which is granted on the basis of fulfilment of conditions set out in the applicant's plan.

The Act overlaps with the Town Planning Act (Chapter 134) which was intended to deal with urban land. To avoid friction, however, the implementation machinery has been harmonised. For example, consent for land development must be obtained both from the Ministry of Physical Planning, through which the Land Planning Act is implemented and also from the Local Authority under whose jurisdiction the land falls. In any case, in the event of severe conflict, the Land Planning Act prevails.

3.3. The Land Control Act (Chapter 302 - Laws of Kenya)

This Act controls agricultural transactions. Its basic objectives were to restrict ownership of land among indigenous people in controlled areas; to prevent speculation of land, uneconomic use of land and fraudulent sales; and to promote good farming practices which begin at the Divisional level, through the District level and thereafter, an aggrieved party has a right of appeal first to the Provincial Land Control Appeals Board, and later to the Central Land Control Appeals Board if he is dissatisfied at the Provincial level.

The Act establishes a hierarchy of Land Control Boards which consider various land transactions. These include sales, transfers, leases, mortgages, partitions or any other dealings in agricultural land situated within a land control area. Controlled transactions must receive the consent of the Board and those that do not are considered void. The President may however exempt a transaction from the operations of the Act.

The requirement for consent does not apply to transmission of land by will or intestacy unless it would result into subdivisions in which two or more persons would hold separate titles. It does not apply to transactions to which the government or county council is a party.

An aggrieved party may appeal to the Provincial Land Control Board and thereafter to the Central Land Control Appeal Board. The decision of the latter body is final and conclusive and cannot be questioned in any court.

The Land Control Board is chaired by the District Commissioner, and in his absence, a District Officer appointed in writing to deputise for him. The Provincial Land Control Appeals Board is chaired by the Provincial Commissioner. The Central Land Control Appeals Board is chaired by the Minister for Local Government. Several key Ministries, such as Agriculture, Forestry, Livestock, and Water are represented at the District and Divisional Land Control Boards by the field officers stationed at those levels.

By the time a community seeks the required consent under any of the above Acts, the matter ought to have been discussed at length at the Sublocational, Locational and District Development Committee levels and a decision made to influence the community to search for land independently. The District Development Committee will have or ought to have considered the options available to the state in terms of making grants, setting land apart for public utility, or compulsory acquisition under the Land Acquisition Act - which empowers it to acquire land for purposes of development geared towards public benefit.

Therefore, the greatest challenge to the community appears to be to

ensure that it is well organized - in a legally recognised entity such as an association, or a co-operative which would help in defining its level of control of the resources at its disposal. We wish to emphasize that the best place for effective organisation is at the sublocational and locational levels when various communities consider projects in their very early stages.

Modes of acquisition of land for public benefit and forms of organisation to facilitate land acquisition are discussed in the next chapter.

4. ACQUISITION OF LAND FOR COMMUNITY UTILISATION

Land law embodies various mechanisms that may be used to facilitate acquisition and use of land for community work. We proceed to examine these mechanisms under the three categories of land namely Trust Land, Government Land and Private Land.

4.1. Trust Land

The constitution describes Trust Land as;

- a. Land which is in the special areas (in other words land which was on 31st May, 1963 vested in the Trust Land Board by virtue of any law or registered in the name of the Trust Land Board;
- b. Areas of land that were known before 1st June, 1963 as Special Reserves, Temporary Special Reserves, Special Leasehold Areas and Special Settlement Areas and the boundaries of which were described respectively in the Fourth, Fifth, Sixth and Seventh schedules to the Crown Land Ordinance as in force on 31st May, 1963, the areas of land that were on 31st May, 1963 communal reserves by virtue of a declaration under Section 58 of that Ordinance as in force on 31st May, 1963, and the areas of land in respect of which a permit to occupy was in force on 31st May, 1963 under Section 62 of the Ordinance; and
- c. Land situated outside the Nairobi Area (as it was on 12th December, 1964) the freehold title to which is registered in the name of a County Council or the freehold title to which is vested in County Council by virtue of an escheat.

Trust land does not however include any estate interests or rights in or over land situated in the Nairobi Area (as it was on 12th December, 1964) that on 31st May, 1963 were registered in the name of Trust Land Board under the former land Registration (Special Areas) Ordinance.

The constitution further vests all trust land in the County Council within whose areas of jurisdiction it is situated. This does not however include "any body of water that immediately before 12th December, 1964 was vested in any person or authority in right of the Government of Kenya or any minerals or mineral oils."

Each County Council holds Trust Land vested in it for the benefit of the persons ordinarily resident on that land. It has an obligation to give effect to such rights, interests or other benefits in respect of the land which are in force and applicable under the African Customary Law in respect to any tribe, group, family or individual. It should be noted however that no right, interest or other benefit under African Customary Law shall have effect for the purpose of this provision so far as it is repugnant to any written law.

4.1.1. Setting Apart of Trust Land

Extensive constitutional provisions have been made regarding the setting apart of trust land by the County Council and for the benefit of the Government. Land set aside in these circumstances extinguishes any rights, interests or other benefits in respect of the land that was previously vested in a tribe, group, family or individual under African Customary Law. It is however a major requirement that prompt payment of full compensation is made to any resident of the land set apart. The above provisions find expression in the Trust Land Act (Chapter 288 - Laws of Kenya). Application of this statute has tremendous influence on community projects as can be gleaned from the various provisions of the Act which empowers the County Council to facilitate the creation of a variety of interests including leases, licences and wayleaves.

4.1.2. Setting Apart by the Council

The Act empowers the County Council to set apart an area of Trust Land for use and occupation:-

- "a. by any public body or authority for public purposes; or
- b. for the purposes of extraction of minerals or mineral oils;
- c. by any person or persons for purposes which in the opinion of the Council is likely to benefit the persons ordinarily resident in that area or any other area of Trust Land vested in the Council, either by reason of use to which the area set apart is to be put or by reason of the revenue to be derived from rent therefrom." (Section 13(1)).

The term 'public purposes' has not been defined. This leaves room for a variety of community activities. Sub-section (c) provides even wider latitude for such activities.

4.1.2.1. Procedure for Setting Apart

The County Council is required to give notice of the proposal to set apart land, to the Chairman of the Divisional Land Board, who must then facilitate a meeting of the Board to consider the proposal. Notice must also be issued to the people of the area concerned who must also be informed of the day and time of the meeting of the Board to consider the proposal. The notice is intended to ensure that the people concerned make presentations which must be recorded at the meeting.

The record of the representations and the Board's recommendation are subsequently submitted to the County Council which must consider it and pass a resolution thereon by a majority vote. If the setting apart is not recommended the resolution must be passed by a vote of three quarters of all members of the County Council.

(Section 13(2) (d).

Where there is approval of the setting apart a notice to the effect must be published in the Kenya Gazette.

Compensation must be paid by the County Council but it has a right to reimburse by any other person. This implies that the County Council may seek reimbursement from the 'body' or authority which may have requested Council to invoke its powers to set apart land.

4.1.3. Setting Apart At The Instance of the Government

This means land set aside through the initiative of the Government. Trust Land may also be set apart in a number of other circumstances namely for;

- "a. the purpose of the Government of Kenya; (for example to construct an office block, or an institution);
- b. the purpose of a body corporate established for public purposes by an Act of Parliament;
- c. the purpose of a company registered under the law relating to companies in which shares are held by or on behalf of the Government of Kenya.
- d. the purpose of the prospecting for the extraction of minerals or mineral oils; (Section 118 (2).

A setting apart herein is similar to a compulsory acquisition. This will be discussed further under acquisition of private land for public utility.

The setting apart of land may cease to have effect when the land set apart is no longer required. The President, must inform the County Council accordingly. This is normally done through the Commissioner of Lands. Thereupon any interest or right vested in any person or authority in consequence of the setting apart must be extinguished. The land would then revert to the County Council as it were Trust Land.

4.1.3.1. Procedure for Setting Apart

As in the case of setting apart by the Council, notices must be sent and published in the Kenya Gazette. The procedure also involves demarcation of the boundaries of the land in question, if necessary; and the deposit of compensation.

Full compensation must be paid promptly by the Government to any resident of the area set apart. This of course includes any person who under African Customary Law applicable to the land has any right to occupy any part of the land or a person who may be

prejudiced (otherwise than in common with other residents) by the setting apart.

A notice of setting apart must be published at the District Commissioner's Office and at some other public or conspicuous place in the area.

Application for compensation must be made to the District Commissioner who, after consultation with the Divisional Land Board must award it if he is satisfied that the applicant is so entitled. He may also reject the application. He must however give notice in writing to the applicant of the award or rejection of the application.

The applicant has a right of appeal in the event of a rejection. Appeal may be made to the Provincial Agricultural Board (of the Province where land is situated) through the District Commissioner. It must be made within 30 days after notice of the award or rejection and it must be in writing.

The Commissioner of Lands has also a right to appeal in like manner if he is dissatisfied with the making of the award.

A party aggrieved by the decision of the Provincial Agricultural Board has access to the Resident Magistrates' Court and the High Court whose decision shall be final. The High Court has jurisdiction to determine the legality of the setting apart as well as to facilitate prompt payment of any compensation awarded (Section 12).

4.1.4. Power to Grant Leases and Licences

Apart from the power to set land apart Trust Land as described, the County Council has power to grant licenses to any person for the purpose of grazing livestock; removal of timber or other forest area within the meaning of the Forest Act; wayleaves and the establishment of temporary labour accommodation (Section 37).

Licences may also be granted for the purpose of taking of common minerals which include clay, county rock, gravel, lime, sand, shale, shingle, murram, mineral water, brine, dolomite, kaolin, building dimension stone, constructional stone (for balance and aggregate and allied uses), ornamental stone, sodium and potassium compound (except sodium compound in Lake Magadi), pyrophyllite (Kisii stone), slate and surface salt).

The Council is also empowered to grant a wayleave licence to any person enabling him to utilize Trust Land for the purposes of laying pipes, making canals, aqueducts, weir and dams and to carry out any other work required for the supply and use of water, to set up electric power or telephone lines, cables or aerial ropeways and erect poles and pylons, make such excavations as may be necessary

for the carrying out of the stated purposes and to maintain the works.

Where the land in question is subject to mining right or a subsisting lease, the council must obtain the consent of the lessee or the holder of the mining right before granting a wayleave licence,

A lessee or holder of a mining right is likely to suffer loss as a result of the grant of the wayleave licence is entitled to compensation.

4.1.5. Trust Land in the Process of Adjudication

Although the Government and the County Councils exercise tremendous influence in respect of the setting apart of Trust land thereby providing room for the creation of a variety of interest to facilitate community projects, it would appear that Trust Land in the process of adjudication presents special problems.

The adjudication process is intended to ascertain interests of persons in the Trust Land for purposes of registration under the Registered Land Act. The term "interest" is defined to include "absolute proprietorship of the land and any right or interest in or over the land which is capable of being registered under the Registered Land Act".

Problems arise partly from the special provisions made with respect to the adjudication process (under the Land Adjudication Act (Chapter 284 - Laws of Kenya) and also from the application of Customary law to the land in question. Moreover, the process of adjudication is slow (sometimes it takes years) giving rise to difficulties of determining and creating interests at various stages of the process before the final act of registration which gives sanctity to the transactions entered into.

The Trust Land Act expressly recognises application of African Customary Law asserted by any tribe, group, family and individual in respect of the occupation, use, control, inheritance, succession and disposal of any part of Trust Land (Section 69). Thus before the adjudication process commences it is possible to create interests based on customary law. Relevant transactions are entered into by persons who have authority within the tribes and execution of documents is easy since the County Councils are vested with relevant authority to facilitate this.

Transactions based on customary law are given effect in the land adjudication exercise. Indeed express authority is provided under the Land Adjudication Act for recognition of rights of ownership and other lesser interests including any lease, right of occupation, charge or other encumbrances.

4.1.5.1. Limitations with Respect to Transactions Entered Into

Once the adjudication process starts committees are created for specific adjudication sections to determine claims to interests in land. The adjudication officer is given wide powers in relation to all claims made under the Act touching on interests in land in the adjudication area.

He may determine any question that needs to be determined in connection with such claims and may also delegate to officers subordinate to him.

This in effect means that land in the control of various tribes is no longer in the hands of the County Councils. The total effect of the Land Adjudication Act is therefore to reduce to the very minimum the number of legal transactions during the period of adjudication. Interests created during this period vest in the person in whose benefit they have been conferred once the process is completed and registration is effected.

Indeed the Act makes it quite clear that no land suits should be entertained by any court (except with consent in writing of the adjudication officer) until the adjudication register for the adjudication section has become final (Section 30 (1)). Suits filed before the publication of notice declaring the adjudication area are also discontinued unless the adjudication officer otherwise directs. The period during which the process is taking place can be confusing and it would be advisable to seek advice before entering into any land transaction.

4.1.5.2. Diversity of Customary Law

The diversity of customary law which vary from tribe to tribe compounds problems. Rights under customary law whether to use, allocate land or dispose of it are controlled in varying degrees by the household (family) the lineage, the clan, the tribe and kinship territorial unit.

Professor Mbithi has observed for example that generally speaking in Central and Eastern Kenya and the Coastal Hinterland, the rights tend to be exercised by the clan whereas among pastoral and nomadic tribes of the Rift Valley and Northern Kenya including Lamu, the rights tend to be territorially defined. He continues to illustrate that Kaputei Masai have rights to a given grazing territory, certain water holes, salt licks, livestock routes and have defined migratory patterns.

In a discussion of Kamba Customary Law, D. J. Penwill points out that during the period of abundance an individual had access to a holding which he could demarcate for himself from 'weu' (which described land to which an individual or family has acquired specific rights) for purposes of grazing or cultivation. The

demarcation conferred personal and individual rights which were enhanced by keeping the land in use. He observes that in Machakos District one would not find large tracts of clan land and consequently a communal holding is rarely found which embraces more than the members of a close family unit. He further states that the communal holding applies to grazing only, since the rights in cultivated land are always clearly known and demarcated.

However, his discussion highlights significant findings. Thus although land taken from 'weu' is essentially in the hands of the occupier - and his kinship have not rights in it - nevertheless sons who inherit it have restricted powers on sale. Land must first be offered to a brother or a close relative before it is sold to a stranger. Close relatives and clan elders exercise a significant influence on such sales. Their consent is essential and may be disallowed in respect of sales outside the family.

Moreover, there are portions of land to which no individual rights attach for example a sacred grove or the site of a market. No private rights accrue in water in its natural state. The owner of land adjoining a stream cannot therefore claim a spring as his private property. This would be considered anti-social behaviour and would be checked by elders. This kind of intervention by elders is however not exercised where a water hole is dug or a dam is built as this involves human effort. In this instance a private interest may be recognized.

The above examples illustrate that negotiations for specific rights in land subject to customary law and practices have to take into account many factors. Transactions must be completed with people recognized under customary law to have appropriate authority and relevant consent must be obtained from clan elders, relatives etc. as the case may be. Otherwise there may be incessant disputes that would undermine the objectives of acquiring the rights in question.

4.1.5.3. Absence of Formats

The absence of prescribed formats to facilitate land transactions creates suspicions on the validity of interests created under customary law. Thus, whereas from a strict legal position specific interests in land may be created between persons who control specific rights under customary law, and other interested persons in the community, to many people these rights appear to have no legal force because they do not conform to conventional arrangements that depend on identifiable rights springing from definite registered titles. Hence they may hesitate to enter into land transactions during the adjudication.

However, our investigations have led us to the conclusion that the express recognition in the adjudication process of interests created under customary law, even when they do not amount to ownership, is clear indication that interests can be created during

the process of adjudication. Further that they are protected from privatization at the point of registration. This is facilitated by the uniformity provided by the Registered Land Act which in any case makes clear provisions which guarantee a large measure of protection against privatization of a number of interests which would normally be created to benefit the community as a whole. The relevant provisions in this regard are in Section 30 of the Act dealing with overriding interests.

4.1.5.4. Overriding Interests

According to this Section unless the contrary is expressed in the register, all registered land is subject to overriding interests, which include rights of way, rights of water and profits subsisting at the time of first registration under the Act; electric supply lines, telephone and telegraph lines and poles, pipelines, aqueducts, canals weirs and dams erected, constructed or laid in pursuant or by virtue of any written law to mention only the main ones. These interests need not be reflected on the register. Nevertheless ownership is subject to them. This excludes their privatization.

However, for the protection under the Registered Land Act to be real it is important that interests likely to be shared by the community are consciously created well in advance of registration. The community should in fact seize opportunity to plan for the future prior to and during the adjudication process.

5. SAFEGUARDING COMMUNITY INTERESTS AGAINST PRIVATISATION

There are two main ways of ensuring that community interests are safeguarded or catered for. One way is to ensure that land is set aside for public utility during the adjudication process. The second way is to form a legal entity to acquire specific interests on behalf of the community or to enable the community acquire the interests and be in control. We discuss these in turn.

5.1. Demarcation of Land For Public Utility

If the community wishes to reserve land for example a water point, a dam, a community centre, health centre etc. This can be accomplished by the community leaders instructing the adjudication officer to enter into the adjudication register that the piece of land (to be described and indicated on the survey plan) is to be reserved for the particular purpose. After registration, the land will be registered under the County Council. Generally the County Council does not interfere with the usage of the land thus reserved. This procedure may also be applied in respect of land to be reserved for public benefit where the beneficiaries are not known. In other words where the beneficiaries are not specifically named.

Where the beneficiaries are known the interest should be endorsed on the adjudication record. The best way to ensure the identity of the beneficiaries is to organise them in one of a variety of legally recognised bodies. This brings us to the next approach of ensuring community interests are safeguarded.

5.2. Forms of Community Organisation

We should mention right from the outset that the Land Adjudication Act recognises the recording of rights to which two or more persons are entitled jointly or in common. This affects rights of ownership as well as lesser interests i.e. rights not amounting to ownership.

5.2.1. Groups in Land (Group Representatives) Act (Cap.287)

Where a group is recorded as the owner of land or entitled to an interest not amounting to ownership, the adjudication officer is under an obligation to ensure that the group is advised to apply for group representatives to be incorporated under the Land (Group Representative) Act (Chapter 287 - Laws of Kenya).

The term 'group' is defined under the Land Adjudication Act to mean:

"a tribe, a clan, section or family or other group of persons who are for the time being the members of the group, together with any person of whose land the group is determined to be the owner". (Section 2).

Recognition of group rights under the Act was intended to enable pastoral people to operate group ranching schemes under the machinery provided by the Land (Group Representatives) Act 1968. It was felt that in certain areas, particularly range areas, block or group farming would be more suitable than individual farming. This form has been adopted in some of the range areas of Kitui. It was expected that the group representatives would have perpetual succession to the land registered in the name of the group.

The policy embodied in these measures has however proved to be unsatisfactory partly because of general trend towards individualization and partly because some of the members have exploited the collective resources for unequal private gain. Subdivision of the group ranches, particularly in Kajiado, Samburu and Narok is under way. There is strong socio-economic pressure from many quarters to change national policy and to allow the dissolution of group ranches. Individualization seems inevitable in view of change in lifestyles and the general practices in the national credit system which lays emphasis on individual title to property.

The trend seems to favour abolition of incorporation of groups representatives in favour of individual interests. This development is significant in considering the effectiveness or otherwise of forms of community organisation for acquisition or control of land rights to facilitate community work.

Incorporating Group Ranches as a way of protecting communal rights to water points, catchment areas, and dams would be ideal in situation where there would absolutely no possibility of the group ranch being sub-divided into individual parcels.

However, as it has been argued, the community of the Group Ranch cannot be guaranteed, given the current trend of abolishing the Land (Group Representatives) Act in favour of individual interests. We do not therefore recommend it. Further, there would be a likelihood of dams, water catchment areas being privatized by the more influential members of the Group.

It seems to us at this juncture that the form of organisation will depend on a variety of factors but key among them the nature of objectives of the community work in question, the environmental setting of the work, the extent of community cohesion and level of education and, finally, involvement of the government.

5.2.2. Groups Registered by the Ministry of Culture and Social Services and the Trustees (Perpetual Succession) Act (Chapter 164 - Laws of Kenya).

One of the prevailing practices in community organisation, is to register groups formed by individual within the community for a specific development purpose including income generating activities

and general welfare concerns.

These groups are limited in many ways. They lack the legal personality to transact business with other parties for example financial institutions and have no system of management accountability to legally bind the group or their leaders.

Accountability within the group is basically founded on trust and informal arrangements that are sometimes undermined by self interest. Our investigations have revealed unsatisfactory situations where informal arrangements related to land allocations, in the name of groups, have been exploited by leaders of the groups or other parties resulting in privatization. Members have not had access to appropriate legal remedies in the circumstances.

Members of the groups express concern about the insecurity of their contributions which do not yield the profits or services anticipated. Lack of guidelines on how a deceased member's contribution should be treated is another source of concern and frustration. This situation requires urgent redress which can be achieved partly by ensuring that these groups take advantage of the mechanisms provided by the law for the protection of various groups interests.

It seems to us that one the solution readily available to these groups is to invoke the provisions of the Trustees (Perpetual Succession) Act (Chapter 164 - Laws of Kenya).

This Act can be invoked if the group has been established for religious, educational, literacy, scientific, social, athletic or charitable purposes. These purposes give room to most of the groups that have created to cater for the community except those that are profit oriented.

It shall be pointed however that the 'group' is a convenient device to communities that have temporary objectives or are indefinite about their objectives. It may provide community with a suitable testing ground.

According to the Trustees (Perpetual Succession) Act, a body or association, may appoint trustees who then apply to the Attorney-General for a Certificate of their Incorporation as a corporate body. The application must provide the objects and constitution of the trust concerned, together with the date of, and parties to every deed, will or any other instrument creating it, constituting or regulating it. It must also give a short statement and short description of the property or interest therein which at the date of application is held or intended to be held by the trustees; names and addresses of trustees etc.

The Registrar of Societies has discretion to register the trust and to impose conditions, particularly relating to the qualifications

and number of trustees, their tenure of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of movable or immovable property or any interest in it held for the benefit of the trust concerned.

The effect of the certificate of incorporation is to vest in the body corporate all movable and immovable property or any interest in it held for the benefit of the trust. Trustees incorporated as explained above can therefore enter into land transactions in respect of the land, government land or private land.

The Registrar of Societies is empowered to dissolve a corporate body created under the Act unless the same is wound up under the Societies Act. Dissolution would normally be justified where objectives of the trust have failed.

This is one of the best forms of organisation in non-profit ventures. We particularly recommend it in view of the fact that the law on trusts is structured in a way that ought to minimise abuse of power by trustees. Under the circumstances, a community that is aware of the remedies available under the law, stands a good chance of protecting its interests and of discouraging abuse of power by trustees. It is also essential that the appointees intend to serve as trustees understand their duties under the law to serve honestly and diligently.

5.2.3. Companies

A company is an artificial legal distinct from the members who form it. It has perpetual succession which means that the demise bankruptcy or insanity of any of its members does not affect its existence. It has power to enter into transactions, own property in its own right, sue and be sued.

There are two distinct forms of companies namely; companies limited by guarantee and companies limited by shares which may be either private or public. The first and second play a predominantly commercial function except for the company limited by guarantee and the unlimited company (which is suited to family enterprises). They also have corporate personality which is absent in unincorporated organisations.]

5.2.3.1 Companies Limited by Guarantees

This type of company is used by charitable and quasi - charitable organisations, schools, colleges, museums etc. It is a convenient substitute for a trust.

Most of the companies limited by guarantee have no share capital. Their only "guarantee fund" consists of the amounts which the members have undertaken to contribute in the event of a liquidation. These amounts correspond to the uncalled liability of

a company limited by shares. Any profit made by the company is required to be reinvested in the company. This form is best suited to welfare activities. Its members should not extend to share in any profits made even though charges or fees may be charged for activities.

Incorporation requirements include preparation of articles and memorandum of association. Objectives must be clearly stated. These documents must then be filed with the Registrar of Companies. Membership is limited to sixty persons.

Since these companies attract charity funds and grants from other institutions their promoters are investigated to ensure their honesty and their suitability for the office. The investigations may take from over three months. [DOES THE PREVIOUS MAKE SENSE]

The ministry under which the objectives of the company falls for example, the ministry of health in the case where there is an objective to set up a health centre, or the ministry of education in case of a school, must give its consent to the incorporation of the company.

The company is not required to file accounts with the Registrar of Companies. It is managed by directors who comprise a board of management accountable to members for the general administration of the company.

5.2.3.2. Companies Limited by Shares (Private Company)

These are profit making enterprises formed to enable two or more people (usually a small group of people) to carry on business together. Membership is limited to fifty people.

The liability of members is limited. This means that no member can be called upon to contribute to the companies liability more than the amount (if any) unpaid on his shares. Members of the company however retain control and can share in the profits realised from its activities. The members right to transfer shares is restricted. The company is also prohibited from inviting members of the public to subscribe for any shares or debentures of the company.

These companies are the easiest and quickest to incorporate. The company's articles and memorandum of association is presented for registration to the registrar of companies and so long as the requirements set out in the Companies Act are met the company is incorporated.

As in other types of companies the affairs of the company are administered by a board of directors accountable to the members. Members/shareholders have a right to attend general meeting which should be held annually.

5.2.3.3. Public Companies

These are formed in order to enable the public to share in the profits of an enterprise without taking part in its management. For purposes of incorporation seven or more persons must subscribe their names to the memorandum of association. A prospectus must be issued inviting the public to subscribe.

The company must pay dividends to members each year and is also required to present a statement of accounts each year to the registrar of companies and to each member.

Many land buying companies were formed immediately after independence in order to facilitate the purchase and transfer of large scale farms to the indigenous population. However, as time went by there were reports of malpractices by self-motivated leaders. This coupled with the dwindling availability of land has resulted in a general policy to discourage formation of these type of companies. In any case it is doubtful that they would be suited to certain types of community projects especially those that are set up in arid and semi arid areas. In these areas the population may not be big enough to warrant their creation with all the expenses involved.

Doubts have been raised in respect of the suitability of the limited liability company to communities that may not be prepared sufficiently for modern commercial relationships. The system of control at the disposal of members requires an elaborate and thorough collection of information for the consumption of members. This calls for efficient managers, literate, knowledgeable and ready to meet the challenges of a sophisticated commercial world. More importantly however, it demands a community ready to consume the information for its own benefit. Sometimes information is not readily available to the community in the form that will enable it understand subtle aspects of such an organisation. Given the variations in the level of awareness of the communities it seems crucial to take the above factors into consideration before selecting the limited liability company for an income generating enterprise or a natural resource use enterprise like a water point.

5.2.4 Cooperative Societies

These are registered under the Co-operative Societies Act (Chapter 490 - Laws of Kenya) which gives the state, through the Ministry of Co-operative Development, wide powers to control them.

A co-operative society is an economic organisation managed in accordance with co-operative principles which are described as; open membership, democratic control, limited rate of interest on the share capital; member education; distribution of surplus funds among members in a way that ensures that a member does not gain at the expense of others; and co-operate with other co-operatives.

The thrust of these principles is equality and centrality of members who enjoy a variety of rights that are also accompanied by obligations. Co-operatives are encouraged by the government as a matter of policy. They have evolved from basically agricultural organisations to include various activities such as industrial production, housing, savings and credit, services (e.g. insurance and banking), and multi-purpose activities that include sale of consumer goods, such as farm equipment. They have potential in the informal sector and have been identified as suitable tools for expansion of export business, especially export of horticulture, generation of labour and a variety of other social and economic functions.

The minimum number of persons who can form a cooperative is ten and membership is unlimited. The application for registration is made to the Commissioner for Co-operative Development in prescribed form. It must be accompanied by a set of by-laws and an economic appraisal of the society's activities. The by-laws must state, inter alia, the name of the society, its objects, its area of operation, qualifications for membership, how funds are to be utilized etc.

The application is scrutinized in the office of the Commissioner for Co-operative Development who has discretion to register the society. The law provided a testing ground for objectives by sanctioning provisional registration.

Once the co-operative is registered it acquires corporate personality and is governed by a committee of not less than five or more than nine persons who are accountable to the members. The committee, like the board of directors in a company, is empowered to enter into transactions on behalf of the co-operative. This include the purchase of real property, raising loans, and defending and instituting legal action.

The co-operative is suited to a variety of community activities especially among peasant communities. The involvement of the government in the day to day running of co-operative has therefore a positive aspect of it. It starts right from the beginning in the actual assessment of the viability of the organisation by co-operative officers. Once the co-operative is registered the government provides supervision and support which includes acquisition of credit facilities, management training, professional services such as audit of books, provision of marketing channels etc.

However, there is a negative aspect to the guidance provided by the government. This guidance is based largely on statutory controls that could easily stifle individuals initiative. Where controls are accompanied by poor services by the government officials the result is frustration and loss of confidence that sometimes undermines the goals of members. Nevertheless the co-operative

seems to provide room for social and economic benefits to their members. They are easy to form and should be encouraged.

5.2.5. Unincorporated Organizations

As unincorporated organisation or association is registered and regulated under the Societies Act (Chapter 108 - Laws of Kenya). It consists of individuals who have come together for a specific purpose which could be cultural (for example a sports club), or social. The association cannot engage in business for profit and is therefore best suited to projects that are non-profit making, are of public services in nature or charitable.

Property bought and owned by the association is regarded as the joint property of the members. However, it is vested in a few members (trustees) who hold it for the benefit of others. The trustees have authority to deal with the property of the association but are accountable to the members who appoint them to represent their interests. They may take legal action in a representative capacity in order to protect the interests of the other members and may equally be sued in their own names.

The association is formed by a minimum number of persons. Application for registration is made to the Registrar of Societies in a prescribed manner. It must be accompanied by two copies of the constitution or rules of the society. The rules must provide for, inter alia, objects of the society, persons to whom membership is open, title of officer, trustees and auditors and their terms of office, and the method of their election, appointment or dismissal and suspension, the custody and investment of the funds and property of the society and the designation of the persons responsible of the property.

The bodies described above can enable a community to engage in various legally recognised land transactions and initiatives with County Councils in the case of trust land, the government in the case of private land. These include transactions for acquisition, transfer of land etc.

As already intimated the forms of organisations described are significant during the period of land adjudication which is fraught with complexities.

Depending on the form of organisation selected, the trustees, committee or board of directors as the case may be can enter into arrangements with individuals who have been indicated as owners in the adjudication record. The individuals must of course be persons enjoying necessary authority under Customary Law. It would appear that interests of a temporary nature for example occupational rights or licences are not suited to community projects. In our opinion therefore leases would be most appropriate.

Lease agreements should be made and in order to ensure added protection the agreements should be registered under the Registration of Document Act. An agreement registered under the Act thus becomes binding even after the registration process is completed provided the lessor has a good title.

After the registration process has been completed the lease should be registered as an encumbrance against the title of the leased property.

It is prudent to ensure before entering into a lease agreement that the land in question is not subject to an objection. An objection can be lodged by a person in or affected by the adjudication register who considers it to be incorrect or incomplete in any way.

It should be noted that where the community requests for land to be set aside by the adjudication officer and the beneficiaries are known, the interest would be reflected on the adjudication record. For example, if a given community has formed an Association the record would reflect an entry that reads as follows;

"The Country Council in trust for Makuki Association"

However, the setting aside mechanism seems best suited to long term needs of the community. Land for immediate use should be acquired by the alternative method described namely direct transaction with persons noted on the record as owners.

5.3. Acquisition of Government Land

Government land comprises land owned by the government (for example large scale farms) and used for its own purposes; and unused or unalienated and reserved for future utility by the public or the government itself. The Government Lands Act (Chapter 280 - Laws of Kenya) provides the procedure of regulating dealings in government land.

The land may be divided into two broad categories namely; land in townships and agricultural land. The Commissioner for Lands is empowered to grant interests over unalienated land through a prescribed process. The Act specifically provides that he may make grants to dispositions for religious, charitable, educational or sports purposes with the general policy of the government and the terms prescribed for such purposes. He may also make grants or dispositions for use of local authorities for municipal or district purposes, namely; accommodation, town halls, public parks, native locations, fire stations, slaughter houses, pounds, incinerators, mortuaries, crematoria, stock sale yards, libraries, hospitals, child welfare institutions, garages, housing schemes, markets and public cemeteries.

Grants for temporary occupation of farming land on grazing licences

terminable at short notice may also be made. The Commissioner's powers extend to sale of farms and plots which have been offered for auction and remain unsold. Community organisations can apply from the Commissioner for this type of land.

5.3.1. Disposal of Land Within Townships

The Commissioner may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes. These plots may be disposed of to individuals or organisations set up by the community. These may be ideal where the community wishes to exercise control over an enterprise.

The Act provides that town plots must, unless the President otherwise orders in any particular case or cases, be sold by public auction. In practice however, the Commissioner invites the public to apply for the plots through the Kenya Gazette. Leases created in respect of the plots provide for the terms of the sale and conditions of allotment on sale.

Community organisations can apply for these for use by the public.

5.3.2. Agricultural Land

The Commissioner is also empowered to facilitate sub-division of unalienated agricultural land for disposition. After sub-division, leases may then be sold through public auction. The practice however is the same as in the case of townships. The public is expected to respond to Gazette Notices by sending applications to the Commissioner. Any individual or body capable of holding property may send an application. So may community organisations.

5.3.3. Licences for Temporary Occupation

These may also be granted by the Commissioner and are available to any person as in the case of leases. However, unless otherwise provided a licence must be for one year. The notice to quit may be served upon the licensee at any time after the expiration of nine months from the date of the licence. In our view temporary interests of this nature may not be suited to community development.

5.3.4. Overriding Interests

A lease, licence or other conveyance cannot (unless it is otherwise expressed in the instrument) confer any right of the water of any spring, river, lake or stream, other than to such water as may be required for domestic purposes. The intention or purpose of the overriding interest provision was to ensure that common rights such as rights to water and air are not privatised. It is therefore possible to prosecute or institute a citizen's case against a

person attempting to claim to own a section of a river , stream or spring and so on.

Similarly rights to the foreshore, unextracted minerals oils cannot be conferred. Other rights that have been reserved to the government are public roads, through fares and outspans.

The government has also the right to enter at any time upon any land sold, leased or occupied under a licence in order to set up poles, carry electric lines across such land, lay sewers, water pipes or electric lines without paying compensation but making good all damage.

Other far reaching rights of the government on the land in question are that the government may at any time enter upon it for the purpose of maintaining or improving the flow of water in any river or stream on the land. It has power to construct and maintain dams or direct any river or stream without paying compensation except for buildings and crops destroyed or damaged.

Clearly then, natural rights to water and other natural resources are safeguarded from privatisation unless express provision is made. The power of the state to construct dams and to maintain them minimises the role of the community in such activities. Thus an express provision in a lease, or other conveyance, which shifts the power to the community or any person would naturally entail a lot of considerations. For example the inability of the government to provide water in the near future given the financial resources available for development. The shift to the community has other implications that the government would wish to weigh carefully. The involvement of a third party for example a financier or donor agency, in the venture would in most cases be inevitable in view of the cost of the activity involved. The ability of the community to enter into legal transactions is crucial in these circumstances, both from the point of view of the community as well as the financier or donor. Hence it justifies the creation of suitable legal bodies to ensure that the objective is achieved and sustained through a system of accountability that allows for community participation.

Although construction of dams appears confined to the state, nevertheless the community must concern itself with catchment area that would inevitably affect private interests where land has been registered. The creation of a trust to acquire land interests in the catchment areas is important and is recommended where land is in the process of adjudication. As stated earlier, the community should ensure that a catchment area is set aside as an area for public utility and the interest noted on the register.

5.3.5. Implied Covenant

Except where it is otherwise provided in every grant or lease there

5.4.4. Acquisition of Lesser Interests

a. Easements

The Registered Land Act defines an easement as "a right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit." According to the Act the proprietor of land or lease can create an easement either in the prescribed form or by a grant or reservation in an instrument must contain full particulars including a plan defining the easement. The Act requires that easements be registered.

b. Profits

A profit is defined to mean the "right to go on the land of another and take particular substance from that land, whether the soil or products of the soil". The substance or profit may be shared by the community for example common minerals like clay or sand. A profit cannot be made with regard to something that cannot be owned for example water. Thus with relation to land that leads to water points easements may be created as opposed to rights of profit.

The proprietor of land or lease may be requested, by an instrument in the prescribed form, to grant a profit. The grant of a profit is completed by its registration as an encumbrance in the register of the land or lease which it affects. Where it is appurtenant to other land or lease it is completed by its registration in the property section of the register of the land or lease to which it is appurtenant; and lastly by filing the instrument.

A profit granted by the proprietor of a lease is capable of subsisting only during the subsistence of the lease. It should be noted however that a profit can rest by prescription (uninterrupted use for twenty years). This does not however apply to government land. It should also be noted that easements and profits cannot be created on government land held under trust for national parks, mines as defined by the Minerals Act, and land vested in the Kenya Railways or Ports Authority.

c. Overriding Interests

All registered land under the Registered Land Act is subject to overriding interests without their being noted on the register. As discussed earlier these interests are set out under the Act. They include interests of a private as well as a public nature. The relevant provision offers protection to community interests created before registration. However, the interests must have been acquired or conferred under a written law. Thus for example where land was set aside for a particular purpose for example construction of a dam, and the same was actually constructed it is

are implied covenants by the grantor or lessor. These are first that the grantor has power to grant the lease. Secondly that so long as the grantee or lessee is paying the rent and fulfilling the conditions imposed on him he will enjoy the premises without interruption by the grantor or lessor or any persons claiming under him. This is however only in so far as the laws for the time being in force permit.

The Act provides further that in every grant, lease and licence there are implied covenants and conditions by the grantee, lessee or licensee first that he will pay rent and royalties reserved at the time. Secondly that he will pay such taxes, rates, charges, duties, assessments or outgoings of whatever description as may be imposed, charged or assessed upon the land or the buildings thereon or upon the lessor or grantor or lessee or licensee in respect thereof.

Thus, a community that seeks to obtain a grant of government land ought to be aware of the financial implications of such a grant. Often this comes as a surprise to most community organisations.

5.3.6. Buildings Constructed on Government Land

Unless special provisions to the contrary are provided in a lease or licence, all buildings on government land leased or occupied under licence must on the termination of the lease or licence pass to the government without compensation. However, in the case of a lease for a term that does not exceed 30 years, the lessee may remove, within three months of the termination of the lease, any buildings erected by him unless the government elects to purchase those buildings.

It would appear that the grants or disposition of government land to County Councils cater for many community interests. It is therefore necessary that the community in a given area considers the level of control it wishes to exercise in respect of the activities that are within the purposes earmarked for County Councils involvement. Sometimes it may be the best to let the Council provide them especially where privatisation is unlikely as the case of grants made to set up a school, a hospital, a market or a housing scheme. Moreover in view of financial implications in the actual administration of land, for example in the form of taxes etc., it may be best to let the County Council handle some of the community oriented activities.

5.4 Acquisition of Private Land

Private land comprises registered of land where title has been issued either in freehold or leasehold tenure under the Registration of Titles Act; following disposal or allotment under the Government Land Act or the registration process which leads to the application of the Registered Land Act. Since the Registered

Land Act is aimed at consolidating all land law, the discussion herein will therefore be confined to transactions creating specific interests that a person or a legal body may enter into under the Act.

These interests include leases, sub-leases, outright transfers and lesser interest such as easements and profits.

Where a legal body becomes proprietor of land under the Act it enjoys the same rights as any other owner. Thus a part from entering into above transactions it may also charge its property as security for credit facilities. Acquisition of private property by a legal body must therefore be seen in terms of the avenues for further development and various community interrelationships inherent therein.

5.4.1. Leases

The Registered Land Act provides for a general right to create periodic tenancies of agricultural land which need not specify the term of the lease or be in writing. These kind of tenancies are not capable of registration. However, any periodic lease is deemed to be a right to obtain an interest under Section 31 of the Act. This means that one can lodge a caution on the property to protect his or her interest. Leases of two years and more must however be in writing and must be registered. It is possible to create future leases which can commence not later than twenty one years but these cannot be of any effect unless registered.

The Act provides for implied covenants on the part of the lessor and on the part of the lessee. These include (on the part of the lessee) and agreement (unless otherwise provided) not to transfer, charge, sublease otherwise part with the possession of the leased premises or any part of them without the previous written consent of the lessor. Such consent must not however be unreasonably withheld. The lessor, agrees among other things, to allow the lessee quiet possession and enjoyment of the leased property without any interruption as long as the latter meets his obligations of paying rent etc.

5.4.2. Subleases

These may also be created but as intimated above this is subject to consent from the landlord or head lessor.

5.4.3. Transfers

A proprietor has the right to make an outright transfer of his land to any person with or without consideration. The transfer is completed by registration of the transferee as proprietor of the land.

protected under the Registered Land Act as an overriding interest provided the setting aside was legally done under the Adjudication Act or the case may be.

d. Registrable Interests

It should be noted that all registrable interests under the Registered Land Act must be in a prescribed form. If an instrument is considerably altered or differs from the one provided under the Act then the Chief Registrar has to approve the instrument before registration can be effected.

e. Compulsory Acquisition of Private Land

The constitution and the Land Adjudication Act (Chapter 295) provide an avenue for the indirect acquisition of private land by the community. The Government, through the Commissioner of Lands has power to acquire land compulsorily under specified circumstances. Thus, if land is required for the purpose of a "Public Body", and if the acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, Town and County planning or the development of utilization of any property in such manner as to promote the public benefit, it can be compulsorily acquired. The necessity must be such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land. A "Public Body" is defined as the Government, or "any authority board, commission or other body which has or performs, whether permanently or temporarily, functions of a public nature, or which engage or is about to engage in the exploitation of natural resources or the provision of power or any other activity which is of benefit to the public". The definition is wide enough to cover various forms of organisations available to the community for purposes of exercising a measure of control on land resources.

In view of the sanctity of individual property recognised by the constitution, compulsory acquisition must be accompanied by prompt and full compensation to the person who has an interest in or right over the land or building acquired.

Compensation is assessed on the basis of prescribed principles namely; the market value of the land at the date of publication in the gazette of the notice of intention to acquire the land (this disregards improvements during the last two years in anticipation of the acquisition increase in value due to illegal use, and increase in value detrimental to health); damage sustained or likely to be sustained by any person in the process of acquisition; damage sustained or likely to be sustained to property; (movable or immovable) or earnings; reasonable expenses due to change or residence or place of business; and loss of profits between the date of publication of notice of intention to acquire the land and the date of possession.

Where a community has specific objectives of a public nature, for example building a dam on private land, there appears to be yet another option to ensure that those objectives are realised. In our view, community leaders should explore the District Development Committee forum to request for compulsory acquisition by the government for the benefit of the community. Where the community has formed a legal entity it should aim at requesting for a grant once the land is acquired by the state in order to exercise a measure of control.

It should be realised however that the administrative costs of compulsory acquisition as well as monetary considerations in respect of compensation may hinder such a course of action on the part of the government. This appears to be an option that would only be exercised in extreme cases. It is therefore important that a community is made aware of other options at its disposal for the acquisition of such land. Incorporation of the community has the advantage that in the event that the community cannot contribute funds to purchase land, at least it can negotiate for funding from benevolent organisations that may prefer to deal with a community that has a system of management accountability.

6. CONCLUSIONS AND RECOMMENDATIONS

The following are the salient issues raised in this report.

1. Land Law

The historical evolution of land law has led to the application of a dual system of land tenure which embodies the English system of tenure and the African customary system of tenure. The overall result is a complex set of laws applicable to three specific categories of land namely, Government Land, trust land and private land. There is an attempt to provide uniformity in the land law through the Registered Land Act. However, the process of unification is slow. This means that transactions in land will continue to be governed by complex rules for a long time.

The government exercises tremendous authority over land resources. This authority is conferred by various statutes which also enable the government to set aside land for community use. An administrative machinery is in place for the implementation of the law. Community projects involving land are scrutinized by the officers involved in this machinery.

2. Land Adjudication and Registration

The process of land adjudication and registration which confers absolute proprietorship to the owner of land is ongoing. It presents difficulties with respect to the nature of interest that can be created in the interim as land gets adjudicated. This is because the land in question is regulated by customary law which varies from tribe to tribe. Moreover, interests in land and transaction under customary law sometimes appear to have no legal force because they do not conform to conventional arrangements dependant on identifiable rights springing from registered titles.

This means that interest to be conferred must be determined in accordance with the circumstance of every particular case and the specific customary law applicable to the land in question.

Any transactions entered into during this period must be treated with utmost caution and the advice of a lawyer is an important prerequisite for entry into transactions. It is nevertheless, possible for a community to engage in beneficial transactions and the law contains various safeguards against privatisation of community interests. A good example is the 'overriding interest' provision in the Registered Land Act which ensures that certain interest such as rights of way, pipelines or dams erected pursuant to any law are protected. In other words all registered land is subject to these interest. The relevant protective provisions must, however, be well understood and applied.

Since the process of adjudication is long and is unlikely to end soon it is necessary that protection of community interest is considered from various view points. One of the best approaches is to create organisations that clearly define the interests of individuals and a system of accountability necessary to attract concrete and sustainable projects. This is especially important during the process of adjudication but it is also necessary in other circumstance. There are many advantages of creating organisation beyond the informal groups that are common in many parts of the country. The main advantage arises from the ability of the organisations to enter into legal transactions. A community is thereby enabled to acquire and control various types of resources.

Where a body is created with corporate personality, for example in the form of an association, a company or a co-operative, it is governed by specific rules that determine the rights and obligations of individuals who create them.

In the case of an organisation that has no corporate status the creation of a trust to facilitate legal transactions on behalf of members of the organisation plays and important role in ensuring a system of accountability.

3. Community Institutions

We are of the opinion that the best forms of organising suitable for social and economic projects of most communities are essentially three and their efficacy depends on the activities the community is interested in. The three are:

(a) Associations created under the Societies Act.

These are suitable for social and non-profit making ventures.

(b) Co-operative Societies formed under the Co-operative Societies Act.

These are suitable for both social and economic ventures.

(c) Companies Limited by Guarantee

These are suitable for non-profit ventures.

Three appendices are submitted as an aid to formation of associations and companies limited by guarantee.

Appendix I deals with associations. Appendix II is an example of a trust instrument that must be created in order to empower trustees appointed by members of the association to carry out transactions on their behalf.

Appendix III comprises specimen Memorandum and Articles of a

company limited by guarantee.

Of the three organisation, the co-operative society is easiest to form. Relevant application forms can be obtained from District Co-operative officers stationed in most Districts. Model by-laws are also supplied by the Ministry of Co-operative Development. By-laws drafted by applicants in respect of a co-operative must contain the following:-

- (a) its name;
- (b) its registered office and postal address;
- (c) the area to which its operation and membership shall be confined;
- (d) the objects of the society;
- (e) the purposes to which its funds must be applied;
- (f) the disposal of its accumulated funds;
- (g) the qualifications for membership, the terms of admission of members and the mode of their admission.
- (h) the withdrawal and expulsion of members and the payment, if any, to be made to such members and the time within which such payment shall be made;
- (i) the rights, liabilities and obligations of members;
- (j) the transfer of the share of interest of members;
- (k) the manner of raising funds, including the maximum rate of interest on deposits;
- (l) its general meetings, the procedure and quorum at such meetings, the power of such meetings and representation and voting at such meetings;
- (m) the appointment, suspension and removal of members of the committee and officers and the powers and duties of the committee and officers;
- (n) the period of its financial year;
- (o) the authorization of officers to sign documents on its behalf; and
- (p) the settlement of disputes

If the objects of the society include the funds to be lent or

advanced to its members such as a savings and credit co-operative, by-laws must also be made in respect of the conditions on which loans or advances may be made to members including:-

- (a) the rate of interest;
- (b) the maximum amount which may be lent to a member;
- (c) the extension, renewal and recovery of loans;
- (d) the period and purpose of loans;
- (e) the security for loans; and
- (f) the consequences of default in the repayment of any sums due.

Majority of applicants have relied on the model by-laws prepared by the staff of the Ministry of Co-operative Development. However, in view of diversification of activities of co-operatives it may become necessary for applicants to draft their own by-laws to match very specific needs.

4. Water Resources: Construction and Maintenance Organisation

We have noted that natural rights to water and other natural resources are safeguarded from privatisation unless express provision is made. We have also observed that the power of the state to construct dams and to maintain them minimises the role of the community in such activities.

However, we are of the opinion that a community can organise itself in order to complement the role of the government to provide public facilities or utilities. The specimen Constitution of an Association (Appendix I) has indeed been drafted with this idea in mind. In particular the main objectives are to facilitate provision of water to the members and to enable members to take full responsibility for building, managing and maintaining any facilities created to aid provision of water.

However, our investigations on the feasibility of creating such an association have revealed:

- (a) The importance of including local administrators in the actual membership of the association and
- (b) The importance of seeking approval from the Ministry of Water Development before application for registration is made. This can be done through the District Water Engineer as is expected under District Focus Strategy.

We are of the opinion that if local administrators are well informed of the importance of forming a legal entity to build,

manage and maintain water resources for the benefit of the community there is bound to be positive response. The point may be stressed that the community venture would be complementary to the state's effort to provide water as well as to ensure that the community takes responsibility for any structures that may have been put up as part of the venture. Accountability is best achieved when there is in existence a legal body which members understand and are prepared to support.

5. Community Participation

We have made reference to the District Focus Strategy which is intended to enhance community participation and resourcefulness in development prioritization, project design and project implementation. We are of the opinion that members of the community could be even more resourceful if they are encouraged to form legal entities to protect their interests. However, they must understand how the various organisations work and the suitable options in given situations. This is especially important in situations which involve land transactions. The Association modality, we believe is the most efficacious.

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Trustees Act - Chapter 167.

Trustees (Perpetual Succession) Act Chapter 164.

Water Act - Chapter 372.

Appendix I

MUTETHYA ASSOCIATION

1. NAME:

The name of the association shall be MUTETHYA ASSOCIATION, in this constitution referred to as "The Association".

2. OBJECTIVES:

The objectives of the association shall be non-political and are designed to:

- a) To aid and assist in maintaining and keeping in good order public facilities set aside by the County Council or the Government of Kenya.
- b) To identify the water points, water catchment areas within the area settled/occupied by the members of the Association.
- c) To erect, maintain and keep in good order dams and other structures for the benefit of the members of the Association and the Public at large.
- d) To cooperate with Government departments in any project involved in supplying of water to the ~~Non-Governmental Organization~~ Location/Community.
- e) To organize and contribute annual subscription for the maintenance of the structures, dams.

3. MEMBERSHIP:

- a) Any person, Group ordinarily residing and owning a piece of land in location in District and being over the age of 18 years and in case of a company, being property registered shall be eligible for membership of the association and shall, subject to the approval of the committee become members of the association on payment of an entrance fee of
- b) Every member shall pay an annual subscription fee of Kenya Shillings One hundred (Kshs 100/=) not later than December 31st each year.
- c) The above fees will only be amended by vote at an Annual General meeting.
- d) Any member desiring to resign from the association shall submit a notice to the secretary, who will in turn report to the committee. Resignation shall take effect from the date of receipt by the secretary of such a notice.

e) Any member may be expelled from membership if the committee so recommends and if a general meeting of the association shall resolve by a two-thirds majority of the members present that such a member should be expelled on the grounds that his conduct has adversely affected the reputation or dignity of the association or that he has contravened any of the provisions of the constitution of the association. The committee shall have power to suspend a member from his membership until the next general meeting of the association following such suspension but notwithstanding such suspension a member whose expulsion is proposed shall have the right to address the general meeting at which his expulsion is to be considered.

f) Any person who resigns or is removed from membership shall not be entitled to a refund of his subscription or any part thereof or any moneys contributed by him at any time.

e) Any member who falls into arrears with his annual subscription for more than six months shall automatically cease to be a member of the association and his name shall be struck off the Registrar of members. The committee may, however, at its discretion, reinstate such member on payment of the total amount of subscription outstanding.

4. OFFICE BEARERS:

a) The office bearers of the association shall be:-

- i. The Chairman
- ii. The Vice Chairman
- iii. The Secretary
- iv. The Assistance Secretary
- v. The Treasurer
- vi. The Assistance Treasurer

all of whom shall be fully paid-up members of the association and shall be elected at the annual general meeting to be held in each year.

- b) All office bearers shall hold office from the date of election until the succending annual general meeting subject to the conditions contained in sub-paragraphs(c)and(d) of this rule and shall be eligible for re-election.
- c) Any office bearer who ceases to be a member of the association shall automatically cease to be an office bearer thereof.
- d)Office bearers may be removed from office in the same way as is laid down for the explusion of members in rule 3 and vacancies thus created shall be filled by persons elected at the general meeting resolving the explusion.

5. DUTIES OF OFFICE BEARERS:

- a)Chairman- The Chairman shall, unless prevented by illness or other sufficient cause, preside over all meetings of the committe and at all general meetings.
- b)Vice-Chairman -The Vice-Chairman shall be the principal assistant to the Chairman, and shall perform any duties of the Chairman in his absence.
- c)Secretary- The Secretary shall deal with all the correspondences of the association under the general supervision of the committee. in case of urgent matters where the committee cannot be consulted he shall consult the Chairman or if he is not available, the Vice-Chairman. The decision reached shall be subject to ratification or otherwise at the next committee meetings. He shall be responi-ble for keeping minutes of all such meeting and for the preser-vation of all records of proceedings of the association and of the committee.
- d)Assistant Secretary- Shall be the principal assistance to the Secretary, and shall perform all the duties of the Secretary and such other duties as shall be assigned to him by the Secretary or committee whether the Secretary is present or not.
- e) Treasurer-The Treasurer shill receive and shall also disburse, under the directions of the committee, all moneys belonging to the committee desirable.
- b.The committee shall have the power toseek and recive any financial support from any other source, provided that such support does not conflict with the laws of Kenya and the objectives of the association as spelled out in paragraph 2 of this constitution.
- c)All moneys disbussed on behalf of the association shall be authorised by the committee expect as specified in rule 11 (d)
- d)The quorum for meetings of the committee shall be not less than ten members.

- f) Assistant Treasurer- The Assistant Treasurer shall be the principal assistance to the Treasurer, and shall perform such duties as may be specifically assigned to him by the Treasurer or by the committee and in the absence of the Treasurer shall perform the duties of the Treasurer.

6. COMMITTEE

- (a) The Committee shall consist of all the office bearers of the association and three other members elected at the annual general meeting. The committee shall meet at such time and places as it shall resolve but shall meet not less than once in any three months.
- (b) Any vacancies for members of the committee caused by the death or resignation shall be filled by the committee until the next annual general meeting of the association. Vacancies caused by members of the committee removed from office will be dealt with as prescribed in rule 4 (d).

7. DUTIES OF THE COMMITTEE:

- (a) The committee shall be responsible for the management of the association and for that purpose may give directions to the office bearers as to the manner in which, within the law they shall perform their duties. The committee shall have power to appoint such sub-committee as it may deem desirable to make reports to the committee, upon which action shall be taken as deems to the committee desirable.
- b. The committee shall have the power to seek and receive any financial support from any other source, provided that such support does not conflict with the laws of Kenya and the objectives of the association as spelled out in paragraph 2 of this constitution.
- c. All moneys disbursed on behalf of the association shall be authorised by the committee except as specified in rule 11 (d)
- d. The quorum for meetings of the committee shall be not less than ten members.

8. GENERAL MEETING

- a) There shall be two classes of general meetings- annual general meetings and special general meetings.
- b) i. The Annual general meeting shall be held not later than December 31 in each year. Notice in writing of such annual general meeting, accompanied by the annual statement of account (see rule 11 (b) and the agenda for the meeting shall be sent to all members not less than 21 days before the date of the meeting.
- ii. The agenda for any annual general meeting shall consist of the following:-
 - a) Confirmation of the minutes of the previous annual general meeting.
 - b) Consideration of accounts.
 - c) Election of office bearers and the committee members.
 - d) Appointment of auditors in accordance with rule 11 (a)
 - e) Such other matters as the committee may decide or as to which notice shall have been given in writing by a member or members to the secretary at least four weeks before the date of the meeting.
- e) Any other business.
- c) A special general meeting may be called for any specific purpose by the committee. Notice in writing of such meeting shall be sent to all members not less than 7 days before the date thereof.
- d) A special general meeting may also be requisitioned for a specific purpose by request in writing to the secretary by not less than $\frac{3}{4}$ members and such meeting shall be held within 21 days of the date of requisition. The notice for such meeting shall be as shown in rule 8(c) and no matter shall be discussed other than that stated in the requisition.
- e) Quorum for general meetings shall not be less than two thirds of the registered members of the association.

9. PROCEDURE OF MEETING:

- a) At all meeting of the association the Chairman, or in his absence the vice-Chairman, or in the absence of both these officers, a member selected by the meeting shall preside.
- b) The Chairman may at his discretion limit the number of persons permitted to speak in favour of and against any motion.
- c) Resolution shall be decided by simple voting by a show of hands. In the case of equality of Votes, the Chairman shall have a second or casting vote.

10. AUDITORS:

- a) The Audit committee shall be appointed for the following year by the

Annual general meeting. All the association's account, records and documents shall be opened to the inspection of the audit committee at any time. The Treasurer shall produce an account of his receipts and payments and statement of assets and liabilities made up to date which shall not be less than six weeks and not more than three months before the date of the annual general meeting. The audit committee shall examine such annual accounts and statements and either clarify that they are correct, duly vouched and in accordance with law.

- b) A copy of the auditor's report on the accounts and statement to get the irs with such accounts and statements shall be furnished to all members at the same time as the notice convening the annual general meeting is sent out. An auditor may be paid such honorarium for his duties as may be resolved by the annual general meeting appointing him.

11. FUNDS

- a) The funds of the association may only be used for the promotion of objectives as set forth in rule 2 above.
- b) All moneys and funds shall be received by and paid to the Treasurer and shall be deposited by him in the name of the association in any bank approved by the committee.
- c) No payments shall be made out of the bank account without a resolution of the committee authorizing such payment and all cheques on such bank account shall be signed by the Treasurer or the Assistant Treasurer and two other office bearers of the association who shall be appointed by the committee.
- d) A sum not exceeding Shs. 500/= may be kept by the Treasurer for petty disbursements of which proper account shall be kept.
- e) The committee shall have power to suspend any office bearer who it has reasonable cause to believe is not properly accounting for any of the funds or property of the association and shall have power to appoint another person in his place. Such suspension shall be reported to a general meeting to be convened on a date not later than two months from the date of such suspension and the general meeting shall have full power to decide what further action should be taken in the matter.
- f) The financial year of the association shall be from January 1-December 31st.

12. AMENDMENTS TO THE CONSTITUTION:

Amendment to the constitution of the association must be approved by at least a two-thirds majority of members at a general meeting of the association.

13. DISSOLUTION:

- a) The Association shall not be dissolved except by a resolution passed at a general meeting of members by a vote of two-thirds of the members present. The quorum at the meeting shall be as shown in rule 8(e). If no quorum is obtained, the proposal to dissolve the association shall be submitted to a further general meeting which shall be given to all members of the association at least 14 days before the date of the meeting shall be the number of members present.
- b) Provided, however, that no dissolution shall take effect without prior permission in writing of the Registrar, obtained upon application to him made in writing and signed by three of the office bearers.
- c) When the dissolution of the association has been approved by the Registrar, no further action shall be taken by the committee of any office bearer of the association in connection with the aims of the association other than to get in and liquidate for cash all the assets of the association, the balance thereof shall be distributed in such other manner as may be resolved by the meeting at which the resolution for dissolution is passed.

14. INSPECTION OF ACCOUNTS AND LIST OF MEMBERS:

The books of account and all documents relating thereto and a list of members of the association shall be available for inspection at the registered office of the association by any officer or member of the association on giving not less than seven days notice in writing to the association.

Appendix II

CHARITABLE TRUST DEED

THIS TRUST DEED is made the
day of one Thousand Nine Hundred and

(herein after referred to as "the Founder") of the one part and

(hereinafter together referred to as "the Trustees" which expression shall where the context so admits include the survivor or survivors of them or other the trustee or trustees for the time being hereof whether original or substituted) of the other part.

W H E R E A S :-

(A) As from the day of 19
(hereinafter referred to as "the Commencement Date") the Founder wishes to establish in Kenya an irrevocable public charitable trust to be known as "
Charitable Trust" for
the

and to this end the Trustees wish to declare certain trusts concerning the sum of Kenya Shilling One Hundred (K.Sh.100/-) already donated to them by the Founder.

(B) It is anticipated that further cash and property will hereafter be given devised or bequeathed to the Trustees by the Founder and by other persons corporations or organisation to be held by the Trustees upon the charitable trusts hereinafter declared.

DEFINITION AND
INTERPRETATION

NOW THIS DEED WITNESSETH and it is hereby declared as follows:-

1. In this Deed where the context so admits:-
 - (a) The expression hereinbefore defined shall have the meanings thereby assigned to them respectively and in addition:-
 - (i) "deed" shall mean any instrument in writing signed by the parties thereto in the presence of an independent witness and dated or in the case of a party or parties thereto which shall be a body or bodies corporate then executed in accordance with the Articles of Association or other statute of such corporate body or bodies;
 - (ii) "Income" includes rents;
 - (iii) "investments" includes property of any kind whatsoever other than cash;
 - (iv) "Trust Fund" shall mean the said sum of Kenya Shillings One Hundred (K.Shs.100/-) and such further moneys investments or other property as may be added thereto by the Founder or any other person or trust all accumulations of income lawfully made and the moneys investments or other property for the time being representing the same;
 - (v) the singular includes the plural and the masculine includes the feminine and vice versa;
 - (b) Any reference to any Act, Ordinance or Chapter number shall be taken to include any rules made thereunder and any statutory modification or re-enactment of such Act or Ordinance or re-numbering of the appropriate Chapter.

CHARITABLE TRUST

2. As from the Commencement Date the Trustees shall hold the capital and income of the Trust Fund upon the following irrevocable charitable trusts:-

- (a) Upon trust for such public charitable purpose or purposes directed wholly towards

(5)

may from time to time in their absolute discretion think fit;

- (b) The Trustees shall have power at their absolute discretion to accumulate and capitalise the whole or any part or parts of the income of the Trust Fund by investing the same in any of the investments hereby authorised and so that any such investment shall be an accretion to the capital of the Trust fund and be held upon the same trusts as the Trust Fund and as one fund therewith for all purposes.

TRUST FOR SALE

3. The Trustees shall hold any real or immoveable property comprised in the Trust Fund upon trust to sell the same with power to postpone the sale thereof or of any part thereof for such period as they shall in their discretion think fit and shall hold all other investments comprised in the Trust Fund upon trust in their absolute discretion either to permit the same to remain as invested or to sell or convert into money all or any of such investments and upon trust as to money with like discretion to invest the same in their names or under their control in any of the investments hereinafter authorised with power at the like discretion from time to time to vary or transpose any such investments for others of a nature hereby authorised.

TRUSTS OF
ADDITIONAL
PROPERTY

4. The Trustees shall have the power at any time or times to accept such additional moneys investments or property of whatsoever nature and wheresoever situate as may be paid or

transferred to them upon the trusts hereof by the Founder or by any other person either personally or by testamentary act or disposition or by gift or by the provisions of any other trust or otherwise (including property of an onerous nature the acceptance whereof the Trustees consider to be beneficial or desirable as an addition to the Trust Fund) and either for the general purposes of the trusts hereby declared or upon any special trusts declared by the donor or testator and in the absence of any direction to the contrary any such additional moneys investments or property so accepted by the Trustees shall be held by them upon the trusts hereof:-

- (a) In the case of capital moneys investments or property as an accretion to the capital of the Trust Fund;
- (b) In the case of moneys being income as part of the income of the Trust Fund.

TRUSTEES
ADDITIONAL
POWERS

5. Without prejudice to any powers which may expressly or by implication be vested in the Trustees under the provisions hereof or by law the Trustees shall have the following additional powers:-

investment

- (a) To invest or lay out the Trust Fund in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever situate and whether involving liability or not and whether producing income or not or upon such personal credit with or without security as the Trustees shall in their absolute discretion think fit to the intent that the Trustees shall have the same full and unrestricted powers of investing and transposing investments and laying out moneys in all respects as if they were absolutely entitled thereto beneficially.

purchase etc
real property

- (b) To purchase take on lease or otherwise acquire any freehold leasehold or other immoveable property wheresoever situate either by way of investment or for occupation and use for all or any of the charitable purposes hereby authorised and to sell exchange surrender let or otherwise deal with any such freehold leasehold or other immoveable property and to facilitate the holding of such immoveable property to apply for and procure their registration as a body corporate with perpetual succession under the Trustee (Perpetual Succession) Act (Chapter 164 of the Revised Laws of Kenya 1962 Edition);

borrow

- (c) At any time and from time to time to borrow money on the security of the Trust Fund with power to charge any part of the capital or income (including any future income) of the Trust Fund including without prejudice to the generality of the foregoing any real or immoveable property forming part thereof with the repayment of any moneys so borrowed and to pay or apply the moneys so raised in any manner in which money forming part of the capital of the Trust Fund may be paid or applied and so that the Trustees shall have power to enter into any joint borrowing arrangements with any person and whether or not involving joint or several liability and no purchaser lender or other person paying or advancing money on a sale mortgage charge or other transaction purporting to be made by the Trustees under or for any of the purposes of this trust shall be concerned to see that the money is wanted or that no more than is wanted is raised or otherwise as to the propriety of the transaction or the application of the money;

purchase etc
chattels

- (d) To purchase hire or otherwise acquire any chattels required or likely to be required for the purposes

of or in connection with any charitable works for the time being carried on by the Trustees and authorised hereby and to sell or otherwise deal with any such chattels;

invite
subscriptions

(e) At any time to invite and with or without such invitation receive contributions from any person or persons whomsoever either by way of donation or annual or other subscription or legacy or otherwise for the support or otherwise for the benefit or purposes of the charitable trusts declared or constituted hereunder;

vest property in
nominee names

(f) To allow any part of the Trust Fund to be or remain vested in or to stand or remain standing in the name or names of any nominee or nominees whether or not including the Trustees or any of them without being accountable for any default on the part of any such nominee or nominees;

operate bank
accounts

(g) From time to time to open and maintain in their joint names or in the names of any of them a banking account or banking accounts at such bank or banks as they shall from time to time decide and to place any moneys forming part of the Trust Fund to the credit of such account or accounts or place the same on deposit with any banker or bankers or with any building or investment society or company;

make bye-laws
or rules etc.

(h) At any time and from time to time to make such arrangements draw up such schemes and make and frame such bye-laws and rules as they shall in their uncontrolled discretion think fit for the administration of the charitable trusts declared herein and for the management of the Trust Fund or any part thereof and at any time or times to amend alter or repeal any of the said arrangements schemes bye-laws or rules as they shall think fit;

- employ officers (i) From time to time to appoint or employ a secretary and such other officers and employees and such members of a board of advisors as they shall from time to time think fit and to fix the remuneration or wages of such secretary officers and employees and advisors respectively and pay such remuneration and wages from the Trust Fund;
- incorporation (j) To promote and procure the incorporation or registration of any company or companies with or without limitation of the liability of the members thereof to facilitate the carrying out of the charitable trust purposes declared hereunder;
- delegation (k) To delegate such of the powers authorities and discretions by these presents or by law conferred on them as the Trustees shall see fit to any committee or committees or other proper officer as constituted in accordance with any bye-laws or rules drawn up by the Trustees as aforesaid or otherwise employed by the Trustees;
- insure (l) To insure against any loss or damage from any peril any property for the time being forming part of the Trust Fund for any amount and to pay the premia payable in respect thereof out of the Trust Fund or the income thereof;
- employ agents (m) Instead of acting personally to employ and pay at the expense of the income or capital of the Trust Fund any agent in any part of the world whether attorneys advocates barristers solicitors accountants brokes banks trusts companies or other agents without being responsible for the default of any agent if employed in good faith to transact business or do any act required to be transacted or done in the execution of the trusts hereof including the receipt and payment of moneys and the execution of documents;

carry on busi-
nesses

(n) To carry on or manage such business or commercial enterprise whether for profit or otherwise as the Trustees determine should be carried on or managed in connection with the trusts hereinbefore declared;

release powers

(o) By deed or deeds revocable or irrevocable to extinguish release revoke or restrict the future exercise of any power or powers conferred on the Trustees by Trust Deed.

ENLARGEMENT OF
TRUSTEES' POWERS

6. If in the course of the management or administration of the Trust Fund the Trustees shall consider that any transaction is expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the Trustees by this Trust Deed or by law the Trustees may by any deed or deeds confer upon themselves or on their nominees either generally or in any particular instance the necessary power for that purpose without the necessity of obtaining an order of the Court provided always that no amendment under this clause shall be made to the Trusts declared in Clause 2 hereof.

POWER FOR
MAJORITY
TO ACT

7. So far as possible there shall never be less than three trustees hereof and all or any of the trusts and powers vested in or exercisable by the Trustees under this Deed shall (so long as there shall be not less than three trustees hereof) be capable of being performed or exercised by a majority of the Trustees hereof for the time being and any action or decision of such majority shall be as valid and effectual as it would have been if done or made by all the Trustees for the time being.

REMOVAL OF
TRUSTEES

8. The Founder may at any time and without assigning any reason therefor by deed remove any person from office as a trustee hereof and the person so removed shall forthwith upon receipt of a certified copy of such deed cease to be a trustee hereof and become and be incapable of acting in the trusts hereof.

APPOINTMENT OF
NEW TRUSTEES

9. The Founder may at any time by deed appoint a new or additional trustee hereof failing which such appointment the statutory power of appointing new and additional trustees contained in Section 37 of the Trustee Act shall apply to this Trust Deed and shall be exercisable by a majority of the Trustees provided that a trustee who has been removed under the provisions of the preceding clause shall not be regarded as a surviving or continuing trustee for the purposes of appointing new or additional trustees hereof.

PERSONS DEALING
WITH TRUSTEES

10. No purchaser mortgagee or other person dealing or proposing to deal with the Trustees or with any persons purporting to be the Trustees shall be concerned or entitled to enquire as to the title of the Trustees to make any appointment or as to the validity of any appointment or removal of any trustee or former trustee.

APPOINTMENT AND
REMUNERATION
OF CORPORATE
TRUSTEE

11. Nothing contained herein shall prevent the appointment of a corporation to be a trustee or sole trustee hereof upon such terms as to remuneration as at or prior to its appointment may be agreed in writing between such corporation and the person or persons making such appointment in default of such agreement in accordance with the corporation's published terms and conditions as to acceptance of trusts current at the date of its appointment.

REIMBURSEMENT OF
TRUSTEES'
EXPENSES

12. The Trustees may retain and reimburse themselves out of the Trust Fund or income thereof all costs charges and expenses of or incidental to the administration of the trusts hereof or in relation thereto but (subject always to the provisions of the following clause) shall not otherwise be permitted to charge for their services.

PROFESSIONAL
TRUSTEES'
CHARGING
CLAUSE

13. Any Trustee for the time being hereof being an advocate or other individual engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business done and time spent and services rendered by him or his firm in the

execution of the trusts and powers hereof whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of an advocate or other professional person.

NO TRUSTEE
LIABLE FOR
LOSS

14. In the execution of the trusts powers and discretions herein contained or hereby or by law conferred no trustee shall be liable for any loss to the Trust Fund arising in consequence of the failure depreciation or loss of any investments made in good faith or by reason of any mistake or omission made in good faith or of any other matter or thing except wilful and individual fraud and wrongdoing or personal conscious bad faith on the part of the trustee who is sought to be made liable.

IN WITNESS whereof the Founder
the Trustees have hereunto set their hands and seals the day
and year first before written.

The _____
in the presence of:-

SIGNED SEALED AND DELIVERED
by the said
In the presence of:-

Appendix III

THE COMPANIES ACT

(Chapter 486, of the Laws of Kenya)

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM

and

ARTICLES OF ASSOCIATION

of

Incorporated

day of

19

THE COMPANIES ACT

(CHAPTER 486, LAWS OF KENYA)

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM

AND

ARTICLES OF ASSOCIATION

OF

Incorporated this

day of

19

W.M.MBITIRU, ADVOCATE
P.O BOX 44187
NAIROBI

THE COMPANIES ACT
(Chapter 486, Laws of Kenya)

COMPANY LIMITED BY GUARANTEE AND NOT
HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION
OF

1. The name of the Company is
2. The Registered office of the Company will be situated in the Republic of Kenya.
3. The objects for which the Company is established are:-
 - a) To aid and assist in maintaining and keeping in good order public facilities set aside by the County Council or the Government of Kenya.
 - b) To identify from privatisation the water points, water catchment areas within the area settled/occupied by the members of the Association.
 - c) To erect, maintain and keep in good order dams and other structures for the benefit of the Association and the public at large.
 - d) To cooperate with Government departments in any project involved in supplying of water to the Non Governmental Organization Location/ community.
 - e) To organise and contribute annual subscription for the maintenance of the structures, dams.

- f) To purchase, take on lease or exchange or otherwise acquire any movable or immovable property in Kenya or elsewhere for any estate or interest whatever, and any rights, privileges or easements over or in respect of any property, and any buildings, machinery, engines, plant, live and dead stock or things whatsoever.
- g) To acquire, build, maintain, alter, enlarge, pull down, remove or replace any buildings, offices, roads, engines, walls, fences, banks, watercourses or other works of any nature; to clear sites for the same, and to join with any person, firm or company in doing any of the things aforesaid, and to work, manage and control the same or to join with others in so doing.
- h) To enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, that may seem conducive to the company objects or any of them, and to obtain from any such government or authority any contracts, rights, privileges or concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, contracts, rights, privileges and concessions.
- i) To acquire, carry on and undertake all or any part of the undertaking, property and liabilities of any person, company or organisation carrying on activities similar to those which the Company is authorised to carry on, or possessed of rights or property suitable for any of the purposes of the Company.
- j) To enter into partnership or any arrangement for union of interests, co-operation, reciprocal concession or otherwise, with any person or company carrying on or engaged in, or about to carry on or engage in, any activities which the

company is authorised to carry on or engage in, or any activities capable of being conducted so as directly or indirectly to further the objects of the company.

- k) To take such steps by personal or written appeals, public meetings, or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the company in the shape of endowments, donations, annual subscription or otherwise; and to promote, assist in the promotion of or otherwise participate in such other things as have for their object the raising of money for the purposes of company.
- L) To apply to any governments or authorities, public organisations, corporations, companies or persons for and to accept grants, donations, gifts, subscriptions and other assistance with a view to promoting the objects of the company and, in taking any gift or property, to take the same subject to any special company which may be prescribed by the donor thereof and which shall be consistent with the objects of the company.
- m) To promote or assist in the promotion of any company or association having objects similar to the objects of the company, and also company of association the objects of which are calculated either directly or indirectly to benefit the company in the attainment of any of its objects.
- n) To grant pensions, allowances, gratuities and bonuses to, and to provide a superannuation or any other fund funds for the employees of the company or otherwise to assist such employees, their widows and children.
- o) To invest the moneys of the company not immediately required

in such manner as may from time to time be determined.

- p) To borrow or raise any money that may be required by the company upon such terms and upon such security as may be deemed advisable.
- q) To secure the repayment of any money borrowed, raised or owing and the performance of any obligation undertaken by the company by mortgage, charge or lien upon any or all of the property and assets of the company, both present and future.
- r) To lend money to such persons and for such purposes and upon such terms as may be consistent with objects of the company and to guarantee the performance of any contract or obligation and the payment of money of or by any such persons.
- s) To amalgamate with any other company or association having objects substantially similar to those of the company.
- t) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, debentures and other negotiable or transferable instruments.
- v) To sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company.
- w) To do, in any part of the world, all such other things as may be conducive or incidental to the attainment of the above objects.

AND it is hereby expressly declared that the word "company" in this Clause shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether domiciled in Kenya or elsewhere. And the intention is that the objects specified in each sub-clause of this Clause shall, except

where otherwise expressed in such sub- clause, be in no wise limited by reference to or inference from the terms of any other sub-clause or the name of the company.

- x) The company shall not support with its funds or endeavour to impose on or procure the observance by its Members (hereinafter referred to as "Companies") or others of any regulations which if an object of the company would make it a Trade Union.
- y.) The company shall not support or participate in any activity of a political nature PROVIDED THAT the investigation and reporting of and comment on political matters in accordance with the principles of a free and independent press shall not be prohibited by this Clause.
- z) The income and property of the company whencesoever derived shall be applied solely towards the promotion of the objects of the company as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, gift, division, bonus, or otherwise howsoever by way of profit, to the Companies of the Company.

Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any director, officer or servant of the Company or to any Company of the Company, in return for any services actually rendered to the Company, nor prevent the payment of interest at reasonable rates on money lent, or reasonable and proper rent for premises demised or let by any such person to the Company.

Provided further that nothing hereinbefore contained shall prevent any payment to any company of which a Company, director, officer or servant of the Company may be a director, member or shareholder, and such person shall not be bound to account for any share of profits he may receive in respect of such payment.

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property

whatsoever, the same shall not be paid to or distributed among the Companies but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause hereof, such institution or institutions to be determined by the Companies of the company at or before the time of dissolution; and if and so far as effect cannot be given to the aforesaid provisions then to some charitable objects to be determined by the Companies.

No addition alteration or amendment shall be made to or in the Memorandum of Articles of Association for the time being in force unless the same shall have been previously submitted to and approved by the Minister of the Government of the Republic of Kenya for the time being entrusted with the control of the affairs of and relating to limited Companies.

The Seventh and Eighth Clause of this Memorandum contain conditions on which a License is granted by the Minister to the Company authorising it to dispense with the word "Limited" in its name.

The liability of the Company is Limited.

Every Companies of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Companies or within One year afterwards, for payment of the debts and liabilities of the Company contracted before he ceases to be a Company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding Kenya Shillings Forty (K.Shs. 40/-).

[illegible]

Witness to the above Signatures:

- 9 -

THE COMPANIES ACT

(CHAPTER 486, LAWS OF KENYA)

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

of

INTERPRETATION

1. In these Articles, the words standing in the first column of the following Table shall bear the meanings set opposite to them respectively in the second column thereof, if not inconsistent with the subject or context.

Words	Meanings
The act	The Companies Act (Cap.486)
These Articles	These Articles of Association, as now framed, or as from time to time altered by Special Resolution.
The Organization	The above named organization.
The Board	The Board of Directors for the time being of the Company or the members of the Board present at a duly convened meeting of the Board of Directors at which a quorum is present.
Chief Executive	The person appointed by the Board to run the day to day affairs of the organization.
Office	The Registered Office of the organization.
The Register	The register of members of the organization.
Month	Calendar Month
In writing	Written or produced by any substitute for writing or partly written and partly so produced.

Words importing the singular number only shall include the plural number and vice versa.

Words importing the masculine gender only shall include the feminine gender and;

Words importing persons shall include corporation.

OBJECTS OF THE INSTITUTION

2. The organization is established for the objects expressed in the Memorandum of Association.

MEMBERSHIP

3. The number of members of the organization is declared for the purposes of registration to be two but the Board may from time to time register an increase of members.

4. The members of the organization shall consist of:

- (a) The subscribers to the Memorandum of Association, and
- (b) Such other (if any) persons as shall be admitted to membership by the Board.

5. The provisions of Section 28 of the Act shall be observed by the organization and every member of the organization shall either sign the register on becoming a member or otherwise signify his agreement to become a member.

6. Every member of the organization shall be subject to the provisions of these Articles in relation to his membership and shall be deemed thereto upon or prior to his becoming a member.

7. A member of the organization may at any time by notice in writing to the Board resign his membership and the name of a member so resigning shall forthwith be removed from the register and he shall thereupon cease to be a member of the organization but he may be re-admitted to membership.

THE BOARD OF DIRECTORS

8. The organization shall have a Board of Directors consisting of not more than 7 members.

The Chairman of the Board shall be elected by the Members of the Board from amongst themselves.

The Directors shall retire from office at the First Annual General Meeting of the organization and at the Annual General Meeting in every subsequent year but shall be eligible for re-appointment.

9. The Chief Executive shall be the Secretary to the Board.

10. The Chief Executive shall attend meetings of the Board but shall not be taken into consideration in reckoning the number of the Board of Directors, nor, be taken into account in determining the quorum and shall not vote on any resolution of the Board.

11. Once nominated a member of the Board shall continue to hold office until removed by a resolution of the Board or;

- (a) If by notice in writing to the organization he resigns office;
- (b) If he becomes of unsound mind; or
- (c) If receiving order is made against him;
- (d) Without the consent of the Board holds any office of profit under the organization.
- (e) Becomes bankrupt or makes any arrangement or composition with his creditors generally.
- (f) Is concerned or participates in the profits of any contract with the organization having failed to disclose his interest therein in manner required by Section 200 of the Act; or
- (g) Fails to attend the meetings of the Board for a period of three months except by special leave of the Board;
- (h) Is prohibited from being a Director of a Company by virtue of any order made under Section 189 of the Act; or
- (i) Ceases to be a member of the organization.

12. The quorum necessary for the transaction of the business of the Board shall be four members of the Board personally present.

13. The Chairman of the Board may, and on the request of the Secretary shall, at any time summon a meeting of the Board by notice served upon all members of the Board. Notice of a meeting of the Board shall be given to a member at his address in the register or at such other address, whether in Kenya or not, as he may from time to time furnish to the organization for the purpose.

14. A meeting of the Board at which a quorum is present shall be competent to exercise all the authorities, powers and discretions which by or under these Articles are vested in the Board generally.

15. The Board may from time to time and at any time delegate any of its powers authorities discretions to sub-committees consisting of such member or members of the Board as it thinks fit and any sub-committee so formed shall in the exercise of the powers so delegated conform to any regulations imposed on it by the organization. The meetings and proceedings of any sub-

PROCEEDINGS OF THE BOARD

22. The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairman shall have a second or casting vote.

BORROWING POWERS

23. The Board may exercise all the powers of the organization to borrow money and to mortgage or charge its undertaking and property or any part thereof and to issue debentures debenture stock and other securities whether outright or as security for any debt, liability or obligation of the organization or of any third party.

24. The members of the Board shall not be entitled to any remuneration in respect of their office save for the Chief Executive appointed under Article 9 hereof.

GENERAL MEETINGS OF MEMBERS

25. The organization shall hold a General Meeting of members in every calendar year as its Annual General Meeting at such time and place as may be determined by the Board and shall specify the meeting as such in the notice calling it, provided that every Annual General Meeting except the first shall be held not more than 15 months after the holding of the last preceding Annual General Meeting and that so long as the organization holds its First Annual General Meeting within 18 months after its incorporation it need not hold it in the year of its incorporation or in the following year.

26. All General Meetings of members other than Annual General Meetings shall be called Extraordinary General Meetings.

27. The Board may, whenever it thinks fit, convene an Extraordinary General Meeting and Extraordinary General Meetings shall also be convened on such requisition, or in default may be convened by such requisitions as provided by Section 132 of the Act.

28. Any requisition made by members of the organization shall state the objects of the meeting proposed to be called and shall be signed by the members taking it and deposited at the office as required by Section 132 of the Act. No business shall be transacted at an Extraordinary General Meeting convened by any such requisitions other than for which the Meeting has been expressly convened.

29. Every General Meeting shall be called by twenty one day's notice in writing at least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day on which it is given, and shall specify the place, the day and the hour of the meeting, and, in case of special business, the general nature of that business shall be given, in manner hereinafter mentioned or in such other manner, if any as may be prescribed by the organization in General Meeting to such persons as are, under the Articles of the organization entitled to receive such notices from the organization.

30. Provided that a meeting of the organization shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed:

(a) in the case of a meeting called as the Annual General Meeting, by all the members entitled to attend and vote thereto; and

(b) in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting being a majority together holding not less than 90% of the total voting rights at that meeting of all the members.

31. The accidental omission to give notice of a meeting to, or the non-receipt of notice by any person entitled to receive notice of it shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS OF MEMBERS

32. All business shall be deemed special that is transacted at an Extraordinary General Meeting and also all business that is transacted at an Annual General Meeting, with the exception of the consideration of the income and expenditure account and balance sheet, the reports of the Committee and of the Auditors, and the appointment and fixing of the remuneration of the Auditors.

33. No business shall be transacted at any General Meeting unless a quorum of members is present at the time the meeting proceeds to business. Until otherwise determined by the organization at a General Meeting the quorum shall be four members present in person or by proxy.

34. If within an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day, time and place as the Board may determine.

35. The Chairman of the Board shall be the Chairman of the meeting or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Board present shall elect any one of their number to be Chairman of the meeting. In the absence of such members of the Board the members present shall choose one of their number to be the Chairman of the Meeting.

36. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business which might lawfully have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of any original meeting. Save as aforesaid, it shall be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

37. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded:

(a) by the Chairman; or

(b) by at least three members present in person or by proxy.

Unless a poll is so demanded, a declaration by the Chairman of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, an entry to that effect in the minute book of the organization shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against such resolution.

38. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

39. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded and it may be withdrawn at any time before the next business is proceeded with.

VOTES OF MEMBERS

40. Every member of the organization shall have one vote.

41. On a poll, votes may be given either personally or by proxy.

42. The instrument appointing a proxy shall be in writing under

the hand of the appointer or of his attorney duly subscribed in writing, or if the appointer is a corporation either under seal or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the organization.

The instrument appointing a proxy and the power or attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the office not less than twenty-four hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposed to vote, or in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or revocation of the proxy, or of the authority under which the proxy was executed, the transfer of the shares in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the organization at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Any instrument appointing a proxy shall be in the following form or as near thereto as circumstances will admit:

"I of a member of
..... hereby appoint..... of
..... and failing him of to the
Annual or Extraordinary or Adjourned Meeting or General Meeting
of the Organization (as the case may be) to be held on
..... the day of 19.. and at
every adjournment thereof.

Signed this day of 19..

This form is to be used * in favor of / against the resolution.
Unless otherwise instructed the proxy will vote as he thinks fit.

* Strike out whichever is not desired.

The instrument appointing a proxy shall be deemed to confer authority to demanding a poll.

SECRETARY

The organisation shall have a Secretary who shall be appointed under Clause hereof.

THE SEAL

48. The Board shall provide for the safe custody of the Seal and the Seal shall not be used except by the authority of a resolution of the Board. The Board may from time to time make such regulations as they see fit determining the persons and the number of such persons in whose presence the Seal shall be used, and until otherwise determined the Seal shall be affixed in the presence of either one Director and the Secretary or two Directors.

ACCOUNTS

49. The Board shall cause proper books of accounts to be kept with respect to:

- (a) All sums of money received and expended by the organization and the matters in respect of which the receipt and expenditure takes place;
- (b) All sales and purchases of goods by the organization; and
- (c) The assets and liabilities of the organization.

50. The books of account shall be kept at the office, or at such other place as the Board shall think fit, and shall always be open to the inspection by members of the Board.

51. At the Annual General Meeting in every year, the Board shall lay before the organization a proper income and expenditure account for the period since the last preceding account (or in the case of the first account since the incorporation of the organization made up to a date not more than nine months before the meeting together with a proper balance sheet made up as at the same date. Every such balance sheet shall be accompanied by proper reports of the organization and the Auditors and copies of the income and expenditure account, balance sheet and reports (all of which shall be framed in accordance with any statutory requirements for the time being in force) and of any other documents required by law to be attached to them or to accompany them shall not less than 21 clear days before the date of the meeting be sent to the Auditors and to all other persons entitled to receive notices of General Meetings in the manner in which notices are hereinafter directed to be served. The Auditors' report shall be read before the meeting and shall be open to inspection by any member of the organization.

AUDIT

52. Once at least in every year, the accounts of the organization shall be examined and the correctness of the income

and expenditure account and balance sheet ascertained by one or more qualified Auditor or Auditors authorized to practice in Kenya.

53. The Board shall appoint Auditors and their duties regulated in accordance with the provisions of the Act.

NOTICES

54. A notice of other document may be served by the organization upon any member of the organization personally or by sending it through the post in a pre-paid letter addressed to him at his address in the register or at such other address whether in Kenya or not, as he may from time to time furnish to the organization for the purpose.

55. A notice, if served by post, shall be deemed to have been served at the time at which it would be delivered in the ordinary course of post, and in providing service of a notice it shall be sufficient to prove that the letter containing it was properly addressed and put into the post office as a pre-paid letter.

AMENDMENTS

56. No addition alteration or amendment shall be made to or in the provisions or regulations contained in the Memorandum of Association of these Articles unless the same shall have had prior approval of the Board.

DISSOLUTION

57. Clause 9 of the Memorandum of Association relating to the winding up and dissolution of the organization shall have effect as if its provisions were repeated in these Articles.

Names, Addresses and description :	Signatures of
of Subscribers :	Subscribers

[illegible]

Dated this day 1991.

Witness to the above Signatures:

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