

REMARKS BY

SPEECH BY HON. ALICE WAHOME, CABINET SECRETARY FOR LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT DURING THE REGIONAL CONFERENCE ON CUSTOMARY TENURE RIGHTS IN EASTERN AFRICA, NAIROBI 17TH OCTOBER 2023 09:00AM

Hon. Mithika Linturi, CS Agriculture and Livestock
Gershom Otachi - Chairman, National Land Commission
Amb. Carla Mucavi - Representative in Kenya, Food and Agriculture Organization of the UN
Abdi Omar- Board Chairman, RECONCILE
Ms. Myra Bernardi - EU Delegation to Kenya - Head of Section, Green Growth and Livelihoods
Ms. Mary Mwiti - CEO, Council of Governors
All the development partners present
Ladies and Gentlemen
Good Morning

1. I take this opportunity to thank the organizers of this conference that is geared towards aligning land policy reforms to securing customary land rights in Kenya and the greater Eastern Africa Region.

2. **Ladies and gentlemen**, the government recognizes customary land rights as a critical attribute of security of tenure for the diverse segments of Kenyan communities. In performing its functions, the ministry derives its mandate from constitutional and statutory provisions of the: Constitution of Kenya, 2010, Community Land Act, 2016, Land Adjudication Act, Cap 284, Survey Act, Physical and Land Use Planning Act, Land Act, 2012 and the Land Registration Act, 2012.

3. As a Ministry we have made significant progress in addressing community land reforms. During the pre-coronial era, community land administration was through elaborate customary structures where land tenure was anchored on **access** as against **ownership.** Land was not a commodity to be pawned, sold, or leased.

4. As you are all aware, prior to promulgation of Constitution of Kenya, 2010 unregistered community lands were administered under the Trust Land Act CAP 288 that was repealed. This did not confer sufficient customary land tenure rights to communities, despite their having generational structures on access and use of their land. The Act gave sweeping powers to the then County Councils to allocate community land, without public participation and compensation. A classical case is the Lake Turkana Wind Power Project (Marsabit County) that has been subject to protracted litigation at the Environment and Land Court.

5. In 2009, for the first time the government deliberately focused on the pastoral areas by recognizing pastoralism as a land use and economic activity thus entrenching the recognition of customary land tenure through communal land ownership structures.

6. The **Community Land Act, 2016** was passed to give effect to provisions of Article 63(5) of the Constitution of Kenya, 2010. It provides for;

- The **recognition, protection and registration** of community land,
- **Management and administration** of community land
- **Roles of the county governments** in relation to unregistered community land
- **Registration** of Community Land is attained after an elaborate process of ascertainment of the land owners through a participatory adjudication process
- **Community land Title upon registration is not inferior to any other Title**

7. **Ladies and gentlemen,** the National Government in consultation with the County Governments is implementing a comprehensive land adjudication programme in the counties with unregistered community land. To date, inventories have been received from thirteen County Governments – Mandera, Wajir, Garissa, Tana River, Lamu, Kilifi, Taita Taveta, Marsabit, Isiolo, Turkana, West Pokot and Baringo.

8. It is important to note that the implementation of the Community Land Act, 2016 is a priority area of the Government of Kenya as can be attested by recent directives by H.E. President William Samoei Ruto, CGH, and Commander in Chief of the Kenya Defense Forces.

9. **A Presidential Working Group** was formed in May 2023 and among the four thematic areas of reference was the fast-tracking of registration of Community Land. This was followed by the 24th July 2023 communication from the Head of the Public Service, directing the State Department for Lands and Physical Planning to fast-track the registration of community land.

10. I am however proud to state that we are making great strides in this direction guided by the provisions of the Constitution of Kenya, 2010, the Community Land Act, 2016 and the Kenya Kwanza Bottom-Up Economic Transformation Agenda. Processes are being fast-tracked and the Ministry has communities registered and community lands ready for registration after undergoing the requisite participatory adjudication process.

11. It is also worth noting that unregistered community lands are the new frontier of the national development trajectory considering they are host to **mega strategic national projects – LAPSSET Corridor, Project Oil Kenya, Geothermal Development sites, Wind Power Development sites, Off-grid Power stations among others.**

12. This conference coming after the **Africa Climate Summit, 2023 and the oncoming COP 28,** community land registration is a priority undertaking whose success will play a pivotal role in climate change mitigation and adaptation for resilience as the green energy projects highlighted above would go towards reducing our carbon footprint and conferring on the communities' livelihood benefits such as through carbon trading.

13. Community lands are also host to over 60% of wildlife outside the Kenya Wildlife Service protected parks and reserves. A structured framework of conservancy establishment and management will enable the communities get on board the carbon market with the ensuing several benefits. This is also taking cognizance of the fact that the community lands bear the greatest brunt of the impacts of climate change yet they emit the least Green House Gases (GHGs)

14. **So far, 8 Community Land Registration Sections are due for titling** with expected over 400 titles including public utilities and an aggregated population in the registers of over 40,000 Kenyans.

15. Ladies and gentlemen, it is important to note that the Government takes cognizance of the need to mainstream the gender component in the implementation framework. To this end, the Community Land Act, 2016 is progressive in that it has extinguished the discrimination against women by having them registered as community members.

16. Aside from membership, the two thirds gender rule is adhered to in the composition of the Community Land Management Committees (CLMCs). This has been accomplished in communities that have conducted elections under the supervision of the ministry.

17. **Dear partners,** the Government recognizes the conflict for land-based resources in community lands. In regards to this, measures are being undertaken through a multi-agency approach to provide alternative sources of livelihood for the communities other than reliance on pastoralism. Provision of social amenities (schools, hospitals) and physical infrastructure is ongoing to curtail undesirable flare ups.

18. It is also envisaged that the County Boundaries Bill, once enacted will provide a mechanism for resolution of perennial inter-county and communal disputes.Community Land Act, 2016 also has in place elaborate provisions for dispute resolution with emphasis on Alternative Dispute Resolution mechanisms as opposed to protracted court processes.