

Maria's Libraries, Inc. is fundraising for a modern, fully-equipped county library in Busia, Kenya. Short- and long-term impacts will include economic development, life-long learning, and youth empowerment, and improved governance and democratic outcomes.

Who we are. Maria's Libraries is a US-based social profit organization devoted to promoting a network of sustainable libraries in Kenya. Our primary short-term goal is to build a new library in Busia, Kenya, a densely-populated rural area on the Ugandan border. This building project is being undertaken in partnership with Family Support Services (FASSCO), the community-based organization in Busia that currently manages the existing library there, and Kenya National Library Services (KNLS), whose mission is to build and manage libraries in Kenya.

Local origins, national plan. Acknowledging the success that FASSCO has had in providing regular (though limited) library services since 2006, the receptiveness of the community to use them, and political support (despite low capacity for financial support) from all sides at the municipal, district, provincial, and national levels for the project, Maria's Libraries confirms that the project is driven by local demand and the community is a full partner. We have a formalized commitment from KNLS to sustain the library in perpetuity after the construction is complete as part of its system of nationally-managed libraries.

Building. The proposed library will be a modern structure, a landmark building in its quick-growing but still under-developed location of Busia, Kenya. It will be fully-equipped with books, computers, and technology for outreach to the areas of the County in which people will have difficulty physically visiting the library. Entrance and use of the library will be free and open to the public. The proposed library will serve the 488,075 people in the County (Kenya National Bureau of Statistics, 2009 Census), and will meet a critical need as the nearest modern library is hours away in Kakamega.

Benefits. The proposed library will offer many benefits to the whole community, and this proposal incorporates requests for library services and materials that have come directly from members of Busia County. The library will provide an opportunity for parents to bring their children, instilling in them a love of reading and promoting a reading culture. The library will also serve as a safe place to children to go by themselves after school, something that Busia lacks and desperately needs. It will serve as a place for study for primary, secondary, and tertiary-level students, many of whom spend their weekends and holidays in their home Busia, and many of whom increasingly study at satellite campuses in Busia itself. The library will have for them quiet- and group study spaces, requested curriculum materials, and access to internet and digital research materials. The large and active business community in Busia will also have access to appropriate databases in which they can research global market conditions, innovative business practices, and undertake other market research critical to their success. Other adults will have new opportunities for life-long learning, including improving their basic literacy and computer skills. All community members will also have access to the space that is proposed to have designated areas and programs specifically geared to community events; public debate of relevant local, national, and global issues; meetings for self-help and civic action organizations; and display of locally produced cultural artifacts.

History. This project has been in the town plans for roughly 20 years, and for the last 3 years has enjoyed more active planning by relevant government and community-based organizations and

many individual local stakeholders. In July, 2009, a formal partnership was established between FASSCO and Maria's Libraries, to see the project to completion, and that agreement initiated a series of stakeholder meetings held in the municipality to come to agreement on where the library should sit, the services the library should offer, how it should look, and how the library would be maintained once built. This discussion resulted in a decision to utilize KNLS-leased land designated for a public library in Busia, as well as to transfer the management of the library, once built, to KNLS. Since that decision, and the approval of KNLS' board, KNLS has been a formal partner in the project to build a new library in Busia.

Current status. The proposed library will sit on plot 454 in Busia Municipality, headquarters of Busia County. This plot is in a central location just off the main road, near Posta and two plots from the Town Council. Walking toward town from plot 454, one must only pass the Youth Polytechnic and cross the main road to reach the District Commissioner. The deed for this plot has been re-confirmed by an April 2010 survey of the land, and the deed itself, a 99-year lease on the property, is physically in the possession of Kenya National Library Service, the lessee. KNLS has received board approval for, and signed a Memorandum of Understanding confirming, its commitment to managing the library once it has been built, including hiring and paying trained library personnel, maintaining books, equipment, and furniture, and renovating and/or expanding the building in the future as the town grows and needs change. While we raise funds for construction, the community-chosen architect, Architronic, a Mombasa-based firm, is working at no charge on moving their proposed concept to a detailed building design. Further, KNLS has already approved their construction of a fence and erection of a sign advertising the project on the property, two projects included in their budget for this quarter. Finally, the municipality recently approved a project to tarmac the road going from the main road past the proposed library site to Posta, which when complete will connect three very important buildings in the town center, improve access to them, and ease the transport of materials to the construction site once building is in process.



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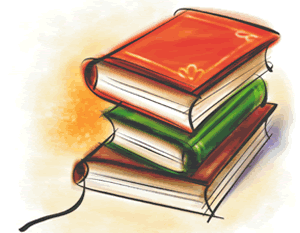
Attachments

- 1) **Conceptual design of the library.** These drawings were submitted by Joe Mugo and Steven Ogwapit of Architronic, a Kenyan-run, Mombasa-based architecture firm. This conceptual design was chosen by consensus by Busia community library stakeholders, who selected Architronic's submission from among 11 Kenyan architects' ideas.
- 2) **Photo map of Plot 454,** with beacons identified.
- 3) **Photos and testimony** of Busia residents who use the existing library and anticipate using the full resources of the proposed modern library in its own space. **Photos of the existing library** also included.
- 4) Likely breakdown of the **budget of the new library construction project.** An actual budget will be developed after detailed plans have been drawn; the above drawings are only a conceptual design. Based on the community's needs and Architronic's projections, Maria's Libraries has agreed with Architronic, FASSCO and KNLS that the building and its outfitting will not exceed 300,000USD.
- 5) **Memorandum of Agreement** among Maria's Libraries, KNLS, and FASSCO indicating the roles and responsibilities of each party in the partnership. This document has been approved by the board of Kenya National Library Services, a vote that formalized the agency's commitment to sustaining the library in perpetuity.
- 6) **Documentation of resolution of land ownership** concerns relating to Plot 454, the site of the proposed library.



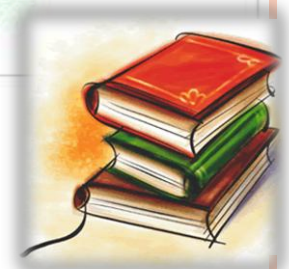
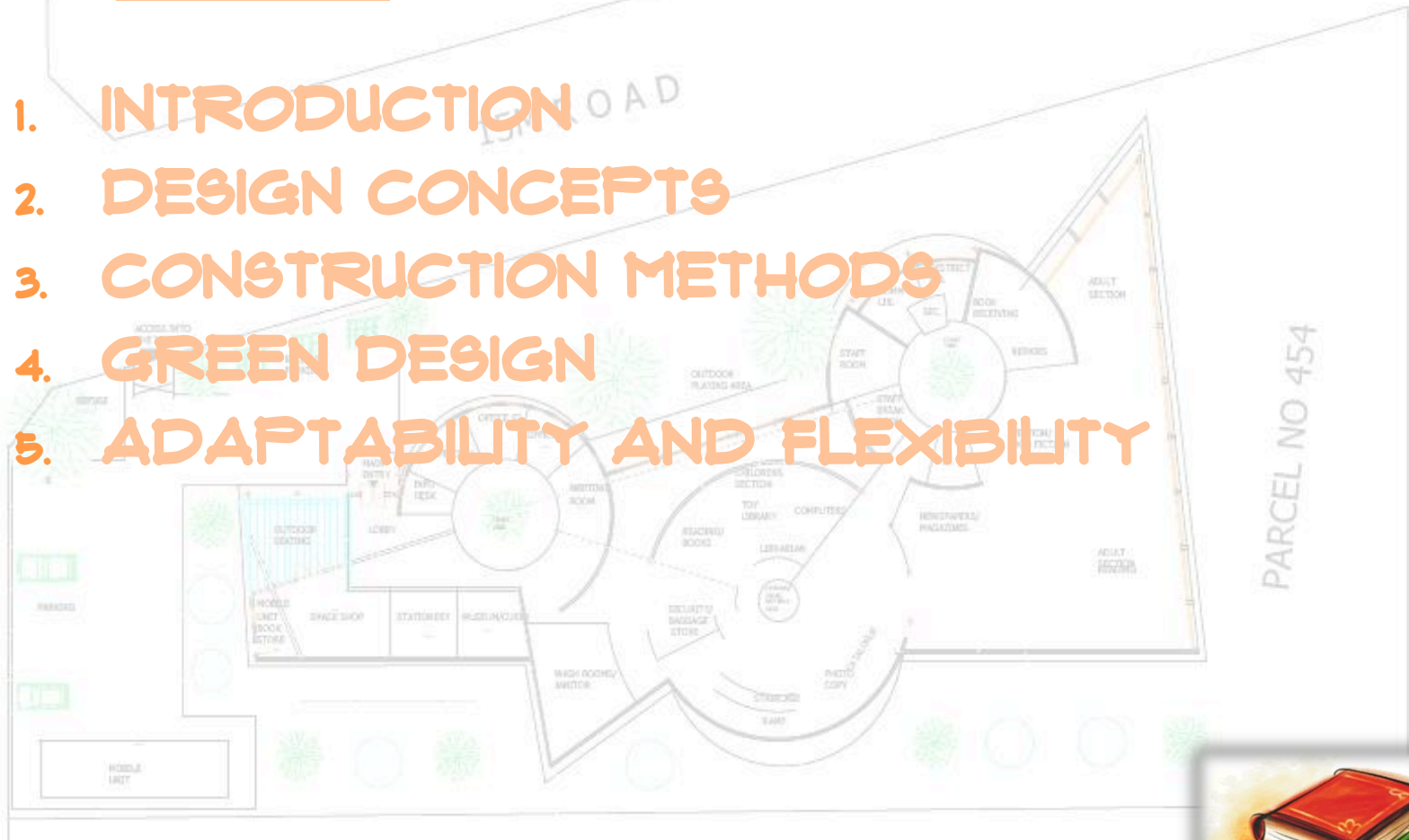
iii Maria's Libraries iii

A MODERN COMMUNITY LIBRARY
BUSIA, KENYA



CONTENTS

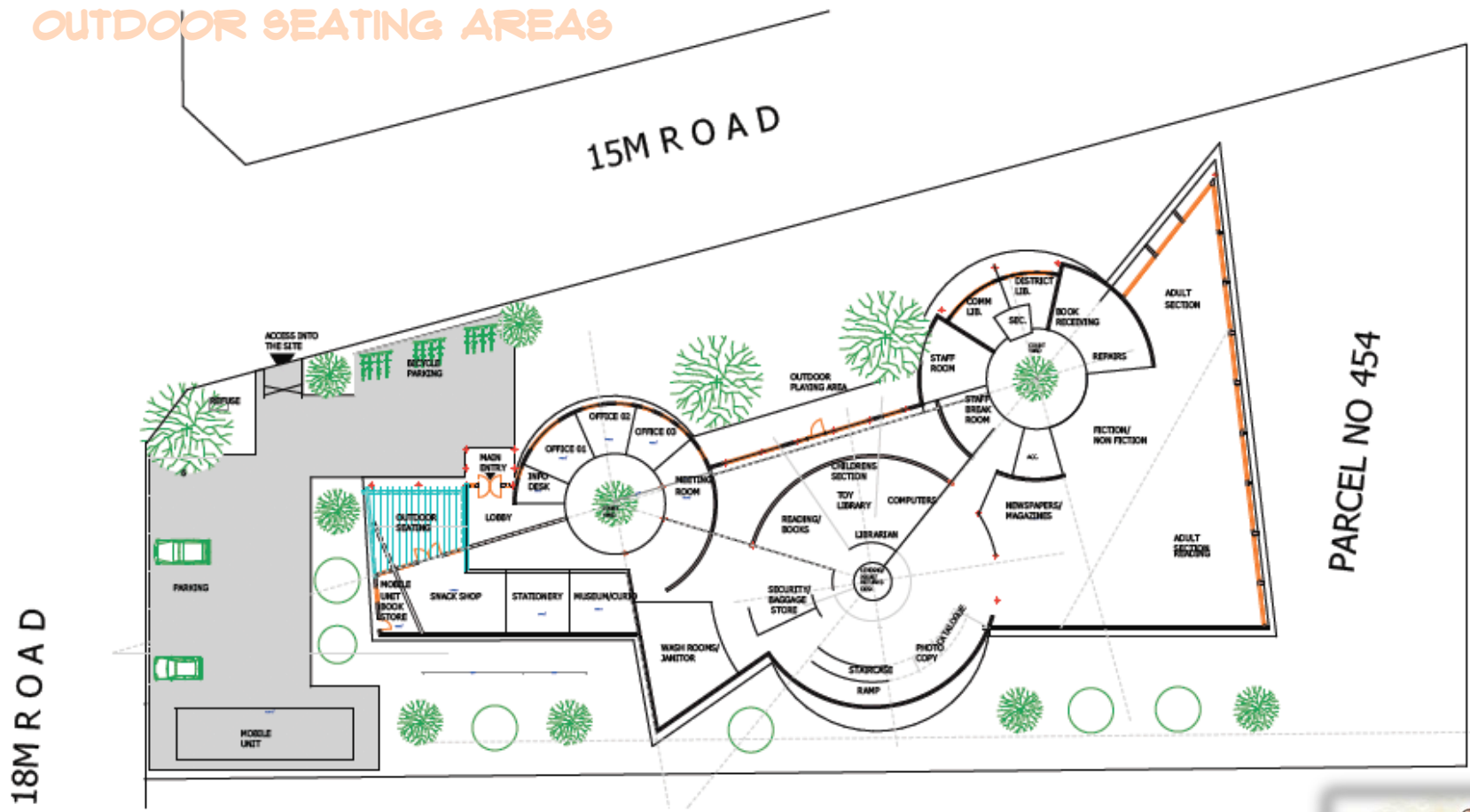
1. INTRODUCTION
2. DESIGN CONCEPTS
3. CONSTRUCTION METHODS
4. GREEN DESIGN
5. ADAPTABILITY AND FLEXIBILITY



PARKING

MOBILE UNIT

OUTDOOR SEATING AREAS

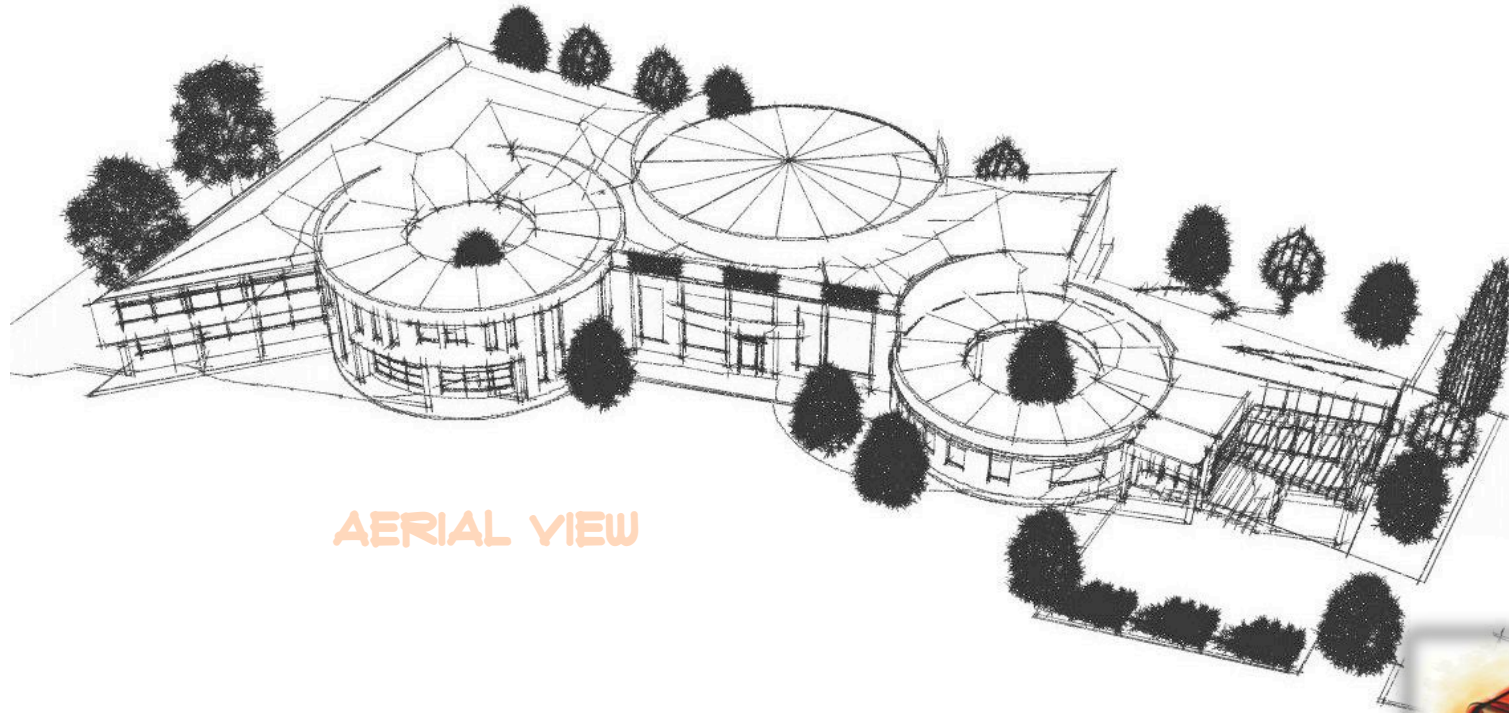


SITE LAYOUT

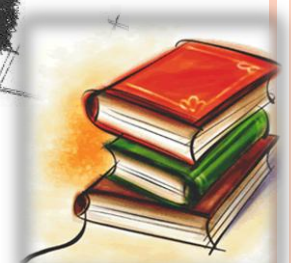


INTRODUCTION

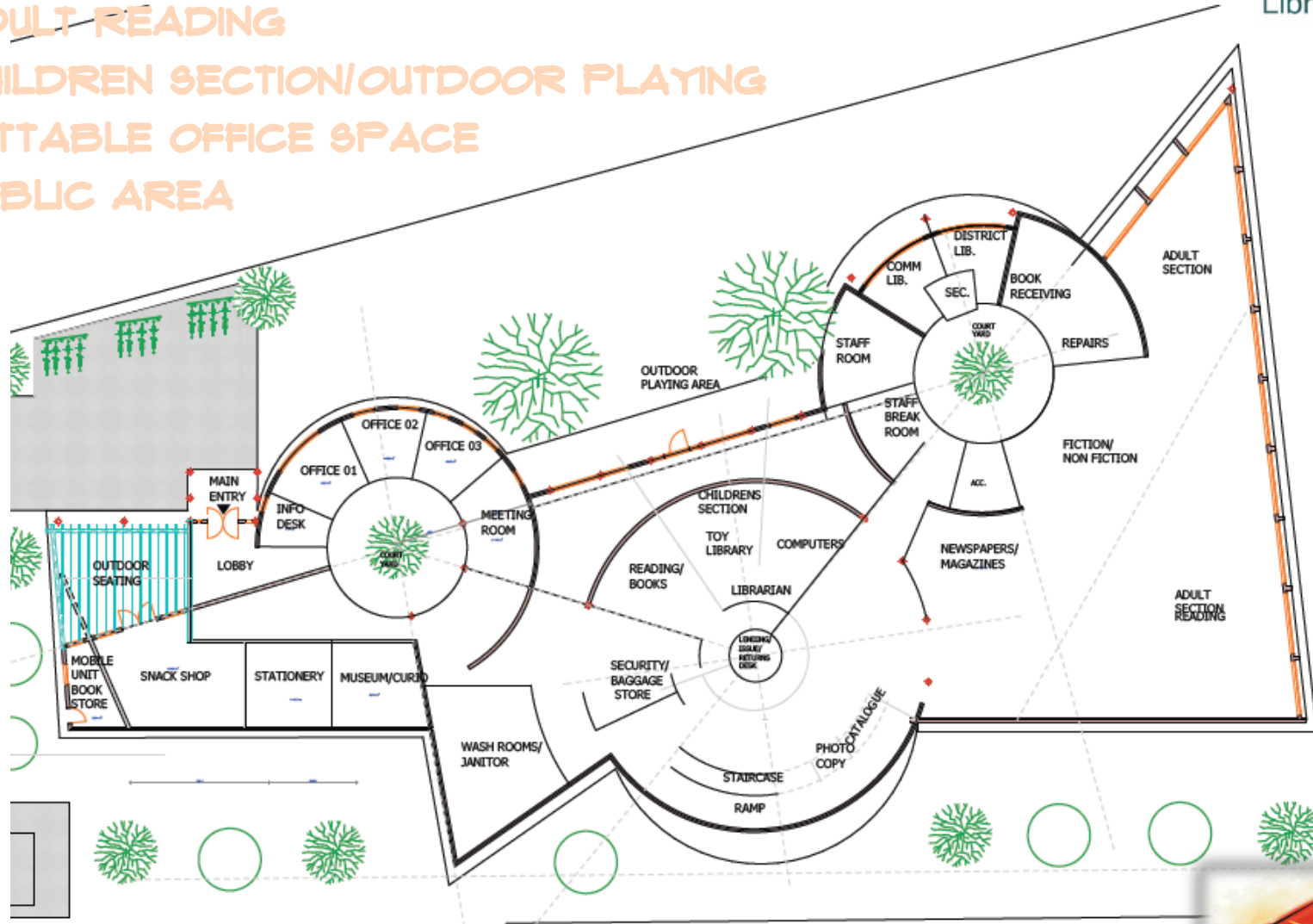
THE IDEA BEHIND THIS LIBRARY PROMISES TO BE ONE THAT WILL BE STIMULATING AND IMAGINATIVE CAUSOMG IT TO BECOME A LANDMARK ATTRACTION IN THE LARGER BUSIA AREA.



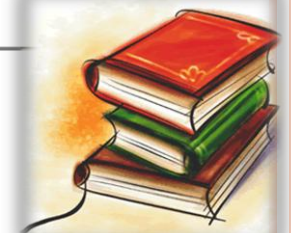
AERIAL VIEW



ADMINISTRATION/STAFF
 ADULT READING
 CHILDREN SECTION/OUTDOOR PLAYING
 LETTABLE OFFICE SPACE
 PUBLIC AREA



GROUND FLOOR
 LAYOUT



DESIGN CONCEPTS

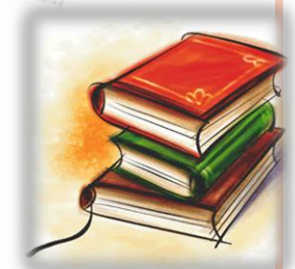
THE COURTYARD

CONCEPT: THIS INWARD ORIENTED DESIGN CONCEPT REFLECTS THE WESTERN KENYA COMMUNITY SET UP, AND IN GENERAL THE WAY THEY PLAN THEIR HOMESTEADS.

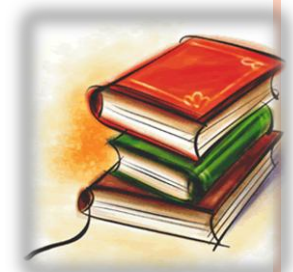
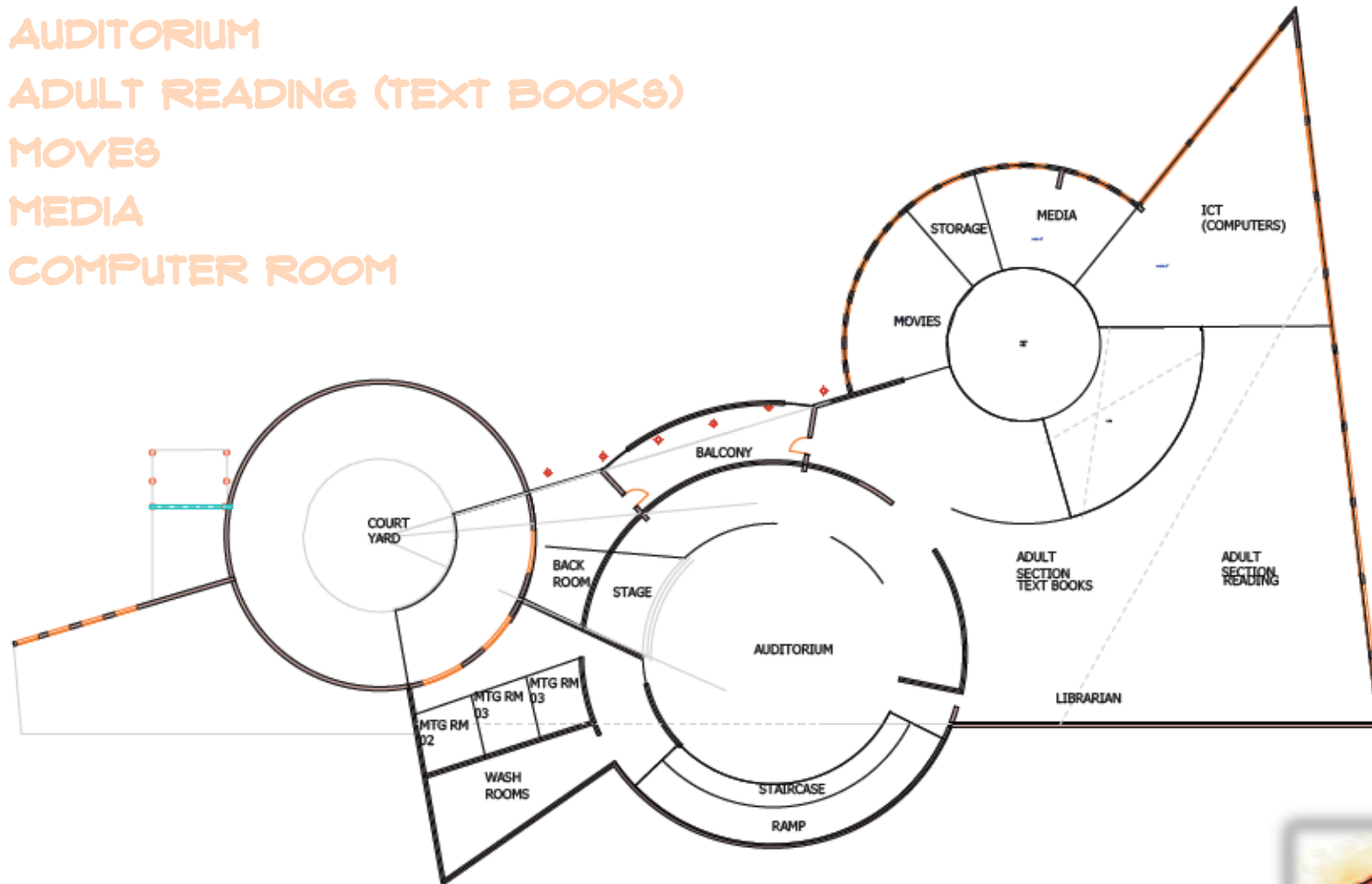


THE AFRICAN DRUM: THE ISUKUTI DRUMS (NORMALLY THREE) ARE COMMON AMONGST THE WESTERN KENYAN COMMUNITY.

THIS IS REFLECTED IN THE THREE CURVED ELEMENTS AS SEEN ON THE PLAN.



MEETING ROOMS
AUDITORIUM
ADULT READING (TEXT BOOKS)
MOVIES
MEDIA
COMPUTER ROOM

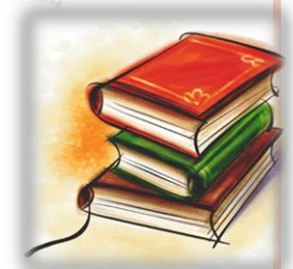


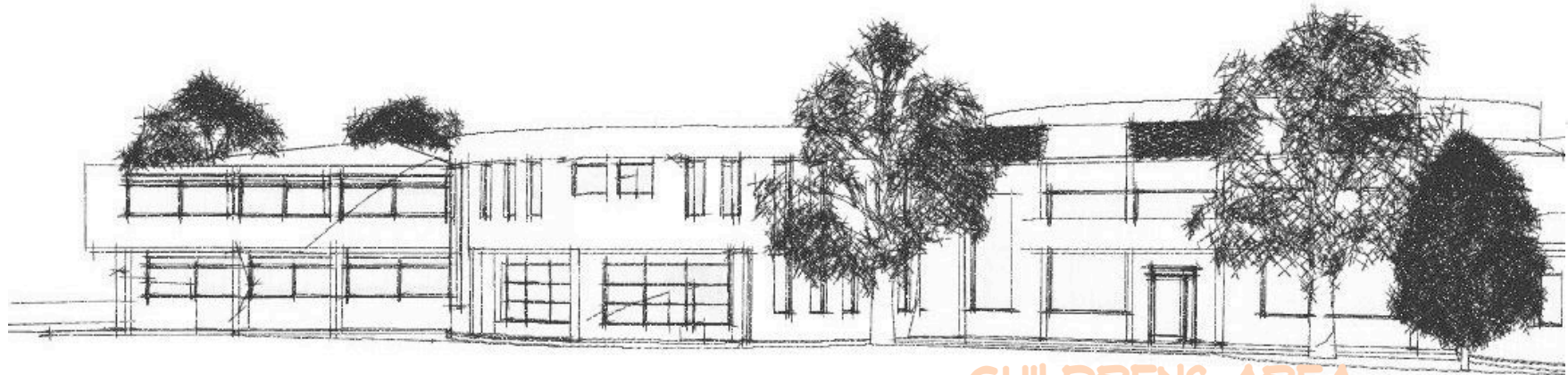
CONSTRUCTION METHODS

LIGHTING & VENTILATION:

THE USE OF LARGE WINDOWS TO BRING IN LOTS OF LIGHT AND AIR INTO THE LIBRARY. USE OF HIGH LEVEL WINDOWS AND OPEN COURTYARDS TO EXPEL HOT AIR FROM THE BUILDING THEREBY KEEPING IT COOL AT ALL TIMES.

COST CUTTING: THE USE OF LOCAL BUILDING MATERIAL AND TECHNOLOGY





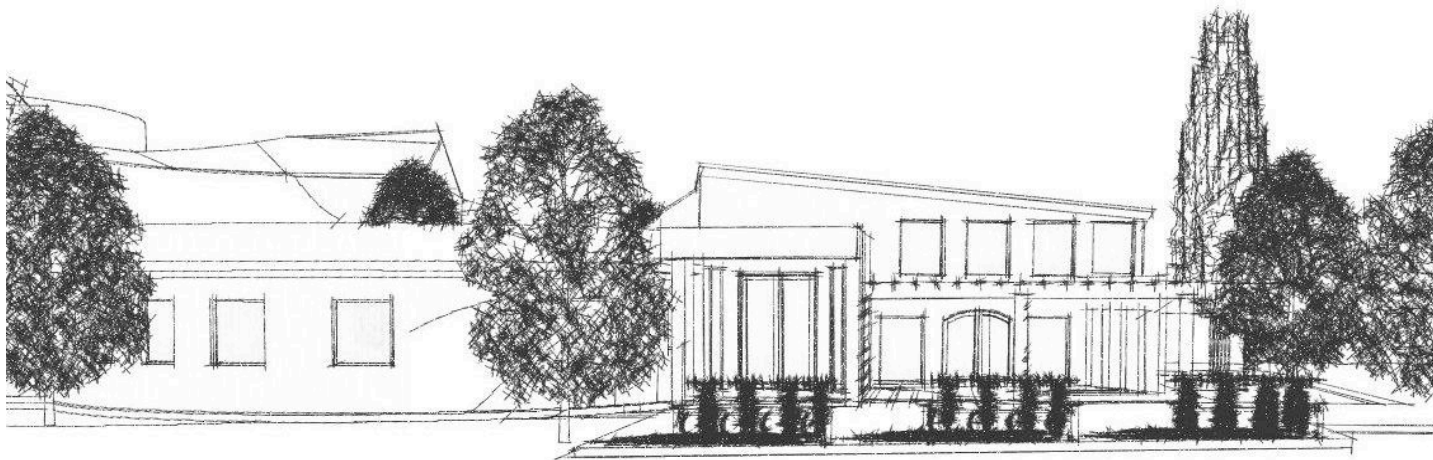
READING AREA

ADMINISTRATION

CHILDRENS AREA

ACCESS SHED

U.E. SEC. NO. 454 RECEIVING



OFFICES

ENTRANCE
APPROACH

PARCEL NO 454

18M ROAD



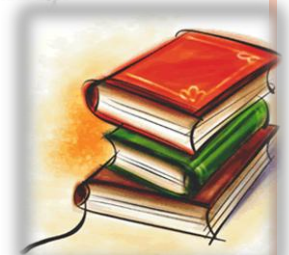
GREEN DESIGN

1. SOLAR HARVESTING: USING
SOLAR PANELS

2. RAIN WATER HARVESTING:
SLANTED ROOFS TO COLLECT WATER INTO
UNDERGROUND TANKS

ADAPTABILITY & FLEXIBILITY

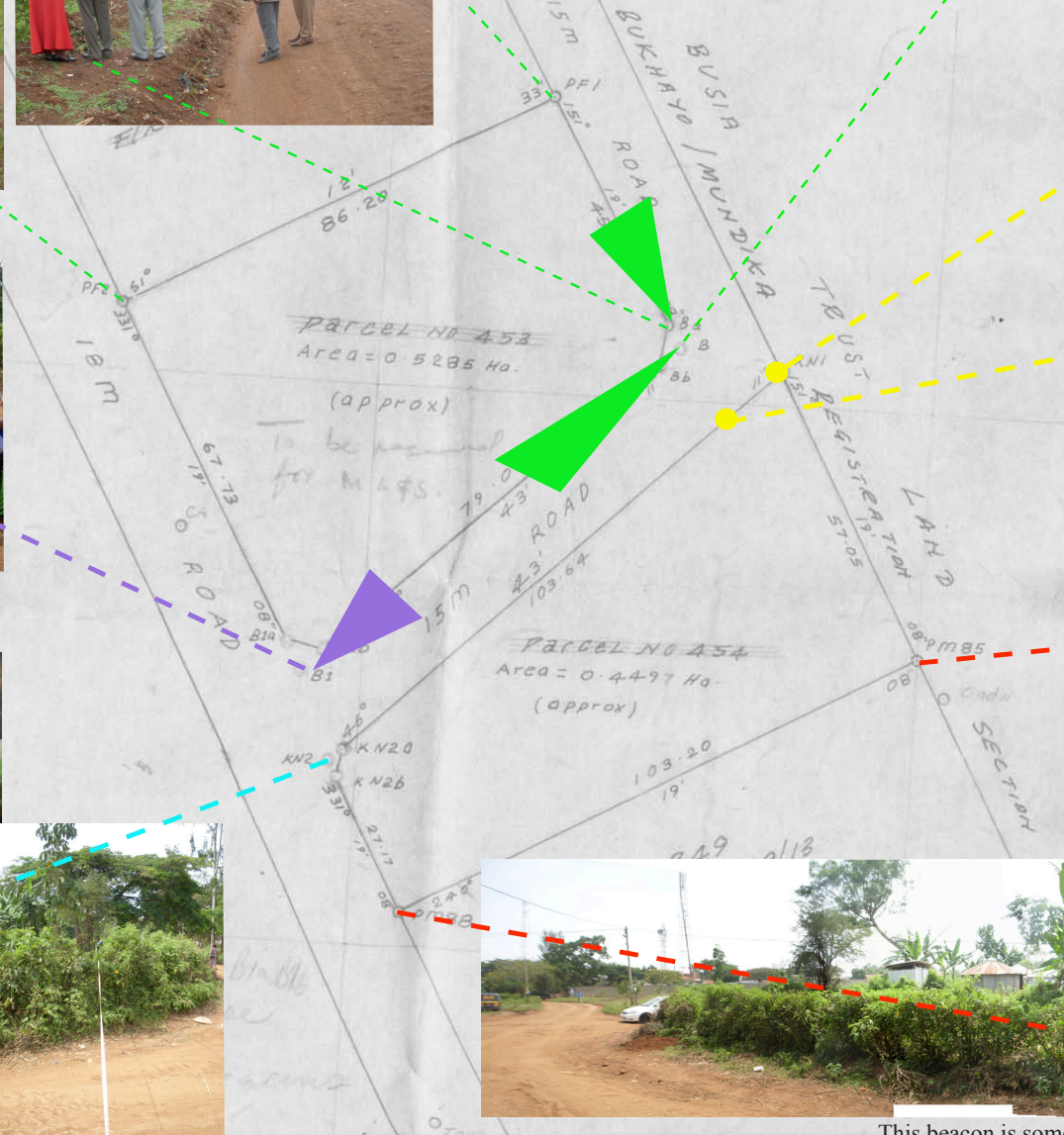
IN THE EVENT OF THE LIBRARY
NEEDING EXPANSION, THE CIRCULAR
MODULE CAN EASILY BE ADDED TO
THE CURRENT LAYOUT AND MERGE
WITH THE REST OF THE BUILDING



Measurements began from the existing posta wall.



Because this beacon fell in someone's driveway and the infrastructure of the existing street is too extensive the agreement was made to leave this street as is and move the beacon down 10m.



The beacon falls on the opposite side of the road from where Alice stands.



This beacon is somewhere on the other side of the tree

Daily visitors to the library in its existing space in the Cooperative Development Office



Ruth Musavi

"The library has improved a lot, people know the library now and they come here to get books. It's good!"



Innocent

Sneaked into the adult reading section to read one of the textbooks.



Edwin Balongo

"Knowledge is power, without a place to read people cannot learn. I think the government should assist the library more, because it is key to our community."



Mohammed, Isaac, Breton and Robert
from Busia Township Primary School



Paul Okumu Echakara

"This is one of the most vital libraries in Busia district, I want to say that it is a learning tool that encourages learning spirit to small pupils at the primary level and it has also helped students who are doing corresponding studies, to do their research and learning in a conducive environment."



Marcos Evua

*"The library is a place that's quiet enough to study,
nothing distracts you from what you need to be doing!"*



Sacha, Desteri, Meshack and Phillis
With their favorite books



Hillary Omwando

"The library is such a nice place, it has helped me so much, not me alone, but the people around here."



Peter Midega

"We've been yearning to have something like this for a long time, since we haven't developed a culture of reading in Kenya, this library will encourage that!"



Willibrod and Bachi



Librarian Esther Ajambo inspecting the newly-painted children's section

RE: BUSIA LIBRARY

FOR COMPARISON PURPOSES ONLY

ELEMENTAL DIVISION OF A SIMILAR PROJECT

SUBSTRUCTURE	12.8 %
WALLING	5.5 %
ROOFING	10.4 %
WINDOWS	9.2 %
DOORS	4.9 %
EXTERNAL FINISHES	1.8 %
INTERNAL FINISHES	7.9 %
FITTINGS	3.6 %
PLUMBING INSTALLATIONS	2.4 %
PAINTING & DECORATIONS	2.4 %
PRELIMINARIES	4 %
ELECTRICAL INSTALLATIONS	10 %
EXTERNAL WORKS	5 %
PROVISIONAL SUMS	4 %
<u>VALUE ADDED TAX (VAT)</u>	<u>16 %</u>
CONSTRUCTION COST	100 %
CONSULTANTS FEES	6% OF CONSTRUCTION COST + VAT (THIS COVER'S ARCHITECT'S FEES & QUANTITIES SURVEYOR'S FEES)
	2% OF CONSTRUCTION COST FOR STRUCTURAL ENGINEER'S FEES

DISBURSEMENTS WILL BE AS PER SCHEDULE ATTACHED.



AREA OF PROPOSAL SUBMITTED IN 2010	=2, 700 SQUARE METRES
COST OF CONSTRUCTION PER SQUARE METRE	= \$ 278 per Square Metre
BUDGET	= \$ 250,000
ACHIEVABLE CONSTRUCTION AREA WITH OUR BUDGET	= 900 SQUARE METRES or ONE THIRD OF THE PROPOSAL

COMMENTS:

THIS SHOULD BE QUITE A SIZEABLE LIBRARY FOR BUSIA.



Memorandum of Understanding between Kenya National Library Services, Family Support Services, and Maria's Libraries, Inc.

Each of the above parties has certain strengths to bring to the success of the Busia Community Library. Herein describes how best to take advantage of each party's strength to create a library that can best serve the communities of Teso and Busia District.

First, it is recognized that:

Kenya National Library Services (hereafter KNLS), by procuring the land and supporting the efforts of Family Support Services (hereafter FASSCO), has an entrenched commitment and stake in the success of the Busia Community Library.

Further, KNLS has a superior capacity to manage and sustain the library project into the future.

Family Support Services, by maintaining the Busia library project for 10 years and counting, finding an international donor, and mobilizing the community in Busia and Teso Districts to support and use the library, has demonstrated itself as both a key stakeholder and a committed partner, on which the success of the library critically depends.

Further, FASSCO, by procuring widespread support from the Busia community, has an advantage in marketing the library locally and developing locally relevant programs.

Finally, Maria's Libraries has a demonstrated ability to fundraise on behalf of the library, both in Kenya and abroad and has a key organizing role as different parties come together to support this library.

Descriptions of each of the above organizations are contained in Appendix I.

Given this, we agree on the following:

I. Library, land and building

KNLS will provide land for the library to be built on, and FASSCO will assist where it can in supporting the KNLS claim to that land.

KNLS will put a fence around the property and post a KNLS sign.

FASSCO and Maria's Libraries, and with advice from KNLS, will manage all activities related to building the library, including managing the design and building process, and funding the structure.

KNLS will be responsible for all maintenance of the building into the future.

II. Other resources

FASSCO and Maria's Libraries, will provide furniture and ICT equipment.

KNLS, FASSCO and Maria's Libraries will all work to supply the library with books and other materials.

III. Management

KNLS will have complete responsibility for managing the library, including hiring, programming, cataloguing and stocking books, and management of staff.

There will be a board of directors/ local library advisory committee in line with KNLS's Community Library Policy.

IV. Library use

The library will be free to users for a period of three years, after which KNLS, FASSCO, and Maria's Libraries will review the impact of the free library and the library's sustainability.

The ICT lab will be free to users for the first 10 minutes of use per day, after which there may be a charge of 1 Ksh per minute, a fee which may be periodically reviewed together by KNLS and the board of directors.

Any public space built into the library, i.e. an auditorium or gallery space, should be free for use by members of the public, CBOs and NGOs for approved cultural programs, other courses that are free of charge, and public activities they may wish to engage in. If a private company, NGOs or individuals would like to use the space for commercial or private purposes, KNLS may charge a fee.

FASSCO's current office is in the donated space which houses the existing library. Given that building new facilities will result in displacing FASSCO, the Busia Community Library will house FASSCO in a 1-2 room office for a period of 10 years at no cost. A full description of FASSCO is contained in Appendix I b.

V. Funding

FASSCO and Maria's Libraries will fund all expenses related to building the library.

KNLS will fund all maintenance of the library, including upgrades to the building, salaries of staff, maintaining facilities, etc.

All fees generated directly from the library, ie. auditorium fees for private individuals or ICT fees, will go to KNLS to use as it sees fit.

Given the propensity for the local community to fundraise on behalf of the library, there may be a time that the community is in a better position than KNLS to make improvements to the library. Any fundraising for specific library-related projects, to be developed through collaboration between the community and KNLS, will go to the Busia Community Library specifically and will be managed by the local library development advisory committee.

Maria's Libraries will work with KNLS to promote a philanthropic network in Kenya to support all work of KNLS. It is intended that any income realizable from the income streams will be accounted for and reinvested for library projects in Kenya.

Amendments

The signatures below represent the agreement of each organization to this MoU. This is not a contract but a memorandum of understanding and shall be treated in the spirit of mutual collaboration and discussion. Any changes in intention shall be made by issuing a new MoU agreed upon by all relevant parties. The party wishing to make the changes will issue a list of proposed changes to the other two parties for discussion. All parties will have to agree on any changes.

Signatures

Richard Atuti, KNLS

Maria Wafula, Family Support Services

Eva Kaplan, Maria's Libraries

Parcel 454: Notes for Resolution of the Land Issues

Executive Summary

This document seeks to present all the relevant information concerning the current unauthorized use of the Kenya National Library Service's parcel 454 by thirty-three households. The diverse stakeholders implicated in this issue have different levels of information surrounding this land issue specifically and the processes of public land allocation and development in general. With this note, all parties will have access to the most up to date and accurate information surrounding the land issue in Busia and the process of land allocation. In addition to this pertinent information, this note offers recommendations for ethical ways forward. This document has been developed thanks to survey data from the households on parcel 454, various key informant interviews, and public information on Kenya's laws and International charters. The note is divided in five sections: Information, Background, Options for Stakeholders, Affected Households, Formal Local Processes Governing the Use of Public Land, Ways Forward, and the Appendix.

Below is a brief summary of some key recommendations towards the peaceful resolution of the land dispute. In the later part of this document, these recommendations are more clearly defined with more robust information. Alternative recommendations are also included in the section titled Ways Forward.

1. Immediate Suspension of Rent Payments by the Tenants on the Land

The tenants should stop paying monthly rent to the Ministry of Works representative given the Ministry's lack of legitimate claim to the property.

2. Stakeholder Meeting

Relevant parties to the stakeholder meeting include, but are not limited to:

- Busia District Commissioner
- Local Councilors
- District Physical Planner
- Busia Mayor
- KNLS Representative
- Ministry of Works Representative
- Ministry of Housing Representative
- District Surveyor
- Land Registrar
- Tenants on Land, or Representatives.

3. Fence

Clearly marked boundaries should be set up delineating KNLS' land. One way of doing this would be to create a fence around KNLS' property.

4. Adequate Time Granted for Adjustments

Many of the residents, when surveyed, responded that they would want or need ample time to make adjustments before they have to vacate the KNLS plot of land. Adequate time has been defined by two NGOs that we interviewed as anywhere from three months to one year.

I. Introduction

This document has four purposes:

- To summarize the information surrounding the issue of land allocation for a Kenya National Library Services Branch Library in Busia, Kenya – on which 33 households currently live on without documentation of their relationship to the land. Multiple parties implicated in the issue surrounding the KNLS plot of land have access to different degrees of information concerning the plot. This paper will compile and simplify the information so that all parties will henceforth be on the same page.
- To outline the local processes governing the use of public land.
- To provide information on the national and international laws and principles concerning housing and the removal of informal settlers on land as these laws are potentially relevant to the land issue in Busia.
- To offer suggestions on ways forward for all parties involved.

II. Background

In 1987, Busia went through a town planning exercise where plots of land were allocated to both private and government parties. This land delegation process involved the Municipal Council, the Town Planning Committee, the District Physical Planner, Department Heads of “relevant ministries” and surveyors from Service Providers.

A plot of land (Parcel 454) off the Busia main road and close to the post office was designated for a community library. In 1996, **Kenya National Library Services (KNLS)**, a parastatal that manages Kenya’s network of national libraries, was issued a letter of allotment from the **Ministry of Lands** in Nairobi. The letter specified KNLS’ lease on the land for a period of 99 years. In January 2010, KNLS formally registered its parcel of land and was issued a title deed from the **Busia Land Registrar’s** office. The lease certificate was signed by the **Commissioner of Lands**.

Although KNLS is normally in charge of building and managing public libraries in Kenya, it often lacks adequate resources to actually build libraries. In the late 1990s, KNLS launched a decentralizing strategy whereby KNLS will agree to stock and manage a library if there is strong and committed organization at the local level to build the library. In line with this strategy, KNLS participated in a Memorandum of Understanding in early 2010 with two parties: **Family Support Services (FASSCO)** from Busia, and **Maria’s Libraries**, a community-based non-governmental organization that aims to promote a library network in Kenya. FASSCO and Maria’s Libraries agreed to source for organization, funding and management towards building the community library, and KNLS would take over management of the library upon completion.

Upon surveying the land in March of 2010 it became clear that there was a potential competing claim to the land. The Ministry of Works had understood the land to be theirs and there were people living on the land in aluminum huts with subsistence farms surrounding them. We learned from our interviews that the March

2010 survey provoked a caution on the land from the Ministry of Works.¹ However, this caution has since been lifted and the Ministry of Works has retracted any claim they had on the land.

In January 2011, a formal household survey was conducted with households within the boundaries of the KNLS plot. Twenty-four of the **33 households** were surveyed and it emerged that all households did not have documentation of their relationship to the land, and only 6 households are not currently paying rent. All other households pay rent to a person identified as the “**Chairman**” at the **Ministry of Works**. Our survey findings revealed that over half² of the households came to live on the land through a connection at the Ministry of Works – a family member either worked at the Ministry, or a member of the household knew someone who worked there. Interviewees suggested that prior to the land being leased to KNLS, the Ministry of Works used that plot of land as employee quarters. However, after the land was officially leased to KNLS in 1996, there was no immediate or apparent eviction notice from any authority. Thus over the years, different households moved in and out of the huts that were originally provided by the Ministry of Works. On July 18, 2010, KNLS in conjunction with the Ministry of Housing erected an eviction notice at the plot of land. In response to the eviction notice, the Ministry of Public Works disputed KNLS’ claim to the land and filed a caution on the land. The Ministry of Works has since retracted the caution as well as any official claims to the land.

III. Options for Stakeholders

Options for KNLS: Informal settlement of Public land is illegal under Kenya law (and specified as such under the Government Lands Act). Neither the occupants of plot 454 nor the Ministry of Works have any legal claim to the land. Given this information, there is no single way to move forward with this case, however eviction is frequently a next step in cases like these.

Options for the People on the Land: When eviction is being considered, those facing eviction are not without “protection”. There are certain guidelines and processes that must be followed, and principles that must be considered, when forcibly removing people from land. These processes are governed by Kenya’s National laws as well as the International Charters/Treaties that Kenya has agreed to uphold as national law through a clause in the 2010 Constitution (Article 2. Para 5)³ (Article 21. Para 4)⁴. Relevant articles and laws include:

- *Kenya Constitution Article 43*
 - Article 43 of the 2010 Kenyan Constitution asserts a universal right to housing.⁵
- *International Covenant on Economic, Social, and Cultural Rights (Kenya Acceded 01/05/1972)*⁶
 - The CESCR is a multilateral treaty that demands that state parties work towards ensuring the

¹ A caution is a written warning or caveat filed with the registrar of land titles against dealings with the land without notice to the party who files the warning. In this case study, it is essentially a hold on all procedures pertaining to the KNLS land without consultation with the Ministry of Works.

² 59%

³ Article 2; Paragraph 5: The general rules of international law shall form part of the law of Kenya.

⁴ Article 21; Paragraph 4: The State shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.

⁵ Article 43 of Kenyan Constitution. See Appendix B for text of article.

⁶ Article 11. Paragraph 1. See Appendix B for text of article.

universal respect for individual's economic, social, and cultural rights. Parties to the treaty are charged with respecting, amongst numerous other rights, an individual's right to an adequate standard of living. This includes a person's right to adequate housing. In no instance should evictions result in rendering people homeless.⁷ Kenya, along with 159 other countries, have both signed and ratified the treaty.

- *UN Right to Housing/Basic Principles and Guidelines on Development-Based Evictions and Displacement*
 - The Principles and Guidelines were developed in 2007 by the Special Rapporteur on adequate housing. These principles were developed to help states develop laws and policy that respect the rights of their citizens and residents to adequate housing. Concerning eviction, the principles specifically request that states resort to eviction in only "exceptional circumstances" and where done with the intent of promoting general welfare. Among the stipulations for eviction procedures is the duty of states to ensure full and fair compensation to those evicted. Furthermore, in cases where eviction is necessary, all care should be taken so that individuals are not rendered homeless. Where possible, alternative housing should be provided as close as possible to the original place of residence. The protections in these principles apply to all persons (ie those with and without formal documented claims to the land).⁸ Two NGOs stated that the Kenyan government has not produced clear eviction procedures. Clarification of the eviction process is needed, as is harmonization of any eviction process with these basic principles/guidelines.

IV. Affected households⁹

The following statistics summarized from the survey data will be of particular importance during any future stakeholder meetings:

- A vast majority (88%) of respondents have a home village within 100 kilometers of KNLS' plot of land.
- Most households (42%) arrived on the land as a result of a household member working for the Ministry of Works although only 17% of households still have a member working for the Ministry of Works. Some current households (29%) were invited on the land by a friend already living on the land.
- A slight majority (58%) of households have four or more current occupants.
- Most respondents have lived on the land between three to five years. One quarter of respondents have lived on the land for twelve or more years, while one quarter has lived on the land for less than two years.
- 63% of the respondents have invested in the land. Of the respondents who provided information on their investments, most stated that money was spent on home repairs (floor, walls, roof). Investment

⁷ CESCR General Comment 7 on the right to adequate housing; forced evictions. Paragraph 16. See Appendix B for text of paragraph.

⁸ Paragraph 21 of UN Guidelines to Development Based Evictions. See Appendix B for text of paragraph.

⁹ A 27-question survey was designed and administered by two trained surveyors to one representative of each of the households currently residing on the land. Although there are 33 households on the land, only 24 surveys were administered. The 24 surveys are sufficient in providing an accurate description of the people actively living on/using KNLS' plot of land. The surveys provide data on the origins, occupations, perspectives, and desires of the people on the land so that in moving forward all stakeholders have a more robust understanding of the community that lives on the land.

estimates ranged from 300 Ksh to 100,000 Ksh (although clarification is needed for this outlier estimate). The majority of investments totaled no more than 1000 Ksh. The one convenience shop on the plot invested 5,000 ksh to build shelves in the store.

- Surveyors observed evidence of subsistence agriculture around a vast majority of respondents' homes. Many households had bananas and vegetables growing near their homes.
- When asked about possible options if forced to leave the land, one quarter responded that they would simply rent another place while one quarter stated that they would be rendered homeless if evicted. Current Ministry of Works employees stated that they expect to get relocated by the Ministry of Works.
- Of the respondents paying rent, all but one pay 200 Kenyan shillings per month. One household, which doubles as a local convenience store, pays 400 Kenyan shillings per month. Current employees of the Ministry of Works do not pay rent to live on the land. Rent is paid to a "chairman" for the Ministry of Works. The chairman collects rent and places it in a community development fund for later investment in the community.
- With regards to the impact of a library in their community, a significant majority responded that a library would improve their access to information. Most respondents also mentioned that a library would have positive outcomes on employment (42%) and their children's education (21%). Thirteen percent of respondents, however, associated a library with a negative outcome of displacement and increased homelessness.
- Respondents were asked what a good solution to this land issue would be. Most (30%) requested some sort of stakeholder meeting (whether with or without residents). Many simply emphasized the need for clear boundaries to be drawn between the Ministry of Works' land and KNLS' land. Twenty-one percent specifically requested adequate time to move off the land while another thirteen percent suggested that KNLS should find another piece of land to use of the library.
- *More extensive survey data can be found in Appendix A.*

The twenty seven question survey administered to the participating households was designed to provide basic information on the people on the land. The responses cited above are highlighted because they provide an idea of what the inhabitants of the land have invested (in terms of time, effort, and money) and, hence, what they would stand to lose if forcibly evicted from the land. For example, questions regarding investments on the land as well as surveyor observations regarding work performed on the land (ie subsistence agriculture, land for animal grazing) clearly indicate the potential monetary losses that families would be subject to in the event of forcible eviction. With investments ranging between 300 and 5,000 Ksh, the monetary losses could be fairly substantial. Questions regarding the respondent's hometown as well as the surveyor's observations on the respondent's tribe, provide a general idea of the time and effort involved in the surveyed person(s) arriving on the land and the possible time and effort involved in the respondent returning to their home village if necessary.

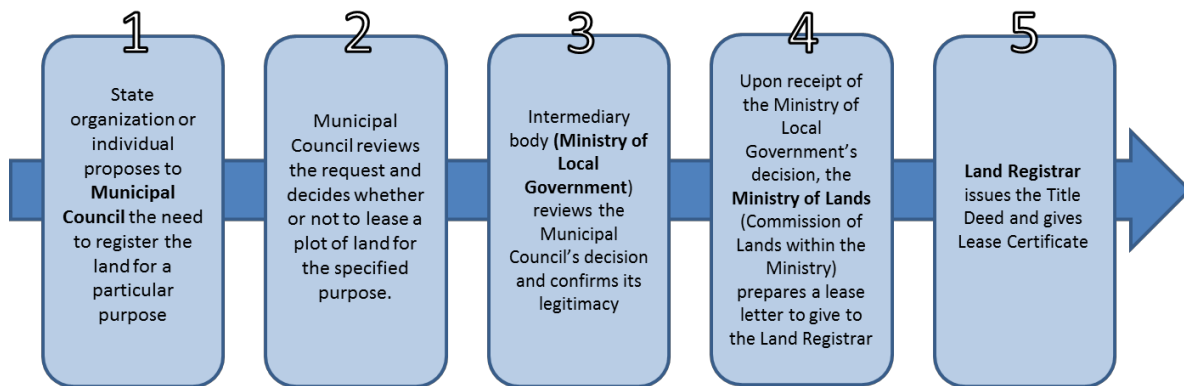
V. Formal Local Processes Governing the Use of Public Land

All land in Kenya is divided into three categories: Public Land (formerly known as Government Land), Community Land (formerly known as Trust Land), and Private Land. Public land is owned by the government- it is not open to individual or community ownership by any legal processes. However, it can be leased to “state organs” or individuals for periods not exceeding 99 years. The plot of land in Busia that this note refers to is Public land, owned by the Kenya Government and leased to the parastatal Kenya National Library Services.

Local county councils hold and manage the paperwork for all public land. Prior to the 2010 Constitution, the Commissioner of Lands under the Ministry of Lands was responsible for administering public land. With the new constitution in place, the National Land Council is now responsible for administering public land. The following section describes the formal process for land allocation in municipalities, which is the process that is most relevant to this case study:

Allocation of Public Land in Municipalities:

The Municipal council for any township/city is in charge of mapping the city and designating different zones of development (residential, commercial, industrial). State organizations and individuals can submit a petition to the municipal council to attain a lease for a portion of land located in the municipality for development. The current process for acquiring a lease to public land is:



Prior to formally registering and/or leasing land, land may be used informally and without registration. State organizations or individuals using land without officially registering the land have a weak legal claim to the land as they lack both a title deed and lease certificate for the land. Prior to a lease being issued, the use of land is not documented with the Municipal Council. Such documentation of the informal use of land may be maintained in the County Council's Archives.

The description above outlines the land processes that the particular parcel in question (Parcel 454) went through. Official processes governing land and the bodies in charge of these processes have recently changed due to the adoption of the National Land Policy in 2009 and the creation of a new constitution in 2010. The National Land Policy and New Constitution have authorized a new body, National Land Commission, to take over the central management and administration of public land from the Ministry of Lands. Once enacted, this will

remove the Ministry of Lands from the process described above. Furthermore, the National Land Policy has called for the creation of District Land Boards (DLB) and Community Land Boards (CLB) to act as the local administrative arm for the National Land Commission. Once the policy is enacted, the DLBs will be in charge of administering public and private land on behalf of the NLC. It is unclear how the institution of the NLC and DLBs will work with the current roles of local authorities. The text of the National Land Policy states, however, that “land use planning functions of local authorities shall be reviewed to conform to this Land Policy”. As the Kenyan government draws closer to the implementation of the Land Policy, there will hopefully be increased clarity in regards to the interaction between the newly instituted land bodies and the already existing processes and offices concerning land.

VI. Ways Forward

Below are four suggestions on next steps in the Busia case that will likely yield positive results. Following the four suggestions are two additional options that parties to this issue could pursue. These suggestions and initial options are derived from research into Kenyan land law as well as from interviews and surveys conducted in Busia, Nairobi, Kisumu and Nakuru in January 2011.¹⁰

1. Immediate Suspension of Rent Payments by the Tenants on the Land

The tenants should stop paying monthly rent to the Ministry of Works representative given the Ministry’s lack of legitimate claim to the property. There has not been a final decision on the land in Busia but it is possible that the tenants will have to leave the land. Having additional monetary resources from the suspension of rent payments can only facilitate this process.

2. Stakeholder Meeting

All parties involved in this land issue should meet, after having read the information contained in this document, and clearly present their interest and needs regarding the plot of land and the library project. Involvement of all the stakeholders in the process is important in ensuring a smooth journey forward. As of March 28 2011, the date of eviction is set for May 1st, 2011. We would recommend that the stakeholder meeting take place as soon as possible – at least three weeks before the date of eviction in order to give ample time for the residents to make their adjustments.

Relevant parties include, but are not limited to:

- Busia District Commissioner
- Local Councilors and the District Physical Planner
- Busia Mayor
- KNLS Representative
- Ministry of Works Representative
- Ministry of Housing Representative
- District Surveyor
- Land Registrar
- Tenants on Land, or Representatives.

¹⁰ Parties interviewed were representatives from Ngazi Ya Chini, Kituo Cha Sheria, Hakijamii, Kenya Land Alliance, Busia Municipal Council, Land Control Board, Kogony Land Council of Elders, as well as the Mayor of Busia and a law practitioner. Parties surveyed were the inhabitants living on Parcel 454, the parcel of land being disputed.

Although some reservations have been expressed about inviting the Tenants on the Land to these stakeholder meetings, we believe it is in everyone's best interest to create an open and inclusive dialogue with *all* relevant parties. One NGO stated that evicting people from public land can become a very difficult and politicized process. A stakeholder meeting involving the tenants would help guard against any potential conflict or difficulties moving forward.

3. Fence

It has been suggested by several stakeholders in this process (including some tenants on the land) that clear marked boundaries should be set up delineating KNLS' land. One way of doing this would be to create a fence around KNLS' property. There are two options for fencing the land:

- Fence placed before/during dialogue:
 - Positive: Setting up a fence immediately will discourage more people from moving on to the land as the dialogue runs its course.
 - Negative: Setting up a fence before dialogue has taken place runs the risk of antagonizing those on the land. A fence could potentially create negative feelings of the people on the land towards KNLS and Maria's Libraries. A fence at this stage could look like a decision has been made without proper prior consultation with the tenants on the land.
- Fence placed after stakeholder dialogue:
 - Positive: Setting up a fence after informing tenants on the land through the stakeholder meetings ensures that tenants will feel like they have been included in the decision making process
 - Negative: Depending on the length of the meetings/negotiations, it could take a while for a fence to actually be placed around the land, leaving plot 454 vulnerable to further inhabitation by illegal tenants.

4. Adequate Time Granted for Adjustment

In addition to these three suggestions on ways to move forward, numerous stakeholders and NGOs informed of this process have suggested that no matter what decision KNLS takes, the tenants on the land should be given adequate time to find alternative accommodations. It should be noted that many of the residents, when surveyed, responded that they would want or need ample time to make adjustments before they have to vacate the KNLS plot of land. Adequate time has been defined by two NGOs that we interviewed as anywhere from three months to one year. At time of writing, there is a little over one month left to May 1st 2011, the date of eviction.

- **Pros:** Giving people adequate time to find alternative housing can help guarantee that tenants are not left homeless or in particularly difficult living situations. Furthermore, if adequate time is given in addition to the suspension of rent payments, current tenants can save enough money to find a new location to rent.

Cons: One NGO expressed concerns with giving the tenants long periods of time to find alternative housing. Firstly, if given a long period of time, tenants may simply live on the land without seeking out alternatives and protest eviction when it eventually occurs. Secondly, more people may move on the land if they find that houses have been abandoned by those who have found alternative and have left the land. One possible solution to this is the fence suggested above, although a fence poses its own concerns and even with a fence in place this problem can still arise.

5. Compensation for the Inhabitants of Parcel 454

Although no respondents requested monetary compensation and only one respondent requested compensation in the form of employment, the question of compensation has arisen in our talks with NGOs about this land issue. There are important benefits and drawbacks to consider when discussing compensation:

Pros: Compensation, in the form of local currency or employment, could help inhabitants quickly secure accommodations outside of the KNLS plot. Furthermore, compensation may leave inhabitants with a more favorable disposition towards the future community library specifically, and KNLS and local authorities in general. Compensation would minimize the likelihood of any tensions developing between the inhabitants and the larger community.

Cons: One NGO, stated that administering compensation could be difficult because as soon as tenants realize that money is being disbursed, the reported size of households is likely to grow and new tenants may arrive on the land with the hopes of receiving money. There is also the issue of who would be responsible for providing compensation: Ministry of Works, Kenya National Library Services, Maria's Libraries? Neither Kenya National Library Services nor Maria's Libraries have expressed the desire or capacity to provide compensation. Discussions regarding compensation have not been breached with the Ministry of Works. One local politician interviewed suggested that perhaps the ministry of works could resettle the inhabitants on another plot of land close to the forest however, once again, these discussion have not occurred with the Ministry itself.

6. Involvement of the Judicial System

One route that the inhabitants or KNLS could take is to resolve this issue using the judicial system. Using the judicial system has been a weapon of choice for informal settlers/tenants in more highly publicized land disputes such as the issue regarding the informal use of land in the Kibera slums. It is unclear whether the using the courts for this smaller case in Busia would benefit or hurt the people on the land. Listed below are potential advantages to either the inhabitants of parcel 454 or KNLS if the courts are involved in this land issue:

Pros for Inhabitants: If the inhabitants decided to use the courts to assert their right to remain on the plot of land or to receive compensation due to eviction, they could potentially benefit in several ways:

- Firstly, inhabitants of the land would not be evicted during the notoriously lengthy process- so they would "win" by still having a place to live. One NGO stated that "everything stops" when the court is involved. No action (eviction, development, etc) can be taken on the land while the court proceedings occur.
- Secondly, inhabitants can sometimes use the court process to draw media attention to their plight and force negotiations. Several NGOs stated that the Media often takes the side of informal settlers in cases like these.
- Finally, if the inhabitants have lived on the land for a long time, the judge may look more favorably on their case. This is a very important point to consider as 8% of the tenants claim to have lived on the land 9- 11 years and 25% have lived on the land over twelve years.¹¹

Pros for KNLS: The courts could easily decide in favor of those with formal claim to the land (KNLS). This land issue could be decisively resolved with the involvement of the courts.

¹¹ All of these potential advantages were offered by NGOs interviewed.

Appendix A

Question 4: Average distance from Respondent's Home village to Busia Town)

1. 0-50 Km= 11/24 (46%)
2. 50-100 Km= 10/24 (42%)
3. 100+ Km= 3/24 (13%)

Question 6: Number of People Living on Land

1. 1 person (s)= 5/24 (21%)
2. 2 person (s)=2/24 (8%)
3. 3 person (s)=3/24 (13%)
4. 4 person (s)=8/24 (33%)
5. 5 Person (s)=2/24 (8%)
6. 6 Person (s)=3/24 (13%)
7. 9 Person (s)=1/24 (4%)

Question 9: How long have you lived on the land?

1. 0-2 years= 6/24 (25%)
2. 3-5 years= 7/24 (29%)
3. 6-8 years= 3/24 (13%)
4. 9- 11 years= 2/24 (8%)
5. 12 + years= 6/24 (25%)

Question 11: How did you come to move to the land?

1. **Saw empty** land and moved in
(Searched for home independently)= 3/24 (13%)
2. Invited by a colleague= 0/24 (0%)
3. Invited by a friend= 7/24 (29%)
4. Former MoW employee in household= 10/24 (42%)
5. Current MoW employee in household= 4/24 (17%)

Question 16: Did you invest in the land?

1. No= 8/24 (33%)
2. Yes=15/24 (63%)
3. N/A= 1/24 (4%)

Question 21: What options do you have if you had to leave the land?

1. Unsure= 2/24 (8%)
2. Move in with family=0/24 (0%)
3. Move in with friends=0/24 (0%)
4. Get relocated by the MoW= 5/24 (21%)
5. Rent another place= 6/24 (25%)
6. Have another home = 0/24 (0%)
7. Rendered Homeless/No options= 6 /24 (25%)
8. Relocation by non MoW entity"= 2/24 (8%)
9. N/A= 3/24 (13%)

Question 25: What do you think is the impact of having a library in your community?

- | | |
|--|-------|
| 1. Unsure= 4/24 | (17%) |
| 2. Children's education= 5/24 | (21%) |
| 3. Access to information= 16/24 | (67%) |
| 4. Employment opportunities= 11/24 | (46%) |
| 5. Expand Busia town/ Develop Busia Town= 3/24 | (13%) |
| 6. Render occupants homeless= 3/24 | (13%) |
| 7. Increase Elite Population= 1/24 | (4%) |
| 8. No Impact= 1/24 | (4%) |
| 0. N/A, No Answer- 1/24 | (4%) |

Question 26: What do you think is a good solution to this confusion with the land?

- | | |
|--|-------|
| 1. Unsure= 2/24 | (8%) |
| 2. KNLS should re-claim and use the land= 2/24 | (8%) |
| 3. Ministry of Works should provide the truth= 2/24 | (8%) |
| 4. Stakeholder meeting= 3/24 | (13%) |
| 5. Stakeholder meeting with occupants= 4/24 | (17%) |
| 6. Boundaries of land should be clear= 7/24 | (29%) |
| 7. Request for time to move out= 5/24 | (21%) |
| 8. Money should be provided as compensation= 0/24 | (0%) |
| 9. Employment should be provided as compensation= 1/24 | (4%) |
| 10. Housing should be provided as compensation= 0/24 | (0%) |
| 11. KNLS should move somewhere else= 3/24 | (13%) |
| 12. N/A, No Answer= 3/ 24 | (13%) |

Appendix B

- *Kenya Constitution Article 43*
 - “Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation”.
- *International Covenant on Economic, Social, and Cultural Rights (Kenya Acceded 01/05/1972)¹*
 - Article 11. Paragraph 1: The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing...The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
 - Paragraph 16 of General Comment 7 on the Right to Adequate Housing (art. 11.1 of the Covenant): Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.
- *UN Right to Housing/Basic Principles and Guidelines on Development-Based Evictions and Displacement*
 - Paragraph 21: States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.
 - Paragraph 37: Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements:
 - appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives;
 - effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups
 - a reasonable time period for public review of, comment on, and/or objection to the proposed plan
 - opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options
 - Holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.
 - Paragraph 43: Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.