15TH JUNE 2021

STATUS OF LAND GOVERNANCE IN KENYA

SCORECARD REPORT
Executive Summary

Land is a principal source of livelihood for a majority of Kenyans. Its ownership, allocation, distribution and utilization is central to the economic, social and cultural development. Land Governance in the Country is guided by the Constitution of Kenya 2010 and the various laws that have been enacted including; Land Act 2012 (Revised 2016), the Land Registration Act 2012 (Revised 2016), the National Land Commission Act 2012 (Revised 2016), Community Land Act 2016, Environment and Land Court Act 2011 and the Physical and Land Use Planning Act 2019. In addition, several regulations have been put in place to reinforce the Acts. These regulations include; the Land Act (Amendment) Regulations 2020, the Land Registration Act (Electronic Transactions) Regulation 2020, the Land (Allocation of Public Land) Regulation 2017, the National Land Commission (Investigation of Historical Land Injustices) Regulations 2017 and the Community Land Regulations 2017. Besides the laws and regulations, the Country adopted the Sessional paper 3 of 2009 on National Land Policy and the Sessional Paper no1 of 2017 on National Land Use Policy as key guides on land management.

To implement these laws, regulations and policies various institutions have been established key among them being; The Ministry of Lands and Physical Planning which is tasked with policy leadership and administering land in the country through its registry, adjudications & settlement, survey and planning departments. The National Land Commission (NLC) tasked with managing public land and oversight on land use planning in Kenya. Community Assemblies and Community Land Management Committees which are tasked with managing registered community lands, County Governments with mandates for land use planning, development control and management of unregistered community land; the Environment and Land Court with jurisdiction over all disputes related to land and environment.

These key institutions provide the platforms for interaction with citizens and act as service delivery points for land transactions. Their efficiency and effectiveness ought to be monitored to ensure that the good land governance objectives set by the laws and policies are achieved for
sustainable development. This comprehensive policy, legal and institutional framework, if well implemented, should guide Kenya to effectively navigate around the issues of rights to use, management and control of its land resource, as is encouraged by key governance frameworks such as the FAO VGGT and the UNECA Framework and Guidelines on Land Policy in Africa. Monitoring their implementation therefore assumes great significance.

Over the last decade, the Land Development and Governance Institute (LDGI) has worked alongside other stakeholders in the land sector to promote effective land governance in the country. Towards this, the institute periodically conducts scorecards to gauge the public perception and monitor the status of land governance in Kenya.

In March 2021, LDGI collected data from citizens across the country to evaluate the status of Land Governance in Kenya. During the study, a total of one thousand and thirty-six (1,036) individuals were interviewed across 36 land registries in 34 Counties. Out of the respondents interviewed, 722 (69.7%) were male while 314 (30.3) were female. A majority of the respondents (75.5%) had attained secondary level of education and most (54%) were within the 31-50 age bracket.

The respondents ranked different aspects of land Governance based on their individual experiences. The survey covered private land, public land, community land and dispute resolution processes across the land categories. The variables included: ease of accessing information; cost of services; timeliness; corruption; and security of title/tenure.

The Institute found that on private land; ease of accessing information was ranked as difficult by 38% of the respondents, fair by 30% of the respondents and easy by 32% of the respondents. The cost of transactions was considered affordable by most (61%)of the respondents while 39% ranked it as unaffordable. With regard to timeliness, majority of the respondents were dissatisfied with time taken on land transactions with 53% regarding the processes as slow. 51%% of the respondents reported that corruption at the registries was high while 49%ranked it as low. Finally, with regard to security of title on private land, most respondents (64%), felt secure with their titles while 18% felt fairly secure and18% stating that they felt insecure with their titles.
With respect to online land search, it was recorded that most respondents (82%) did not know that this online platform exists. Of those that were aware 83% reported that they did not understand how to use the system, 9% ranked it as effective while 8% ranked it as ineffective.

Results on community lands indicated that 72% of the respondents were not aware of the existence of the Community Land Act; of those aware, only 15% were informed of the contents. In addition, only 10% of the communities represented by the respondents had commenced registration process. On access to information on community land, most respondents (57%) ranked it as difficult, 22% ranked it was fair while 21% ranked it as easy. On level of inclusion and participation of communities in land governance, 56% of respondents ranked it as low, 16% ranked it as fair while 28% ranked it as high. Most of the respondents (65%) considered the cost of community land registration to be unaffordable. The respondents expressed frustration with the speed of land transactions/registration; (62%) said the process was either slow or very slow. With respect to dispute resolution, it was noted that most of the communities rely on Traditional Dispute Resolution Mechanisms; their knowledge of the court system was minimal. It was established that 73% of the respondents ranked the effectiveness of traditional dispute resolution mechanism as high while 37% ranked it as low.

With regard to the National Land Commission, it was reported that half (50%) of the respondents knew of the NLC as the Institution responsible for managing public land in Kenya, 50% did not. Also, 59% of the respondents said it was difficult to access the Commission, 14% said it was fair while 27% said it was easy. On performance of NLC functions, most respondents (71%) were of the opinion that information on public land was not readily available. With respect to the function of investigation and redress of historical land injustices, most respondents (81%) were dissatisfied with the performance of the Commission. On the function of monitoring county land use planning, 69% of the respondents were dissatisfied with the performance of the Commission. Finally, with respect to the promotion of the application of traditional dispute resolution most (54%), respondents expressed satisfaction with the Commissions while 46% were dissatisfied.

The Institute also assessed public perception on the performance of the Environment and Land Court and the Alternative Dispute Resolution Mechanisms (ADR). 42% of the respondents
ranked accessibility of the court as fair, 24 % ranked it as easy while 34% ranked it as difficult. Access to information in the court was ranked as difficult by most (64%) of the respondents, 18% ranked it as easy and 18 % ranked it as fair. Cost of seeking justice was ranked as unaffordable by most 86% of the respondents and affordable by 14%. With regard to speed of the court processes, most respondents (59%) regarded it as slow, 22% as fair and only 19 regarded it as timely. Corruption at the courts was ranked high by 36% and low by 64% of the respondents. It was also recorded that 67% of the respondents had used ADRs, out of this, 82% ranked them as effective while 18% ranked them as ineffective.

From the result it was deduced that a lot requires to be done to improve land governance in the country. To address the challenges and improve land governance the following were the key recommendation; complete automation, while ensuring effective and seamless transition from manual to digital system; capacity building on land laws, policies and existing and proposed digital platforms; reduced corruption in service delivery points; increased efficiencies to reduce transaction time'; Improved public participation in decision making and finally, strengthened and adequate financing of land governance institutions from community to national levels.
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1. Introduction

Since 2010, the Land Development and Governance Institute has periodically gauged the status of land governance including progress of the implementation of land reforms in Kenya through its scorecard tool. The results of the scorecards are shared with public land governance institutions and other stakeholders in the sector to inform policy, laws and best practices.

The LDGI 21st scorecard gauged citizen's perceptions on status of land governance in the country. Variables measured included; ease of accessing information, public participation in decision making, affordability of services, timeliness in service delivery, presence or absence of corruption, access to justice on land matters, security of title/tenure to land, reliability of online systems, Citizens’ level of awareness with respect to land laws.

1.1 Objectives

The specific objectives were:

1. To establish accessibility of information from the key land governance institutions in the country
2. To establish the affordability of land transactions in the country
3. To determine the speed of land transactions/processes at various service points
4. To evaluate the present / absence and levels of corruption at service points in the country
5. To identify citizen's inclusion and participation in service delivery
6. To determine citizen’s experiences with Alternative Dispute Resolution Mechanisms.
7. To seek recommendations from the public on how to improve different processes carried out by lands governance institutions.

1.1.1 Scope of the Study

The data used in this survey was collected between 1st March 2021 and 26th March 2021, from 36 Land Offices in 34 Counties. The enumerators interviewed a total of one thousand and thirty-six (1036) respondents. Out of the total sample population of 1036 respondents 69.7% were male while 30.3% were female
1.1.2 Age Bracket of the Respondents

Majority of citizens (31%) seeking services at land registries were aged between 31-40 years. Respondents aged between 41-50 years and 51-60 years represented 23% and 15% of the sample respectively; 16% of those interviewed were aged between 21-30 years while 15% of the respondents were aged over 60 years old.

1.1.3 Highest Level of Education

16% of the respondents had attained at least primary level of education. 29% had secondary education as their highest level, 24% had tertiary education, 20% university education, 3% postgraduate while 8% had no formal education.
2. FINDINGS – PRIVATE LAND

Ranking of Services
The respondents ranked different aspects of service delivery based on their individual experiences with the land offices. These variables were ease of accessing information; cost of services; timeliness; corruption levels and security of title deeds. The following section contains the study findings.

2.1 Services Sought
The most sought service is the land search at 26%, followed by approval of purchase at 20%, approval of transfer at 14%, approval of Subdivision at 11%, Land dispute resolution at 9% and planning approvals at 10%.
Other services being sought represented 10 % of the total.
These other services include;
   a) Certification of a deed plan
   b) Deregistration of a replicated title deed
   c) Discharge of title from loan collateral
   d) Follow up on a lost green card
   e) Land caution services
   f) Land Control Board services
   g) Mutation purchase services
   h) Valuation for stamp duty

2.2 Access to Information
Access to information at the land offices was ranked as follows; 11 % ranked it as very easy, 21% ranked it as easy while 30% ranked it as fair. 23 % ranked it as difficult, while 15% ranked it as very difficult as shown in the figure below.
Access to information is low, more work to improve the ease of access is required

2.3 Cost of Transacting
The cost of services was considered as just affordable by majority (50%) of the respondents, 11% considered the cost to be very affordable, 33% considered it to be unaffordable while 6% considered the costs to be completely unaffordable as shown below.

This is commendable and attributed to waiver given in year 2017

2.4 Timeliness
Majority of citizens were dissatisfied with the time taken to complete processes at lands offices. Turnaround times for transactions carried out at lands offices were poorly ranked with 28% of
respondents rating it as very slow and 25% rating it as slow, 26% rated it as fair. On the other hand, 15% rated it as timely, and 6% rated it as very timely as shown below.

This indicates that there is inefficiency in service delivery the lands offices.

2.5 Levels of Corruption
Corruption remains a great hindrance to service delivery at lands offices across the country. 51% of the respondents still found that corruption is rife in land transactions and ranked it either as very high 31%, or just high 20%. 36% of the respondents rated corruption as low while 13% very rated it as very low.

This implies that the incidences of corruption are still high. More measures to enhance integrity of officers are necessary.
2.6 Security of Title / Tenure

Respondents were asked how secure they felt with their certificates of title. The findings revealed that 28% of the respondents felt very secure, 36% felt secure with their titles while 18% of the respondents felt fairly secure. 10% of the respondents felt insecure and 8% felt very insecure with the titles; as shown below.

![Security of Title](image)

*Figure 5 Security of Title*

*It is commendable that a majority of citizens feel secure with land titles. The element of insecurity reported is significant and needs to be addressed.*

2.7 Online Land Search System and online transactions

2.7.1 Online Land Search System

In September 2015, the Ministry of Lands and Physical Planning introduced an online land search option for the Nairobi Registry, hosted on the government’s ‘e-Citizen’ platform (http://lands.ecitizen.go.ke). However, 82% of the respondents interviewed were not aware of the existence of online land search system while 18% were aware.

2.7.2 Effectiveness of the Online Search system

The respondents ranked the effectiveness of the online search system as follows; 83% did not understand how to use the platform; 9% ranked it as effective, while 8% ranked it as ineffective or unreliable.
This system has since been upgraded and the new digital land information management system dubbed ‘ardhi sasa’ has been launched. Feedback on the systems performance is discussed under the land watch note released together with this report.

2.8 Land Control Board (LCB)

More than half (51%) of the total number of the respondents had dealt with the LCB, 49% had not dealt with the Board. Of the respondents that had interacted with the LCB, 44% ranked them as effective, 56% ranked it as ineffective. Respondents cited high corruption in the Boards, favoritism, unmotivated members, and gender imbalance in composition of the Boards.
3. FINDINGS - COMMUNITY LAND

3.1 Awareness of the Existence of Community Land Act (CLA) and its Contents
72% of the respondents were not aware of the existence of Community Land Act while 28% of the respondents were aware of its existence. Out of the respondents that are aware of the existence of the CLA Only 15% were informed on the contents of the Act while 85% were not aware.

3.2 Community Land Registration
Only 10% of the communities represented by the respondents had commenced Community Land Registration process and 90% had not.

3.3 Community Assembly
Out of the communities represented by the respondents, 26% had community assembly while 74% did not have the community assemblies.

Ranking of community land registration process

3.4 Ease of accessing information on registration
Access to information on community land registration was ranked as follows; 5% ranked it as very easy, 16% ranked it as easy while 22% ranked it as fair. However, 41% of the respondents ranked it as difficult, while 16% ranked it as very difficult as shown in the figure below.

![Access to Information](image)

*Figure 7 Ease of Access to information - community land*

A lot of work need to be done to ensure availability of information to communities
3.5 Level of inclusion and participation on registration process
Community participation was ranked as follows: 5% ranked it as Very high, 23% ranked it as high, 16% ranked it as fair; however, 30% ranked it as low while 26% ranked it as very low as shown in the figure below

![Figure 8 Inclusion and Participation of community members](image)

Community members’ participation in land governance still very low

3.6 Affordability of the registration process

7% of the respondents in communities that had commenced registration considered the process to be very affordable. 28% ranked the cost as just affordable. 61% considered it to be unaffordable and 4% ranked it as completely unaffordable as shown below.

![Figure 9 Affordability of Registration Process](image)
The registration process is considered unaffordable by majority of the respondents; the process is not financed by Government thus transferring this heavy burden to communities.

3.7 Speed of community land registration

Majority of community members were dissatisfied with the time taken to complete registration. 27% of respondents rated the process as very slow, 35% rated it as slow. 18% of the respondents rated it as fair, 16% rated it as timely while 4% rated it as very timely; as shown below.

![Speed -Community land registration](image)

Communities attributed the inefficiencies in registration process to among others; lack of community land registries and registrars in counties with vast community land and confusion created by community land inventories provided by counties that do not align with community land boundaries.

3.8 Effectiveness of Traditional Dispute Resolution Mechanisms

52% of the respondents ranked the effectiveness of dispute resolution as high, 11% ranked it as very high; 28% ranked it as low while 9% ranked it as very low.
Most of the communities rely on TDR for dispute resolution, their knowledge about court systems was minimal.
4. FINDINGS – PUBLIC LAND

4.1 Awareness of key public land governance institutions
50% of the respondents did not know of the key public land governance institution while 50% were aware of the key institution that governs public land as the National Land Commission.

4.2 Accessibility of the National Land Commission
Accessibility to Commission was considered difficult and very difficult by 48% and 11% respectively; 14% of the respondents considered it fair while 27% considered it easy.

4.3 Ranking of the performance of National Land Commission

![Figure 12: Rank of performance of various functions of National Land Commission](image-url)
Most respondents (69%) were dissatisfied with the performance of the NLC in monitoring and overseeing land use planning at county level.

Most respondents (81%) were dissatisfied with the performance of NLC on investigation of present and historical land injustices and their appropriate redress.

Most respondents (71%) were of the view that information on public land is not readily available.

Finally; On the promotion of traditional dispute resolution mechanisms, most respondents were satisfied (54%) with the performance of NLC.

NLC ought to improve their operation in managing public land and oversight of land use planning in Kenya.

5. FINDINGS – DISPUTE RESOLUTION

Environment and Land Court

5.1 Awareness of the Existence of the Environment and Land Court

64% of the respondents were aware of the existence of the Environment and Land Court while 36% are not aware of its existence.

5.2 Accessibility of the court

Accessibility to court was considered easy by 24% of the respondents; 42% of the respondents considered it fair, 23% considered it difficult while 11% considered it very difficult know as shown below.

![Accessibility to Court](image)

*Figure 13 Accessibility to courts*
Improved on accessibility to court is noted, however a lost still remains to be done address the population facing difficulties.

5.3 Access to Information

Access to information from the Environment and Land Court still remains a huge challenge to most of the citizens. 52% of the respondents ranked it as difficult, while 12% ranked it as very difficult; 18% ranked it as easy and 18% ranked it as fair, as shown below.

Access to information still a challenge. Automation of the court registries is necessary

5.4 Cost of Seeking Justice.

The cost of seeking justice under the Environment and Land court was unaffordable to majority (68%) of the respondents; 18% considered the cost to be completely unaffordable. However, 14% of the respondents felt the cost of seeking justice was affordable as shown below.

The services are very costly to majority of the citizens
5.5 Speed of court processes/judgment delivery.
Majority of the respondents were dissatisfied with the time taken by the Land and Environment Court. 31% of respondents rated the process as very slow, 28% rated it as slow. 22% of the respondents rated it as fair, 16% rated it as timely while 3% rated it as very timely; as shown below.

![Speed of operation by the ELC](image)

**Figure 16. Speed of the Operations**

This indicates inefficiencies in court processes

5.6 Incidences of Corruption.
Corruption remains a great hindrance to service delivery at Environment and Land Courts across the country. 36% of the respondents still found that corruption is rife in the courts. 56% of the respondents ranked the corruption levels as low and 8% very ranked it as very low.

![Corruption Level](image)

**Figure 17 Corruption Levels**

Corruption still significant in the courts, a lot needs to be done to eliminate it.
5.7 Alternative Dispute Resolution Methods (ADR)

67% of the respondents who had visited the land registry had used alternative dispute resolution methods while 33% of the respondents had not used alternative dispute resolution.

Of the respondents that had used ADRs, 38% had used the mediation method of dispute resolution, 37% had used negotiation while 25% of the respondents had used arbitration method of dispute resolution as in the figure below.

![Figure 18 Alternative Dispute Resolution Methods](image)

5.8 Effectiveness of Alternative Dispute Resolution Methods (ADR)

36% of the respondents ranked alternative dispute resolution as very effective, 46% of the respondents ranked it as effective while 18% ranked the ADRs as ineffective as shown below.

![Figure 19. Effectiveness of ADRs](image)

*ADR are considered effective by most citizens*
6 Conclusions and Recommendations

6.1 Conclusions

6.1.1 Private Land

Access to information, speed of transactions and service delivery and corruption levels are the main concerns to citizens seeking services on private land. Poor access to information was attributed to among others; shortage of staff, poor responsiveness from the staff and the presence of broker giving inaccurate and distorted information. The slow speed of transactions and services was mainly attributed to few available staff in the registries and the use of manual systems. The high levels of corruption was evidenced by ‘missing documents’, request for ‘fuel money’ to conduct site visits, unofficial payments without receipts and use of brokers in order to get services.

6.1.2 Community Land:
One of the key challenges in community land was access to information on key land laws, policies and practices; lack of information meant that the communities were unable to meaningfully participate in land governance. Unaffordability of land registration was mainly attributed to the fact that community land registration processes are not funded by the government nor are the local land governance institutions, despite managing vast areas of land. Another key challenge to registrations was the absence of community land registries and registrars.

6.1.3 Public Land:
Access to the National Land Commission as well was access to information on public land management is a challenge to citizens. They was also great dissatisfaction with the performance of the National Land Commission in monitoring and overseeing land use planning at county levels and in the investigation of present and historical and injustices and recommendation of appropriate redress.

6.1.4 Environment and Land Court:

Challenges experienced by citizens in Land and Environment Court include, accessibility to the court; citizen expressed frustration of having to travel long distances to the visit the courts. The courts processes were also reported to be slow further frustrating the citizens. Unaffordability of courts was mainly attributed to the high legal fees, the distance to courts, and frequency of courts visits.
6.2 Recommendations

6.2.1 Automation of Land Information

Land information systems should be automated across the country and their accessibility be simplified. This ought to be accompanied by mass education for the public to raise their awareness of the platforms and their use. Digital divide ought to be taken into consideration and unique solution custom made to the region and the people to ensure they are not excluded from key services.

6.2.2 Access to Information

Efforts should be made to ensure information is available to all citizens in simplified and concise manner. This will help them know where to seek various services, and also enable them to participate in land governance in the country. Beyond availing the resource materials to the public, access to information can further be enhanced through civic education on key provisions on land laws, policies and best practices.

6.2.3 Speed of Service Delivery

Services should be received within reasonable time. However, this is not usually the situation. Delays are in some cases by design, to frustrate the service seekers who end up paying more to fast-track their transactions. We recommend all efforts be made to eliminate such practices, and those caught to face disciplinary actions. Secondly, Delays are as a result of system failure; increase in transactions and complexity means that manual systems are unable to effectively serve the people. Well designed and implemented digital system is key to improving transaction speed. Finally, delays are result of inadequate human resource, equipment and facilities at the service points. We recommend the employment of more staff and adequate funding to ensure availability of resources to implement their functions.

6.2.4 Citizen's Inclusion and Participation in Land Governance

Citizen participation is one of the key principles in Kenya's Constitution and a key objective to devolution, Article 174(c) of the Constitution state that; “To give power of self-governance to the people and enhance the participation of the people in the excise of the powers of the State and in making decisions affecting them”. It is therefore
important that citizens participate in land matters, this can be enhanced by their increased knowledge of the land laws and policies. Informed citizenry are able to demand transparency and hold land governance institutions accountable. Deliberate invitation to land governance forums, inclusion of youth and women in institutions of land management is necessary

6.2.5 Eliminating Corruption

To address corruption issues; integrity measures should be enhanced in the lands offices and Environment and Land Courts; land governance institution should be strengthened and systems upgraded to ensure transparency, accountability and efficiency; access to information should be enhanced to increase citizens ‘capacity to hold these institutions accountable; finally, there is need to end impunity in land governance institutions; corrupt officials must be prosecuted.

6.2.6 Budgetary allocation – community land management

Government financing of community land registration processes and budgetary support for community land management institutions is key. This will speed up registration process that is lagged partly by the high registration and management cost that have been transferred to the communities

6.2.7 Improved accessibility by the National Land Commission

There is need for increased public engagement by the NLC. This will increased public knowledge of their services and participation in public land management.