AN ASSESSMENT OF THE PERFORMANCE OF THE ENVIRONMENT AND LAND COURT

12TH SCORECARD REPORT
Full Report

Released: 17th September 2013
EXECUTIVE SUMMARY

Dispute resolution is a key component of land administration and management in Kenya. Article 162 of the Constitution of Kenya provides for the establishment of the Environment and Land Court (ELC) by an Act of Parliament. Further, parliament is mandated to determine the jurisdiction and functions of the courts. In 2011, parliament passed the Environment and Land Court Act through which the Environment and Land Court was established. In accordance with the provisions of this act, the court is mandated to ensure reasonable and equitable access to its services in all counties. To date 15 judges have been appointed to the ELC covering 14 stations countrywide.

The Land Development and Governance Institute sought to assess the perceptions of the members of the public on whether the formation of the ELC had improved the handling of disputes related to land. A total of 470 respondents (of which 70 percent were male and 30 percent were female) were interviewed in 28 counties across the country. Out of 28 counties sampled for the survey, 14 counties had an Environment and Land Court while the remaining 14 did not have the court. 69 percent of the respondents filed their cases with the ELC and 31 percent sought services from the high court, magistrate court or alternative dispute resolution mechanisms. From the study it emerged that 85 percent of the interviewed respondents had confidence in the ELC while only 15 percent had no confidence in the courts. Respondents feel the new courts have reduced corruption, with 69 percent of the sample population ranking corruption as low in these courts and 31 percent rating it high.

In conclusion, there is general optimism from the public on service delivery by the Environment and Land Court. In areas where the courts are established, they are fairly accessible to the public. However, a section of the public is not aware of the existence of this court.

The report recommends that there is need to increase the number of courts to cover all counties to reduce the cost of travelling. Capacity building is necessary to increase public awareness on the jurisdiction and functions of the court. Where alternative dispute resolution mechanisms have been established, they should be strengthened to reduce back log of cases in the ELC. In
addition, to improve efficiency, it is important to computerize the filing process and have more efficient staff.
TABLE OF CONTENTS

EXECUTIVE SUMMARY .................................................................................................................. iii
TABLE OF CONTENTS ...................................................................................................................... v
LIST OF FIGURES .......................................................................................................................... vi

1 INTRODUCTION .......................................................................................................................... 1
   1.1 Objectives of the study ........................................................................................................... 2
   1.2 Scope of the study .................................................................................................................. 2

2 RESPONDENTS PROFILE .......................................................................................................... 3
   2.1 Gender of the respondents .................................................................................................... 3
   2.2 Age of the respondents ......................................................................................................... 3
   2.3 Highest level of education attained ..................................................................................... 4

3 FINDINGS ..................................................................................................................................... 5
   3.1 INTERACTIONS WITH THE ENVIRONMENT AND LAND COURT .................................... 5
      3.1.1 Nature of disputes ......................................................................................................... 5
      3.1.2 Point of seeking justice ............................................................................................... 6
      3.1.3 Duration respondents have pursued their cases ............................................................ 6
   3.2 SERVICE DELIVERY RANKING ......................................................................................... 8
      3.2.1 Respondents' ranking .................................................................................................... 8
      3.2.2 Awareness on the ELCs ............................................................................................... 11
   3.3 RESPONDENTS’ SUGGESTIONS ON IMPROVEMENT OF SERVICE DELIVERY ........... 12
      3.3.1 Automation ................................................................................................................... 12
      3.3.2 Facilitation of the judiciary ............................................................................................ 12
      3.3.3 Corruption .................................................................................................................... 12
      3.3.4 Devolution of services .................................................................................................. 12
      3.3.5 Ethics and professional conduct of advocates ............................................................... 12
      3.3.6 Alternative Dispute Resolution Mechanisms ............................................................... 13

4 CONCLUSIONS AND RECOMMENDATIONS ........................................................................... 14
   4.1 CONCLUSIONS .................................................................................................................... 14
      4.1.1 Disputes taken to the Environment and Land Court ....................................................... 14
      4.1.2 Public satisfaction on efficiency of service delivery ..................................................... 14
      4.1.3 Effectiveness of Alternative Dispute Resolution Mechanisms ..................................... 14
   4.2 RECOMMENDATIONS ......................................................................................................... 15
LIST OF FIGURES

Figure 1: Gender of the respondent.......................................................................................... 3
Figure 2: Age bracket of the respondent................................................................................. 4
Figure 3: Highest level of education attained ........................................................................... 4
Figure 4: Source: Nature of disputes....................................................................................... 5
Figure 5: Whether cases were filed at ELC ............................................................................. 6
Figure 6: Average time taken to pursue a land dispute.............................................................. 7
Figure 7: Accessibility to ELCs ............................................................................................... 8
Figure 8: Ease of accessing information.................................................................................. 9
Figure 9: Incidences of corruption.......................................................................................... 10
Figure 10: Cost of seeking justice........................................................................................... 10
Figure 11: confidence with the ELC ...................................................................................... 11
1 INTRODUCTION

A robust land dispute resolution system is crucial for effective land administration and management. In the past, land cases were resolved by Magistrates Courts and the High Courts. These courts would also handle other criminal and civil matters, making it difficult to resolve land cases expeditiously. This led to a backlog of land cases in the courts. Some land disputes were handled by Land Dispute Tribunals which were established by the Land Dispute Tribunals Act No. 18 of 1990, now repealed. While initially these tribunals were efficient in handling land cases, they gradually fell short due to the complexity of land transactions as a result dynamism of land markets. In addition, there was a gradual build up of a backlog of unresolved disputes pending before these tribunals too.

In response to these challenges, the Sessional Paper on the National Land Policy and Article 162 of the Constitution of Kenya provided for the establishment of a court specifically charged with hearing and determining cases on land and the environment. This was realized in August 2011 when the President assented the Environment and Land Court Act, thus establishing the court. This court is mandated to adjudicate over matters relating to the environment, land use, ownership, titling and management of land.

The court has similar status as the High Court and is guided by the principles of sustainable development of land, the principles of the National Land Policy, judicial authority, national values and principles of public service. Moreover, the court was given exclusive jurisdiction over disputes under Article 162 of the Constitution of Kenya, 2010. These include power to hear and determine disputes relating to environment and land, including disputes relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources. The other disputes under ELC’s jurisdiction included those relating to compulsory acquisition of land; land administration and management; public, private and community land contracts; or any other instruments granting any enforceable interests in land. These courts also have jurisdiction over any other dispute relating to environment and land.
The ELC also has supervisory jurisdiction over the subordinate courts, local tribunals, and persons or authorities in accordance with the constitution. These powers included interim or permanent preservation orders such as injunctions; prerogative orders; award of damages; compensation; specific performance; restitution; declaration; or costs.

Fifteen (15) ELC judges have been appointed covering fourteen\(^1\) (14) stations across the country and new cases pertaining to land and the environment are currently being filed with this court. In areas where the ELC have been established the courts are taking up land and environment cases that would previously be filed with the Magistrates Courts and the High Court within the country.

This report contains the findings of a study commissioned by the Land Development and Governance Institute (LDGI) on land dispute resolution under the Environment and Land Court in which interviews were conducted in the fourteen counties with an Environment and Land Court and 14 counties without the court.

### 1.1 Objectives of the study

The general objective of the 12\(^{th}\) scorecard initiative was to gauge the perceptions of the members of the public on whether the formation of the ELC had improved the process of resolving disputes related to land and the environment. The specific objectives of the study were;

a) To measure the public satisfaction on efficiency of service delivery at the ELCs

b) To determine other alternatives pursued by the public to resolve land disputes

### 1.2 Scope of the study

This study relied on primary data that was collected between 16/08/2013 and 27/08/2013 across twenty eight (28) counties, targeting counties with ELCs\(^2\) as well as other counties where ELCs had not been established\(^3\).

\(^1\)Bungoma, Malindi, Milimani Law Court (Nairobi), Kerugoya, Nyeri, Kisumu, Nakuru, Meru, Busia, Mombasa, Kakamega, Kisii, Eldoret and Kitale.

\(^2\)Counties with an Environment and Land Court - Bungoma, Kilifi, Nairobi, Kirinyaga, Nyeri, Kisumu, Nakuru, Meru, Busia, Mombasa, Kakamega, Kisii, Uasin Gishu and Trans-Nzoia

\(^3\)Counties without an Environment and Land Court – Machakos, Kajiado, Kiambu, Makueni, Embu, Isiolo, Murang’a, Kwale, Nyandarua, Laikipia, Narok, Kitui, Migori and Homabay
2 RESPONDENTS PROFILE

2.1 Gender of the respondents

From the sampled population of four hundred and seventy (470) respondents, 30% were female while 70% were male as shown in Figure 1 below.

![Gender of the respondent](Figure 1: Gender of the respondent)

Source: Survey data 2013

2.2 Age of the respondents

From the interviewed respondents, a majority of those visiting the courts were aged between 31-50 years (62.1%), followed by those aged between 51-60 years (16%). The respondents above 60 years and below 30 years of age were fewer, accounting for 11.7% and 10.2% respectively. This is shown on Figure 2 below.
Figure 2: Age bracket of the respondent

<table>
<thead>
<tr>
<th>Age Bracket</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 20 years</td>
<td>2</td>
<td>0.4</td>
</tr>
<tr>
<td>Between 21 and 30 years</td>
<td>46</td>
<td>9.8</td>
</tr>
<tr>
<td>Between 31 and 40 years</td>
<td>141</td>
<td>30</td>
</tr>
<tr>
<td>Between 41 and 50 years</td>
<td>151</td>
<td>32.1</td>
</tr>
<tr>
<td>Between 51 and 60 years</td>
<td>75</td>
<td>16</td>
</tr>
<tr>
<td>Over 60 years</td>
<td>55</td>
<td>11.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>470</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Survey data, August 2013

2.3 Highest level of education attained

Most of the respondents visiting the ELC, High Courts and Magistrates’ Courts had at least attained secondary level of education (80.0% of the respondents). 30.9% had attained college education while 13.4% and 0.4% had attained university and post graduate education respectively. 16.4% had attained primary education and 3.6% had no formal education as shown in below.

Figure 3: Highest level of education attained

Source: Survey data, August 2013
3 FINDINGS

3.1 INTERACTIONS WITH THE ENVIRONMENT AND LAND COURT

3.1.1 Nature of disputes

A majority of land cases being filed at the Environment and Land Court were land disputes such as family disagreements over land and fraud related cases (accounted for 28% of the total sample). Succession cases accounted for 27% while boundary disputes accounted for 22%. Thirteen per cent (13%) of the cases were on double registration. In addition, eviction and compulsory acquisition accounted for 4% and 3% respectively as shown in Figure 4 below.

Figure 4: Source: Nature of disputes

Source: Survey data, August 2013
3.1.2 Point of seeking justice

As shown in Figure 5 below, 69% of the respondents filed their cases with the ELC. 31% of the respondents either filed their cases at Magistrate Courts or the High Court or sought alternative means to resolve their land disputes.

![Figure 5: Whether cases were filed at ELC](source: Survey data, August 2013)

3.1.3 Duration respondents have pursued their cases

With regard to duration of time the respondents had pursued their cases, 50.6% of the respondents had pursued their land cases for 1-5 years while 44.8% had pursued their cases for less than one year. 3.7% had pursued their cases for a duration ranging between 5-10 years while 0.6% of the respondents had been following up cases for a period of 10-20 years. Only 0.3% of respondents had pursued their cases for more than 20 years as shown in Figure 6 below.
Figure 6: Average time taken to pursue a land dispute

Source: Survey data, August 2013
3.2 SERVICE DELIVERY RANKING

3.2.1 Respondents’ ranking

Service delivery was measured by perceptions collected from the respondents. This scorecard sort to gauge the ELC in terms of service delivery based on the following indicators:

- Accessibility of the courts
- Ease of accessing information
- Cost of seeking justice
- Incidences of corruption
- Confidence level towards the judicial process.

(a) Accessibility of the Courts

![Figure 7: Accessibility to ELCs](source: Survey data, August 2013)

From the Figure 7 above, it was observed that the bulk of the respondents felt that the courts were fairly accessible to them. 30% of the respondents felt that accessing ELCs was easy while 45% said that it was fair and 25% of them said it was difficult. Though the court has been set up in only 14 counties, respondents were satisfied with its proximity. However, a quarter of the interviewed respondents still felt that the courts are difficult to access, owing to the distances they had to travel to seek justice.
(b) Ease of accessing information

Figure 8: Ease of accessing information

From the study, it was established that it is fairly easy to access information from the ELC. As shown in Figure 8 above, majority of the interviewed respondents (45%) felt it was easy to access information at the court registry. 31% of the respondents were of the opinion that fairly easy to access information. However, 23% of the sampled population experienced difficulties in accessing information at the court. This section of the respondents attributed their poor rating to poor filing systems which resulted in misplacing of files.

(c) Incidences of corruption

On matters of corruption, the courts received a positive rating with 46% and 23% of the respondents ranking it as low and very low respectively. 26% of the sample felt that corruption was high while only 5% felt it was very high as illustrated in Figure 9 below.
This is laudable as far as the land sector is concerned. Notably, previous Scorecard Reports have underscored corruption as the main obstacle in land reforms implementation and the positive rating of the court is an indicator of progress being made within the sector.

(d) Cost of seeking justice
Majority of respondents felt that the cost of seeking justice was affordable with 53% and 6% of the respondents reporting that it was affordable and very affordable respectively. 34% were of the opinion that the cost was unaffordable and 7% felt that the cost was completely unaffordable as shown in Figure 10 below.
Respondents who ranked the cost of seeking justice as unaffordable cited advocate fees as their main reason. A section of the respondents also implied having to travel long distances to access the courts as a contributing factor to the unaffordable cost of seeking justice.

(e) Confidence in the judicial process under the Environment and Land Court

It was evident from the study that most of the respondents had confidence in the judicial process under the ELC; 64% of the respondents had confidence in the ELC and a further 21% were very confident. However, 15% of the respondents had no confidence in the ELC. The high level of confidence in the court was attributed to the speedy and fair determination of cases as cited by respondents. On the other hand, those who had no confidence in the ELC felt that corrupt individuals could still manipulate the court system to their advantage.

![Figure 11: confidence with the ELC](image)

*Source: Survey data, August 2013*

3.2.2 Awareness on the ELCs

Public awareness of the existence and operation of ELC is very low. The Environment and Land Court Act in 2011 repealed the Land Disputes Tribunal Act of No. 18 of 1990. Subsequently, the Land Dispute Tribunals which were charged with hearing and determining cases of a civil nature involving land disputes were disbanded. However, there exists an information gap in this regard with a fraction of the public still not aware of the existence of these courts.
3.3  RESPONDENTS’ SUGGESTIONS ON IMPROVEMENT OF SERVICE DELIVERY

3.3.1 Automation
Respondents suggested that automation of the court registries would improve efficiency at the ELC. They recommended a review of the court processes to avoid bureaucracy which was slowing down service delivery and consequently increasing the cost incurred in seeking justice.

3.3.2 Facilitation of the judiciary
Citizens cited insufficient staff as one of the reasons for inefficient services. They proposed that more judges be appointed to the ELC to speed up the process of land dispute resolution by reducing the number of cases assigned to each judge.

3.3.3 Corruption
Respondents proposed that the court should have periodic audits by anti-corruption agencies to eradicate corruption and political patronage. They emphasized on regular vetting of judicial officers to curb this vice.

3.3.4 Devolution of services
Citizens were of the view that more judges should be appointed the ELC to cover all counties and thus ensure easy access to the court. Alternatively, respondents suggested that mobile Environment and Land Courts be introduced to serve the areas that do not have the court.

3.3.5 Ethics and professional conduct of advocates
Advocates are important in the process of land dispute resolution. They form the link between the citizens seeking justice and the courts. The public feels that advocate fee is too high, with respondents particularly alleging that some advocates prolong cases in order to increase earnings when representing clients, making dispute resolution at the ELC costly. In this regard, citizens called for the firm application of the advocates’ practicing regulations and code of conduct.
3.3.6 Alternative Dispute Resolution Mechanisms

Alternative Dispute Resolution (ADR) comprises various approaches for resolving disputes in a non-confrontational way, ranging from negotiation between the two parties, a multiparty negotiation, through mediation, consensus building, arbitration and adjudication. Alternative Dispute Resolution mechanisms are well entrenched in Chapter 10 of the Constitution of Kenya, 2010 on judiciary (Article 159). Subsequently Article 20 of the Environment and Land Court Act 2011 legally recognizes ADRs. This study established that in some cases ADRs were effective in resolving land disputes and were easily accessible as well as cost effective. However, in other instances ADRs were not effective in resolving land disputes. Some aggrieved respondents felt that they were denied fair hearing in the context of ADRs thus they sought legal redress. Consequently respondents complained that they were being referred to distant areas where the ELC is in operation. This calls for the provision of a robust legal framework for the establishment of effective ADRs.
4 CONCLUSIONS AND RECOMMENDATIONS

4.1 CONCLUSIONS

4.1.1 Disputes taken to the Environment and Land Court
Despite the establishment of an Environment and Land Court in 14 locations across the country, not all cases relating to land are being filed with this court. In counties where the courts were not in place, the land disputes are taken to Magistrate Courts and High Courts. However, a small section of the public opts to make use of other alternatives in resolving land dispute such as councils of elders and religious groups.

4.1.2 Public satisfaction on efficiency of service delivery
The public is fairly satisfied with the efficiency of service delivery of the ELC, with most citizens confident with the judicial process under the Environment and Land Court. Land cases are being heard and determined in a shorter period as compared to the past. On the other hand, Kenyans feel that automation of the registry and the court process as a whole would greatly improve the court’s efficiency in resolving land disputes.

4.1.3 Effectiveness of Alternative Dispute Resolution Mechanisms
Alternative Dispute Resolution Mechanisms are generally effective in solving land disputes. However, in some cases it can take a considerably long period for a case to be settled. The Alternative Dispute Resolution mechanisms are at times affected by power dynamics, the monetary value of the land under dispute and the complexity of the dispute.
4.2 RECOMMENDATIONS

Dispute resolution is a core component of land administration and management. While the Environmental and Land Court has started off on a positive note, there remains much to be done with regard to dispute resolution in the land sector and the following recommendations can be drawn from this scorecard:

1. **Need for more courts:** There is need to extend the reach of the Environment and Land Court to cover all counties. This will be in line with the provisions in Article 4 of the Environment and Land Court Act, which states that the court shall ensure reasonable equitable access to its services in every county. This may be achieved through mobile courts that may sit at a location without the court on specified days of the week.

2. **Alternative Dispute Resolution Mechanisms:** The Government and Civil Society should promote public awareness on the importance of adopting Alternative Dispute Resolution Mechanisms as an alternative option in resolving land disputes. ADRs should however not be misconstrued to replace the role of courts.

3. **Public awareness of the Environment and Land Court:** The Government should also promote public awareness on the existence, jurisdiction and functions of the Environment and Land Courts. From the survey it was evident that some section of the public is still not aware that this court is in place.

4. **Automation of the registry:** To achieve maximum efficiency at Environment and Land Court, there is need for automation of the court registry. Linkages between the automated court registry and the land information management system in the Ministry of Lands (when fully in place) would help in authenticating land records to be used in resolving land disputes.