

2014

# Land Reforms Implementation: An Analysis of Citizens' Perception of the Relations between the National Land Commission and the Ministry of Lands

14th Scorecard Report





## **Full Report**

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## **EXECUTIVE SUMMARY**

The National Land Commission (NLC) is an independent Institution established under the Constitution of Kenya. The Ministry of Lands, Housing and Urban Development together with the National Land Commission have the mandate of administering and managing land in the country. The two bodies have however been in conflict over the distinction and scope of their mandates as stipulated in the land laws: the Land Act 2012, the National Land Commission Act 2012, and the Land Registration Act 2012.

The National Land Commission took office in February 2013 and has now been in operation for 14 months. The Land Development and Governance Institute (LDGI) set out to establish the citizens' perception on the relationship between the National Land Commission and the Ministry of Lands. 27 counties were visited and 809 individuals interviewed.

The research established that there is a large knowledge gap on the progress of land reforms in the country. With respect to the differences between the Lands Commission and the Ministry, most respondents were unaware of the underlying causes but felt that there should be clear mechanisms to address conflicts in the future. They also had the view that there should be a clear separation of roles and function between the Commission and the Lands Ministry to enable the institutions to effectively administer and manage land. In summation, the citizens were dissatisfied with the services provided by the institutions and demanded for appropriate interventions.

LDGI recommends a careful look into the land laws enacted in 2012; the Land Registration Act, 2012, the Land Act, 2012 and the National Land Commission Act, 2012. In addition, the Institute recommends that the Commission expedites decentralization of its services to county level. Finally, the Institute recommends that extensive civic education exercises are undertaken at the county level to ensure citizens' knowledge on the functions and roles of various land management institutions is improved. This will in turn increase their participation in land reforms and their capacity to hold Institutions accountable.

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## **1. INTRODUCTION**

The National Land Commission (NLC) is an independent institution established under Chapter 5 of the Constitution of Kenya, 2010. It is brought into operation through The National Land Commission Act, 2012.

The Act makes provision for the functions and the powers of the Lands Commission, qualifications and procedures for appointment to the Commission and gives effect to the objects and principles of devolved government in land management and administration.

The Ministry of Lands, Housing and Urban Development has its functions stipulated in Article 6 of the Land Act. Despite the introduction of a Lands Commission in the institutional framework of land administration and management, the Ministry retains the duty of running and maintaining land registries countrywide and will continue to have presence at national and county level.

The Land Development and Governance Institute (LDGI) sought to determine citizens' perception on the relations between the Commission and the ministry as well as gauge citizens' understanding of the their functions and mandate.

### **1.1 About the score card**

This scorecard aimed at gauging citizens' perception of land governance in the country with the introduction of a Lands Commission to the institutional framework of land administration and management over the past year.

### **1.2 Objectives**

The main objective was to determine citizens' perception of relations between the Ministry of Lands and the National Land Commission. The specific objectives of the study were;

1. To determine citizens' interaction with the Commission
2. To assess the citizens' awareness of the distinction of functions between the Lands Ministry and the Commission
3. To collect citizens' views on the turf wars between the Lands Ministry and the Commission

## 2. FINDINGS

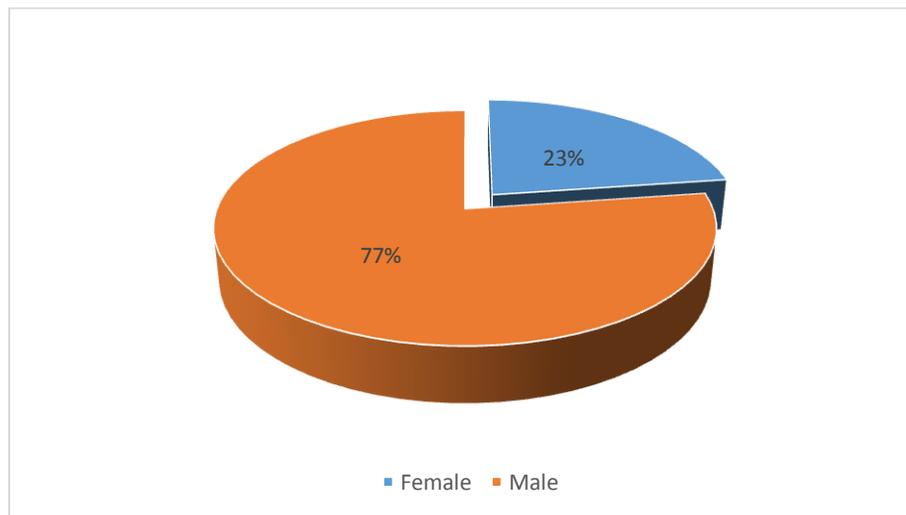
### 2.1 Data sources

The study, conducted between 22<sup>nd</sup> April and 20<sup>th</sup> May 2014, utilized data collected from eight hundred and nine (809) respondents interviewed across 27 counties (Kiambu, Muranga, Nyeri, Kilifi, Mombasa, Taita-Taveta, Embu, Isiolo, Kitui, Makeni, Meru, Nairobi, Kisii, Kisumu, Migori, Kajiado, Laikipia, Nakuru, Uasin Gishu, Bungoma, Kakamega, Machakos, Kirinyaga, Nyandarua, Homabay, Narok and Kwale).

### 2.2 Gender of respondents

From the population sample, 23% were female while 77% were male as shown in Figure 2.1 below.

*Figure 2.1: Gender of respondents*

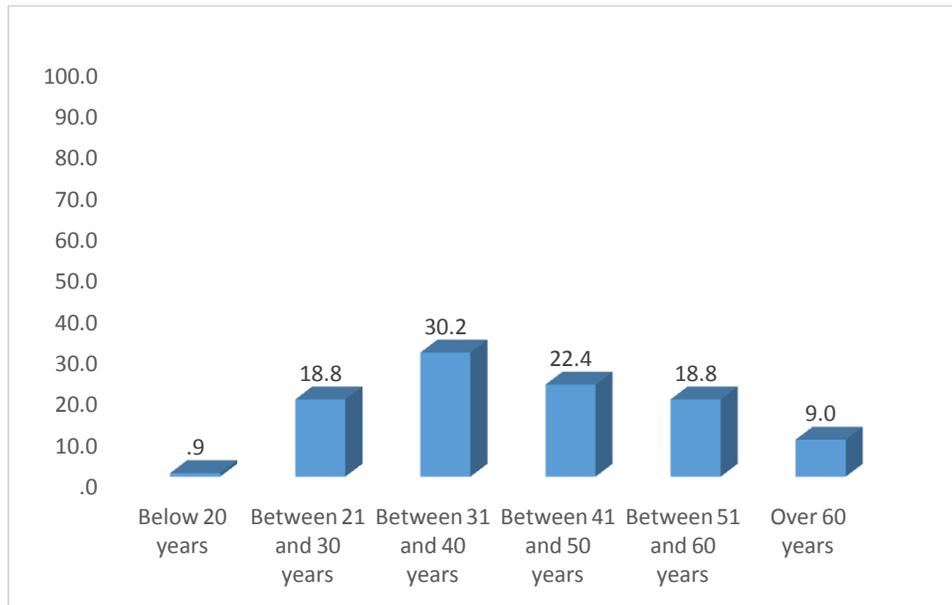


*Source: Survey data, May 2014*

### 2.3 Age of the respondents

From the total number of interviewed respondents, a majority were aged between 31-40 years (30.2%), followed by those aged between 41-50 years (22.4%). 18.8% of the respondents were aged between 51 to 60 years. The respondents above 60 years and below 30 years of age accounted for 9.0% and 19.7% respectively. This is shown on Figure 2 below.

*Figure 2.2: Age of the respondents*

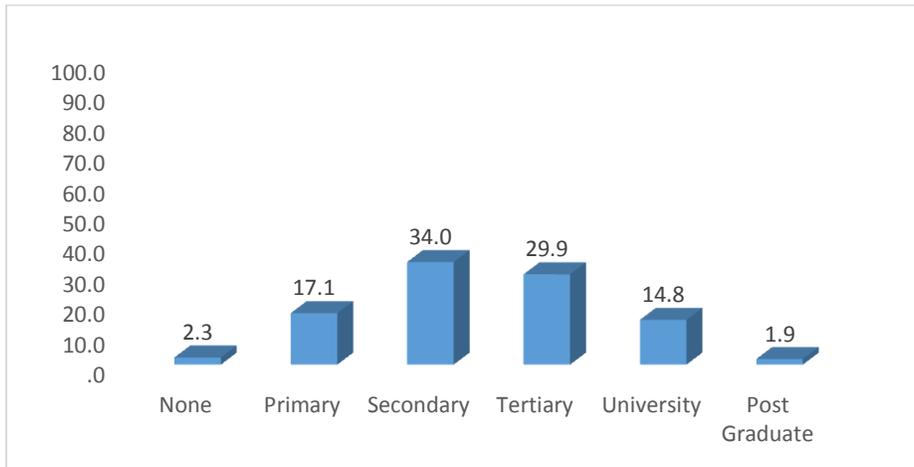


*Source: Survey data, May 2014*

#### **2.4 Level of education**

Out of the respondents interviewed, 80.6% had at least attained secondary education (34% - secondary education, 29.9% - tertiary education, 14.8 – university education and 1.9% - post-graduate education). 17.1% of the respondents had attained primary education and 2.3% had no education.

*Figure 2.3: Level of education*

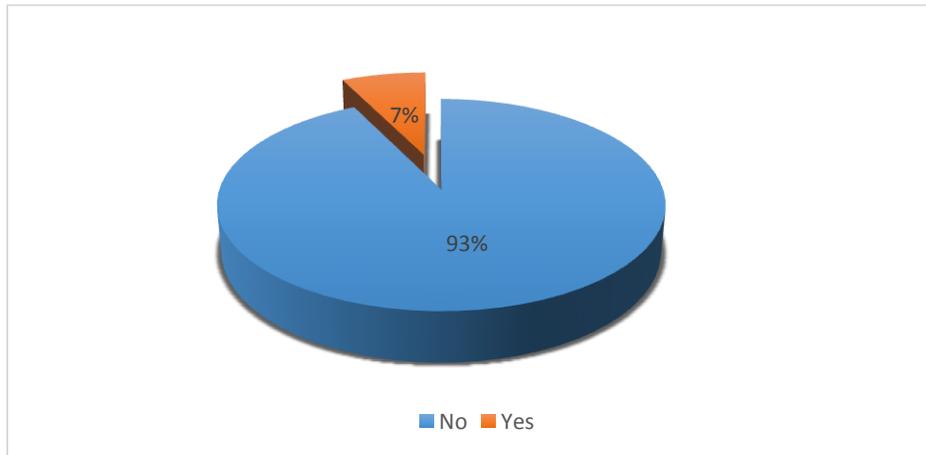


*Source: Survey data, May 2014*

### **2.5 Interaction with the National Land Commission**

Majority of the respondents interviewed (93%) had not interacted with the Commission while only 7% had as shown in the Figure 2.4 below.

*Figure 2.4: Interaction with the National Land Commission*

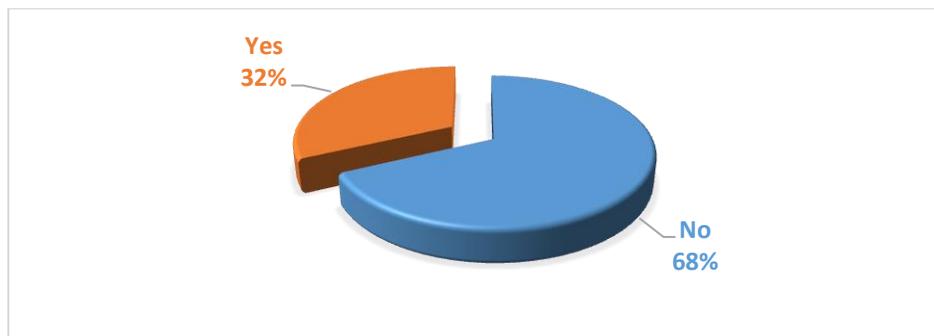


*Source: Survey data, May 2014*

## 2.6 Awareness of the functions of the National Land Commission and distinction from the Ministry's functions

Figure 2.5 below shows that majority of the respondents interviewed (68%) did not know the mandate and functions of the Commission while 32% were able to state at least one of its functions with the most common one being the management of public land on behalf of the national and county governments. However, respondents lacked clarity on the separation of functions between the Ministry and the National Land Commission.

*Figure 2.5: Awareness of the mandate of the National Land Commission*



*Source: Survey data, May 2014*

## 2.7 Suggestions on how to resolve differences between the Ministry of Lands and the National Land Commission

Most of the respondents felt that the Commission and the Ministry of Lands, Housing and Urban Development are public institutions set up to serve them and the differences between them were hampering service delivery. The general opinion by respondents was that the two institutions need to work together to improve service delivery. Respondents gave the following solutions to the feud between the Ministry and the Commission:

- ❖ Clear separation of roles between the two institutions and implementation of their respective mandates as stated in the Constitution.

- ❖ Dialogue between the two land administration and management bodies to sort out any differences and work together for the benefit of public to improve the land sector as a whole.
- ❖ A few felt that the Government should intervene and give clarity on the functions of the two institutions and a way forward that would ensure cohesion for the improvement of the land sector as a whole.

### 3. DISCUSSION

The lack of clarity over the separation of functions between the Ministry and the Commission is caused by the numerous conflicting public statements made by the spokespersons from the Lands Ministry and the Land Commission, based on their interpretation of the existing law. The new land laws, analyzed against the Constitution and their respective clauses, leave room for uncertainty in a number of cases.

The National Land Commission derives its functions from Chapter 5 of the Constitution of Kenya, 2010 under Article 67 (2), which outlines the following functions;

- a) To manage public land on behalf of the national and county governments;*
- b) To recommend a national land policy to the national government;*
- c) To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;*
- d) To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;*
- e) To initiate investigations, on its own initiative .or on a complaint, into present or historical land injustices, and recommend appropriate redress;*
- f) To encourage the application of traditional dispute resolution mechanisms in land conflicts;*
- g) To assess tax on land and premiums on immovable property in any area designated by law; and*
- h) To monitor and have oversight responsibilities over land use planning throughout the country.*

In addition to these functions, Section 5 (2) of the National Land Commission Act, 2012, in accordance with Article 67 (3) of the Constitution of Kenya, 2010, gives the Commission the power to:

- a) On behalf of, and with the consent of the national and county governments, alienate public land;*
- b) Monitor the registration of all rights and interests in land;*

- c) *Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose for future generations;*
- d) *Develop and maintain an effective land information management system at national and county levels;*
- e) *Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and*
- f) *Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.*

Section 5 (2) further provides that ‘despite the provisions of this section, the Commission shall ensure that all unregistered land is registered within ten years from the commencement of the National Land Commission Act’.

A careful look at the above begins to show some divergence between the larger constitutional statements and the scope defined by Statute. Moreover, provisions in Section 5 (1) (b) and 5 (3) introduce further challenges of expectation by appearing to call upon the Commission to both monitor and execute matters of land registration.

On the other hand, Section 6 of the Land Act, 2012 bestows the following functions upon the Ministry of Lands presided over by the Cabinet Secretary;

- a) *Develop policies on land, upon the recommendation of the Commission.*
- b) *Facilitate the implementation of land policy and reforms.*
- c) *Coordinate the formulation of standards of service in the land sector.*
- d) *Regulate service providers and professionals, including physical planners, surveyors, valuers, estate agents, and other land related professionals, to ensure quality control.*
- e) *Monitor and evaluate land sector performance.*
- f) *Through the departments in the ministry, be responsible for land registration (the Lands Department), land survey (the Department of Survey) and spatial planning (the Department of Physical Planning).*

In its Section 134 (1), the Land Act requires the Land Commission to implement settlement programmes on behalf of the national and county governments. This causes further confusion given that the Act did not repeal the Land Adjudication and the Land Consolidation Acts which both put this mandate under the Department of Land Adjudication and Settlement which is under the Lands Ministry, essentially leaving this under the Lands Cabinet Secretary. This therefore sets the stage for direct conflict between the Land Commission and the Lands Ministry.

The Land Registration Act, 2012, in section 7. (1) states that:

*7. (1) there shall be maintained, in each land registration unit, a land registry in which there shall be kept—*

*(a) a land register, in the form to be determined by the Commission*

However, Section 110 of the same act states that

*110. (1) the Cabinet Secretary shall make regulations prescribing anything which may be prescribed under this Act generally and for the better carrying into effect the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—*

*(b) the manner and form of the registries of land, the procedures to be followed by the registries and hours they are to be open for business; and*

*(d) particulars and format to be contained in a register or other document required to be kept under this Act*

Whereas section 7 of the Act gives the Commission jurisdiction over the ‘form’ of the land register, section 110 reverts this function back to the Cabinet Secretary. This inconsistency in the law creates an ambiguity that is a source of conflict between the two institutions.

Section 8 (a) of the Land Act, 2012 (management of public land) states that ‘In managing public land on behalf of the national and county governments, the Commission shall identify public land, prepare and keep a database of all public land, which shall be geo-referenced and

authenticated by the statutory body for survey'. On the other hand, Section 7 (1) (d) of the Land Registration Act, 2012 states that 'there shall be maintained, in each registration unit, a land registry in which there shall be kept any plans which shall, after a date appointed by the Commission, be geo-referenced'. While Section 8 (a) of the Land Act, 2012 directly places the geo-referencing of the database under the Ministry's survey department, Section 7 (1) (d) of the Land Registration Act, 2012 introduces the Commission into this function, thereby creating confusion over mandate.

On general power to make regulations, Article 160 (1) of the Land Act, 2012 states that:

*160 (1) The Commission or the Cabinet Secretary, where applicable, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing,*

The Act needs to specify the institution to be charged with making the specific regulations regarding the specific provisions of the Land Act and clarify on the applicability of the same.

There is need for Parliament to act with speed to align the land laws to the Constitution. Imperfections and non-clarity illustrated through the above Articles of the Constitution and Sections of the laws should be dealt with through careful amendments.

#### 4. CONCLUSIONS

The Ministry of Lands, Housing and Urban Development and the National Land Commission both have a significant role to play under the new institutional framework of land administration and management in the country. However, a majority of service seekers have not interacted with the Commission and do not know its mandate or functions. The lack of clarity on the functions of the Commission can be attributed to its lack of presence at county level.

From responses, Kenyans are not keen on the tussle between the Ministry and the Commission but are mainly concerned with improvement of service delivery in the various land institutions. Citizens feel that the Ministry and the Commission should work together towards providing better services in Land offices. A clear separation of roles and mandate of new land institutions would ensure clarity on the functions and hence coherence and complementarity in serving Kenyans.

## **5. RECOMMENDATIONS**

### **5.1 Review and harmonization of conflicting sections of the Land Act, 2012, the Land Registration Act, 2012 and the National Land Commission Act, 2012**

The Land Laws (the Land Act, 2012, the Land Registration Act, 2012 and the National Land Commission Act, 2012) should be reviewed to be in harmony with the Constitution and to eliminate inconsistencies in legal framework of land administration and management in the country. Parliament should also ensure that land laws enacted in future have clarity and conform with the constitutional provisions key to efficient land administration and management in the country, and in particular those contained in Articles 40 and 67. This will provide an enabling environment for the new land institutions to work in complementarity. Moreover, a resolution mechanism should be put in place to manage any differences that may arise between the institutions without undermining service delivery.

### **5.2 Decentralization**

The National Land Commission should devolve its services as per the National Land Commission Act, 2012. While there is need to set up these institutions at an early moment, a good mapping of the institutions already existing at County level and their respective roles should first be undertaken so as to avoid an emergence of turf-driven conflicts between the new County level Land Commission organs and those of the County and Central governments already in place in the Counties.

### **5.3 Civic education**

The National Land Commission should conduct civic education campaigns across the country to create public awareness on their functions and mandate and give clarity on the separation of functions between the Commission and the Ministry of Lands. This will help in ensuring that citizens understand the Commission's roles hence easier access to land services.