



15TH LDGI LAND WATCH NOTE

LAND REFORMS: GAINS AND CHALLENGES FOUR YEARS AFTER THE PROMULGATION OF CONSTITUTION

The Promulgation of our constitution in August 2010 ushered in earnest the implementation phase of Kenya's land reforms. Years 2011 and 2012 saw the delivery of the first tranche of land laws (The Environment & Land Court Act, 2011; The Urban Areas and Cities Act, 2011; The Land Act, 2012; The Land Registration Act, 2012; and The National Land Commission Act, 2012) which were critical for our land administration and management. This was followed up by the putting into place of new institutions like the Environment and Land Courts and the National Land Commission. The Land Commission is currently busy establishing County Land Management Boards. As we went past four years of implementation, major sectoral gains had been made while some gains while some key challenges are yet to be navigated as noted below.

Gains

The two key institutional drivers; the Ministry of Lands, Housing and Urban Development and the National Land Commission have achieved/ have been attending to the below within the four years of implementation:-

- Enactment of new land laws
- Preparation of regulations to operate the new land laws
- Institutional restructuring
- Staff recruitment/ establishment of County Land Management Boards by the Land Commission
- Issuance of title deeds in parts of Coast region
- Establishment of a Titling Center at the Survey Field Headquarters at Ruaraka
- Reorganization of land records in Nairobi, Mombasa, Kwale and Kilifi land registries
- Computerization of land records (aspects such as securing land record offices, Titling Center sub-system, scanning, digitization in Ardhi House and Ruaraka)
- Commencement of recovery of grabbed public land
- Preparation of Community Land Bill, Evictions and Resettlement Bill and a new Physical Planning Bill
- Amendments to new land laws

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- Legal framework on historical land injustices

While gains in each of the areas above are appreciated, the Ministry and the Land Commission must note that the reported regular differences, public notices and counter-notices along with references of sectoral matters to courts of law for interpretation continue to cause public anxiety and erosion of confidence in their ability to provide reliable information and services to citizens and investors. Their chequered journey through the last one and half years has presented service seekers, and in particular land professionals, developers and lending institutions, with difficult moments. In a number of cases, this category of service seekers has lost big sums of money for transactions delayed or aborted due to the lack of clear institutional procedures or conflicting public information on the status of instruments, such as land leases, held in or registered through the Ministry.

The Institute therefore urges the two to try and bring an end to any real or perceived differences, cease blame games and focus on service delivery in the interest of this country. Leadership in each of the two institutions must appreciate that with our current constitutional and legal framework, their success in addressing Kenya's land sector needs will require that they work in complementarity to plan, estimate budgetary and staff requirements and implement programmes at national and county level.

Outstanding Challenges

But importantly, they need to begin to appreciate that the issues below will call for their concerted attention in conformity with our policy, constitutional and legal frameworks and public needs.

- 1. Computerization/ Land Information Management:** Putting in place a comprehensive Land Information Management System as opposed to ad hoc stand-alone sub-systems. This will require the installation of appropriate physical and e-infrastructure, the digitalization of existing land records (cadastral maps and ownership records) and the computerization of technical procedures of data collection, analysis/ processing, dissemination and storage. Without this, duplication of title deeds and opportunistic corruption will continue to dog the sector's service delivery processes overseen by the Ministry and the Commission. There is need for the Ministry and the Commission to appraise stakeholders on the broad work plan to the computerization of land records which hopefully reflects the various steps, phases and budgets and the roles of stakeholders at each stage for early buy-in.



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2. **Titling:** A comprehensive and systematic titling programme to ensure the completion of pending adjudication/ settlement programmes (Coast {Taita, Kwale, Lamu, Tana River}, Central {Kirinyaga}, Eastern {Makueni, Machakos, Kitui, Embu, Tharaka-Nithi, Meru, Isiolo}, Rift Valley, etc.) and the pending sub-divisions of company and cooperative farms and group ranches needs to be put in place. Communities keen on converting their community land to private ownership should also be facilitated once an appropriate legal framework is in place. In this regard, Institute appreciates government commitment to issue some 3 million title deeds during its tenure. But it would help if the details to this programme, including numbers of title deeds to be issued in each County and when, were shared with stakeholders for transparency and accountability.
3. **Land Use Plan:** We need to formulate an appropriate land use plan to guide rural and urban land use and development within the country as provided for under the land policy and the constitution. This plan needs to be fast-tracked before our rapid development invalidates any work done so far.
4. **Legal Framework to guide resolution of historical land injustices:** The National Land Commission is required to develop a legal framework to enable the resolution of historical land injustices for consideration and enactment by parliament within two years of its appointment in accordance with Section 15 of the National Land Commission Act. The two years end in February 2015. This framework is critical since it will help the country to address past and current historical land injustices in a formal and systematic manner.
5. **Alternative Dispute Resolution Framework:** Kenya needs to develop and implement an Alternative Dispute Resolution framework to complement our formal courts. The many boundary and land disputes around the country clog and overwork the courts and cost the country disproportionate sums of money. A well thought out alternative dispute resolution framework will help the country to address the many pending cases that need not go to court and save on development time and costs.
6. **Need for more Environment and Land Courts:** We need to establish more environment and land courts. There are only 16 such courts spread within Kenya's 47 Counties so far, leaving most citizens with poor access to justice whenever they have pertinent cases. Resources need to be sourced and put into the establishment of more of these courts. The resources should also be used to improve the professional capacity of judges to these courts so as to broaden their view and understanding of the technical/ thematic issues involved.
7. **Rules of procedure to guide the review of irregularly allocated grants of land:** The development and publication of rules of procedure to guide the review of grants of

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public land previously irregularly or illegally issued needs to be developed. Current efforts by the Land Commission in this regard are rather ad hoc and could get selective and politicized hence attracting litigation which could cost the country large sums of money. Such costs could spiral and lead to diversionary and obstructive public debate.

- 8. Pending Community Land Bill:** The pending Community Land Bill and the Evictions and Resettlement Bill need to be expedited through Cabinet and Parliament. The Fifth Schedule of our constitution provides a 5 year timeline for the enactment of a Community Land Bill. This timeline will end in August 2015 and we now have ten months left. With parliament's calendar interrupted by routine recess and public holidays, one can see that we have hardly six working months. The little time left could compromise the quality of our community land law which needs good public and stakeholder input and buy-in. Community land law is critical in providing guidance to the exploration and exploitation of minerals and mineral oils within community land holdings, among other undertakings on such land.
- 9. Revision of sectoral statutes:** Article 68 (b) provides for the revision of sectoral land use laws for conformity with the land policy principles stipulated in Article 60 (1) of our constitution. To this effect, we are yet to revise our Planning, Survey, Valuers and the Land Control Act, among others. Some of these laws still make references to offices and jurisdictions long changed under the new constitution and need appropriate revision. These contradictions could be used for legal mischief.
- 10. Need to simplify and reduce transaction time:** The Ministry of Lands should work with the Land Commission and County Governments to simplify and reduce time taken in receiving, processing and approving development applications around the country. Transparency and accountability in these processes (sub-division, amalgamation, change of change of user, construction and extension of leases) need to be ensured. Lack of clear institutional processes and procedures in this regard is a disincentive to development and is costing this country dearly. Local and foreign real estate investors find this challenge rather limiting.
- 11. Need for clarity in processing of leasehold grants:** The position of the Lands Ministry in the matter of processing leaseholds derived from public land and that of the Land Commission are yet to converge. Each seeks to exercise jurisdiction. This has led to public confusion as the two issue conflicting messages to Kenyans. Leaseholds in Kenya constitute major parts of our urban areas and therefore account for a very major fraction of our real estate portfolio. These two institutions should therefore make efforts to issue a common message to Kenyans on the future of processing leasehold grants. The matter of sub-division, change of user and extension or renewal of leases

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derived out of public land should no longer be left to conjecture but be guided by clear institutional procedures and timelines to which specific people within the Ministry and/or Commission should be held accountable.

- 12. Public Awareness:** There is need to escalate public awareness particularly on critical issues that touch on the rights of women/children/minorities, protection of community land and the allocation and protection of public land. Without this, devious owners, officers and land dealers will continue to exploit the information gap noted with land owners, leaders and communities around the country.

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