

2016

LDGI Survey: Status of Public Land Management in Kenya

In February 2016, LDGI conducted a survey on the status of public land management in Kenya, targeting public institutions holding large tracts of land and County Land Management Boards (National Land Commission agents at the devolved level). This report contains the findings and conclusions from the study, and recommendations from the Institute on how to improve management of public land in Kenya.





Full Report

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LDGI Survey on Status of Public Land Management in Kenya

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Executive Summary

Public land is a resource that should be effectively managed in the public's best interest in line with provisions of the Constitutions of Kenya and the Land Act. The management framework governing land use and development decisions on public land should ensure protection and sustainable management of the land. Despite these provisions in law, recent media reports point to resurgence of public land grab.

The Land Development and Governance Institute commissioned this research study to establish the status of the public land management in Kenya. The scope of the study covered 21 counties around the country. The survey sought to determine the status of the public land management by targeting public institutions, County Land Management Boards (CLMBs) and the general public.

From the survey, 77% of the institutions interviewed were aware of the extent of their land while 23% were not. Of those who knew the extent of their land, only 41% had proof of ownership of the parcels of land held (Hard copy maps, Survey data, Digitized maps, Development plans, Title deeds/title certificates/lease certificates, Allotment letters). With regard to steps public institutions had taken to safeguard their land, 71 of the 88 institutions sampled had planned their land accordingly. 71 out of the 88 institutions sampled had surveyed their land and 78 had clearly fenced their property. From the analysis of the data collected, 40% of the interviewed officers reported having encountered an incident or attempt to irregularly or illegally acquire their land.

Most of these public institutions (62%) are aware of the National Land Commission's (NLC's) role in the management of public land and had interacted with the commission to process ownership documents, solve encroachment disputes and repossess grabbed land. Some of these institutions had also interacted with the Commission at seminars and workshops on public land management.

The study also visited 9 CLMBs where 7 CLMBs confirmed having an inventory of the land in their respective counties. However, most of these inventories were lists of public institutions within the respective counties and not geo-referenced maps and the corresponding registration

status as required by law. CLMBs cited the main threats to public land as encroachment by members of the public (e.g. putting up of informal structures and development along road reserves) and allocations to powerful individuals as major threats to public land. With these threats, CLMBs have taken steps to protect public land from grabbing. Repossessing already grabbed land was one of the major steps taken by CLMBs.

The study also interviewed members of the public seeking to get views on the status of public land management. 89% of the respondents were aware of public land as classified in the Constitution of Kenya and could comfortably give examples. With regard to incidences of irregular or illegal acquisitions, 26% of the respondents were aware of attempts to irregularly acquire public land in their counties but 74% were not. 85% of those who had witnessed attempts to irregularly or illegally acquire public land did not take any steps to avert the situation. The 15% who took action against the attempts to irregularly acquire public land either reported the matter to the specific institution or reported to authorities. Majority of the respondents (65%) were not aware of the National Land Commission. Additionally, only 8% of those who were aware of NLC's function to manage public land had interacted with the commission in regard to land management and protection from land grab.

The survey also took suggestions from the CLMBs, institutions and individuals on the role the various stakeholders can play in protecting public land. Views shared are in the main report.

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1. INTRODUCTION

The land sector in Kenya has in recent years undergone changes through the implementation of reforms that have ushered in new land laws and new governance institutions. The current institutional framework in land administration and management involves sharing of functions between the Ministry of Lands and the National Land Commission, with the latter's main mandate being that of managing public land. Three years into the Commission's existence, the gains in land governance as expected from those who proposed the institution are yet to be fully felt by the public. This has in the recent past been evidenced in the Institute's Scorecard reports.

Chapter Five of the Constitution of Kenya defines public land as land occupied by state organs, government forests, game reserves and national parks, specially protected areas, roads and road reserves etc. The National Land Commission is tasked with the main function of managing public land on behalf of national and county governments. The National Land Commission Act reinforces this function and tasks the commission with ensuring that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations. Additionally, the National Land Commission is charged with identifying public land, preparing and keeping a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey (the Land Act 2012).

LDGI set out to establish the status of public land in Kenya with regard to how it is managed, challenges in the management, and the main threats. The survey targeted public institutions holding and managing large tracts of land (Schools, research institutions, hospitals) and County Land Management Boards (National Land Commission agents at county level) - in the light of recent reports on the grabbing of public land.

1.1 Objectives

The main objective of this survey was to establish the status of public land management. The specific objectives were:

1. To assess the progress made in the development of an inventory of public
2. To identify the challenges that public institutions and the National Land Commission/ County Land Management Boards are encountering in the management of public land
3. To get public views on public land management

1.2 Scope of study

The data used in this study was collected between 29th January and 17th February 2016. The data was collected through face to face interviews with managers of public institutions (head teachers, curators, directors, managers etc.), members of County Land Management Boards, and citizens seeking services at lands offices. The survey took place in 21 counties¹ spread across the different regions of the country. Below is a breakdown of the sample of the respondents:

Table 1: Respondents by type

	Respondent type	Number
1.	Institutions	88
2.	CLMBs	18
3.	Individuals	254

Source: survey data January 2016

¹Nairobi, UasinGishu, ElgeyoMarakwet, Embu, HomaBay, Kajiado, Kakamega, Kericho, Kirinyaga, Kiambu, Kilifi, Kisii, Kisumu, Kitui, Machakos, Meru, Mombasa, Nakuru, Nyeri, Siaya andTharaka-Nithi Counties

2. FINDINGS AND DISCUSSIONS

2.1 Public Institutions

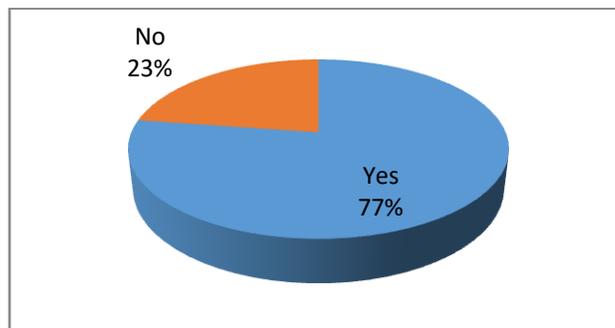
Public institutions in Kenya comprise of government ministries, parastatals, institutions of learning and research institutions. These institutions are individually responsible for managing the land on which they reside (classified as public land), thereby forming the main target of this study.

Notably, while public institutions at county level are generally open to sharing information about land under their management, some national offices exhibited reluctance to share information about their land. Some institutions at county level also exhibited high levels of bureaucracy in giving information.

a) Extent of land owned by public institutions

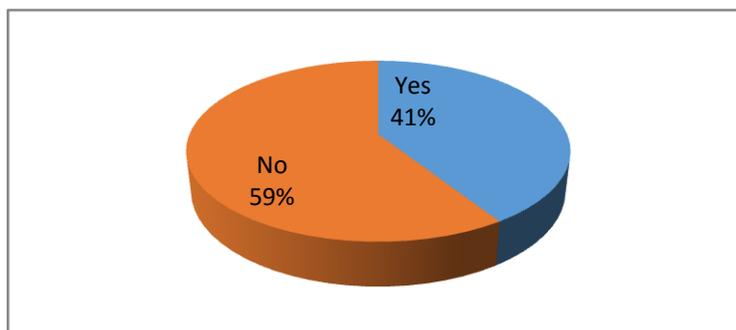
From the study, it emerged that a majority (77%) of the managers of public institutions are aware of the extent of land under their management. However when asked whether they had the documentation to support this, less than half (41%) of those who claimed to know the extent of their land had any form of documentation (Hard copy maps, Survey data, Digitized maps, Development plans, Title deeds/title certificates/lease certificates, or Allotment letters). Figure 1 below summarizes these findings.

Figure 1: information on the extent of land owned



Source: survey data January 2016

Figure 2: Documentation to prove ownership

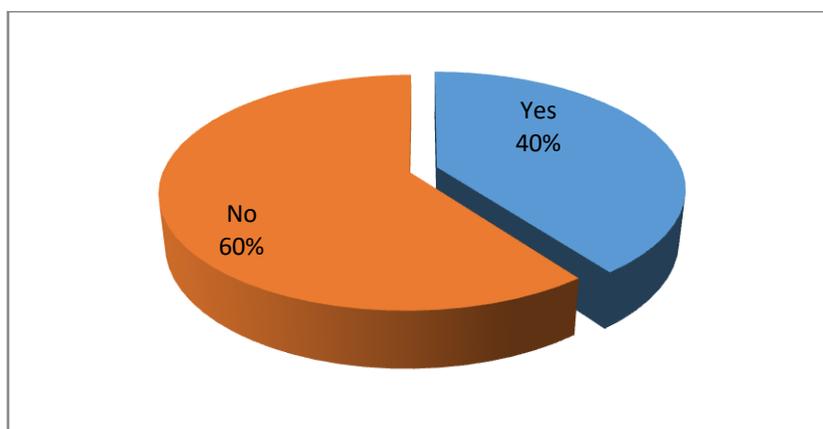


Source: survey data January 2016

b) Incidences of irregular and illegal acquisition of land

Irregular and illegal acquisition of land manifests itself through different ways such as encroachment, invasion by squatters, land grabbing, cultivation and herding among others. From the analysis of the data collected, 40% of the interviewed officers stated that the institution they manage had a previous incident of irregular acquisition as in Figure 3 below.

Figure 3: Incidences of irregular or illegal acquisition of land



Source: survey data January 2016

The encroachment of public land by members of the public mainly takes shape through setting up of informal or semi-formal structures on public land in an attempt to determine whether the management is keen on protecting their land. This was the case for road reserves. Cases of squatters invading and settling on public land are more common in areas neighbouring forests (cases of squatters were reported in Kaya and Mandunguni Forests in Kilifi County). Additionally, there have been isolated cases where one public institution encroaches on the land belonging to another public institution.

c) Approaches to safeguard public institutions from land grab

In the recent past, irregular acquisition of land belonging to schools, hospitals and research institutions has re-emerged as a threat to public land. Among the first steps that would go a long way in safeguarding public institutions from the threat of land grab is surveying the land, putting up a boundary fences, and planning the land effectively. Where possible, physical development, including cultivation, does also help. Out of the 88 institutions sampled, 72 of them had adopted planning as a protection method to their land, 71 had surveyed their land and 78 had adopted fencing as a protection strategy. Table 2 below gives a summary of this.

Table 2: Approaches to safeguard public institutions from land grab

Land protection approach	No. of institutions (out of 88)
Planning	72
Surveying	71
Fencing	78

Source: survey data January 2016

Fencing of land was singled out as the most effective strategy for protecting land against illegal acquisition. Most of the institutions that had perimeter fences and walls had fewer incidences of grabbing and encroachment. This coupled with other measures such as putting up of signage

and use of guards to regularly patrol the property offer practical options to safeguarding public land. Unused/undeveloped land appeared to be more susceptible to encroachment and land grab and managers of public institutions suggested that these institutions should ensure that all land under their management is put to productive use. Public institutions managing environment and forest resources proposed community involvement through sensitization as a step that will help in protection of public land. Additionally, the interviewed officers suggested setting up of estate departments in public institutions managing large parcels of land and prosecution of trespassers.

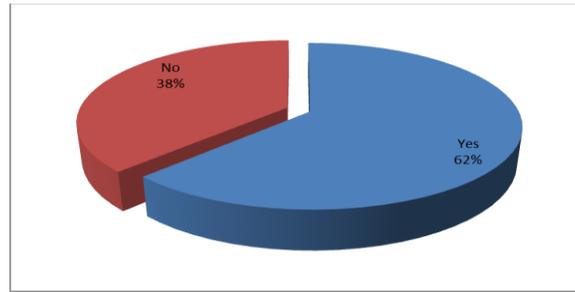
d) Challenges of public land management

Officers interviewed in this survey identified slow processing of ownership documents (Title deeds/title certificates/lease certificates, or Allotment letters) as a key challenge in managing public land. Lack of political goodwill was also cited as a challenge with many institutions observing that politicians pose the main threat to public land. Limited finances for fencing, employing guards and processing titles further hindered any efforts towards protecting public land.

e) Interaction with the National Land Commission

The National Land Commission is mandated by the constitution to manage public land on behalf the national and county governments. The study established that 62% of the institutions were aware of the role of NLC to manage public land and 38% were not as shown in figure 4 below.

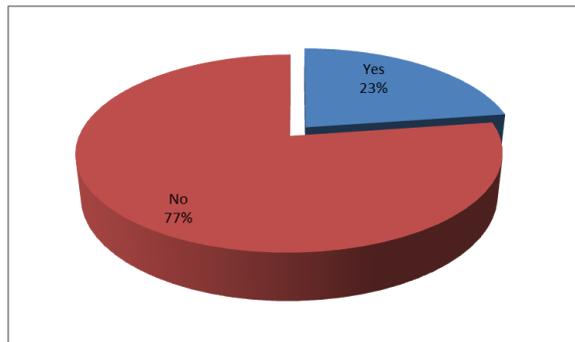
Figure 4: Awareness of NLC mandate to manage public land



Source: survey data January 2016

77% of the public institutions that participated in this survey had not interacted with the National Land Commission in regard to public land management while only 23% had interacted with the NLC (Fig. 5 below). The few institutions who had interacted with the NLC had sought assistance in: processing of ownership documents, solving encroachment disputes, and repossession of grabbed land. Public school officers had interacted with the Commission through seminars and workshops on public land management.

Figure 5: Interaction with NLC



Source: survey data January 2016

f) Suggestions on management of public land

The interviewed officers were prompted to give their suggestions on the best ways through which different stakeholders- county governments, NLC and the members of public, would contribute towards protection of public land from irregular and illegal acquisition.

Managers of public institutions proposed that county governments should: formulate policies and laws that will ensure protection of public land; collaborate with public institutions to assist in protection of public land; and sensitize the public on the need for protecting public land.

The interviewed officers additionally suggested that the National Land Commission should: provide technical support in terms of assisting in survey and acquisition of documents; issue leases through County Land Management Boards; reclaim grabbed land; monitor county governments on land transactions; ensure sustainable use of public land; revoke irregularly acquired titles; and promote policies that will ensure sustainable management of public land.

The public institutions also called upon the public to respect boundaries of public institutions and carry out due diligence before buying land.

2.2 County Land Management Boards

County Land Management Boards are tasked by the National Land Commission Act to perform all of the Commission's duties at the devolved level. CLMB members are established by the NLC in consultation with county governments. These boards comprise of: not less than three and not more than seven members appointed by the Commission; a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the governor. The secretary to the board is appointed by the Commission.

In the 21 counties visited for this survey, only three (Nairobi, Mombasa and Kisumu) had no CLMB in place at the time of the study. While public institutions within Nairobi can directly get in touch with the National Land Commission at Ardhi House, those in Mombasa and Kisumu were disadvantaged by having only a representative of the commission (the CLMB secretary) within the county.

Chapter Four of the Constitution of Kenya on the Bill of Rights (Article 35) gives every citizen the right of access to any information held by the state. A key observation on the part of CLMBs is the lack of openness with regard to divulging information on public land. Out of the 18 CLMBs approached for information on public land within the county, only 9 CLMBs gave information. Most of the CLMB members declined to give information on public land within the county, citing lack of permission from the National Land Commission's CLMB Coordinator. This portrays negatively with respect to transparency and accountability requirements for public officers, more so those dealing with public resource management.

a) Inventory of public land

Out of the nine (9) CLMBs who provided information, seven (7) confirmed that they have some form of inventory of the public land within their counties. However most of these inventories were lists of public institutions within the county (without acreages) and maps of the land without an indication of registration status; only one CLMB had made efforts to map out the public land on a georeferenced platform.

CLMBs which did not have any inventory in place reported to be currently taking steps to establish an inventory which included obtaining maps, surveying and engaging with public institutions that own sizeable tracts of land.

b) Threats to public land

Public land, as observed by the CLMBs is experiencing several forms of threats. The major threats as put forward by CLMBs included;

- Encroachment by members of the public, for example, human settlement along road reserves.
- Invasion by squatters
- Irregular acquisition by private developers and powerful individuals
- Corruption in lands offices
- Public institutions encroaching on land belonging to other public institutions (e.g. in Kitui where the Ministry of Agriculture allegedly encroached on land belonging to Kenya Medical Training College, KMTC)

c) Measures to protect public land

CLMBs have taken various steps to protect public land from grabbing. Repossession of grabbed land is one of the main approaches the CLMBs are employing.

The CLMBs have also embarked on assisting public institutions to obtain documentation for their land in form of title deeds and lease certificates. Public schools are the most active participants in this approach.

Additionally, CLMBs are making efforts to increase public awareness on the issue of public land management. The Board at Makueni, for instance, engages members of the public through *barazas* and distributes pamphlets to educate them on its mandate as well as the need for

protecting public land. However there was no evidence of a systematic campaign against land grab.

d) Challenges in public land management

The efforts of the CLMBs to ensure protection of public land management are marred by various challenges including:

- Lack of proper coordination between national and county governments which slows down efforts to enhance management of public land at the county level
- Inadequate support from the county government to carry out their mandate
- Lack of political goodwill at the county level
- Lack adequate finances and manpower to run their projects

e) Suggestions on management of public land

The interviewed CLMB members were prompted to give their suggestions on the best ways through which different stakeholders- public institutions, county governments, NLC and the members of public would contribute towards protection of land from grabbing.

CLMBs put forward that public institutions should ensure their land is planned, surveyed, registered and clearly fenced. The ownership documents are key in protecting public land. Additionally, CLMBs called upon public institutions to apply principles of sustainable land use and encouraged reporting of cases of grabbing to the NLC/CLMBs for immediate action to be taken.

To the county governments, CLMBs proposed facilitation through provision of technical and financial support, political goodwill in management and protection of public land, and upholding of integrity within the devolved units.

The CLMBs also called on the National Land Commission to fast-track the establishment of a National Land Information Management System that would greatly improve the boards' efficiency and effectiveness in carrying out their duties.

Board members interviewed called upon the public to report all incidences of land grab to the NLC/CLMBs and perform due diligence before buying land.

2.3 Members of the Public

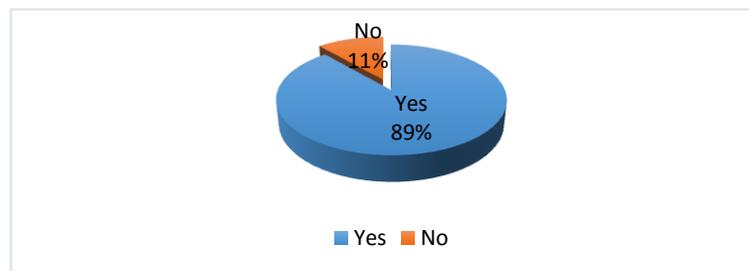
Article 69 of the Constitution of Kenya calls upon all citizens to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

In addition to the interviews with public institutions and CLMBs, the study also interviewed two hundred and fifty four (254) individuals seeking services at the land offices.

a) Awareness on public land

89% of the respondents had knowledge about land classified as public land under the Constitution of Kenya and could readily give examples. 11% of the respondents were not aware of the public land as shown in the figure 8 below.

Figure 6: Public land awareness



Source: survey data January 2016

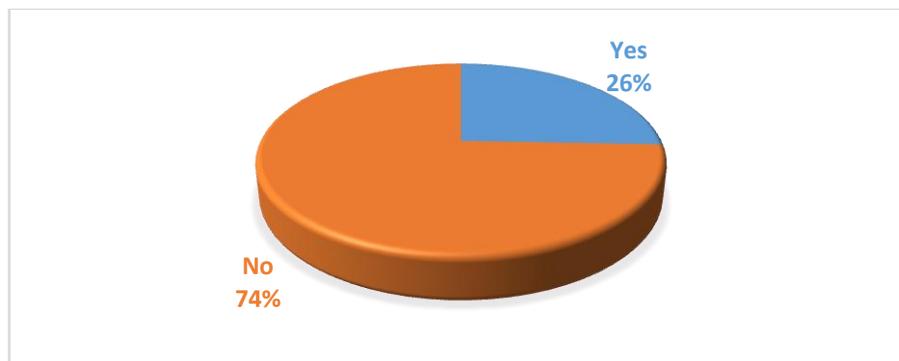
Examples of the public land highlighted by the respondents include:

- Public schools
- Public hospitals
- Forests
- Roads
- Public play grounds
- Show grounds
- Land belonging to parastatals

b) Incidences of irregular and illegal acquisition of public land

26% of members of the public interviewed for this survey were aware of incidents where attempts were made to irregularly or illegally acquire public land in their counties. 74% of the respondents had not encountered this as shown in figure 9 below.

Figure 7: Cases of irregular acquisition



Source: survey data January 2016

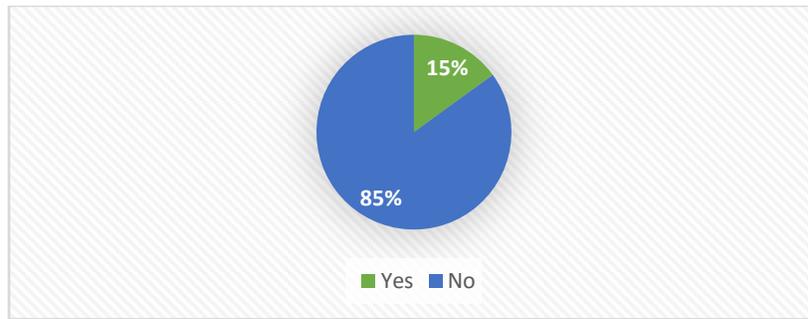
Some of the irregular or illegal acquisition cases narrated included:

- Encroachment by the public e.g. kiosks on road reserves, squatters
- Encroachment by other public institutions
- Irregular acquisition by (powerful) individuals
- Irregular acquisition by private institutions

c) Actions taken by the public

85% of those who had witnessed public land being irregularly or illegally acquired did not take any action to stop this while 15% took steps to report the incidents as shown in the figure 10 below.

Figure 8: Action taken by the public



Source: survey data January 2016

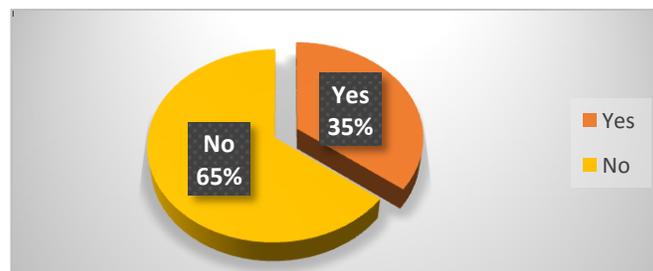
d) Threats to public land

The biggest threat to public land as identified by the respondents was that of corruption in land administration and management. Managers of public institutions who allow land to be irregularly acquired or illegally occupied, and brokers who knowingly sell grabbed land were also identified as a threat to public land.

e) Interaction with the NLC

Majority of the respondents (65%) were not aware of the National Land Commission function to manage public land while 35% were aware as illustrated in figure 11 below.

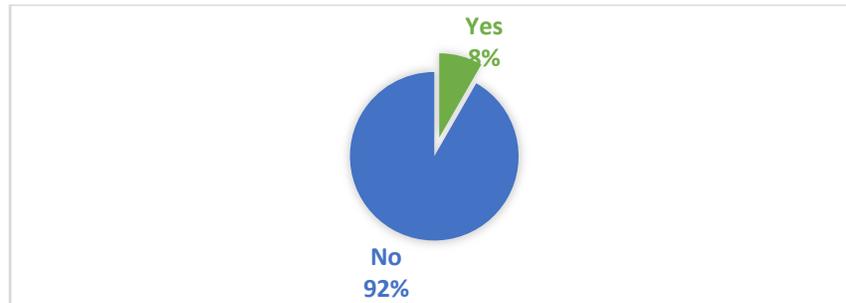
Figure 9: Awareness of NLC function to manage public land



Source: survey data January 2016

Only 8% of the interviewed respondents who were aware of NLC function to manage public land had interacted with the commission with regard to land management and protection from land grab as shown in figure 12 below.

Figure 10: Interaction with NLC



Source: survey data January 2016

Majority of those who interacted with the NLC sought assistance in resettlement or through CLMBs at the county level.

f) Suggestions on management of public land

The respondents were prompted to give their suggestions on the best ways through which different stakeholders- public institutions, county governments, NLC and the members of public would contribute towards protection of public land from grabbing. Below are the suggestions that came out of the interviews.

Members of the public recommend that public institutions ensure their land is clearly fenced and marked, with proper documentation (title deeds/ certificates of title/ leases) as a step towards protecting their land from irregular acquisition and illegal occupation. Developing idle land was also suggested as a way to put off squatters and curb public encroachment.

Respondents also suggested that county governments help public institutions from land grab through assisting in fencing and acquiring title deeds as well as enactment of planning and development regulations that will safeguard public land.

Members of the public called upon the National Land Commission to carry out its functions of repossessing grabbed land, and to educate the public and institution managers on the need for sustainable management of public land.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1 Conclusions

Public land in Kenya is under different kinds of threats ranging from grabbing, encroachment as well as invasion by squatters. Public institutions have lost massive tracts of land over the years thereby necessitating the formulation of strategies to avoid further loss as well as reclaim lost land.

The lack of an inventory of public land, both at national and county level, is a major hindrance to the protection of public land. Once such an inventory is established, regular checks and updating will go a great way in ensuring protection of public land.

This study, having interacted with the public institutions, CLMBs and the public concludes that more effort needs to be put in place by all the stakeholders in land. The institutions, for instance, have all experienced challenges in managing and protecting their land from grabbing. However, simple practical strategies such as fencing and use of signage to reduce instances of illegal acquisition of public land have not been effectively employed by all public institutions.

Accessing information from CLMBs which were established to devolve NLC services to the counties is difficult for members of the public. This poses new challenges in management of public land as the lack of approachability and openness is likely to deter members of the public from reporting any irregular or illegal acquisition of land. Making information open to public and maintaining free and effective communication channels will go a long way in gaining public goodwill and support. Furthermore, not all counties have operationalized the Boards. This has hindered dispensation of services to the public, and continues to expose public land to the threats of grabbing and encroachment. The Boards are also not displaying independence from the NLC.

Members of the public pose a threat to public land through invasion of wildlife habitats and encroachment on forests for agriculture and development. Conflict over ownership of land was also evident between various public institutions. Such cases can easily be avoided with proper demarcation and documentation of land.

3.2 Recommendations

Based on the study findings, LDGI proposes the following recommendations with respect to management of public land in Kenya:

- 1) **Establishment of an inventory of public land:** to ensure protection of public spaces, it is necessary for the NLC to prioritize the establishment of an inventory on public land. This will ensure that the extent of land under the Commission's management is well known and any attempt to irregularly acquire or illegally occupy it will be easily detected and addressed. This information should be easily accessible by the public.
- 2) **Need for public institution managers to take effective measures to protect land under their management:** Public institutions should ensure they are in possession of all necessary ownership documents (title deeds/certificates of title/leases, and accompanying maps). In addition to this, managers of these institutions should work to clearly fence and put up proper signage around the property. As much as possible, they should commit land under their management to physical development or cultivation to deter speculators.
- 3) **Ministry of Lands to prioritize titling of all public land:** The Lands Ministry should fast-track surveying, planning and subsequent titling of all public land. The Ministry should delineate specific actionable timelines and roadmaps for this and share with the public and public institutions in the spirit of accountability. Budget resources allocated to the ministry should take this into account as well.
- 4) **NLC to provide technical support to institutions and sensitize citizens on management of public land:** The NLC should provide public institutions with the technical support/advise necessary to plan, obtain letters of allotment, survey and register their land. It should also embark on sensitization campaigns to promote sustainable management of public land by institutions. This should also be accompanied by a public awareness campaign on the need to protect public land in the country.

5) County Land Management Boards and public institutions should embrace the principle of open information sharing: Many CLMBs were found unwilling to share information on the state of affairs on public land under their watch. This is counter to their mandate which is basically to ensure the protection of such land which would be best done where such information is freely shared with stakeholders. Some public institutions were equally uncooperative in giving information on management of their land. All public institutions should respect provisions of Article 35 of the Constitution of Kenya and exercise openness. This will ensure public goodwill and support in safeguarding public land.

ANNEX:

LDGI Survey on the Status of Public Land Management: List of target Public Institutions

1. Kenya Wildlife Service (KWS)
2. Kenya Forest Service (KFS)
3. Kenya Agriculture and Livestock Research Organization (KALRO)
4. Agricultural Development Corporation (ADC)
5. Rift Valley Railways (RVR)/ Kenya Railways
6. Kenya Airports Authority (KAA)
7. Kenya Ports Authority (KPA)
8. Kenya Medical Training College (KMTC)
9. Kenya Secondary School Heads Association (KESSHA)
10. Kenya Primary School Heads Association (KEPSHA)
11. Kenya National Highways Authority (KeNHA)
12. Water Authorities (WARMA, Water Resource Management Authorities, Water Services Regulatory Boards)
13. Regional Development Authorities (Kerio Valley Development Authority, KVDA, Lake Basin Development Authority, LBDA, Tana River and Athi River Development Authority, TARDA, EwasoNgiro South River Basin Development Authority, ENSDA, EwasoNgiro North River Basin Development Authority, ENNDA, Coast Development Authority, CDA)
14. National Environmental Management Authority (NEMA)
15. Industrial and Commercial Development Corporation (ICDC)
16. Health facilities (Hospitals, dispensaries etc.)
17. Public primary and secondary schools