

Assessing Transparency and Accountability of Land Governance in Kenya

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SUMMARY

Good governance is critical for the successful implementation of land administration processes. To ensure effective land tenure, fair land allocation, and proper land use, we need good land governance. Land is one of the important resources for every society in this universe and therefore efficient and effective governance of land is required. Different organisations/agencies on various levels for example FAO, UNDP, World bank, and UN-Habitat have produced different frameworks to assess good land governance.

Therefore, the objective of this study is to assess transparency and accountability in land governance in Kenya according to the nine principles discussed in the land governance elective course 2022 at the ITC faculty, University of Twente within the master's programme of Geoinformation management for Land administration. These nine principles include Transparency, accountability, public engagement, effectiveness and efficiency, rule of law, equity, security, sustainability, and subsidiarity.

A qualitative method consisting of a literature review and own experience/knowledge acquired during the land governance elective course will be used in the study. Results from the literature review and the knowledge acquired during the land governance elective will be used. Based on the findings, a discussion is developed, and a score table is developed ranging from low(L), medium(M), and high(H) depending on different thematic areas against transparency and accountability.

The examination will be based on the principles of accountability of actors and transparency as outlined in the land governance elective course 2022 at the University of Twente, ITC, The Netherlands. This assessment can therefore help the government of Kenya to assess and strategize on what is in dire need of redress to help achieve good land governance.

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1. INTRODUCTION

Land is one of the most important resources in the world. The economic, social, and environmental importance of land such as one of the primary factors of production in economic production cannot be overemphasized. A well-functioning land governance system has the prospective to boost the country's economic growth and development, improve social justice standards, protect susceptible groups, and help in environmental management hence contributing to sustainable development (Deininger & Hilhorst, 2013).

Transparency and accountability of the actors involved in land administration can help in the improvement of land governance. Transparency refers to the process where the rules, standards, and regulations are enforced in an open, vivid, predictable, and easy-to-understand manner. The information pertaining to transparency is also accurately available. Accountability of the actors refers to the process where the actors involved act in a manner that they can account for their actions. Accountability of the actors involved can only be achieved where there is a rule of law and transparency.

Improved transparency, therefore, enables better decision-making processes among the stakeholders involved including the government, agribusiness farmers both smallholders and large holders, researchers, and NGOs. The public can also keep a check on land administration service delivery for example land taxes procedures and payment and be awatchdog of public land grabbing as the land data will be open and accessible.

The study will be arranged in sections as follows: Section 2 Literature Review on governance, land governance, transparency and accountability in land governance, section 3 the methodology and the several ways in which data were collected, section 4 results based on the literature review in Kenya, section 5, a discussion from the results provided are developed. Finally, the study ends with a conclusion and recommendation regarding good land governance in Kenya.

2. LITERATURE REVIEW

In this section, a literature review on governance, land governance, transparency, and accountability of land governance is presented.

2.1 Governance

In every society, a governance system is witnessed. Governance refers to “the process of how decisions are formulated and how these decisions are implemented or not implemented in a given country/society.” (UNESCAP, 2009). Governance can be used in different contexts, e.g., corporate governance, international governance, country contexts, Districts, or even in the local context with different actors involved. Good governance can be conceptualized differently in the development process depending on different fields of study.

“Good Governance is participatory, transparent, and accountable. It is also effective and equitable and fosters the rule of law. Good governance ensures that political, social, and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources” (UNDP, 2015).

Good governance should be through participation, consensus-based, equity, rule of law, transparency, accountability, responsiveness, effectiveness, and efficiency. (Graham et al., 2003).

2.2 Land Governance

Land governance refers to the “structures, rules, and processes through which access to, and use of land resources are implemented or not implemented in a given society and the way competing interest in land is managed” (Palmer et al., 2009).

Land is more than an asset that has multiple rightsholders hence proper land governance is important to reduce land conflicts. Land governance is therefore the determination and implementation of sound and sustainable land policies and the establishment of a strong and better land-to-people relationship (Enemark et al., 2009).

Good land governance has been fuelled by increasing population growth, urbanization, changes in land use, economic growth, and development, among others. Lack of good land governance has led to the expansion of slums, unplanned urban expansion, insecurity of tenure, an increase in the number of land-related conflicts, and displacement.

The importance of good land governance cannot be overemphasized. For example, it helps to protect legitimate vulnerable owners from eviction, provides a framework for land conflict resolution, increases government revenue through land taxation, becomes an incentive for the landowners hence sustainable land use, and reduces fraud and bribery among other benefits (Deininger & Hilhorst, 2013b).

The nine principles of good land governance from the elective course are namely- Transparency, accountability, public engagement, effectiveness and efficiency, rule of law, equity, security, sustainability, and subsidiarity. For this study, only transparency and accountability in land governance will be discussed.

2.3 Transparency and Accountability in land governance

Transparency in land governance refers to the free flow of land information to the citizens of a given country. This should cut across all the sectors i.e., the public land sector, private actors, and civil society. “Transparency is about acting openly, understandably, and predictably, therefore, making the people in the system involved act in an open, accountable, and consistent manner” (GLTN, 2013).

Transparency is a crucial element in ensuring the accountability of the actors involved and in the administration of administrative justice through the rule of law.

Accountability in land governance refers to the process under which different actors make decisions and how these how actions can be kept in check. The actors in this land governance, involve the governing bodies and their representatives in the land departments. These actions might include how land claims are processed, how land conflicts are resolved, and how land plans are processed and approved. Accountability in land governance is important as it helps in maintaining checks and balances between the officials and the society and therefore has the potential to reduce the cases of officials acting with impunity.

3. METHODOLOGY

In this chapter, a description of the study area and the data collection process are presented.

3.1 Study Area

The study area of this paper is the republic of Kenya. Kenya is a sovereign state located in the East Africa region, the African continent. The study area was chosen because Kenya has been in the process of improving its land governance through different mechanisms since 2010. It is, therefore, essential to assess the impacts of these measures on ensuring transparency and accountability in land governance in Kenya.

3.2 Data collection

The qualitative methodology specifically the extant research methods will be used. This includes using literature review, internet search, government websites and

statutes, and knowledge gained throughout the land governance elective course is best suited for this study. “Qualitative research refers to a research term used to describe ways of studying perceptions, experiences, or behaviours through their verbal or visual expressions, actions, or writings” (Salmons, 2016).

For governance in Kenya, a search strategy of review articles that include citations with the publication range of 2000-2022 with the title “Governance” AND “Kenya” was used on google scholar. This produced 471 results. For land governance in Kenya, a search strategy of review articles that include citations with the publication range 2010-2022 with the title “Land Administration” OR “Land Governance” AND “Kenya” was used. This produced 1920 results.

Finally, for transparency and accountability in Kenya, a search strategy of review articles that include citations with the publication range between 2000-2022 with the title "Transparency" AND "Accountability" AND "Kenya" was used. This produced thirty-two results.

Purposeful sampling was used after all search strategies according to the purpose of the study as some results were irrelevant to the study. The Ministry of Land and physical planning and the Kenya law reports websites were vital sources of information for the study.

An assessment table is then developed with High(H), medium(M) and low(L) based on the performance of different thematic areas on transparency and accountability in Kenya.

4. RESULTS

In this chapter, results from Kenya on Governance, land governance, transparency, and accountability within land governance will be presented.

4.1 Governance in Kenya

According to the Kenyan constitution (2010), Kenya has a devolved system of governance. There are two governance systems i.e., the national government and the forty-seven county governments. The national government and the county governments are very distinct and interdependent but should work in consultation and cooperation.

The National government has three main branches namely: the legislature, the executive, and the judiciary. The legislature is made up of two assemblies i.e., the national assembly and the senate that make laws/policies, while the executive executes the approved policies for development, and finally, the judiciary interprets the law.

The constitution 2010 is the supreme law of the land. Chapter two of the Kenyan constitution (2010) outlines patriotism, equity, national unity, devolution of power, rule of law, non-discrimination of the marginalized, inclusiveness, sustainable development, human dignity, equality, integrity, transparency, accountability, democracy, and participation of the people, social justice as the national values and principles of governance.

4.2 Land Governance in Kenya

In Kenya, land governance is mainly done by the Ministry of Land and physical planning and the national land commission (NLC). The ministry of land and physical planning is mandated with private land ownership while the national land commission is mandated to manage the public lands in Kenya. The five main departments of the Ministry of Land and physical planning are the departments of land registration, the department of land administration, the department of land valuation, the department of physical planning, and finally, the department of survey services (Services - Ministry of Lands and Physical Planning, 2022.)

Different acts guide the management of each type of land in Kenya. Land Act No.6 2012 whose main function is to guide the revision, consolidation, and rationalization of land laws; the land registration Act No.3 2012 which regulates private land; the community land Act No.27 of 2016 which deals with community land; the national land commission Act No. 5 of 2012 which guides the functions of the national land commission, and the environment and land Act No. 19 of 2011 that deals with resolving land-related disputes in Kenya.

The national land policy 2009 and chapter 5 of the Kenyan constitution 2010, outlines the principles of land governance. These principles include equitable access to land, transparent and cost-effective management, security of tenure rights, sustainability, efficient, sound conservation, and protection of sensitive ecological areas, Elimination of any form of discrimination, and encouragement of the communities to settle their land disputes through local means that is consistent with the constitution (The Constitution of Kenya, 2010).

For this study, only the principles of transparency and accountability within land governance as outlined in the Kenyan constitution 2010 and the national land policy sessional paper No.3 of 2009 will be discussed.

4.3 Transparency and accountability in land governance in Kenya

Transparency and accountability have been recognized as some of the important principles of governance and land governance in the Kenyan constitution 2010 and the national land policy framework 2009. These principles can be assessed through different thematic areas as listed below. These thematic areas have been used in the

assessment of land governance in most countries including Kenya and Ethiopia (Kameri-Mbote, 2016; Palmer et al., 2009; Zerfu Hailu, 2016).

For this study, the following thematic areas will be used to evaluate accountability and transparency in land governance in Kenya.

Land rights recognition.

Both the constitution of Kenya 2010 and the national land policy framework 2009 recognize three types of land tenure in Kenya namely: public, private, and community land. Chapter 5, article 61 of the constitution further clearly states that all land in Kenya belongs to the people. The constitution also protects against illegal land acquisition.

Urban land use, planning, and development.

The Environmental Management and Coordination Act of (1999) and the Physical and land use planning Act (2019), provide regulations/guidelines on the use, planning, and development of land. Under the constitution of Kenya 2010, every county is required to produce integrated development spatial plans.

Public land management.

The national land policy 2009 paragraph 59 defines public land as ‘all land that is not private land or community land and any other land declared to be public land by an Act of Parliament.’ The constitution of Kenya 2010 chapter 5, article 62 lists these public lands. Article 62 (2 and 3) of the constitution states that “these public lands will be held in trust for the people of Kenya and administered by the national land commission”.

Public provision of land information.

The national land policy 2009, recognizes the need to establish a National spatial data infrastructure (NSDI) for integrated land information management systems to help re-organize, update, and authenticate land records to support government decision-making processes. The land Act 2012 mandated the Ministry of Land and physical planning to develop and implement the NSDI.

Land valuation and taxation.

The Rating Act Cap 267 allows the county authorities to tax real properties i.e., land, buildings, and improvements in the land. Valuers are allowed through the Rating Act Cap

267 to use the best method deemed to them when conducting valuation procedures. Valuations are allowed for different purposes but mainly for stamp duty which the act states clearly at 4% in urban and 2% in rural areas.

Dispute resolution.

The constitution of Kenya 2010 recognizes different land dispute resolution mechanisms. These include the establishment of the Environment and Land Courts Act 2011, the recognition of alternative dispute resolution, traditional dispute resolution, the national land commission, the national environment tribunal, and the public complaint committee on the environment

5. DISCUSSIONS

In this chapter, a discussion of the results on Governance, land governance in Kenya and transparency and accountability in land governance in Kenya is presented.

5.1 Governance in Kenya

Kenya has a good governance system in place. The constitution 2010 is the supreme law. The national government is well-structured into the judiciary, executive and legislature with clear mandates. The country is divided into forty-seven counties with clear governance systems. The limitation of the research is that there is no field work to assess how these clear legal frameworks are being implemented on the ground.

5.2 Land governance

Land governance in Kenya is well guided by the national land policy 2009 framework. This policy provided the base for the dedication of chapter 5 of the Kenyan Constitution 2010 to land and environmental management. The policy framework also provided for the current clear different land acts discussed in 4.2. Having a clear legal and institutional framework is the starting point for a good land governance system in a society.

The land Act 2012 provides the framework for the management and administration of land in Kenya. The Act outlines how to manage and administer public land; community land administration; administration and management of private lands e.g., contracts over land, transmission, and transfer; compulsory acquisition; settlement programmes and the powers of the courts.

The limitation of this research is that there was no field data collection to assess if these legal frameworks are being implemented as written therein.

5.3 Transparency and accountability in land governance in Kenya

The discussion in this section will be based on the chronological order of thematic areas as discussed in 4.3. These discussions are based on the land governance assessment done in Kenya in 2014/2015 (Kameri-Mbote, 2016).

Land rights recognition.

Land rights are well recognized in the constitution and the different land acts 2012. However, most of the people living in rural areas in Kenya have no formal documentation of their land rights but they perceive it as secure(M). Women's rights to land are protected in legal frameworks but not practised on the ground(L). Several wins have been made towards indigenous land rights but much needs to be done(M).

Performance indicator	Ranking
Rural land tenure rights are formally recognized and protected in practice.	M
Women's land and property rights are protected in practice as written in the law	L
Indigenous land rights are legally recognized and protected in practice.	M

Urban land use, planning, and development.

The Physical and land use planning Act (2019) stipulates how the urban development process should be carried out. However, these processes are not very transparent to the public, nor do they respect the existing rights(L). This is very evident in the recent eviction and demolition of residents of *Mukuru Kwa Njenga* to pave way for road construction. Some approved urban land-use plans take decades to be implemented(L).

Performance indicator	Ranking
The urban expansion process is transparent and respects existing rights.	L
Approved requests for urban land-use changes are promptly developed.	L

Public land management.

As discussed in 4.3, public land is mainly managed by the national land commission. Information on public land is fairly accessible(M). Public land

transactions are not transparent to the public(L) and finally, in the process of compulsory acquisition, the compensation is not timely as it should be(M).

Performance indicator	Ranking
Land transactions are conducted in an open, clear, and understandable manner.	L
Information on public land is publicly accessible.	M
Timely Compensation is provided for the compulsorily acquired land rights.	M

Public provision of land information.

Most of the land documents and transactions are manual in Kenya and takes time to get information and it is for a fee not for free(L). The information in the registries is not upto date as most rural areas are not registered(M). The fees are documented but the public is never informed of the reason/rationale(L). All payments are not accounted for as people do not get receipts of payment. Paying informally to fasten the transactions is common.

Performance indicator	Ranking
Registry/cadaster information is up-to-date and reflects de facto.	M
The fee schedule is public, and all payments are accounted for.	L
Information in public registries is free and available anytime	L

Land valuation and taxation.

The rating act provides a clear process of property valuation(H). The valuation rolls are not complete due to a lack of support from the property owners hence they are not publicly accessible as they should be(M). The Ministry of Land has the power to exempt some properties from paying taxes. This is done without justification nor in a clear manner to the public(L)

Performance indicator	Ranking
Property valuation has a clear legal framework	H
Valuation rolls are up-to-date and accessible to the public	M
Property exempted from taxes is justified and publicly transparent.	L

Dispute resolution

Land-related disputes in Kenya can take decades to be formally resolved(L). Some cases have been in court since the 1970s. Traditional land disputes are common in customary land systems, but they are rarely legally encouraged(M) as they lack written evidence. The conflict resolution mechanisms are well elaborated in the Land Act 2012 but accessing it formally is expensive and hence inaccessible to the poor(M).

Performance indicator	Ranking
Land-related conflicts in the formal system are resolved promptly	L
Informal dispute resolution mechanisms systems are encouraged.	M
Conflict resolution mechanisms are accessible to the public.	M

CONCLUSION

This study aimed to assess transparency and accountability in land governance in Kenya. To the study, Kenya has done well in developing legal frameworks for the achievement of good land governance, however, a proper implementation framework is needed. Public involvement in land policy and decision-making processes might go a long way in achieving transparency and accountability of the actors involved.

On land rights recognition and implementation, a benchmark of the FAO's Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests is recommended. The guideline provides clear principles that can help Kenya in the implementation of its legal frameworks mostly for the poor, women, and indigenous people. The guidelines also help in formulating what should be followed in compulsory acquisition processes and generally guides natural resource management.

To increase transparency, Kenya has launched a pilot digital platform called 'Ardhi sasa' meaning Land now in Nairobi to help improve service delivery in the land department. However, an improvement in the backend is required to help it function well. This is because the process workflow is still the same as it was in the manual system as it still takes the same amount of time for a transaction as it was before. Kenya is in the process of developing Geoportals. Open land geoportal can help make land information visible to the public hence a starting point to increase transparency and ultimately accountability.

Increase the number of environment and land courts and specialized judges in the forty-seven counties to help reduce the land-related cases that have been backlogged for decades. This helps to solve land disputes in a timely, open, and transparent manner. Keeping the valuation rolls up to date, digitizing the fiscal

cadastre and making this information public. This might help to increase transparency and accountability in the land valuation department.

Fastening the development of Kenya's national spatial data infrastructure could help to integrate and re-organize the current spatial data and information silos. Development of integrated land use land information management has started in Nairobi, this, if made accessible to the public will help to reduce public land grabbing and reduce land eviction cases. The National land commission has mapped around 60% of public schools through the titling programme launched in 2013. The National land commission needs to map, digitize, and make this information public with a proper inventory system.

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BIOGRAPHICAL NOTES



Joseph Rajul is a Land Administration specialist and a Graduate Assistant at the Technical University of Kenya. He holds a BSc of Science in Land Administration from the Technical University of Kenya. He is currently undertaking his MSc in Geoinformation Management for Land Administration at ITC, University of Twente, The Netherlands. His interest is in Land Policy formulation processes, Responsible Land Administration and Land Management, Land Registration and Tenure Security Systems, Gender and Land Tenure, Land Information Systems and models, Land Governance, and Cadastral data acquisition methods.

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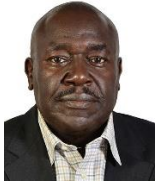
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