

KENYA

FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

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ABSTRACT

In Kenya, insecure land tenure and inequitable access to land and natural resources have contributed to conflict and violence, which has in return exacerbated food insecurity. Most farmers in Kenya have no legal title for the land on which they farm. Sources of tenure insecurity can be ethnic conflicts over land between neighbouring communities, particularly in the Northern provinces, expropriation by the state or local government and land grabbing by local elite or companies. Competition is as well growing over water, especially over groundwater, which is scarce in Kenya. Farmers, herders and companies are increasingly competing against each other. Overall past programs of land administration have increased insecurity, inequity and conflicts. Land has become a sensitive issue also due to politics and corruption, which is endemic in land administration. The new land policy is addressing some of these vested interests but has yet to translate into concrete action. In 2012, the new land bills have been adopted, which should mark the start of implementation.





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About IS Academy on Land Governance for Equitable and Sustainable Development

LANDac, the IS Academy on Land Governance for Equitable and Sustainable Development, aims at bringing together researchers, policy makers and practitioners in the field of land governance and development. It is a partnership between several Dutch organisations and their Southern partners involved in development-related research, policy and practice. LANDac is one of the IS Academies for International Cooperation sponsored by the Netherlands Ministry of Foreign Affairs.

About KIT

The Royal Tropical Institute (KIT) in Amsterdam is an independent centre of knowledge and expertise in the areas of international and intercultural cooperation, operating at the interface between theory and practice and between policy and implementation. The Institute contributes to sustainable development, poverty alleviation and cultural preservation and exchange.

Country expert contribution:

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1 POLICY AND LEGISLATION

1.1 Regulatory land governance framework

In December 2009 the Government of Kenya approved a new National Land Policy (NLP), which was seen as a critical step toward addressing current patchwork of often incompatible laws and ensuring sustainable and equitable land use..

This policy was a response to the Ndung’u report, prepared by the Ndung’u Commission as it became known after its chairman, which was made public December 2004. Kenyan President Kibaki instigated this Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, following public pressure. The report. exposed a serious crisis in the management of Kenya’s land, particularly through land grabs by well-connected individuals.

Land issues are an important part of the new (2010) Constitution of Kenya. It declares that land should be held in an equitable, efficient, productive and sustainable manner, as well as the redress of illegal land grabs.

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| <p>CONSTITUTION OF KENYA (2010)</p> | <p>“Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles: (a) equitable access to land; (b) security of land rights; (c) sustainable and productive management of land resources; (d) transparent and cost effective administration of land; (e) sound conservation and protection of ecologically sensitive areas; (f) elimination of gender discrimination in law, customs and practice related to land and property in land; and (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution” (GOK 2010, Article 60).</p> |
| <p>2009 NATIONAL LAND POLICY OBJECTIVES:</p> | <ol style="list-style-type: none"> 1) Recognize and protect customary rights to land; 2) Outline principles of sustainable land use and provides productivity and conservation targets and guidelines; 3) Call for reform of land management institutions to ensure devolution of power, increased participation and representation, justice, equity, and sustainability; 4) Establish the National Land Commission, District Land Boards, and Community Land Boards; 5) Call for the development of a legal and institutional framework to handle land restitution and resettlement for those who have been dispossessed; 6) Call for reconsideration of constitutional protection for the property rights of those who obtained their land irregularly |
| <p>2012 LAND BILL</p> | <p>Is intended to provide for the review, consolidation and rationalization of land laws in Kenya, and to provide a framework for sustainable management and utilization of all categories of land. At the moment, it only covers public and private land but not communal land. The Community Land Bill is expected soon.</p> |
| <p>2012 LAND REGISTRATION BILL</p> | <p>Sets out extensive mechanisms and structures to regulate the registration and transactions dealing with land. These two bills (+ the upcoming one) also set up the new institutional framework.</p> |

The existing legal framework governing land remains a collection of colonial and post-colonial statutes.

| Law | Content |
|---|--|
| THE 1968 LAND (GROUP REPRESENTATIVES) ACT | Allows groups of people to jointly own freehold title to land. |
| THE 1963 REGISTERED LAND ACT | Governs individual ownership of land. The Registered Land Act applies to registered land formerly held under customary law, trust land (ex-community land), and land known as "native reserves." The Act does not apply to land held by the government or local authorities and does not recognize customary rights of use. |
| THE 1962 LAND CONTROL ACT (LCA) | Governs transactions in agricultural land. Under the LCA, local Land Control Boards (LCBs) must approve all transactions in agricultural land including sale, lease, mortgage, and division |
| THE 1948 TRANSFER OF PROPERTY ACT | Governs individual ownership of land (see the 1963 Registered Land Act above). The Transfer of Property Act governs land in settler and formerly settler-occupied areas, which were designated during the colonial period as the white highlands. |
| THE 1948 GOVERNMENT LANDS ACT | Gives the President power to make grants or dispositions of any estates, interests or rights in or over un-alienated government lands to individuals. |
| THE 1939 TRUST LAND ACT | The Trust Land Act states that land in areas that were occupied by indigenous Kenyans during the colonial period and that has not been consolidated, adjudicated, and registered in individual or group names, and indigenous land that has not been taken over by the government, is governed by the Trust Lands Act. These lands are vested in local authorities designated as community councils. |

1.2 Land tenure forms

In the recent National Land Policy¹, the main classifications of land ownership in Kenya remain private (freehold and leasehold), public, and community/trust land held, managed and used by councils for the benefit of a community.

Inheritance is the most widespread method of obtaining land rights in Kenya followed by purchase. Land leasing is common in some rural areas.

Customary land holding systems continue to exist, but are not integrated in the formal land system. These systems vary from one ethnic group to another and can include regulations for lending/borrowing of land for residential or cultivation purposes, provisions on ownership of buildings and trees separately from the land, or land subleasing. These informal tenure arrangements are monitored by elders and other local leaders, often in tandem with local authorities (the District Commissioner and the municipal council) (Swazuri and Yahya 2007).

¹ Detailed description of tenure forms can be found in national session paper on land policy (2009) available on: http://www.ldgi.org/index.php?option=com_docman&task=doc_download&gid=14&Itemid=52

| | |
|-----------------------|--|
| Community land | 70% of all land, derive from the 1915 amendment to the Crown Lands Ordinance of 1902, which converted all native reserve lands to trust (now community) lands and (at Independence) vested county councils with the power to hold and alienate land for the benefit of resident communities. A new bill is expected in 2012 to regulate community land |
| Private freehold land | 20% of Kenya’s land and is held either individually or collectively. Private freehold covers most high-value agricultural land. Collective freeholds include group ranches established Elected group representatives act as legal trustees of the ranch. |
| Public land | Approximately 10% of Kenya’s land is under public ownership and includes all un-alienated land, including gazetted forests, protected areas and reserves, rivers, and land occupied by government or quasi-government institutions |

(GOK 2009b; Mwenda 2006; Agrawal and Roth 2008).

1.3 Institutional land governance framework

The land registration procedures are laid out in the Registration of Titles Act or The Registered Land Act (1963). Most land administration structures are housed within the Ministry of Lands. These include the *Department of Lands*, responsible for land administration, valuation, and registration; the *Department of Land Adjudication and Settlement*, responsible for land adjudication, consolidation, group ranches, and settlement of landless citizens; the *Department of Survey*, the official agency on all matters affecting land surveys and mapping; and the *Department of Physical Planning*, responsible for the production of development plans for both urban and rural areas (GOK 2008). Local Land Control Boards (LCBs) are established by the Minister of Lands for every land-control area and division. Under the Land Control Act, these boards must approve all transactions in agricultural land. County Councils are the trustees of trust/community land under the Trust Land Act.

The National Land Policy proposes a complete overhaul of this institutional framework by creating National Land Commission and democratically elected District and Community Land Boards. The country is now preparing for this transition.

1.4 Gender

The 2010 Constitution of Kenya prohibits discrimination and women are granted the right to equal treatment and equal opportunities in the political, economic, cultural and social spheres (GOK 2010). However the outdated but still valid Transfer of Property Act (TPA) of 1948 limits the rights of married women to own property individually (GOK 1948b). Inheritance of land to women is rare (USAID, 2010). As a result, women hold only about 1 percent of registered land titles, while 5 to 6 percent of registered titles are held in joint names (World Bank, 2004). Many grassroots organisations emphasize that the biggest problems for women remains the issue of weak control and insecure access to land for women, which is a bigger challenge than formal ownership.

1.5 Indigenous people

Kenya counts numerous indigenous groups living all over the country. Many of them have been evicted in the last decades without prior consent or fair compensation. However, in 2012, a landmark ruling by the African Commission on Human and Peoples Rights (CHPR) stated that the Kenya Government had violated the charter by evicting the Endorois people, a traditional pastoralist community, from their homes at Lake Bogoria in central Kenya in the 1970s, to make way for a national reserve and tourist facilities. In the first ruling of an international tribunal to find a violation of the right to development, the Commission found that this eviction violated the Endorois' right as an indigenous people to property, health, culture, religion, and natural resources. It ordered Kenya to restore the Endorois to their historic land and to compensate them. Future will show how this will be enacted in practice (Human Rights Watch, 2012)

1.6 Land acquisitions

According to the rules and regulations, any person (citizen or foreigner) can apply for and be allocated land in urban areas. Foreign individuals and companies may acquire rural land as renewable leasehold from either the government or landowners for investment purposes (GOK 2009b).

The land matrix from the International Land Coalition (ILC) indicates 13 major land deals over 633,500 ha, mostly for agricultural purposes. The validity of these findings still need to be verified.

2 INTEGRATED WATER MANAGEMENT

2.1 Regulatory framework

In Kenya, water supply is insufficient to satisfy demand as eighty percent of the country has an arid or semi-arid climate. Water scarcity is aggravated by degradation of existing water resources, increasing volatility of rainfall amounts, resulting in periodic droughts or floods.

Forests in Kenya are important in regulating water supplies. The country relies on high forest "water towers" notably five main water catchment areas (Mt. Kenya, Mt. Elgon, Abadares, Cherangany and the Mau forest), where also the hydro-electric power stations are located and along major rivers, which also provide water to support big irrigation schemes.

| Integrated Water and Resources Legislation in Kenya | | |
|---|--|--|
| Law | Purpose | Key elements |
| Water Act (2002) | Provide for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water; to provide for the regulation and management of water supply and sewerage services | Every water resource is vested in the State, but subject to any rights of user granted by or under this Act or any other written law. Separates the management of water resources from the provision of water services; separates policy making from day-to-day administration and regulation; decentralizes functions to lower level state organs, and involves non-governmental entities in the management of water resources and in the provision of water services |
| Forests Act (2005) | Provide for the establishment and development of sustainable management of forests, including conservation, and rational utilization of forest resources | All forests, other than private forests and local authority forests, are vested in the State. Customary rights to forest products are protected, as long as the produce is not for purposes of sale (Ludeki et al. 2006). 1) inclusion of management of all types of forests; 2) involvement of adjacent forest communities and other stakeholders in forest conservation and management; 3) ecosystem approach to forest management planning; 4) provision of appropriate incentives to promote sustainable use and management of forest resources; 5) development of a framework for a forest legislation; and 6) establishment of Kenya Forest Service |

2.2 Institutional framework around Integrated Water Resource Management (IWRM)

The water act of 2002 stipulated that overall responsibility for water management lies with the *Ministry of Water Resources Management and Development* (MWRMD) and provided also for the establishment of a *Water Resources Management Authority* (responsible for water pollution, and the management of lakes, aquifers and rivers) and a *Water Services Regulatory Board*, responsible for water supply through licensed water services providers (Ludeki et al. 2006). Water is allocated by the Water Resource Management Authority, which also registers informal and extra-legal community self-help water systems in charge of community development (Mumma 2005).

The River Basin Development Authorities (RBDA) is in the Ministry of Regional Development. Irrigation development in Kenya is under a number of institutions. Within MWRMD are the National Irrigation Board (NIB), which is in charge of the development of the national irrigation schemes, and the Irrigation and Drainage Department (IDD) responsible for the promotion of smallholder irrigation. Most of the structures and water rights for each scheme belong to the irrigating community. Water management within the smallholder irrigation schemes is the responsibility of the water users associations (WUA). WUAs can also be created in areas without irrigation schemes.

The Kenya Forest Service is the government agency responsible for forest management in Kenya and the Kenya Wildlife Service (KWS) is charged with conserving and managing Kenya’s wildlife, and enforcing related laws and regulations. The Forest Act provides several avenues for participation of communities in the implementation and monitoring of the Forests Act and the management of their forests. These include: as members of Community Forest Associations (CFAs); as representatives appointed to the Forest Conservation Committees; as representatives appointed to the Board of the Kenya Forest Service; and as individuals (FAN n.d.).

3 REALITIES ON THE GROUND

Violence and conflict surround the access, use and management of land, water and forest resources. Insecure land tenure and inequitable access to land and natural resources contributes to conflict, most recently in the post 2007 elections violence. This violence has exacerbated **food insecurity** (cf. Kenya Food Security Steering Group) (USAID, 2010). Chronic **water scarcity** results in nearly permanent state of conflict in affected areas.

Strong links exist between **land and politics**. Patronage systems are frequent and go together with high level of corruption. The results are forced eviction and lack of compensation for those who have lost land through violence. Land grabbing by domestic actors is also a growing policy concern (see new land policy and constitution). In particular community land and public land are subject to elite land grabs and illegal land deals. There has been well-documented illegal appropriations of public land by the elite from the 1960s until today.

Until recently Kenyan authorities, foreign advisors and local people increasingly have seen the **conversion of customary land** tenure into individual ownership as a priority of land administration in Kenya (USAID, 2010). **Secondary rights holders**, like tenants and those with user rights to natural resources, have often been dispossessed by titling and registration programs at the benefit of primary users. Titling and registration processes also opened land to elite capture, especially the recipients of former settler land, and those influential enough to manipulate the registration process in the interests of themselves, their lineage, or clan (Wakhungu et al. 2008; Quan 2000). **Customary rights** in rural areas have frequently been violated by county councils who have expropriated lands without regard to their constitutional mandate, the provisions of the Trust Land Act, or the communities they represent (Odhiambo 2006; Wakhungu et al. 2008).

Degradation of water resources is compounded by **intense water exploitation**. The water sector has historically suffered from low levels of investment, also many watersheds have been damaged by logging, encroachment of settlements, and changing borders, in addition to government policy changes that de-gazetted National Forests in the early 1990s (FAO 2005; GTZ 2008; Miller et al 2003). The Water Act does not recognize the existence of a pluralistic legal framework or customary rights. (Mumma 2005). Although irrigation schemes are reconsidered by some as important for agricultural development, for others these are “white elephants”. The success of these schemes is notably fought by conservation groups and other resource users..

Competition over land and water resources is also linked to **conservation programs**, whereas forests are threatened by land invasions and an increased demand for forest resources particularly **charcoal and fuel wood**. The 1986 Presidential Directive banning charcoal production and transportation does not outlaw the sale, purchase, or use charcoal As a result, the charcoal market was forced underground (WRI 2007).

4 RESOURCES AND OTHER INFORMATION

4.1 Related country profiles

- USAID: <http://usaidlandtenure.net/usaidltpproducts/country-profiles/kenya/>
- FAO: <http://www.fao.org/countryprofiles/index.asp?lang=en&ISO3=KEN>
- FAO/Gender: <http://www.fao.org/gender/landrights/report/en/>
- IMF: <http://www.imf.org/external/country/KEN/index.htm>
- World Bank: <http://www.worldbank.org/en/country/kenya>

4.2 Laws, policy and regulations search engines

- FAO Lex (Land & NR search engine): <http://faolex.fao.org/faolex/index.htm>
- Water Lex (Water laws search engine): <http://faolex.fao.org/faolex/waterlex.htm>

4.3 Maps and databases

- Land and soils databases/information systems: <http://www.fao.org/nr/land/databasesinformation-systems/en/>
- Water database/information systems: http://www.fao.org/nr/water/infores_databases.html
- Land and water maps and graphs: <http://www.fao.org/nr/solaw/maps-and-graphs/en/>
http://www.fao.org/nr/water/infores_maps.html

4.4 Portals and other resources

- http://landportal.info/search/apachesolr_search/kenya
- <http://www.landesa.org/search/?q=kenya>

4.5 Donor support programs

- UN Habitat chairs the Development Partners Group on Land (DPGL).
- DFID, Irish Aid, SIDA, and USAID via UN-Habitat support the implementation of the National Land Policy
- The World Bank and USAID have programs for improving water resource management, also linked to Irrigation and the Management of Forest Resources;
- There is also a Forest Donor Coordination Group (FAO, UNEP, UNDP, USAID, World Bank, the Embassy of Finland, and others (GOK 2007b).

4.6 Civil society organizations working on land governance

Members of International Land Coalition from Kenya:

- Environmental Liaison Center International – Nairobi. <http://www.elci.org/>
- Kenya Federation of Agricultural Producers Nairobi Kenya. <http://www.kenfap.org>
- Kenya Land alliance:, Nakuru, <http://www.kenyalandalliance.or.ke>
- Mau Community Forestry Association - <http://www.macofa.co.ke/>
- Resource Conflict Institute (RECONCILE), Nakuru, <http://www.reconcile-ea.org/>
- The Eastern Africa Farmers Federation (EAFF) participates actively in national and international discussions on land governance. They also published in 2010 *The Entebbe Declaration on Large Foreign Land Acquisitions* <http://www.eaffu.org/go/downloads/EAFF%20Position%20on%20Land%20Grab.pdf>
EAFF covers the following countries: Burundi, Democratic Republic of Congo, Djibouti, Eritrea, Federal Democratic Republic of Ethiopia, Kenya, Rwanda, Uganda and the United Republic of Tanzania. General website: <http://www.eaffu.org/go/>

Members EAFF in Burundi:

- Kenya National Federation of Agricultural Producers (KENFAP) - <http://www.kenfap.org/>
- Cooperative Alliance of Kenya (CAK) - <http://www.cak.coop/>

Other CSOs and private actors:

- Groots Kenya – Nairobi. <http://www.groots.org/members/kenya.htm>
- LNSA (Land Sector Non-State Actor Group)
- Land Development and Governance Institute – Nairobi. <http://www.ldgi.org>
- The Private sector is also influential in the development of the new land bills, notably through KEPSA (Kenya Private Sector Alliance) – Nairobi. <http://www.kepsa.or.ke/>

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