Scaling up Responsible Land Governance

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 14-18, 2016

Securing Tenure For Land Belonging To Public Schools: Experiences, Lessons And Insights From Transparency International Kenya's Land And Corruption In Africa Project.

Samuel Kimeu, **Francis Kairu,**

Transparency International Kenya

skimeu@tikenya.org

fkairu@tikenya.org

Paper prepared for presentation at the
"2016 WORLD BANK CONFERENCE ON LAND AND POVERTY"
The World Bank - Washington DC, March 14-18, 2016

Abstract

Kenya has an area of approximately 582,646 sq. Km. Out of this acreage, a huge percentage is community land comprising 66% while public land comprises about 12%. The government has long faced challenges in establishing an appropriate way of registering community and public land. Failure to have a proper system of registering these categories of land has through corruption opened them up to extreme plunder, illegal dispositions and displacement of communities. Among the biggest casualties of the current state of affairs have been public schools. Transparency International Kenya is currently implementing a project that seeks to help schools secure tenure to the land that they currently occupy. Our paper shares our lessons, experiences, challenges and recommendations on the way forward for protecting tenure for public schools. We also highlight best practices and offer insights from the field about communities' perspectives and reactions to the titles for schools project.

Key Words:

1. Introduction

Land has continued to play a central role in the life and economy of the country. All major sectors of the economy that contribute to our GDP are reliant upon land. Tourism, agriculture, trade and commerce the major income earners for the country are all reliant upon land. However, corruption in the land sector in Kenya has been a perennial problem. The sheer amount of corrupt land deals in the land sector over several years is outstanding. Kenya as a developing economy loses every financial year staggering volumes of revenue to corruption and bad deals. Land being a corruption prone sector contributes massively to these losses. Therefore cutting back corruption in the land sector would unlock considerable amounts of domestic revenue while also boosting innovation and industrialization.

In Kenya land is categorized into three categories. Public land, private land and community land. Public land would constitute land held by government institutions, forests and all land declared to be public land by the law. Community land is land vested and held by communities identified on the basis of ethnicity, culture or similar community of interest. Statistics indicate that 65% of community land in Kenya remains unregistered and therefore untitled. In the absence of a proper system of registering interests in community land and public land, a practice emerged where public land was registered under the name of the chief accounting officer at the Ministry of Finance. Trust land was also vested in the government and managed by municipal/local councils.

The government has grand development plans. Among the major priorities that the government has invested on are improving health care, improving infrastructure, improving education and security. Infrastructure has over the last 2 financial years taken up the biggest chunk of the budgetary allocation being 27% in the 2015/2016 period. This means that there is less investment in other crucial sectors like health and education. The converse side is that by prioritizing in infrastructure which is a land intensive activity, this has marginally escalated pressure on land. This escalation in pressure on land needs to be contextualized. Most of these land intensive projects traverse land that is traditionally unregistered, un-adjudicated and consequently having fluid tenure regimes. It is almost impossible for communities living in these areas to even resist government efforts since they do not have ownership rights to the land.

Corruption has also marginally raised the cost of improving tenure security. In a recent analysis of bribery trends TI-Kenya has noted that this sector remains in the realms of the most underperforming sectors.
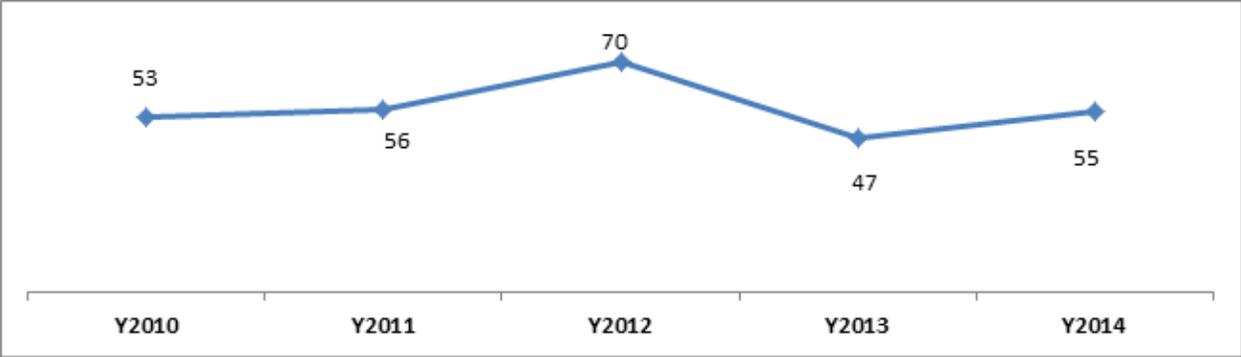
FIGURE 1. Aggregate score trends – Land services Kenya

The average size of bribe that Kenyans have paid for services in this sector has also remained constantly high. This is enough testimony of how Kenyans seeking services from the ministry have to dig deep into their pockets to obtain these services. The official costs of conducting a transaction at the lands registry is also way beyond the means of most Kenyans. This farther removes the possibility of protecting tenure from the hands of ordinary citizens in the country.

Indicator/Year	2010	2011	2012	2013	2014
Average size of bribe(Ksh)	8,973	6,800	9,842	8,949	7,219
Average size of bribe(USD)	88	66	96	87	70

Figure 2. Average size of bribery – Land Services Kenya

Land grabbing has also continued to be a great impediment to the security of tenure in the country. During a baseline survey conducted for the land and corruption project in the country, TI-K has learnt that land grabbing has increased over the past two years. Public land still leads among the categories of land

being grabbed. Grabbing is being perpetuated by cartels that have money and influence. The cartels are usually comprised of land brokers and government officials who could come from vital agencies such as the judiciary, police, ministry of lands, county governments etc. The cartels are known to be ruthless and execute their schemes with impunity. Among the biggest casualties of grabbing are public institutions and mostly schools. We shall herein examine some of the factors that have made schools soft targets for grabbing. All hope is not lost however. The National Land Commission has indicated that by May 2015 it had received 350 cases of grabbing of school land. Over the past two years, the national land commission has revoked nearly 20,000 titles. These were mostly titles to public land that were illegally allocated to individuals.

Our analysis has also shown that majority of schools do not sit on land that is contested. Nevertheless, the schools exist mostly on mere community good will. In light of increasing pressures on land and shifting land use practices, there is need to anchor the place of schools and public spaces in our formal land tenure systems. Community goodwill cannot be the only basis for protecting tenure to public assets.

The land market in the country has also grown in stature and volume. Shrinking space in urban areas coupled with demand for housing has made the price for land increase marginally. Analysts in the real estate have opined that in the last ten years, the price of an acre of land in most urban areas has increased almost 100 times over. Rural areas although faced by urban – rural migration have also seen changing land uses over time. Improved farming methods have increased subsistence farming. There has also recently been an increase in a new method of farming christened ' *'telephone farming''*. People living in urban areas have been acquiring parcels of land in rural areas which they then use for subsistence or small scale farming mostly for horticultural products. Individuals do not necessarily have to travel to the village to check on how the farms are progressing and rely mostly on follow up via mobile phones. This development will definitely overtime impact on land holding and tenure in rural areas.

There has also been a recent surge in alienation of huge tracts of land for mining and farming of bio diesel producing plants[i]. Over the past one year, we have tracked 3 major projects across the country where land in the rural areas has been alienated for mining or jatropha farming. This serves to add onto the competing pressures for land that changes how people view, hold and utilize land.

2. Background

A huge majority of public schools currently occupy land that is either community land or public land. They have drawn legitimacy from the communities that founded them or from government sponsorship

efforts. There are roughly 23,000 public Primary Schools and 4,000 Secondary Schools in the country according to a UNESCO report http://www.unesco.org/iiep/PDF/pubs/Kenya_B185.pdf.

Preliminary analysis has put the number of schools that have titles at only 5,000 schools. This is an average of 100 titles issued to schools per year since independence. This means that only about 15% of all public schools within the country enjoy formal protection of tenure to the land that they hold. The rest of the schools operate as noted above mainly due to community goodwill. We reiterate that although the public or communities are the ultimate guarantors of the safety of school land, it is not a long term solution that can allow schools to ward off any interference with ownership of their land.

According to the ministry of lands the government has since independence issued about 5 million titles. This means that out of these titles issued; only 0.005% comprises titles issued to schools. This is a sorry state of affairs. There is therefore urgent need to increase the number of schools having access to more secure forms of tenure.

In the last year the county government of Nairobi commissioned an inquiry into the state of education in Nairobi County. The commission returned an alarming verdict[ii] that only 3 out of every 50 schools had a title to the land they currently own. They also observed showed that one out of every 10 schools had a dispute related to the land they own. They also observed that out of every 10 visited schools, one had a complaint on encroachment either by private developers, religious organizations and /or illegal settlements. Some of the complaints were characterized as follows:

1. Private developers who are aided by authorities to hive off part of the school land.
2. Religious institutions that come under the guise of assisting schools to put up facilities like toilets but later ask to be allowed to use part of the school land, which they eventually acquire in collaboration with the authorities.
3. A system where some people secure court orders claiming part or entire school land.
4. Situation where encroachers move to court to obtain orders barring the school from further developing the land.
5. Confusion on who owns land and the total acreage. Most schools do not know who owns the land they occupy. At times some complaints are based on lack of information.

One of the recommendations by the taskforce was a thorough analysis of all land belonging to public schools and the establishment of an information repository for these types of land. Nairobi is the most suitable area for such an analysis. Its residents have easier access to education, information and means of seeking for justice. All the key institutions including the main three arms of government are also located

in Nairobi. Security of tenure for public schools in Nairobi is indeed very grim. However this is a demonstration that other areas of the country could be doing even worse.

The much acclaimed report from A Commission of Inquiry into Illegal/Irregular Allocation of Public Land (Ndungu report) published in 2004 put this issue into perspective. This report highlighted about 1000 parcels of land belonging to public schools that had been illegally alienated. However little has been done to either implement its recommendations or conduct an updated analysis of the illegal dispositions highlighted therein.

3. The case of Langata road primary school

In January 2015, news of school children who were tear-gassed while protesting the grabbing of their school land hit the headlines[iii]. This incident was widely condemned but it brought to the fore an issue that was sizzling in the background. Langata road primary is located along one of the busiest roads in Nairobi and its situated in a prime area next to a small airport (Wilson airport). The school is a classical case of a public institution located in an area where it's totally ''unwanted''. The airport has drawn massive investments into the area including residential and commercial developments. Majority of the pupils attending the school are from the nearby Kibera slums.

On the eve of Christmas day in 2014, a perimeter was erected around the play ground that Langata road primary school pupils were using. The wall took a record two days to complete. This effectively left the school without a playground which was apparently allocated to a private developer. Unconfirmed reports indicate that the title to the parcel was processed in just 10 days. There was a report of youths hired to protect/guard the land. The head teacher resisted the efforts and reported the matter to the local police post but no action was taken. When schools reopened in January 2015, pupils were shocked by the turn of affairs.

On 16th January 2015 parents, pupils and citizens converged on the disputed plot and demolished the wall. They were met by about 100 antiriot policemen who threw teargas canisters to disperse the crowds mostly comprised of pupils under 10years of age. This incident gripped the headlines. Apart from the injured children, the blatancy with which the police took sides in such a dispute was worrying.

In interviews with parents from the school in Dec 2015, TI-K was informed that the school had an enrollment of about 850 students as at the beginning of 2015. By the end of 2015, about 200 students had left the school. There is a high likelihood that the students have left due to the controversies surrounding the school land.

Langata road primary school remains as the most outstanding case on matters of school land. It is a tale of courage and defiance that has changed the course of history in Kenya. After the incident the ministry of lands and several government agencies said that the land belongs to the school.

Since then, governance experts, the National Land Commission, civil society activists and education sector players have been at the fore front seeking solutions to school land problems. Several stakeholders launched a campaign dubbed the ''#shule yangu'' campaign (Swahili for ''*my school''*) the campaign seeks to create awareness on the need to protect land belonging to schools.

Pursuant to the Langata primary school matter, the president issued an executive order that all schools should receive titles to their land. This order remains hugely unimplemented 10 months later. The presidential order seems to have been caught up in the endless bureaucratic practices of the institutions handling land management. We shall herein detail some of the hindrances to the achievement of the presidential directive.

The government also promised to issue 5,000 titles to schools in one year. It's already an year now since then and there is no school that has had the title processed to date. Langata road primary also remains untitled to date. Before this incident, there were 400 pending applications for titles to schools across the country. The number has now jumped to 7,500 applications for title. We here below also analyze some of the causes of this impasse in processing titles.

The question now remains, what has led to the current sorry state of affairs? In preparations for our project, we have engaged in an analysis to identify the major inhibitors to the realization of secure tenure for public schools.

4. What has led to the current situation on matters of land for public schools? An analysis of the Causes from our experiences in the project.

In the course of our project, we also conducted a deeper analysis of the factors that have had an influence on the current state of affairs on matters of land governance.

a. Legal and policy gaps

- Kenya lacks a land use policy. This means that the government is totally unable to regulate land use. Where the government has tried to enforce some standards of land use, it has been on an adhoc basis. Decisions on what form of land use a particular parcel of land can be approved to have can only be said to be made through utter ingenuity on the

part of land officials. This has created a perfect ground for mixed land use and unchecked development to fester.

- There exists absolutely no nexus between other plans by the government and the regulation of land use. The government at both levels makes decisions on development with little regard to matters of land use. This state of affairs has utmost resulted into development plans that are incompatible with the ideal land use for huge tracts of land.

- Kenya lacks a clear policy on recovery of land that was illegally acquired or wrongly disposed off. It is a fact of common notoriety that numerous parcels of land have been disposed off contrary to law. However most attempts by government to recover lost land has been met with debilitating court cases that almost always drag on for eons. The constitution anticipated that parliament would legislate on a law that would spell out the process that government could follow to recover lost land. This has not been forthcoming. A clear indication of this is the Ndungu report. Despite clearly identifying over 200,000 titles that were issued illegally, very few have recovered more than ten years later.

- The physical/ urban planning laws in the country are archaic and moribund. This has left planners with little choice on very crucial planning decisions. Huge town like Mombasa is still reliant upon physical planning policies passed in 1971 more than 40 years later. Correlating these policies to ballooning populations, shifting land use and a booming land market is almost impossible. Lack of proper policy guidelines has also left planers devoid of the tools to influence change.

- Despite myriad problems facing school land, Kenya still lacks a policy on issuance of titles or for titling school land. Institutions handling this have therefore had to result to innovation to suit the increased demand. Lack of a policy also means that there are little or no standards to adhere to. This may lead to differentiation in handling cases which may disadvantage certain segments of the society.

- Crucial issues are also devoid of policy/legal guidelines. Crucial legal Questions that need to be addressed and anchored in law are:

  - What form of title should schools obtain?

  - Whose name should the title bear?

- Who should be custodian of the title?

- Is the land available for alienation after being titled?

- What are the legal safeguards exist to eliminate misuse of titles?

- Can the titles issued to schools be used as collateral?

- Legislation to protect land classified as community land in the country has been in the pipeline for more than 5 years. However practitioners in the land sector as well as legislators have always differed on what form the recognition of community rights should take. All attempts to place a substantive law in parliament have flopped. However for the first time, a proposed bill was tabled in parliament in 2015 and has progressed to second reading which is a crucial stage for passing laws. Upon being passed into law, this legislation will provide for recognition, protection and registration of community land rights besides providing for how to manage and administer community land. This will greatly assist to uphold standards in managing community land which constitutes 65% of land in the country.

b. Political issues

- Land reforms have majorly stalled in the country despite having a progressive constitution. The main problem has been lack of political will to see land reform through. Parliament for example missed a 5 year deadline that had been imposed by the constitution on passing of crucial land laws. This means that reforms in the sector continue to be delayed for no good reason.

- Land issues obviously hold a degree of high prominence in the country. However taking action on allegations of corruption leveled against political office holders has not happened in the country. Over the past year, the minister of lands was implicated in a corruption scandal. She was arraigned in court and later relieved of her duties as minister. Having senior officials in the land ministry implicated in corruption being relieved of their duties and arraigned in court is a first in a long time. The benefits this has in disrupting cartels in the land sector cannot be gainsaid.

- The Ministry of Lands has had a long standing stalemate with the National Land Commission. This has led to crippling delays in the discharge of the mandates for both institutions. It has also created a power vacuum which has favored status quo, frozen land reforms and created opportunities for corruption cartels to thrive. Following this conflict, the National Land Commission (NLC) petitioned the Supreme Court for an advisory opinion to define their statutory roles. The court recently distinguished the roles and ruled that the primary mandate of the NLC was to manage public land on behalf of the national and county governments. The purpose of the independent agency was to provide oversight in the management of public land, its use and ownership. The Court further stated that NLC was mandated to recommend a national land policy to the national government and advise on a comprehensive programme for the registration of titles. The Ministry of Lands on the other hand has the authority to register and issue land titles. To land practitioners, this advisory opinion heralds a new era. It will help to know where to apportion blame and also from whom to demand for accountability. This also allows the land commission to enjoy the independence that is crucial for its operations. The definition of roles will also help these institutions to focus on their core mandates in order to deliver the much awaited land reforms.

c. Other related causes

- There is a serious lack of awareness among teachers, parents and the general population on matters of tenure for school land. The team noted during interactions with school management officials that most were not clear on what titling for their school land entailed or even the importance it held. In some instances head teachers mixed up registration of the school with the ministry of education and registration of the school land. Lack of awareness fosters gullibility which is dangerous in light of emerging threats to land.

- Competing land use has had a huge impact on all categories of land including land belonging to public institutions. The increasing pressure on land especially in urban areas has heralded the escalation of threats on public land. Schools often have to compete for shrinking space and resources.

- The cost implications of titling have over time alienated institutions and individuals from the bracket of registration. Survey costs, application fees and government taxes are usually prohibitive. Considering that most schools have few choices on revenue sources, expenditure has to be prioritized. Books and infrastructure often take the biggest share leaving little for an issue like titling. Government should therefore waive these costs for schools as an incentive to spur mass registration.

- Land records in the country are very poorly maintained. Ascertaining the position of registration of most parcels of land belonging to schools is a gargantuan task. Some registries are also seriously understaffed. There is also a challenge with technical skills for those manning the registries. Apart from this, there has been little use of technology to register and manage land rights. This further complicates the web of tenure protection.

- Kenya lacks an inventory of public land. It is almost impossible to ascertain exactly how much land is held in the name of institutions such as schools. This also opens up land to the risk of illegal alienation.

- Population growth patterns have seriously impacted on land use. Population growth affects zoning and has in most areas led to unplanned development. This ultimately complicates provision of basic services which should also include regulation of land use.

- There are overlapping tenure systems in most urban areas. This has led to confusion on what form tenure for school land should take. It is still unclear whether tenure I urban areas should be public, private or community. This further compounds the resolution of any tenure issues.

- Government has failed to prioritize titling of land belonging to public schools. Despite lots of talk on the issue, it has failed to match the rhetoric with concrete actions. This can be seen from two examples:

    - On 27th Feb the ministry of education wrote a circular to all county directors requiring that all schools be informed to establish the status of their land even where titles existed and to apply to the national land commission for ownership documents. Since then, only 7,500 schools applied. It is imperative upon all government institutions to proactively pursue the registration of right for schools.

- In the first week of January 2016, the president jointly with the ministry of lands and the national land commission issued about 5,000 titles to squatters who had been living on a private farm[iv] in Mombasa. The government acquired the land for purposes of settling the squatters. However out of the 5000 titles, none was issued for a school or for public spaces.

5. <u>The project</u>

The Kenyan context has shown that Corruption in local land administration and at grand level between investors and local elite favors "land grabs"[v] and state capture, and marginalizes local populations[vi]. Existing global initiatives, like the G7 Land Transparency Initiative, the African Union (AU) Land Policy Initiative, and the Voluntary Guidelines for the Responsible Governance of Tenure (VGGT) aim to make land deals transparent and support good governance in land administration. Although the VGGTs embrace the necessity to prevent corruption with regard to tenure rights, most VGGT initiatives currently do not address corruption risks in the land sector. In Kenya as in many countries in Africa, land reform or land registration processes are currently on-going. Land registration, while it can help clarify and secure tenure and user rights, also favours those who have access to the registration information and those who have the networks and economic or political means to influence decisions to their benefit. The main issues that TI-K is best-positioned to tackle, and bring changes to, are:

- The **lack of accessible and understandable information** which keeps men and women of different generations and social and cultural backgrounds unaware of their land rights, hampers them in claiming their rights to land, and surrenders them to non-transparent and corrupt practices in land governance and land transaction procedures;

- The **inadequate access to justice on land issues** for men and women of different generations and social and cultural backgrounds, which hinders them to seek redress for corrupt practices;

- The corruption in land administration and land registration procedures, as well as in negotiation and compensation processes on land transactions;

- The **secrecy and opaqueness around large land transactions** and the political corruption which might be part of it;

- The **lack of monitoring and social accountability mechanisms** to prevent and prohibit corrupt practices in the land sector at local, national, and regional level;

- The **absence of multi-stakeholder dialogue effectively tackling corruption in the land sector** and building a strong coalition against it.

Transparency international Kenya is currently one of the chapters in Africa implementing a project on land and corruption. The project seeks to explore mechanisms on how people-centred land-governance can be supported at national level, and land-related corruption can effectively be addressed in the country. The project will also seek to build linkages with state and non-state actors involved in land governance[vii], and gather and share relevant data on corruption in the land sector[viii], its trends, nature and strategies that have been utilised to combat it. TI-Kenya will seek to contribute to the development of a body of evidence on land and corruption in Africa.

TI-Kenya will also foster existing efforts of citizens and organized groups in the fight against corruption in the land sector. Furthermore, the initiative will actively support the development, implementation and evaluation of various social accountability tools and approaches that actively engage citizens and curb corruption around land (like public dialogue forums, social compacts/development pacts and advocacy and legal advice services).

The key result areas for this project are as follows:

- Result 1: A strong citizenship of men and women of different generations and social and cultural backgrounds is informed of their land and tenure rights, legally empowered to defend their rights, aware of solution mechanisms, and demands transparency and accountability and citizen participation and oversight from their governments to end corruption in the land sector.
- Result 2: Stakeholders from civil society, private sector and government are engaged in land related anti-corruption initiatives, systematically act to promote good land governance, and prevent corruption in the land sector nationally, regionally and globally.
- Result 3: Intergovernmental institutions, governments, and businesses have strong, equitable, and just procedures in place to prevent and redress corruption in land distribution, land acquisition, and land dispute management, as well as to sanction infractions.

One of the biggest outputs anticipated in this project is enhanced protection of tenure for public schools within Kenya. TI-Kenya will facilitate the development of geo-referenced maps of land belonging to a select number of public schools drawn from Nairobi and Kwale counties. We anticipate to work with school communities to jointly identify their school boundaries, capture the information on maps, assist

school management committees to understand the process of applying for titles and support the schools in following up with the authorities to track the progress of the applications for titles.

Indeed we ascribe to the school of thought that recording of rights will make tenure more secure and consequently improve land use by all. Improved technology such as the use of Geospatial data collection and collation devices can be used to improve tenure security for public schools in Kenya. This project will make use of available geo-mapping technology. We shall share our experiences in the use of these tools that can be replicated elsewhere. We shall offer unique insights from the field and lay down communities' perspectives and reactions to the titles for schools project. This project has allowed us to conduct an independent analysis of the performance and capacity of government institutions responsible for facilitating security of tenure for public schools. We have also examined the roles of institutions such as the Ministry of Lands, the National Land Commission and county governments. We have also examined existing laws and policies and the extent to which they facilitate the realization of this form of security of tenure, and suggest requisite policy and legal reforms.

For the exercise we engaged the services of a consultant to undertake the task. The terms extrapolated in the TOR's were as follows:

◆ - - - - - - - - - - - - ◆

1.Specific Objectives

I.   Develop GIS based maps of 40 select public schools in Kwale and Nairobi counties.

II.   Producing a set of maps for use in community-level corruption risk assessment for 40 schools. These maps will be provided in hard (printed – 2 copies) and electronic formats. The electronic format will be usable with the relevant Geographic Information System software (such as ArcView) and include each data layer used in generating the maps.

III. The maps should be embedded to a webpage that is publicly accessible.

IV.   The webpage should have a backend where the status/profile of the schools can be changed and more schools can be added by a web page administrator who is a member of staff of TI-Kenya.

V.   The webpage should enable printing of the maps as specified by the user.

◆ - - - - - - - - - - - - ◆

2.   Characteristics of the maps include:

Data Contents and Specifications

a) School boundaries and approximated acreage expressed in HA.

b) Scale: 1:5,000; 1:50,000.

c) Data presented: a) Infrastructure, including roads, canals, electrical facilities, water facilities, housing and other buildings such as classes, offices and stores.

d) Definition of occupied and other unoccupied lands with an indication of basic land use.

e) Elevations derived from existing data based or generated from digital sources.

f) At least three geo-referenced marks for reference on the map (10 references for the 1:50,000 map), if fully rectified maps with standard grid references are not practical.

g) Compliance with local and global standards in terms spatial references and accuracy.

h) Printed with water-fast ink on map grade paper in color.

i) Use of standard map notations, notations key and indication of scale.

j) Base map will be prepared on various layers for ease of operation in AUTOCAD/GIS.

k) GIS Visualizations:

   - Maps should be clear and legible

   - The maps should be displayed using different colors to show different features, items, geographical regions etc.

   - Users should be able to filter / narrow into a specific item such as a school to display the data specific to that school.

VI. To provide TI-Kenya with an in-depth understanding of existing ownership details including competing claims to the land.

VII. Establish the locations of property (buildings or plots) in schools onto the GIS base map and its corresponding data which would provide a spatial dimension of Properties.

VIII. Allow spatial analysis of existing school land and assist in particularly identifying the location of vulnerable school land.

3. Detailed Tasks:

I. Undertake data collection, analysis, storage and retrieval through a variety of techniques, including Field visits, use of available GIS, ensuring the full involvement of local stakeholders from the outset.

II. Support the progressive registration and protection of school land by using GIS to include physical development issues such as land tenure, informal development, development suitability, topography, drainage, access to land, and location choices for school development based on available information.

III. Prepare properly geo-referenced maps and work with team members to verify and assess the results.

IV. Document methodologies, practices, results and lessons learned for communication to other stakeholders in order to increase project relevance.

V. Provide user manual clearly providing information on how to navigate / use the maps and administrator manual detailing how to add a school and update the school metadata.

Methodology:

The team first compiled a list of public schools in each county. A preliminary mapping of the schools was conducted using a matrix to capture data as follows:

The name of the school, Contact person	Type of school, Public/Private Primary/ Secondary	The location of the school, County Rural/urban	Registration status of the school with the Ministry of Education	Approximate size of land occupied by the school	Registration status of the land	If not registered, has the school applied for registration	Are there any existing disputes to the land or any

							current threat to the school land?

TABLE 1: Sample Matrix

◆ - - - - - - - - - - - - ◆

Results from the mapping

From the initial mapping the team deciphered that out of 84 schools that were mapped; only 8 had titles to their land. 6 of these schools were in Nairobi county while only 2 were in Kwale county. We also noted that all the schools that were titled were started by mainstream churches and were therefore probably beneficiaries of the efforts of churches to formalize tenure for their land.

The team also noted that 16 schools had existing threats to the land they occupied. An interesting point was that the number of schools in both the rural county (Kwale) and the urban county (Nairobi) that had existing threats were almost equal. A deeper analysis of the threats showed that schools in Nairobi faced threats from several parties namely churches, individuals, the county government and other government institutions. However those in kwale had threats from or disputes with mostly individuals.

Out of all the schools mapped half of them 38 had already made applications to be issued with title deeds. Most of those that had applied were from Nairobi county. On further consultations with heads of schools on the mode of application, we noted that they had simply written letters to the national land commission seeking for the titles. Only 2 schools out of those that applied had received any response from the officials concerned on their application. This showed that there was a huge gap that needed to be plugged on the processing of applications.

Our analysis is that the applications having being done in a simplistic way may also not yield any positive results. School heads need a lot of guidance on the legal process to follow for them to obtain a title to the land they occupy.

After the preliminary data collection, we selected a total of 40 schools that we are now working with. The boards of management for these schools have been sensitized on the process of registration of school land. This is to prepare them for the ongoing project.

Challenges and mitigation strategies.

- This consultancy was floated and received bids that were higher than the amounts budgeted for. Conducting such a momentous task requires a huge investment in terms of resources. This assignment was nearly abandoned midway. However this was discussed and after budget realignment, it was possible to continue with the consultancy.

- However a lot of useful time had been lost and with the year drawing to an end, a lot of government offices were not fully functional. This has delayed some components of the work around this consultancy. However in the New Year, all systems are back to normal and the consultancy is continuing without any further hitches.

- Members of the school administration in some schools have links to local politicians. These politicians have in some cases participated in or been complacent in the loss of school land. There was therefore open opposition to attempts to get more information from the schools or to even work with them on the school project.

- Local administrators in some cases were very uncooperative. The team encountered a situation where preliminary meetings with the school administration could not continue because a local official wasn't supportive of the idea. This matter was reported to a senior official who then assisted the team to proceed with their plans.

- Data collection requires the physical presence of several experts in the school compound. This sometimes attracts unwarranted attention and in some cases may result into a security threat. The team has learnt that working closely with the community alleviates any form of threat to the consultants.

- Obtaining land records is a massive problem in this country. This is bound to greatly affect the collation of data relating to a school. For example attempts to obtain maps for some schools in Kwale were futile because officials said that maps could only be obtained in Nairobi.

Lessons learnt

- The team has been careful to work with the community from the conceptual stage of the project. This has helped to get easier community ownership and support. As mentioned above it also helps for security.

- Time is a great asset for such a project. We recommend a period of about six months from planning, implementation and validation.

- Obtaining advice on technical issues related to such a task is crucial. The team benefited greatly from collaboration with an expert from cadasta[ix] who has helped to ensure that the best standards are adhered to in the assignment.

6. <u>Major findings</u>

✓ Titling schools has close relation with adjudication of land. In areas where counties have well advanced adjudication processes it is easier to title schools. Where counties are still struggling with incomplete land adjudication then titling is more complex.

✓ Rural areas like Kwale do not often have physical development plans. Most plans are for towns in the rural areas. Where will the plans for the schools fit in the overall planning of these areas?

✓ Most land corruption related cases reported at the Ethics and Anticorruption commission are in areas that are untitled or un-adjudicated. There is therefore a close link between informal tenure regimes and risk of corruption.

✓ Most applications for titles to schools are done by head-teachers in forms of letters to the national land commission. These letters hold little legal value in the whole chain of land registration. Most schools have also not met the minimum requirements for issuance of titles. The application letters do not help to resolve this issue.

✓ Even with the escalating threats to public school land and numerous campaigns for registration of school land, only 7500 have applied for titles in the past one year. This represents about 25% of all the schools. ¾ of the schools are yet to take the first step.

✓ In most cases of land grabbing the custodians of the rights to the land are to blame. Government officials, private individuals and school administration lead in the list of those implicated in loss of land belonging to public schools.

✓ The education sector consumes a huge part of the Kenyan budget being 26% in the financial year 2014/2015 and 22% in the financial year 2015/2016. However most of these funds go to recurrent

expenditure and little to development. Despite the huge budget there is zero investment in assisting schools secure the land they currently occupy.

7. Recommendations:

✓ There is need to develop prediction models to help us understand how schools will be impacted by competing land pressures for example in urban areas.

✓ There is need to prioritize planning for people and not profit. This needs to be done by all built environment professionals.

✓ Community good will is not enough to continue securing interests on land belonging to public schools. There is need for all stakeholders to follow through on formalization of tenure for land belonging to public schools.

7.1 Further recommendations:

National and county governments can:

✓ Develop clear guidelines and minimum standards on registration of school land, based on the Constitution and new legal framework, with some flexibility to address unique county circumstances;

✓ Equip counties to collate and disseminate reliable, updated information on school land.

✓ Prioritize funds to assist with formalization of tenure in schools within a budget cycle.

✓ Establish feedback mechanisms where citizens can report grabbing, register questions or complaint or compliments, without fear of reprisal;

✓ Dedicate adequate financial and human resources to training county staff on use of technology to manage and administer land rights;

✓ Ensure that school leadership understand their roles, functions, responsibilities in relation to protection of tenure.

✓ Developing and widely disseminating a citizen's guide on the process of acquiring titles especially for public schools.

✓ Waive all costs of obtaining a title for public schools.

Civil society can:

✓ Build partnerships with counties to establish participatory land registration processes.

- ✓ Use networks and coalitions to identify, advocate for, and monitor minimum standards for government transparency, accountability, and participation on matters of land governance.
- ✓ Donors can help by encouraging multi-year proposals from CSO coalitions to support and monitor land registration processes; and
- ✓ Use common methodologies and platforms to monitor government performance.

Development partners can:
- ✓ Fund Government-CSO partnerships focused on designing and rolling out participatory registration processes systems and enhancing capacity,
- ✓ Support longer-term initiatives by CSO networks and coalitions to advocate for minimum standards for transparency, accountability and performance, and to monitor government performance on land governance.
- ✓ Enhance grant making criteria that reinforces accountability of government and CSOs to constituents.

---

[i] Jatropha is one of the plants being farmed in the country. It is used for production of biodiesel.

[ii] http://goo.gl/JcOl84

[iii] http://edition.cnn.com/2015/01/20/africa/kenya-playground-children-tear-gassed/

[iv] This farm is known as the waitiki farm and belongs to a private individual.

[v] Term used according to Tirana Declaration, http://www.landcoalition.org/about-us/aom2011/tirana-declaration

[vi] "Corruption in the Land Sector", TI and FAO Working Paper #04/2011; and "Corruption and Large-Scale Land Acquisitions", Global Witness, October 2012

[vii] E.g. concerned NGOs and CBOs, the county government, traditional authorities, Ethics and Anti-Corruption Commission, The National Land Commission,

[viii] E.g. through TI's Global Corruption Barometer; data from the TI Advocacy and Legal Advice Centres http://www.transparency.org/getinvolved/report

[ix] Cadasta is a US based organization with expertise on geo mapping work that offered pro bono technical advise on the project.

LIST OF TARGET SCHOOLS IN MOMBASA AND NAIROBI COUNTY

MOMBASA	NAIROBI
MSAMBWENI PRY SCHOOL	RAILA EDUCATIONAL CENTRE
MVINDENI PRY SCHOOL	HURUMA PRIMARY SCHOOL
SIMANYA PRY SCHOOL	AYANY PRIMARY SCHOOL
MVINDENI SECONDARY SCHOOL	OLYMPIC PRIMARY SCHOOL
KICHAKA SIMBA PRY SCHOOL	KOMAROCK PRIMARY SCHOOL
KOMBANI PRMARY SCHOOL	BUSARA PRIMARY SCHOOL
KWALE PRMARY SCHOOL	ST. GOERGES ATHI SECONDARY SCHOOL
BOWA PRIMARY SCHOOL	VALLEY BRIDGE PRIMARY SCHOOL
KIDZIMBANI PRIMARY SCHOOL	GATINA PRIMARY SCHOOL
NDAVAYA SECONDARY SCHOOL	DAGORETTI MIXED SECONDARY SCHOOL
VANGA PRIMARY SCHOOL	MIHANGO PRIMARY SCHOOL
JUMA BOY SECONDARY SCHOOL	KIBERA PRIMARY SCHOOL
MWABILA PRIMARY SCHOOL	KAYOLE PRIMARY SCHOOL
VIVURUNGANI PRIMARY SCHOOL	
YEJE PRIMARY SCHOOL	
GOLINI PRIMARY SCHOOL	
NDAVAYA PRIMARY SCHOOL	

Table 2: target schools