



TRANSPARENCY
INTERNATIONAL
KENYA

BASELINE SURVEY, POLITICAL ANALYSIS AND RISK MAPPING IN KWALE AND NAIROBI COUNTIES

**Draft Report Presented to
Transparency International-Kenya**

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EXECUTIVE SUMMARY

This report is the outcome a rigorous study that encompassed the following: a baseline survey; a political analysis; and a risk mapping. The study sought to establish the corruption risk, prevalence and the nature of corrupt practices in the land sector in target 'communities' (areas and/or sectors) in Kwale and Nairobi County. The report consists of an empirical section and an analytical section that are intended to inform TI-K programming decisions and determine benchmarks for possible outcomes and impacts of the project's interventions. The baseline study is also intended to provide programme staff with detailed baseline data on key project indicators to enable changes in land governance to be measured over the course of the project. The **Analytical Part** of the survey i.e. the Political Analysis and Risk Mapping addresses itself to the questions of operational relevance for TI-Kenya and its partners who will be implementing the land project as well as those who work on land and corruption. The analysis examines the political, legal and operational context and dynamics of the land sector and is structured around the following areas, namely;

1. Policy, Legislative and Operational environment governing land and Corruption and level of adoption/implementation, which presents the basic legal guarantees that define the operational environment for land actors. This sections looks at the centrality of land in Kenya's development, the problem of complexity, use and abuse of state power, the sanctity of title and the new constitutional dispensation as regards land management and use.
2. The Land and Integrity Debate, which focuses on the underlying causes of corruption in the land sector, the political and legal dynamics and how these impact on land governance. This section discusses the inconsistencies of the Land Acts, the fact that sections of the political leadership are keen to roll back the gains that have been achieved with land reforms and the theoretical mischaracterization of corruption.
3. The role of politics, political agents and Institutions in addressing and/or sustaining corruption in the land sector, in which the report analyzes and assesses the country's politics and history with regard to land and land reforms. The section situates the parameters of political debate and land policy development in Kenya. The section also takes a look at the nationalist movement, the liberation discourse and the neoliberal narratives that followed in framing the land reform debates and practices. The section ends with a brief overview of the TJRC findings on the history and irregularities that attend to the land sector.

The **empirical part** of the mapping presents the results of the field studies, based on the Household Surveys, Focus Group Discussions and Semi-Structured Interviews and Case Studies. The section is structured around the following areas, namely

1. Context and conditions of work on land and corruption, where the discussions which took place in both counties chronicle the perceptions of land value among the communities (what the ownership question means to them, their common land problems, prevalent land use patterns among other issues), access to land and land tenure (who is allowed to own land and how do people acquire land?); knowledge, rights, interests and duties in land (land rights, content, practices and challenges); degree of citizen participation in land management (decision making and empowerment); corruption in land services and some recommendations.

2. Prevalence and nature of corruption in the land sector for the target communities, in which for example the two case studies presented “The Church and Land Corruption: The Case of Umoja Residents Association vs Redeemed Gospel Church” and “The Case of Tiwi Diani Complex: Tiwi Aggrieved Farmers Struggle Against a Cocktail of Repression” the report examines the land injustices that communities go through in the hands of land hungry individuals and institutions and mechanisms that exist for complaint handling as far as these issues are concerned.
3. Benchmarks on security of tenure, Information and Data for Land Advocacy and Interventions, presents the indicator baseline values, indicator data, stakeholders involved in land and corruption which provide guidance for improving project interventions, activities, design and monitoring indicators.

Recommendations and Conclusion

1. **Policy, Legislative and Operational Environment Governing Land and Corruption:** The policy environment is replete with legal and administrative guarantees that define the spaces for land actors and their operations. From a regime where there were many land laws and a missing holistic policy which gave rise to incompatible regimes that informed the breakdown in land administration, led to corruption, inequality in ownership, disinheritance of some groups and deterioration in land quality, today there are a lot less laws, a concise constitutional framework and fewer institutions. The new constitutional dispensation has however not dealt with the problem of complexity, use and abuse of state power and the sanctity of title. Integrity (or lack of it thereof) in Kenya’s land administration and management has for long been seen only through the narrow lens of land law reform.
 - a) **Importance of Land and Land Documentation:** 98.25% of the study respondents view land as a critical resource and classify it as either important 20.8% or very important 77.4%. Yet for such a critical resource it is a paradox that only about 34.8% of the respondents confirm being in possession of a legal title or document and a majority 62.8% in Kwale and 2.5% in Nairobi County are unaware of the existence of legal title. 49.7% linked their tenure security to the title they held while 50.3% felt insecure mainly fearing the possibility of forced evictions in both Counties. Land remains central to Kenya’s development. There is however a dominant belief that that giving people unencumbered title to their land is essential to secure their tenure and perhaps to ensure increased productivity, rural/urban job creation, and food security. This emphasis underestimates the texture of customary law communities as titling often is expensive. Communal and customary tenure provides access to communal land which acts as an important safety net that allows people who otherwise would be forced to migrate to cities to become urban unemployed to find reason to be.

The fact that the content of property rights one got under the Registered Lands Act (Cap. 300 Laws of Kenya) was absolute and could only be circumscribed, in theory, in exercise of State’s power of compulsory acquisition meant that revocation of title was impossible even where it may have been obtained illegally. Most of these titles are never issued with due process, after public participation and competitive bidding for example. Even land set aside for other

purposes has been allocated. This principle of sanctity must be challenged given the circumstances.

- *In this connection the study recommends that government should strengthen customary tenure systems by making them more democratic and transparent. The land policies should be harmonized and made compatible so that corruption in land administration is reduced with more equity in ownership and greater equality in land distribution. Kenya must start registering deeds and not mere titles and other forms of tenure recognition must be accepted and legitimized. Unregistered interests must constitute property given that most communities live and use unregistered land for the most part. Illegally acquired titles must be revoked and those dispossessed restituted.*
- *The study recommends that the land sector should appreciate history, especially its shaping of the present and the lessons that may be learned from it: Kenya's land redistribution programme, initiated some fifty years ago, through the introduction of land titling for everyday people was ultimately a failure, geographically patchy in implementation and over swept by land grabbing carried out by Kenyan elites to an incredible degree this is not a path anyone should want to tread again.*

b) **Abuse of state power:** On land Information, land laws remain the most popular source of information on land rights at 40.1% followed by public officials/ public institutions at 21.7%, media at 15.2%, Non-Governmental Organizations (NGOs) at 6% among other sources. The process of land law reform is largely confused to equal land reform which is why most respondents seem to consume land laws as their key source of information. Whereas most respondents confirmed knowledge on what they would do if they required more land information on 'land title as collateral for credit' was the most sought after at 20.4%. Only a paltry 5.13% of respondents sought information on land use. This confirms that Kenya's land reform has focused more on land tenure and paid lip service to land use. Land administration and management has for a long time lacked an efficient, accountable and equitable institutional framework which is why the centralization of state responsibility over land matters; lack of government transparency over land management became a byword. This is what led to the use of public land to secure political favors.

- *This study recommends that the state must not be the ultimate authority in matters of control and management of land. The delivery of land services, including registration, allocation, transfers, surveys and dispute processing must be dispersed to other agencies to root out corruption that is prevalent in the ministry that has been providing these services.*

c) **The problem of complexity and the 'technist' approach to land reforms:** Kenya has had too many land laws at one stage 76 pieces of legislation and 131 regulations and laws. This made administrative decisions too complex and layered leading to inefficient management arising out of the bureaucracy. The corrupt and inefficient management is therefore a function of the inefficient land administration regime. It is the reason jurisdictional turf wars of key agencies has been a big challenge making anti-corruption efforts very futile.

- *The study recommends that the legal and policy framework should be calibrated to ensure the multiple interests that land connotes are addressed. This should ensure the land owning mania is controlled by having traditional institutions also play a role in land management, use and access. The overall agrarian system livestock production, tourism, agriculture and natural resource exploitation must all be dealt with in enabling laws that speak to one another. The colonial laws and their relics must be removed from the statute books and the impact of the inequalities which those laws made possible redressed. The dual system that developed the European economy at the detriment of its African counterpart must be rectified through affirmative actions that incorporate the views of communities.*

d) **Community Institutions and Land Management:** Despite community's desire to play a part in making decisions on how to administer and manage community land, public officials/institutions remain the most authoritative on matters of community land 23.5% in Nairobi and group representatives or traditional leaders 41.5% in Kwale. Public participation is therefore hampered by this as well as due to lack of knowledge on procedures for community land management. Most respondents do not belong to any organized group that deals with land issues but quite a number had engaged in self-help actions in their community 11.1% in Kwale and 30.5% in Nairobi. Major actions included attending demonstrations, signing petitions and contacting a lawyer or legal

- *Address the political legacy of dual systems of governance and authority: This is where points of friction have arisen between tradition, custom and constitutional rights. The current land laws undermine customary law by entrenching colonial distortions of it and using the common law lens to understand it not the constitution. We recommend the enactment of a community land law that will not phase out customary land tenure as a system but one that will allow it to evolve.*

2. **The Land and Integrity Debate:** The underlying causes of corruption in the land sector bear political and administrative undertones but also history. Land governance such as is envisaged in the new Land Acts still suffer from debilitating inconsistencies in these laws and the fact that sections of the political leadership are keen to roll back the gains that have been achieved with land reforms makes this matter even more complex. This is in addition to the theoretical mischaracterization of corruption. Old land statutes are still in operation apparently because there are saving provisions in Section 107 of the Land Registration Act. Infeasibility of title has also been referred to court. Even as the study contemplated the gains in the new land laws, several inconsistencies that are identified in the detailed sections of the report need urgent attention. But even before this is done Parliament has introduced a Land Laws (Amendment) Bill, 2015 that seeks to abolish the County Land Management Boards to stop the decentralization of land services as contemplated by NLC. The Bill also seeks to give the Registrar undefined discretion to 'delete' entries in the register. The Bill also seeks to grant compensation to departing lessees for unlawful improvements if application for renewal is not granted.

For a sector is not immune to corruption and owing to the centrality of land in Kenya's socio-cultural and economic development, reducing corruption in land management is an effort worth pursuing. That corruption is both a major cause and a result of poverty in Kenya (and around the

world) is not disputed. Due to the fact that corruption in the land sector is pervasive and that even with more investment applied by the state to anti-corruption measures in Kenya, corruption seems to be even more entrenched. Theoretical considerations that inform the characterization of corruption as a subject must be called to question. Because it seems, even if most individuals morally disapprove of corruption and are fully aware of the negative consequences for the society at large, very few actors show a sustained willingness to fight it. The study takes the view that anti-corruption reforms have largely failed because they are based on a mischaracterization of the problem of corruption (Persson et al., 2010). Legal reforms in and of themselves are far from adequate as a means to tackling corruption because as a country the frameworks are more than one can ask for.

- *Deal seriously with the displaced legacy of urban poverty and inequality: Over the years, many of the people, their livelihoods, and a vast proportion of the wealth their dispossession enabled, have urbanised. Much of the old capital accumulated on farms is now sitting at the stock exchange or has left the country. Merely restoring land itself the symbol of dispossession and accumulation does not therefore reverse this legacy.*
- *Attempt to erase the social and spiritual legacy of division, alienation and invisibility: Forced removals of communities over the years has led to loss of land, homes and livestock, break up of communities, the splitting up of families and the erasing of histories. There is no physical memorial of what was lost and reconciling communities is difficult where policy process only speaks of victims, no perpetrators or beneficiaries. What does the law seek to do with those who benefited from dispossession-elite and corporate owners who acquired land cheaply and developed it using public subsidies and cheap labor? As we all know communities predate the state and most gazetted public lands were appropriated unjustly.*

3. The role of politics, political agents and Institutions in addressing and/or sustaining corruption in the land sector: Kenya's politics and history have defined the parameters of political debate and land policy development. First there was a liberation struggle and a nationalist movement that was driven by the contestation over access to land and land based livelihoods. Despite this land reforms have hardly succeeded to offer some form of redress, land restitution, restoration or compensation to those who suffered land related injustices sown during the pre-and post-colonial periods by white farmers, absentee land owners and outsiders. Often land policy debates are informed by narratives, norms and antecedents that started with colonial dispossession and displacement. These displacements were legitimized by colonial laws which then gave impetus to the liberation movements. However when the liberators took power they inherited political structures, institutions and economic production systems left by the colonists and quickly abandoned the liberation ideals. A post settler oligarchy emerged that was more interested in accumulation through abuse and use of state power using the liberation discourse to justify their behavior. When economic reforms followed in the 80s a neoliberal narrative was introduced to determine how policy and political action is framed. It is these narratives and their policy and political impacts that the TJRC was established to investigate.

- *The study therefore recommends the full implementation of the TJRC report to reduce and rid Kenya of the expanded scope of colonial land law and policy.*

- *Need to Confront the material legacy of rural poverty and inequality: The dual country sides created by the colonial legacy where there is deep poverty and underdevelopment on one side with successful capitalist farming on the large settler economy on the other hand made possible by dispossession and cheap farm labour and decades of politically motivated production and export subsidies, price controls, regulated marketing through state control boards and trade protection ought to be vanguished.*

4. **Context and conditions of work on land and corruption:** In Kwale and Nairobi communities have varied perceptions of land value. Each community has its own idea (what the ownership question means to them, their common land problems, prevalent land use patterns among other issues), access to land and land tenure (who is allowed to own land and how do people acquire land?); knowledge, rights, interests and duties in land (land rights, content, practices and challenges); degree of citizen participation in land management (decision making and empowerment); corruption in land services among other things.

- a) **Land Rights and Land Management Institutions:** 49% of the households surveyed confessed possession of knowledge on their rights to land compared to 71.3% in Kwale and 38.2% in Nairobi who did not know about their land rights. While illiteracy played a part in this latter situation some found comprehension of land laws somewhat difficult while others had outright lack of access to land information. 43.9% of respondents in Kwale felt that their land could be taken away anytime while 10.5% were not sure whether their land could be taken away or not. Cumulatively, slightly over half of the respondents are confident that their land cannot be taken away at 55.1%. Family and politicians were the main suspects who could take away the land and this includes relatives (42.8%), parents (13.2%) and children (3.8%). Politicians on the other hand include Governor (20.8%), Member of County Assembly-MCA (8.2%) and Senator (1.3%). The threat of eviction is a reality that residents of informal settlements (mostly in Nairobi) and squatters (mostly in Kwale) confront on a daily basis and is a form of insecure tenure.
- b) **Prevalence and nature of corruption in the land sector for the target communities:** In two case studies presented from the two Counties “The Church and Land Corruption: The Case of Umoja Residents Association vs Redeemed Gospel Church” and “The Case of Tiwi Diani Complex: Tiwi Aggrieved Farmers Struggle Against a Cocktail of Repression” the land injustices that communities go through in the hands of land hungry individuals and institutions are examined. Mechanisms that exist for complaint handling as far as these issues are concerned are discussed too.
- c) **Corruption in Land Services:** Bribery experiences reported by TI throughout the five year period 2010-14 show no improvement in statistics which simply put suggests that, there was no dividend from the Constitution of Kenya, 2010 and the new Land Acts (Land Act, 2012; Land Registration Act, 2012; National Land Commission Act, 2012 and Environment and Land Court Act, 2012) in so far as bribery while seeking land services is concerned. Majority (81%) of respondents view corruption as a major issue in land management (Nairobi 92.3% and Kwale 63.2%). Cumulatively, 77.5% consider corruption in land management high with relatively more respondents in Nairobi considering it very high at 69.5% as compared to

Kwale at 25.1%. Perceptions of corruption invariably increase with multiple uses of land. Therefore, the failure of development control in Nairobi can largely be attributed to corruption. Slightly over one-third (38.6%) of respondents for both counties had been asked to pay a bribe. The Ministry of Lands officials were the major culprits in asking for bribes at 88.3%, followed by community leaders at 11.7%. Majority (53.2%) felt the need to pay the bribe, having been asked to, while 46.8% did not feel the need to pay a bribe.

Of the 38.6% of the respondents who had paid a bribe the major reason given for paying a bribe was; to speed up land transaction (27.41%), because it was the norm and everyone did it (15.23%), to avoid eviction (15.23%) and to access relevant information (14.7%). Corruption in the land sector is cited as constraint in the 'ease of doing business' survey. Public officials are the major recipients of bribes in the land sector and they mainly asked for money, gifts in kind and transfer of property deeds.

Article 60(1) directs that land in Kenya shall be managed in accordance with the principles of *inter alia*, equitable access to land as well as transparent and cost effective administration of land. Article 62 affirms that all land belongs to the people of Kenya collectively, as a nation, as communities, and as individuals. To give effect to those terms, Article 67 establishes the National Land Commission (NLC) to, among others; manage public land on behalf of the National and County Governments. In Article 40, the Constitution guarantees the right to every person either individually or in association with others, to acquire and own property of any description and in any part of Kenya. It is clear that the property clause makes the land claims by communities a little tricky as the two may in some interpretations be in conflict.

- *The study recommends that all efforts are put in place to implement Section 158 of the Act which provides the necessary legal apparatus to repossess illegally acquired land and all other invalid transactions tainted by corruption. The NLC must notify those occupying land illegally to vacate.*
- *In order to improve transparency in land management all the new land laws should be enacted. This would enhance transparency but would be bolstered if transparency in land registries through digitization of land records, arrest and prosecution of corrupt officials an enhanced civic awareness on land rights is improved.*

List of Acronyms and Abbreviations

AU-AfDB	African Union –African Development Bank
CKRC	Constitution of Kenya Review Commission
CLMBS	County Land Management Boards
EACC	Ethics and Anti-Corruption Commission
FGD	Focus Group Discussion
GoK	Government of Kenya
IMF	International Monetary Fund
KASDS	Kenya Agricultural Sector Development Strategy
KIHBS	
KII	Key Informant Interview
KLA	Kenya Land Alliance
KLR	Kenya Law Reform
KNBS	Kenya National Bureau of Statistics
KNDR	Kenya National Dialogue and Reconciliation
LTO	Land Titles Ordinance
MCA	Member of County Assembly
NEMA	National Environment Management Authority
NGOs	Non-Governmental Organisations
NLC	National Land Commission
NLP	National Land Policy
NRM	Natural Resource Management
ODK	Open Data Kit
SID	Society for International Development
SPSS	Statistical Package for Social Scientist
TI-K	Transparency International Kenya
TJRC	Truth Justice and Reconciliation Commission

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Acknowledgements

Section I: Introduction

1.1 About Transparency International

Transparency International–Kenya (TI-Kenya) is a not-for-profit organisation founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The global movement provides a platform for sharing knowledge and experience, developing strategies to respond to regionally distinct patterns of corruption and initiating advocacy campaigns at both the regional and sub-regional level. The vision of TI-Kenya is that of a transparent, accountable and corruption-free Kenya and the mission is to transform the society and institutions by supporting the development of high integrity leadership in all sectors and at all levels. TI-Kenya’s key goals are: Institutions that are efficient and deliver quality services; and, a society that upholds and promotes integrity. TI-Kenya remains the leading civil society organisation in anti-corruption with over 15 years’ experience in governance work both at the national and county levels, including direct engagement with the Government, the private sector, individuals and groups . TI-Kenya has its main office in Nairobi and a regional presence in the Coast, Rift Valley, the larger Western Kenya and parts of Eastern Kenya through its four Advocacy and Legal Advisory Centres (ALACs¹) in Mombasa, Eldoret, Kisumu and Nairobi. Through the ALACs TI-Kenya has increased the coverage and reach of its services at the community level.

1.2 Project Overview

TI-Kenya with support from the Transparency International Secretariat is intent on implementing a project entitled “land and corruption in Africa” The project seeks to explore mechanisms on how people-centred land-governance can be supported at national and local levels, and land-related corruption can effectively be addressed in the country. The purpose of the initiative is to build linkages with state and non-state actors involved in land governance², and gather and share relevant data on corruption in the land sector³, its trends, nature and strategies that have been utilized to combat it. This should contribute to the development of a body of evidence on land and corruption in Africa having assessed various laws, regulatory provisions and practices and how well these work. Ultimately the project will seek to 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, advocacy and legal advice services).

The key result areas for this project are as follows:

¹ Advocacy and Legal Advice Centre (ALAC) is a walk-in, call-in or mail in centre where victims and witnesses of corruption can obtain free and confidential advice on corruption cases.

² E.g. concerned NGOs and CBOs, the county government, traditional authorities, Ethics and Anti-Corruption Commission, The National Land Commission

³ E.g. through TI’s Global Corruption Barometer; data from the TI Advocacy and Legal Advice Centres

- **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.

The main goals of the project are:

- Enhancing transparency and accountability in land management within Kenya.
- Promoting the realization of secure tenure rights for land within Kenya.
- Significantly curbing corruption in land management and land administration within Kenya.

The project target areas are Nairobi and Kwale counties in which the project will focus on outreach that will increase knowledge levels on corruption and anti-corruption strategies in the land sector among Kenyans, directly and through local mass media. This is intended to contribute to the level of responsiveness by the county government and participation by citizens. The overall project goal is encapsulated in three broad objectives that seek first, a strong citizenship of men and women of different generations and social and cultural backgrounds that 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.

Secondly, Stakeholders from civil society, private sector and government who are engaged in land related anti-corruption initiatives, systematically act to promote good land governance, and prevent corruption in the land sector nationally. Thirdly, 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.

1.3 Methodology

The study was a cross-section rapid assessment of the knowledge, attitude, perception and capacity of the sectoral conditions in land management and land administration in select Sub-Counties of Nairobi and Kwale Counties. A multistage sampling approach was utilized for the quantitative survey. The total household population was divided into L strata (2 counties and further into sub counties) and random samples selected from each stratum. In each sub county, cluster random sampling was employed with due consideration to population size, regional coverage among others.

The Sample size was **443** households. The required sample size was given by:

$$n = z^2 \sum_{i=1}^L \frac{N_i^2 p_i (1 - p_i) / w_i}{N^2 d^2}$$

$$w_i = \frac{N_i}{N}$$

Where:

P_i = the proportion of population in stratum

N = the total population size (i.e. the population proportion as a weighted average of the stratum-specific proportions, where the weights are the relative sizes of the strata)

p = Confidence interval level

d = Confidence limit (such that the uptake of project goal can be estimated within 10% of the true population uptake with 90% confidence)

w_i = Proportional allocation for the i^{th} stratum.

Purposive sampling was undertaken for the qualitative survey. Key informants in the evaluation were interviewed at the policy level and also the stakeholders identified in the Sub-Counties participated in FGD. The study population comprised all stakeholders to be involved in the project in target area and working or partnering with the implementing agency. Persons were eligible to participate solely on the basis of the inclusion and exclusion criteria, regardless of nationality, religious, ethnic or other characteristic.

Inclusion criteria:

- Male or females aged 15years and above (household heads)
- Willingness to voluntarily participate in the study
- Preferably land owners or those actively involved in land acquisition and management processes, ordinary land users

Exclusion criteria:

- Unable to understand the purpose of study, and answer the interview questions
- Minors and Refusals

Data was acquired through a multi-stage approach. The activities in the first stage involved acquisition of secondary data and desk review of publications, documents and reports on operational background, organizational background, any history on land management, a rapid assessment of relevant policy, legislative and institutional frameworks relating to land and their effectiveness in curbing corruption and the project documents among others. The second stage involved field missions and assessment visits to the targeted beneficiaries and relevant organization to conduct key informant interviews and to engage focus group discussants using investigator developed questionnaire. Key informants were sampled based on their incumbency.

The third stage involved the collection of primary data using a household targeted tool integrated in mobile phone data collection. In addition to the structured interview questionnaire, direct observation was a complimentary data collection method. Focus group discussions (FGDs) were conducted with groups of individuals to get information on particular aspects related to the baseline survey. Focus group discussions involved community groups of targeted beneficiaries. Three (3) FGDs were

undertaken in both Counties (2 Nairobi, 1 Kwale). The Nairobi FGDs included; Residents of informal settlements e.g. Kibera, Mukuru, Embakasi Village, Kiambiu (to look up at eviction issues) and Kenya Alliance of Residents Association. The Kwale FGD involved the landless in Kwale, those squatting on public/private land (evictions), ordinary land users, land/property owners (perceptions of corruption), beneficiaries of settlement schemes, members of group ranches (subdivision and fraudulent dealings) and other key stakeholders in the land management.

The study tools employed in the survey included;

- a. **Household survey questionnaire:** this was the main study tool used during household surveys.
- b. **Focus group discussion (FGD) Guide:** this tool served as a study discussion guide conducted with target groups in order to flag out their lived experiences, land management and perceptions of corruption thereof.
- c. **Key Informant Interview (KII) Guide:** this tool was used during discussions with target communities (for example, community-level opinion shapers, policy makers and implementers) to get a better understanding of their experiences and perceptions on land management. For state and non-state actors, this tool was instrumental in getting insights into the prevailing policy and practice with respect to land management and corruption in Kenya.
- d. **Direct observation and Photography** was used as key complimentary data acquisition methods. The consultancy team deployed Open Data Kit (ODK) which relies on mobile phones to capture data. These phones are also camera enabled which availed an opportunity to take photos from the household level.

Data collection using ODK enabled easy transfer of data online or storage in a local server, thus enabling real-time access to information for immediate analysis. Data cleaning was conducted by running frequency distributions to track missing information, re-organize misplaced codes and ensuring adherence to the SKIP instructions, in case of filter questions. The individual KIIs and FGDs interviews were simultaneously translated into English and transcribed. Thereafter, Data coding and analysis was undertaken. The KIIs and FGDs interviews were analyzed using a grounded theory approach, which is a commonly-used method in qualitative research for inductively developing a theory of a phenomenon “grounded” in the actions and social interactions of people. This was followed by the examination of relationships among categories. Analyses proceeded with an aim to develop an understanding of experiences, beliefs, attitudes and practices surrounding land management in communities in Nairobi and Kwale counties. Quantitative data was cleaned and analyzed using R Gui® statistical software and Statistical Package for Social Scientist (SPSS).

1.3 Limitations

Being a cross sectional study, this research was subject to a wide range of limitations. Thus, lots of efforts were put in place to minimize these potential confounders;

Refusal bias: Refusal bias arises when those who refuse to participate have different behavior than those who agree. Thus refusal bias may underestimate true levels of community practice because some respondents may avoid participating because they do not want to admit to behavior that they

recognize are risky. To guard against such a bias extensive training of the interviewers was done to explain the purpose of the study to the respondents, their full consent to participate was obtained before questioning begins and confidentiality and privacy would be assured.

Selection bias: Issues around proper sampling frame, sampling technique and sample size estimation might create such bias. The use of recent updated county statistics helped in identification of proper sampling frame helped minimize this bias.

Measurement bias: This specific bias which might occur when the respondent deliberately gives the wrong answer due to embarrassment connected with the nature of the questions in this study or the wrong perception of legal implications of it. This was minimized by better explanation of the study purpose and assurance of privacy and confidentiality by the interviewers.

1.4 The Context of Land Management and Risk in Kenya

Kenya has several historical unresolved land issues. These range from huge tracts of land held by absentee landlords, numerous squatters, unregistered land, internally displaced persons who remain un-resettled, and land grabbing especially of public spaces. The National Land Policy identifies land issues facing the country as being the deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilization and abandonment of agricultural land, tenure insecurity and conflict. More recently the country has suffered from alienation of large swathes of indigenous peoples' land for mining,⁴ large scale farming⁵ and land intensive capital projects⁶. Reports indicate that land belonging to public schools has become a key frontier for land grabbing.

According to the National Land Commission in major towns such as Nairobi – Kenya's capital city, only 3 out of every fifty schools has a title to the land on which the school sits. This has left over 90% of all school land exposed to grabbing. The National Land Commission has indicated that by May 2015 it had received 350 cases of grabbing of school land. Tenure rights for land held by public institutions such as schools thus need attention. TI believes that there is a clear relation between management systems of land, lack of transparency and accountability and the resultant land problems. The land issues in the country are therefore not merely a management issue and neither are they just mere 'talk'. Kenya generally has a common history of settler colonialism, labour migration, and land dispossession characterized in the pre-independence period and perhaps even currently by a highly capital intensive settler-owned agricultural land sitting side by side with overcrowded rural reserves or communal areas.

The East African Bribery Index 2014 ranked land services in Kenya as the second highest in the average size of bribe paid. In terms of the likelihood of encountering bribery, land services were leading with respondents having a 17% chance of encountering corruption. In the aggregate index for Kenya, land was ranked second with a score of 55.0 rising by 8.3 from 46.7 from 2013. TI- Kenya

⁴ Mining projects include Titanium mining in Kwale, coast region and coal mining in Kitui, eastern region.

⁵ One of the projects includes the Galana-Kulalu Ranch which has about 1000 Ha under irrigation.

⁶ This includes projects such as the standard gauge railway and the Lamu Port project.

believes that respecting land and tenure rights – whether traditional / customary or modern – is the basis for good land governance in Africa. Proper Land governance brings together men and women as users of and producers on land and the state as a service provider to its citizens and developer and protector of their prosperity. If the state is corrupt, and laws to protect citizens’ rights do not exist and are not enforced, land governance and land rights fail. In that case, the livelihoods of men and women whose prosperity is based on secure access to land are severely undermined. Kenya has also been the bedrock of irregular land allocations further exacerbated by runaway graft and high handedness by government officials. The government’s reaction to the issues at hand has been largely reactionary with several commissions of inquiry⁷ appointed to probe the land question but whose recommendations remain largely unimplemented.

⁷The most renowned being the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, more commonly referred to as the ‘Ndung’u Land Commission’

Section II: Findings from the Baseline Survey

2.1 Introduction

The findings of this survey have been organised under seven thematic areas, including Household (HH) Demographics; Perception on Land Value; Knowledge on Land Rights and Duty Bearers (Land Management Institutions); Participation in Decision Making; Empowerment and Taking Action; Corruption in Land Service and Improving Transparency in Land Management.

2.2 Household Demographics

This section documents the attributes of the HH head regarding his/her: age, gender, marital status and level of education. Data on HH economic status including: sources of income and expenditure, average monthly family budget, HH dependency and HH dwelling structure are provided as well.

2.2.1 Response Rates

The study was able to reach 443 respondents out of the targeted 443—translating to a 100% response rate. All questionnaires were administered to HH heads as indicated in *Table 1* below.

Characteristics	Name of County		Total
	Nairobi	Kwale	
Household Interviews			
Household Selected	272	171	443
Household Occupied	272	171	443
Household Interviewed	272	171	443
Household Response Rate	100	100	100
Questionnaires administered to HH heads			
Yes	100.00%	100.00%	100.00%
No	0.00%	0.00%	0.00%

2.2.2 Respondent's Attributes

Slightly above half of the HH in the study area had male HH heads at 59.4% with 40.6% being headed by females. Further, the marital status of the respondents was tallied. Here, 71.6% of the respondents considered themselves as married with 2.7% being in civil partnership (locally referred to as 'come-we-stay'). The population distribution across the various age-groups/cohorts was also enumerated as well. There seemed to be a bias towards age cohort 40-49 (30.2%) and 30-39 (28%). Cumulatively, 72% of the respondents were below 50 years.

Three-quarters (86%) of HH heads had some form of formal schooling. In contrast, only 14% had no formal schooling with Kwale at 29.2% and Nairobi at 4.4%. Respondent's level of education is important as it determines the mode (even language) of civic education, civic engagement and related activities that rely on behavior change communication.

Table2 : Respondents' Attributes			
Characteristics	Name of County		Total
	Nairobi	Kwale	
Respondent's Gender			
Female	36.4%	47.4%	40.6%
Male	63.6%	52.6%	59.4%
Respondent's Marital Status			
Married	72.4%	70.2%	71.6%
Civil partnership	.7%	5.8%	2.7%
Single	17.6%	5.8%	13.1%
Widow/widower	8.1%	18.1%	12.0%
Other	1.1%	0.0%	.7%
Respondents Age			
20-29 years old	17.6%	7.6%	13.8%
30-39 years old	26.8%	29.8%	28.0%
40-49 years old	32.4%	26.9%	30.2%
50-59 years old	17.6%	19.9%	18.5%
60 years and above	5.5%	15.8%	9.5%
Respondent's Education Level			
No formal education	4.4%	29.2%	14.0%
Primary Not Completed (2-5 years)	5.1%	19.3%	10.6%
Primary Completed (6-9 years)	12.9%	21.1%	16.0%
Secondary (10-13 years)	29.4%	24.6%	27.5%
College/University (13+ years)	48.2%	5.8%	31.8%
Total (n)	100%(272)	100%(171)	100(443)
Gender-Chi2(1)=5.239 Pr=0.022; Marital Status-Chi2(4)=32.103 Pr=0.00; Age-Chi2(4)=21.034 Pr=0.00; Educ-Chi2(4)=130.410 Pr=0.00			

2.2.3 Household Economic Status

The parameters for the HH economic status include the main sources of HH income, the main areas of HH expenses, average monthly budget, HH dependency and HH dwelling structure.

2.2.3.1 Household (Main) Sources of Income and Expenditure

Majority of the respondent are involved in business at 48.3% (Nairobi at 61% and Kwale at 28.1%) as their livelihood source. Cumulatively, 28.7% of households in Kwale are involved in farming as their main livelihood source with 24% involved in crop farming and 4.7% involved in livestock farming. The main areas of household expenditure were enumerated as well. Food accounts for 58.2% of HH expenses followed by education at 23.3%. Interestingly, 2.2% of the HHs in Nairobi spends money on farm lease for agricultural production.

Table 3: Household Income and Expenditure			
Characteristics	Name of County		Total
	Nairobi	Kwale	
Main Sources of Household income			
Crop farming	3.3%	24.0%	11.3%
Livestock farming	.4%	4.7%	2.0%
Business	61.0%	28.1%	48.3%
Formal employment	22.4%	13.5%	19.0%
Casual labor	8.8%	21.1%	13.5%
Others	4.0%	8.8%	5.9%
Main Areas of Household Expenditure			
Rent	14.3%	.6%	9.0%
Farm lease	2.2%	.6%	1.6%
Food	42.6%	83.0%	58.2%
Fees	33.5%	7.0%	23.3%
Hospital bills	4.4%	2.3%	3.6%
Others	2.9%	6.4%	4.3%
Total	100%(272)	100%(171)	100(443)
Income-Chi2(5)=93.003 Pr=0.00; Expenditure-Chi2(5)=88.954 Pr=0.00			

2.2.3.2 Average Monthly Budget

Cumulatively 55.1% of the households recorded a monthly expenditure of less than KES 15,000 with slightly below half (43.3%) in Kwale spending below KES 5,000. To a large extent, these figures mirror the prevailing poverty in Kwale County and therefore the centrality of land as shown in 2.3.1 below.⁸

⁸ KNBS figures

Characteristics	Name of County		Total
	Nairobi	Kwale	
Average monthly family budget			
Below 5,000	1.5%	43.3%	17.6%
6,000-10,000	12.1%	37.4%	21.9%
11,000-15,000	18.4%	11.1%	15.6%
16,000-20,000	15.8%	3.5%	11.1%
21,000-25,000	7.7%	1.8%	5.4%
26,000-30,000	10.3%	1.2%	6.8%
31,000-35,000	5.5%	.6%	3.6%
36,000-40,000	7.4%	0.0%	4.5%
Over 40,000	21.3%	1.2%	13.5%
Total(n)	100%(272)	100%(171)	100(443)
Budget-Chi2(8)=223.747 Pr=0.000			

2.2.3.3 Household dependency

The survey collected information on the dependency of HH members on the HH head. Here 87.1% of the respondent HH heads had dependents. Cumulatively, the number of household with five dependents and below was 63.6%. The average size of a household for Kenya is 5.1 members⁹. In Kwale, majority (29.2%) of the HH heads have over eight dependents. Conversely, the majority of HH heads in Nairobi had three dependents.

Characteristics	Name of County		Total
	Nairobi	Kwale	
Respondent has dependents			
Yes	88.6%	84.8%	87.1%
No	11.4%	15.2%	12.9%
<i>n</i>	272	171	443
Number of dependents			
1	9.9%	5.3%	8.1%
2	14.3%	8.8%	12.2%
3	22.8%	11.7%	18.5%
4	14.7%	14.0%	14.4%
5	11.8%	8.2%	10.4%
6	5.5%	9.4%	7.0%
7	3.7%	11.1%	6.5%
8	1.8%	2.3%	2.0%
Over 8	15.4%	29.2%	20.8%
Total(n)	100.0%(240)	100.0%(145)	100.0%(385)
Dependents-Chi2(1)=1.358 Pr=0.244; Number-Chi2(8)=34.627 Pr=0.000			

⁹ KIHBS

2.2.3.4 Household Dwelling Structure

The type of household dwelling structure was key in determining the respondent's perception of their security of tenure. Cumulatively 45.6% of respondents live on temporary or semi-permanent structures. The main reason for this was lack of financial resources to buy the requisite building materials (67%), cultural preferences (14.7%), fear of forceful eviction (10.7%), the respondent does not view the current place of residence as the permanent place of residence (6.1%) and lack of security of tenure (1.5%).

Characteristics	Name of County		Total
	Nairobi	Kwale	
Housing structure			
Permanent (Brick and stone)	61.8%	42.7%	54.4%
Semi-permanent (Iron sheet /Mabati, mud and timber)	36.4%	55.0%	43.6%
Temporary (paper, polythene, sticks, tents, etc.)	1.8%	2.3%	2.0%
<i>n</i>	272	171	443
Reason for state of housing structure			
Fear of forceful eviction	5.1%	16.3%	10.7%
Affordability of building materials	75.8%	58.2%	67.0%
Cultural preferences	13.1%	16.3%	14.7%
I will go back to rural home	5.1%	7.1%	6.1%
Lack of security of tenure	1.0%	2.0%	1.5%
Total	100% (99)	100%(98)	100%(197)
Structure- $\chi^2(2)=15.466$ Pr=0.000; Reason- $\chi^2(4)=8.189$ Pr=0.057			

2.3. Perceptions on Land Value

This section examined the respondent's perception on land value. Here, the parameters included, among others, the importance of land to the respondent, type and presence of legal title documents and the land acquisition method.

2.3.1 Importance of Land

Cumulatively, 98.2% of respondents view land as a critical resource (important at 20.8% and very important at 77.4%). However, only 34.8% of respondents are in possession of a legal title document (14.6% in Kwale and 47.4% in Nairobi). These findings mirror persistent narratives in Kenya's land law reform. The National Land Policy, 2009 aptly describes the coastal land problem (squatting, historical land injustices and complex land registration regime) as 'special' and therefore in need of reform.

Table7: Importance of Land			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Importance of land			
Not important at all	1.1%	.6%	.9%
Not important	1.1%	.6%	.9%
Important	10.3%	37.4%	20.8%
Very important	87.5%	61.4%	77.4%
Total (n)	100%(272)	100%(171);	100%(443)
Importance-Chi2(3)=47.078 Pr=0.000			

2.3.2 Legal Land Documents

2.3.2.1 Presence and Nature of the title

As mentioned in 2.3.1 above, 77.4% of respondents consider land as a very important resource. However, only 34.8% of respondents are in possession of a legal title document (14.6% in Kwale and 47.4% in Nairobi). Evidently, majority of the study respondents do not have a legal title document or are unaware of its existence at 62.8% and 2.5% respectively. With regard to the form of tenure, half of the titles possessed were of freehold.

Table 8: Land Documents			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Possession of legal title document			
Yes	47.4%	14.6%	34.8%
No	49.6%	83.6%	62.8%
I don't know	2.9%	1.8%	2.5%
Type or nature of the title in possession			
Leasehold	37.2%	0.0%	31.2%
Freehold	45.7%	72.0%	50.0%
Community land	8.5%	16.0%	9.7%
I don't know	8.5%	12.0%	9.1%
<i>n</i>	129	25	154
Title requires renewal			
Yes	40.3%	0.0%	33.8%
No	41.1%	76.0%	46.8%
I don't know	18.6%	24.0%	19.5%
Total	100(272)	100%(171)	100%(443)
Possession-Chi2(2)=52.435 Pr=0.000; Nature-Chi2(3)=13.670 Pr=0.003; Renewal-Chi2(2)=15.851 Pr=0.00			

2.3.2.2 Security of land document

Perceptions of security of tenure for title holders were equally investigated. Here, 49.7% of the respondent felt secure with the title documents in their possession. On the contrary, 50.3% of the respondents were either insecure or did not know at 36.6% and 13.8% respectively. The main reasons for perceptions of insecurity were given as the fear of forceful evictions at 41.7% (50% in Nairobi and 31.7% in Kwale).

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent feels secure with the title they hold			
Yes	55.1%	40.9%	49.7%
No	30.9%	45.6%	36.6%
I don't know	14.0%	13.5%	13.8%
Why respondent does not feel secure with the title they hold			
The fear of fake title documents	8.2%	20.8%	13.9%
The fear of forceful evictions	50.0%	31.7%	41.7%
The fear of double allocation of land	7.4%	5.9%	6.7%
I don't know	16.4%	21.8%	18.8%
Other	18.0%	19.8%	18.8%
Total	100.0%(129)	100.0%(25)	100.0%(154)
Secure-Chi2(2)=10.521 Pr=0.005; ReasonInsecure-Chi2(4)=11.864 Pr=0.018			

2.3.2.3 Name on Land Document

Land ownership was a key study parameter. The person whose name appears on the title document was investigated as well. The most predominant name on the title document was that of the respondent (26.7%), the respondents' parent (16.3%) and private investor or company (13.8%).

Characteristic	Name of County		Total
	Nairobi	Kwale	
Name on land document			
A local NGO	3.7%	2.9%	3.4%
A private investor/company	18.5%	6.4%	13.8%
I do	35.8%	12.3%	26.7%
My spouse	7.0%	6.4%	6.8%
My parents (inherited)	11.8%	23.4%	16.3%
Relatives	1.5%	7.6%	3.8%
The bank/financial institution	.4%	0.0%	.2%
Group ranch leaders/traditional leaders	0.0%	2.9%	1.1%
The county government/ public institutions	11.8%	2.3%	8.1%
Religious entities	1.1%	9.9%	4.5%
I don't know	7.0%	19.3%	11.8%
Others	1.5%	6.4%	3.4%
Total	100.0%(272)	100.0%(171)	100.0%(443)
Name-Chi2(11)=11.009 Pr=0.000			

2.3.2.4 Methods of Acquisition of Title to land

The study also investigated methods of acquisition of title to land. Cumulatively, gift remains the most common (45.1%) method followed by purchase (23.5%) and adjudication (21.7%). In the largely agrarian Kwale County, the prevalence of gift might as well be construed to mean inheritance—described as ‘transfer’ under Section 7 of the Land Act, 2012. Only 14.8% (compared with 33.7% in Nairobi) of respondents in Kwale purchased their land. This low purchasing is corroborated by findings in 2.2.3.2 above.

Characteristic	Name of County		Total
	Nairobi	Kwale	
Mode of acquisition of land currently in use/occupied			
Adjudication	6.7%	34.4%	21.7%
Purchase	33.7%	14.8%	23.5%
Inheritance	16.3%	4.1%	9.7%
Gift	43.3%	46.7%	45.1%
Total	100.0%(104)	100.0%(122)	100.0%(226)
Mode- $\chi^2(3)=37.212$ Pr=0.00			

2.4 Knowledge on Land Rights Land Management Institutions

The baseline examined respondent’s knowledge on land rights and land management institutions. Specific study parameters included knowledge on land rights, main sources of information on land rights, knowledge on how to acquire land and threats to land rights.

2. 4.1 Knowledge on Land Rights

Respondents’ knowledge on land rights was evenly matched across the two study sites where 49% possessed knowledge on land rights. Kwale recorded a majority of respondents without knowledge on land rights at 71.3% compared to Nairobi at 38.2%. Respondents’ lack of knowledge on land rights was majorly attributed to illiteracy (21.7%), difficulty in reading and understanding existing land laws (23.5%), they thought information on land was not useful to them (9.7%) and other reasons (45.1%) including lack of access to information on land and lack of financial resources to access land documents.

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent has knowledge of land rights			
Yes	61.8%	28.7%	49.0%
No	38.2%	71.3%	51.0%
Why No			
I cannot read or write	6.7%	34.4%	21.7%
The land laws are not easy to read	33.7%	14.8%	23.5%
It is not useful to me	16.3%	4.1%	9.7%
Other	43.3%	46.7%	45.1%
N	104	122	226
Total	100.0%(272)	100.0%(171)	100.0%(443)
Knowledge-Chi2(2)=59.273 Pr=0.000; ReasonNo-Chi2(3)=37.212 Pr=0.000			

2.4.2 Main Sources of Information on Land Rights

Land laws remain the most popular source of information on land rights at 40.1% followed by public officials/ public institutions at 21.7%, media at 15.2%, Non-Governmental Organizations (NGOs) at 6% among other sources. As elaborated in Section III of this report, in Kenya, land reform has been (and still is) land law reform. This largely explains the preponderance of land laws with regard to information.

Characteristic	Name of County		Total
	Nairobi	Kwale	
Main sources of information on land rights			
Land laws	36.9%	51.0%	40.1%
Media	16.1%	12.2%	15.2%
A local NGO	7.1%	2.0%	6.0%
A private investor/ company	2.4%	6.1%	3.2%
Neighbors	4.2%	0.0%	3.2%
Public officials/ public institution	23.2%	16.3%	21.7%
Relatives	3.6%	4.1%	3.7%
Religious leaders	1.2%	0.0%	.9%
The bank/ financial institution	1.2%	0.0%	.9%
The cooperative/ farmers' association	1.8%	0.0%	1.4%
I don't know	.6%	6.1%	1.8%
Others	1.8%	2.0%	1.8%
Total	100.0%(168)	100.0%(49)	100.0%(217)
Source-Chi2(11)=16.787 Pr=0.114			

2.4.3 Knowledge on how to acquire more land

Respondents' knowledge on how to acquire more land (should they need to) was enumerated. Besides, familiarity with land acquisition processes is a key factor to minimizing corruption risks. 81.3% of the respondents in Nairobi are aware of how to acquire additional parcels of land compared to 37.4% in Kwale. Cumulatively, 86.4% of the respondents were satisfied with the source of information on how to acquire additional land while 13.7% were not satisfied.

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent knows how to acquire more land should they need it			
Yes	81.3%	37.4%	64.3%
No	15.8%	55.0%	30.9%
I don't know	2.9%	7.6%	4.7%
Level of satisfaction with the source of information on how to acquire new land			
Not satisfied at all	2.3%	1.6%	2.1%
Not satisfied	14.0%	3.1%	11.6%
Satisfied	55.2%	87.5%	62.5%
Very Satisfied	28.5%	7.8%	23.9%
Total (n)	100.0% (272)	100.0% (171)	100.0% (443)
Acquire-Chi2(2)=88.222 Pr=0.000; Satisfaction-Chi2(3)=22.406 Pr=0.000			

2.4.4 Type of Information required on Land

Information on 'land title as a collateral for credit' was the most sought after at 20.4%. This largely reflects similar findings on 'perceptions on land value' in 2.3 above. Only 5.13% of respondents sought information on land use. As elaborated in Section III of this report, Kenya's land reform has focused more on land tenure and paid lip service to land use. This is not to suggest that poor land use is a major problem which manifests in various ways.

Characteristic	Name of County		Total
	Nairobi	Kwale	
Land title as a collateral for credit	17.99	26.29	20.4
Availability of land	10.23	9.48	10.01
Laws and regulations relating to land	14.64	27.59	18.4
Conditions of land use	5.29	4.74	5.13
Evictions	10.58	3.88	8.64
Land adjudication processes (including waiting lists)	3.35	3.02	3.25
Land contracts	4.94	0.86	3.75
Land inheritance rights	7.58	12.93	9.14
Land prices	10.93	2.59	8.51
Land transactions	8.47	2.59	6.76
Use of communal land	2.82	1.72	2.5
I don't often need to know about these issues	3.17	4.13	3.51
Total	100%(272)	100%(170)	100%(442)
Chi2(110) = 198.0152 Pr = 0.000			

2.4.6 Threats to Land rights

Here respondents were asked if they felt their land could be taken away from them and by whom. 43.9% of respondents in Kwale felt that their land could be taken away anytime while 10.5% were not

sure whether their land could be taken away or not. Cumulatively, slightly over half of the respondents are confident that their land cannot be taken away at 55.1%. When asked who would take away their land, family and politicians were mainly cited. Family includes relatives (42.8%), parents (13.2%) and children (3.8%) translating to a cumulative figure of 59.8%. Politicians on the other hand include Governor (20.8%), Member of County Assembly-MCA (8.2%), Senator (1.3%) giving a cumulative figure of 30.3%.

Table 16: Land Threats			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Land can be taken away anytime			
Yes	30.9%	43.9%	35.9%
No	61.0%	45.6%	55.1%
I don't know	8.1%	10.5%	9.0%
n	272	171	443
Who can take away land any time			
A local NGO	2.4%	6.7%	4.4%
My children	2.4%	5.3%	3.8%
Parents	8.3%	18.7%	13.2%
My relatives	33.3%	53.3%	42.8%
Chief	6.0%	2.7%	4.4%
Governor	35.7%	4.0%	20.8%
MCA	8.3%	8.0%	8.2%
NLC	1.2%	1.3%	1.3%
Senator	2.4%	0.0%	1.3%
Total (n)	100.0%(84)	100.0%(75)	100.0%(159)
Land Taken- Chi2(2)=10.148 Pr=0.006; WhoTakes-Chi2(8)=31.448 Pr=0.000			

Forceful evictions are a common manifestation of insecure tenure. The threat of eviction is a reality that residents of informal settlements (mostly in Nairobi) and squatters (mostly in Kwale) confront on a daily basis. In this connection, slightly below one-third of the respondents have been threatened some form of eviction with Kwale leading at 39.8% compared to Nairobi at 26.1%.

Table 17: Eviction Threats			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Threatened with eviction from land currently occupying			
Yes	26.1%	39.8%	31.4%
No	73.2%	59.6%	67.9%
I don't know	.7%	.6%	.7%
Total	100.0%(272)	100.0%(171)	100.0%(443)
Eviction-Chi2(2)=9.103 Pr=0.011			

2.5. Participation in Decision Making

Public participation in decision making regarding land management was enumerated. This includes 'who makes the decision' on how to administer and manage community land (Article 63 of the Constitution).

2.5.1 Decision on how to administer and manage Community Land

Public officials/institutions remain the most authoritative on matters community land in Nairobi (23.5%) whereas in Kwale it is group representatives or traditional leaders (41.5%). It is also worth noting that respondents in both counties lack knowledge on community land management at 17.2%.

Table18: Decision Making on Community Land			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Who decides on how community land is used			
Cooperatives/ farmers' associations	8.8%	0.0%	5.4%
Local NGOs	11.0%	7.6%	9.7%
My children	0.0%	1.8%	.7%
My spouse	2.6%	1.8%	2.3%
Neighbors	2.9%	0.0%	1.8%
Private investors/ company	7.4%	4.7%	6.3%
Public officials/ public institutions	23.5%	6.4%	16.9%
Relatives	6.6%	10.5%	8.1%
Religious leaders	0.0%	8.8%	3.4%
Group representative/ community leaders/ traditional leaders	15.8%	41.5%	25.7%
I don't know	18.8%	14.6%	17.2%
Others	2.6%	2.3%	2.5%
Total n	100.0%(272)	100.0%(171)	100.0%(443)
Chi2(1)=99.660 Pr=0.000			

2.5.2 Community organizing

Only 10.2% of respondents were organized in community groups dealing in land matters with Nairobi at 13.2% and Kwale at 5.3%. However, only 19.4% of the respondent actively participated in community group discussions. All of these discussions had been organized by local NGOs alluding to their key input in land reforms advocacy. These platforms for community participation were considered by most of the respondents as meaningful at 92.7%.

Table 19:: Community Participation				
Characteristic	Name of County		Total	
	Nairobi	Kwale		
Membership of any community group involved in land issues				
Yes	13.2%	5.3%	10.2%	
No	86.8%	94.7%	89.8%	
Participation in community discussion/consultations regarding land and associated land issues				
Yes	20.6%	17.5%	19.4%	
No	79.4%	82.5%	80.6%	
Who organized discussions/consultations				
Local NGOs	100.0%	100.0%	100.0%	
Rating on meaningfulness of participation in community discussions/consultations				
Not meaningful	3.4%	11.5%	7.3%	
Meaningful	3.4%	57.7%	29.1%	
Very meaningful	93.1%	30.8%	63.6%	
<i>n</i>	29	26	55	
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)	
Member-Chi2(1)=7.312 Pr=0.007; Participation-Chi2(1)=0.622 Pr=0.430; Meaningfulness-Chi2(2) =23.470 Pr=0.000				

2.6. Empowerment and Taking Action

2.6.1 Action on Land Issues

The survey sought to establish if the respondents had taken any action regarding land issues in their community. Only 23% of the respondents had taken action on land related issues with Kwale at 11.1% and Nairobi at 30.5%. The major actions taken by respondents in both counties were attending demonstrations at 41.94% (Nairobi 39.71% and Kwale 46.15%) followed by signing of petitions at 26.94%(Nairobi 27.54% and Kwale 25.82%) and contacting a lawyer or legal organization at 12.14% (Nairobi 15.94% and 4.95%) in that order.

Table20:: Action on Land Issues				
Characteristic	Name of County		Total	
	Nairobi	Kwale		
Respondent has taken action regarding land related issues				
Yes	30.5%	11.1%	23.0%	
No	69.5%	88.9%	77.0%	
Action taken by respondent				
I have asked my local NGO to take action	4.06%	18.13%	8.92%	
I have attended community meeting	0.58%	0%	0.38%	
I have attended demonstrations	39.71%	46.15%	41.94%	
I have contacted a journalist about my case	0.58%	0%	0.38%	
I have contacted a lawyer/legal organization	15.94%	4.95%	12.14%	
I have initiated a petition	0.87%	0.55%	0.76%	
I have joined a community group	1.45%	0%	0.95%	
I have lobbied local businesses	1.45%	1.65%	1.52%	
I have lobbied my political reps	1.45%	0.55%	1.14%	
I have put in a complaint	0.58%	0%	0.38%	
I have requested access to this information	2.32%	0.55%	1.71%	
I have set up a community group	0.58%	0%	0.38%	
I have signed a petition	27.54%	25.82%	26.94%	
I have not taken any action	2.90%	1.65%	2.47%	
Total	100%(272)	100%(171)	100%(443)	
Action-Chi2(1)=22.304 Pr=0.000; ActionType-Chi2(10)=35.240 Pr=0.000				

2.6.2 Reasons for not taking Action

Most respondents did not take any action against land issues because they did not know of any appropriate action at 33.9% (Nairobi 43.6% and Kwale 21.4%) and because they were scared of discrimination by community members and/or retaliation at 25.8% (Nairobi 13.8% and Kwale 41.4%).

Table21:Reasons for not taking Action			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Why respondent has taken no action regarding land related issues			
Because I am scared of being discriminated against as retaliation	13.8%	41.4%	25.8%
Because I do not know what actions to take	43.6%	21.4%	33.9%
Because I feel no actions were necessary	11.2%	9.7%	10.5%
Because my community leaders/ traditional leaders advised me against it	8.0%	5.5%	6.9%
Because others also did not take action	5.9%	3.4%	4.8%
I don't know	15.4%	12.4%	14.1%
Others	2.1%	6.2%	3.9%
Total(n)	100.0%(188)	100.0%(145)	100.0%(333)
Chi2(6)=41.883 Pr=0.000			

2.7 Corruption in Land Services

Transparency International just released the East Africa Bribery Index Trends Analysis (2010-2014). The parameters of corruption in land services included corruption perception, incidence of corruption and nature of corruption. The statistics show no improvement in the bribery experiences reported throughout the five year period. Simply put, there was no dividend from the Constitution of Kenya, 2010 and the new Land Acts (Land Act, 2012; Land Registration Act, 2012; National Land Commission Act, 2012 and Environment and Land Court Act, 2012) in so far as bribery while seeking land services is concerned.

2.7.1 Corruption Perception

Majority (81%) of respondents view corruption as a major issue in land management (Nairobi 92.3% and Kwale 63.2%). Cumulatively, 77.5% consider corruption in land management high with relatively more respondents in Nairobi considering it very high at 69.5% as compared to Kwale at 25.1%. Perceptions of corruption invariably increase with multiple uses of land. Therefore, the failure of development control in Nairobi is largely attributed to corruption.

Table22: Corruption in Land Management			
Characteristic	Name of County		Total
	Nairobi	Kwale	
Corruption a major issue in land management			
Yes	92.3%	63.2%	81.0%
No	7.7%	36.8%	19.0%
Prevalence of corruption in land management			
Very low	4.8%	10.5%	7.0%
Low	7.4%	28.7%	15.6%
High	18.4%	35.7%	25.1%
Very high	69.5%	25.1%	52.4%
Total(n)	100.0%(272)	100.0%(171)	100.0%(443)
Corruption-Chi2(1)=57.946 Pr=0.00; Prevalance-Chi2(3)=87.485 Pr=0.000			

2.7.2 Incidence of Corruption

Here the respondents were asked if they had been asked to pay a bribe. Slightly over one-third (38.6%) had been asked to pay a bribe with majority (54%) in Nairobi compared to Kwale (14%). All the demands for a bribe were made in the past 12 months. The Ministry of Land officials were the major culprits in asking for bribes at 88.3%, followed by community leaders at 11.7%. Respondents were also asked if they felt the need to pay the bribes. Majority (53.2%) felt the need to pay the bribe, having been asked to, while 46.8% did not feel the need to pay a bribe. These findings confirm the limits of 'principle-agent' theory in the fight against corruption—what analysts call a 'theoretical mischaracterization' of corruption (see Section III).

Table 23: Incidences of Corruption				
Characteristic	Name of County		Total	
	Nairobi	Kwale		
Respondent has been asked to pay a bribe				
Yes	54.0%	14.0%	38.6%	
No	46.0%	86.0%	61.4%	
Respondent asked to pay in the last 12 months				
Yes	54.0%	14.0%	38.6%	
No	46.0%	86.0%	61.4%	
<i>n</i>	272	171	44)	
Person/institution who asked for the bribe				
Community leaders/ traditional leaders	10.2%	20.8%	11.7%	
Ministry of lands officials	89.8%	79.2%	88.3%	
Respondent felt necessary to pay the bribe				
Yes	55.1%	41.7%	53.2%	
No	44.9%	58.3%	46.8%	
Total(n)	100.0%(147)	100.0%(24)	100.0%(171)	
Asked-Chi2(1)=70.912 Pr=0.000; Asked12months-Ch2(1)=70.912 Pr=0.000; Person/Institution-Chi2(1)=2.257 Pr=0.133; Need-Chi2(1)=1.1496 Pr=0.000				

2.7.3 Occurrence of Corruption

Respondents were asked if they had actually paid bribe, having been asked for. Here, 38.6% of the respondents had paid a bribe. The major reason given for paying a bribe was; to speed up land transaction (27.41%), because it was the norm and everyone did it (15.23%), to avoid eviction (15.23%) and to access relevant information (14.7%). Ordinary land users mostly pay a bribe to facilitate timely land transactions. However, Kenya ranks poorly in the 'ease of doing business' due to corruption. Findings from the Foreign Investment Survey (2015) indicate that most investors are constrained by corruption in the land sector.

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent paid bribe in the last 12 months			
Yes	54.0%	14.0%	38.6%
No	46.0%	86.0%	61.4%
<i>n</i>	272	171	443
Reason for paying bribe			
To access relevant information	16.18%	4.17%	14.7%
To avoid eviction	13.29%	29.17%	15.23%
To get a land related loan	1.73%	0.0%	1.52%
To get legal advice	4.62%	4.17%	4.57%
To jump the queue on a land adjudication waiting list	8.67%	4.17%	8.12%
To secure a land title	1.73%	0.0%	1.52%
To speed up a land transaction	27.75%	25.0%	27.41%
Everyone does it	13.29%	29.17%	15.23%
I don't know	12.72%	4.17%	11.68%
Total(n)	100.0%(144)	100.0%(24)	100.0%(168)
PaidBribe-Chi2(1)=70.912 Pr=0.000; Reason-Chi2(8)=10.440 Pr=0.235			

2.7.4 Nature of bribes paid

Public officials were the major recipients of bribes in the land sector at 89.5%. The Ministry responsible for land has consistently been ranked as one of the most corrupt institutions in Kenya by Transparency International. Recipients of bribes mainly asked for money (94.1%), gifts in kind (4.1%) and transfer of property deeds (1.8%).

Characteristic	Name of County		Total
	Nairobi	Kwale	
Institution/Person that received bribe			
Community leaders/ traditional leaders	8.8%	16.7%	9.9%
Private investor/ company	0.0%	4.2%	.6%
Public officials/ public institutions	91.2%	79.2%	89.5%
Nature of bribe			
Gifts in kind	3.4%	8.3%	4.1%
Transfer of property deeds	2.1%	0.0%	1.8%
Money	94.5%	91.7%	94.1%
Total(n)	100.0%(145)	100.0%(24)	100.0%(169)
Institution-Chi2(2)=7.727 Pr=0.021; Nature-Chi2(2)=1.700 Pr=0.427			

2.8 Improving Transparency in Land Management

The survey also explored respondent's opinions on measures that would improve transparency in land management. Majority of respondents felt that implementation (and enactment of new laws) of the existing laws would improve transparency at 20.84%. This was followed by promotion of

transparency in land registries, such as, digitization of land records (20.03%), arrest and prosecution of corrupt officials (19.89%) and enhanced civic awareness on land rights (18.26%).

Characteristic	Name of County		Total
	Nairobi	Kwale	
Activities that may enhance transparency			
Enact/ implement existing laws on land and integrity	22.27	17.75	20.84
Promote transparency in land registries (digitization of land records, staff bad	15.9	29	20.03
Intensify civic awareness on land and integrity	18.89	16.88	18.26
Strengthening public participation in land management	13.52	17.32	14.71
Arrest and prosecute corrupt officials	24.85	9.09	19.89
Others	4.57	9.96	6.27
Total	100%(272)	100%(171)	100%(443)
Chi2(37) = 125.1185 Pr = 0.000			

Section III: Policy and Legal Framework Governing Land and Corruption

Background to Land and Corruption in Kenya: Policy and Legal Framework

3.1 Introduction

The genesis of the new land laws in Kenya date back to the understanding that Kenya had no codified and clearly defined land policy since independence, which was principally informed by past initiatives such as the Presidential Commission of Inquiry into the Land Law System of Kenya (GoK, 2002), the Presidential Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (GoK, 2004) otherwise known as the Ndungu Land Report, the Constitution of Kenya Review Commission (CKRC, 2005), Agenda Item 4 of the Kenya National Dialogue and Reconciliation (KNDR, 2008) and the Truth Justice and Reconciliation Commission report chapter dedicated to historical land injustices (TJRC, 2013) among other reform initiatives. Lack of a holistic policy was manifested in, but not limited to, the many land laws, some of which are incompatible, a breakdown in land administration and therefore corruption, inequity in ownership, disinheritance of some groups and individuals as well as deterioration in land quality.

As stated above, the land problem in Kenya manifests in diverse yet dramatic ways. Guided by the objectives of this baseline study, the following discussion mainly looks at land and corruption in Kenya. Corruption in Kenya's land management is both a political and legal problem. This section, however, is dedicated to integrity (or lack of it thereof) in Kenya's land administration and management through the narrow lens of land law reform thus far. This discussion is structured under the following sub-headings: 1) the centrality of land in Kenya's development 2) the problem of complexity 3) abuse of state power 4) the sanctity of title 5) 'technist' approach to land reforms

3.1.1 The centrality of land in Kenya's development

The centrality of land in virtually all facets of human development is well documented. This is particularly true for Kenya where the economy relies heavily on agriculture, livestock production, tourism and the exploitation of natural resources; all of which are based on land. Consequently, the legal and policy framework governing land ownership and any dealings thereof is not only a key pointer to the health of Kenya's economy but also the ability of Kenyans to earn a living. Indeed, land is more than just a factor of production in Kenya. Firstly, land remains an important element in the construction of social identity, the organization of religious life and the production (and reproduction) of culture. The link across generations is ultimately defined by land resources which families, lineages and communities share and control (AU-AfDB-ECA Consortium, 2009). In pre-colonial Kenya, individuals and families were allowed to use (cultivate, graze and hunt) land, however, it is the tribes and clans that lay claims to territories within which individuals and families then own land (Ochieng Odhiambo, 2012). For instance, *Borori wa Gikuyu* (territory of the Gikuyu) denotes the political unit of all lands within the tribal boundary (Kenyatta, 1965). Equivalently, land ownership accords social status, with every adult Kenyan male aspiring to acquire land so as to enhance their standing within the community. This, however, has triggered a national land-owning mania (legally or otherwise).

Many Kenyan communities also see land as socially important for availing burial sites for the departed members, religious sites and places of sacrifice.

Secondly, land is— in most forms of society— the most important natural resource required for the creation of wealth. In a nascent economy like Kenya, the land title is the main instrument used to secure business loans. Compared to other investments that depreciate, the value of land invariably appreciates, making the property market in Kenya one of the most lucrative in the region. Conversely, land has been, and will continue to be the mainstay of the Kenyan economy which is heavily reliant on agriculture. This position has been reaffirmed by Kenya’s Agriculture Sector Development Strategy (2010-2020) which estimates the agriculture sector accounts for 65 per cent of Kenya’s total exports and provides more than 18 per cent and 70 per cent of formal and informal employment, respectively.

Thirdly, the control of land brings economic power, which in turn, is often the basis of political power. Right from the pre-colonial Kenya, decisions about access to and use of land were controlled by traditional institutions that were political in nature. Colonialism also had as its underlying rationale, the need to acquire land in Kenya both for commercial and political interests (Mweseli, 2000). To a large extent, land provided the basis for the struggle for independence where Africans sought to reclaim their land earlier annexed by white settlers. A largely unsuccessful political response came in the form of Swynnerton Plan (1955), a policy document that would create a landed African middle class with a stake in the prevailing colonial arrangement and therefore a bulwark against revolutionary tendencies. Yet again, *“property rights protection was deemed imperative for the conclusion of the independence talks held in Lancaster House from 1960 to 1962”*, reaffirms the National Land Policy, 2009. In a bid to legitimize its existence, the independent Government resorted to settling the landless. It is therefore not surprising that land clashes in Kenya still coincide with the General Election cycles (1992, 1997, 2008 and 2013). Locals invariably perceive the non-locals (settlers) as political adversaries planted to destabilize the prevailing voting patterns.

3.1.2 The problem of complexity

For quite some time, there was disparate legislation governing land tenure and land registration in Kenya. Analysts opined that there was so much law in the land sector that even the most adept legal technician was not able to unravel its fabric when faced with specific decision making contexts (Okoth-Ogendo, 2008). For instance, it was estimated that in excess of 76 pieces of legislation governed the land sector alone while 131 laws and regulations were applicable to the agriculture subsector. These included *inter alia*, international legal instruments to which Kenya had acceded to, environmental management legislation, natural resource management (NRM) legislation, physical planning legislation, agricultural sector legislation, land administration legislation, legislation on specific land uses not to mention rules and regulations applicable. Challenges abound. First, ordinary land users are subjected to a plethora of administrative decisions and secondly, inefficient management by the resultant bureaucracy perpetuates corrupt and inefficient land administration regime.

In addition to the inflationary legal regime, the conflicting nature of applicable legislation manifested in many ways including jurisdictional turf wars among key government agencies tasked with land and land-based resource management in Kenya—effectively crippling anti-corruption efforts in this sector.

This explains why Article 68 of the Constitution of Kenya, 2010 directs Parliament to revise, consolidate and rationalizes existing land laws; revise sectoral land use laws in conformity land policy principles set out in Article 60 and enact prescribed legislation. Even with the new Land Acts in place, the Ministry responsible for land and the National Land Commission (NLC) hitherto engaged in never-ending jurisdictional turf wars. This led to a hiatus in developing respective Rules and Regulations (to operationalize the respective Land Acts), effectively perpetuating the status quo in a new constitutional dispensation. Only recently (2015) was a clear separation of roles and functions between the NLC and the Ministry pronounced by the Supreme Court of Kenya.

The complexity in Kenya's land law reform is the result of a number of developments. The first is the manner in which the legal framework grew. On attaining independence, Kenya not only inherited but also adopted the entire set of colonial laws that had been enacted to protect the interests of white settlers (Ndungu, 2006). Therefore, the regulatory framework of the agrarian sector grew in response to demands by settler farmers and their cartels in Europe. Typically, most of these laws focused on mundane issues (diseases, production quotas) rather than cross-cutting issues of importance to the entire agrarian sector. These laws and respective institutions created thereof remain in Kenya's statute books. Therefore, the application of customary laws and attendant institutions was thus allowed to the extent that these aligned to formal statutes. What followed was a dual legal system borne out of the effects of imposition of foreign laws of colonial powers.

The second was the requirement of the nationalist governments that emerged from post-colonial Africa, including Kenya, to create a more authentic African legal system, blending together African and foreign legal ideas and rules. This is evident in wholesale adoption of 'best practices' in various legislations. The third, and most recently, was the enactment of laws that go beyond sub-sectoral legislation to establish an overarching regulatory mechanism, such as, Environmental Management and Coordination Act, 1999 (Repealed). However, this approach without inter-sectoral coordination often meets with little success. The foregoing largely explains the failed merger of forest and wildlife management institutions by the Jubilee administration. Other challenges include an incomplete legal and policy reform which manifests in outdated and incompatible laws.¹⁰ Conversely, County Assemblies are now empowered to develop specific policies, legislations and plans to guide the implementation of devolved land-based functions.

3.1.3 Abuse of state power

To a large part, the need for land reforms in Kenya arose from the failure of the previous Constitution to establish an efficient, accountable and, equitable institutional framework for land administration and management. This failure, according to the National Land Policy of 2009, resulted in the centralization of state responsibility over land matters; lack of government transparency over land management leading to allocations of public land to secure political favors and; inequitable access to land, particularly for vulnerable groups. The state became, in law, the ultimate authority in matters of control and management of land. This was particularly the case in respect of the delivery of land services, including registration, allocation, transfers, surveys and dispute processing.

¹⁰ Even with the constitutional requirement to review, consolidate and rationalize existing land laws; the following outdated Acts remain untouched: Survey Act, Land Control Act and Land Consolidation Act.

In Kenya, the abuse of state power in land administration and management falls within the rubric of political corruption.¹¹ According to Transparency International (2011), the roots of political corruption in the land sector often reside within the upper circles of power in the public service. The legacy of political corruption can be traced back to pre-independent Kenya. In 1885, European imperial powers convened in Berlin, Germany to partition Africa. It is at this meeting that the Berlin Treaty was signed, African territories created and subsequently allocated to participating European powers. Following the domestication of the Berlin Treaty, Kenya became part of the British Empire and the Crown or King could deal with land in the territory as he or she pleased. In order to alienate and/or allocate land in the new territory, the colonial Government enacted the East African (Lands) Orders in Council of 1895, 1897 and 1901. These laws were later re-enacted in the form of Crown Lands Ordinances of 1902 and 1915. The net effect was to vest the radical title to land in the British Crown, thus setting the stage for massive expropriation of land belonging to indigenous peoples. This position was confirmed in a court ruling declaring indigenous peoples as *mere tenants of the Crown*.¹²

Political corruption has been well documented in Kenya's land reform journey over the last 50 years. But where did it all begin? As mentioned elsewhere in this report, the independent Government made minor amendments to the colonial land laws (Crown Lands Ordinances of 1902 and 1915), such that Ordinances were merely renamed 'Acts', Crown replaced with 'President', Crown Land was renamed 'Government Land' and the British Monarch as an institution was substituted with 'Government'. Effectively, the powers of alienating and allocating land in Kenya, previously vested in the British Monarch, were purportedly transferred to the President of independent Kenya (Ndungu, 2006). In the 1960s and 1970s, the President started exercising his perceived powers of allocating land, albeit on a small scale, to his cronies, ministers, family members and even to himself (Ndungu, 2006). Regrettably, this remained the position until the National Land Commission was operationalized in 2013.

As resources for political patronage declined with foreign aid freeze in the 1980s, the Government increasingly turned to public land, which was less fettered by international scrutiny and donor conditionalities. In addition, administration officials fearful that a change in government would end their privileged access to this public resource accelerated their accumulation of land (Klopp, 2013). Indeed, the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (GoK, 2004) otherwise known as *Ndungu Land Report* found that illegal land allocations peaked around the time of elections. As stocks of public land diminished, the Government turned its attention to properties that were reserved for public purposes, such as, road reserves, public parks, gazetted forests, road reserves, playgrounds or even old graveyards and public toilets.

3.1.4 The sanctity of title

The land tenure system that was operative in Kenya under the old constitutional dispensation has largely been blamed for the runaway corruption in the sector. The content of property rights one got under the Registered Lands Act (Cap. 300 Laws of Kenya) was absolute and could only be

¹¹ Political corruption in the land sector aims to gain control over a country's resources- both what is above and beneath the ground. It can manifest as opportunities created through land transactions, reforms and development projects that occur within a country, region, county or district.

¹² *Isaka Wainaina Gathomo & Another vs Morito Indagara & the A.G. of Kenya (1922-23)* 2 KLR 102.

circumscribed, in theory, in exercise of State's power of compulsory acquisition. This piece of legislation was interpreted strictly to exclude any revocation of titles to land that may have been obtained illegally.

According to the *Ndungu Land Report*, illegal allocation of public land occurs when public officers in the Ministry of Lands allocate public land without following due process in law. Such allocations invariably skip processes such as public participation and competitive bidding. It also occurs when public land is allocated to undeserving beneficiaries. Illegal acquisition on the other hand occurs when individuals acquire public land set aside for other purposes, as stated above, without following due process. They then use executive orders and influence to get valid allotment letters for the land. Conservative estimates of the *Ndungu Land Report* indicate that some 200,000 illegal titles were created between 1962 and 2002. The beneficiaries of these illegal allocations have title deeds which they use to claim valid land ownership, thereby invoking the principle of sanctity¹³ of title (Nyangito, 2013). The question that then arises is whether such illegally acquired titles can be valid in the first place. Conversely, on acquiring titles (or even allotment letters), most grabbers would very quickly sell the land to state corporations at hugely inflated prices. The net effect is not only an obliteration of paper trail but also unjust enrichment (KLA, 2006).

Kenya runs a system of registration of title not registration of deeds. Registration as owner confers title to the land. The Register is conclusive evidence of title in law. Therefore it follows that unregistered interests are unenforceable against subsequent purchasers who obtained the property for value (Nyangito, 2013). Title is certain and guaranteed by Government, with indemnity being provided in cases of fraud or mistakes or omissions by the Land Registry which lead to loss.¹⁴ This system of registration of title makes it hard for the government to cancel title deeds for illegally acquired public land for it will renege on the indefeasibility principle. While most reports suggest cancellation of titles be an avenue for repossession, the recipients of the illegal acquisitions have challenged the cancellations in court with a high degree of success, citing sanctity of title. The law requires that revocation or validation of an illegal title can only be done by the High Court. Previous attempts to bypass the court system have either been declared unconstitutional¹⁵ or deemed a waste of taxpayers money.¹⁶

3.1.5 Addressing Land and corruption in the new constitutional dispensation

¹³Sanctity of title refers to the ultimate importance granted title deeds to the extent of being Sacred. This is closely linked to indefeasibility and inviolability of title. Indefeasibility of title means that the register is the definitive record of all land interests, and thus, the registered proprietor is immune to claims contrary to the register. Inviolability of title on the other hand means that the title cannot be invaded, transgressed, dishonoured, or broken. The three concepts are linked to state guarantee of title.

¹⁴Section 81 of the Land Registration Act, Act No. 3 of 2012.

¹⁵Given the large number of illegal titles identified by the Ndungu Land Commission and the slow, expensive, complicated and bureaucratic processes associated with Kenyan court system; the Commission recommended that the law be amended to establish an efficient Land Titles Tribunal with a simplified system of processing cases. The High Court would later declare these Tribunals unconstitutional

¹⁶Due to sanctity of title, the courts have been consistent that the Registrar of Titles or even the Minister for Lands has no power to cancel title deeds. The Minister or Registrar has two options: initiate the process of compulsory acquisition of the suit land and thus pay full and prompt compensation to the petitioner or file a suit in the High Court challenging the petitioner's title and await its determination, one way or the other.

The legal framework after the enactment of the Constitution of Kenya, 2010 is of interest to this baseline study. The national values and principles articulated in Article 10, in Chapter Six, and in various other provisions, reflect historical, economic, social, cultural and political realities in the struggle for land reforms in Kenya. Specifically, good governance, integrity, transparency and accountability are aimed at disciplining a rapacious and self-serving land grabbing elite. Further, Article 60(1) directs that land in Kenya shall be managed in accordance with the principles of *inter alia*, equitable access to land as well as transparent and cost effective administration of land. Article 62 affirms that all land belongs to the people of Kenya collectively, as a nation, as communities, and as individuals. To give effect to those terms, Article 67 establishes the National Land Commission (NLC) to, among others; manage public land on behalf of the National and County Governments.

In Article 40, the Constitution guarantees the right to every person either individually or in association with others, to acquire and own property of any description and in any part of Kenya. Further, Parliament is barred from enacting any law that permits the State or any person to arbitrarily deprive a person of any property unless by compulsory acquisition, or other avenue provided for in Chapter Five. However, the Constitution in Article 40(6) is categorical that the protection from arbitrary deprivation does not extend to any property that has been found to have been unlawfully acquired.

In order to operationalize these provisions of the Constitution, Parliament is mandated to enact legislations on land and environment contemplated under Article 63, 66 and 71 of the Constitution within five years and that under Article 72 within four years. The legislation concerning Land under Article 68 of the Constitution is already enacted through the various land laws including the Land Act, 2012; the Land Registration Act, 2012; the National Land Commission Act, 2012 and the Environment and Land Court 2011. A consideration of these several statutes will illuminate the extent to which integrity is mainstreamed in Kenya's land administration and management.

3.1.4.1 The Land Act, 2012

The Act is a response to the problem of complexity discussed in 3.1.2 above. In its preamble, this is an Act of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources and for connected purposes. The Act applies to all categories of land provided for in the Constitution. As the substantive land law, Section 158 of the Act provides the necessary legal apparatus to repossess illegally acquired land. The Act provides *inter alia* that all grants of public land, dispositions obtained or induced by corruption on the part of any government official (National, County or Commission) are illegal from their inception, void and of no legal effect. The same provision further requires persons occupying such lands forfeit it back to the government without any entitlement to any compensation. In contrast with Cap. 300, here, the Act does not differentiate first and subsequent registrations, invalidating all transactions tainted by corruption.

Section 158 of the Act, thus, goes against indefeasibility of first registration as provided for in the previous land laws (Cap. 300). By holding the transactions void, the Act allows for cancellation of the titles. It further denies any form of compensation, without protecting an innocent purchaser for value and without notice. It also improves on previous laws by empowering the National Land Commission

(NLC) to issue a notice to person or entity it suspects to be in illegal occupation of public land to vacate. Failure to comply with the terms of the notice empowers the NLC to move to court to validate the notice and thereafter obtain appropriate orders for vacation. Section 157 of the Act elaborates on criminal acts punishable by law. Of importance to note is that these offences largely mirror corrupt dealings in land. Specifically, the Act makes fraudulent and corrupt land transactions a criminal offence liable on conviction to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years or both.

Part VIII of the Act further provides for compulsory acquisition of interests in land. It provides that whenever the National or County government is satisfied that it may be necessary to acquire some particular land for public use, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the NLC to acquire the land on its behalf (Section 107). The Commission is empowered however, to reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed under Article 40(3) of the Constitution. The acquisition is subject to prompt and adequate payment of compensation—a safeguard against arbitrary deprivation of land rights (Section 108).

3.1.4.2 The Land Registration Act, 2012

This Act seeks to revise, consolidate and rationalize the registration of titles to land and to give effect to the principles and objects of devolved government in land registration. The Act, in Section 3, applies to registration of interests in categories of land. This, in itself, will bring sanity in a sector that was constrained by disparate land registration regimes. Part II of the Act deals with the organization and administration of the registry in a decentralized manner as envisaged in the Constitution. This has the potential of instilling efficiency in the management of Kenya's land and land-based resources going forward. In Section 10, the Act provides for the maintenance of documents in a more secure, accessible and reliable format and specifically provides for freedom of access to information in line with Article 35 of the Constitution. In order to eliminate the rampant corrupt practices that have characterized the management of land at the registry, Section 12 of the Act now provides for competitive recruitment of the Land Registrars by an independent body, the Public Service Commission. Section 12 of the Act spells out the functions of a Registrar, which in any case, excludes the power to cancel a title. The Act guarantees sanctity of title, but limits this to legally acquired titles. It provides, in Section 26, that the certificate of title shall be held as conclusive evidence of proprietorship except on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.¹⁷ This provision seeks to enhance public confidence in land holding while also offering the government a roadmap to recover illegally alienated public land. This roadmap is however, subject to some restrictions. Section 53(1) of the Act provides that an innocent third party purchaser—without notice of any irregularity—has a valid title and the government cannot therefore repossess the land. Although the Act protects innocent purchasers for value, it lowers the burden of proving that they knew of irregularities while engaging in the purchase of the land in Section 53(2). Further, Section 76 of the Act empowers the Land Registrar

¹⁷ The words 'fraud', 'corruption', 'illegality' and 'unprocedurally' mentioned in the Act are matters of facts which require proof in a court of law.

to place a restriction on the transfer of the land if he/she suspects any fraud or for any other sufficient cause.

3.1.4.3 *The National Land Commission Act, 2012*

This statute, enacted to fulfill the object of Article 67(3) of the Constitution, seeks to among others, provide for the management and administration of land in accordance with the principles of land policy enumerated in Article 60 of the Constitution, *inter alia* equitable access to land, transparent and cost effective administration of land. Section 4 of the Act provides for a decentralization of NLC functions in order to enhance accessibility and wider public reach. Similarly, Section 18 of the Act devolves management of public land by establishing County Land Management Boards (CLMBs). These Boards are tasked with processing applications for allocation, change and extension of user, subdivision renewal of leases for public land within Counties. This is quite transformative, bearing in mind the previous corruption risks associated with a highly centralized and opaque land management system.

In Section 5 of the Act, the Commission is given a wide array of functions which *inter alia* include to: manage public land on behalf of the national and county governments; to recommend a national land policy to the national government; to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya; to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress; to encourage the application of traditional dispute resolution mechanisms in land conflicts; to assess tax on land and premiums on immovable property in any area designated by law; and to monitor and have oversight responsibilities over land use planning throughout the country. In order to enhance the expertise of the Commission in the performance of its functions, the Act provides in Section 8 that the Chairperson and the members of the Commission shall be persons who are knowledgeable and experienced in land matters.

To recover illegally alienated land, Section 14 of the Act empowers the Commission by dint of Article 68 (c) (v) of the Constitution—on its own motion or upon a complaint by the national or a county government, a community or an individual—to review all grants or dispositions of public land to establish their propriety or legality within five years of the commencement of the Act. Upon establishing fraud, irregularity or any illegality, the Commission shall direct the Registrar to revoke or cancel the Title (Section 14). This is a complete departure from the ‘sanctity of title’ in Cap. 300 where the Registrar or even the Minister responsible could not cancel an irregularly acquired title. Instead it was left to the court as discussed above. In addition, the Act, in Section 14(7), protects a bona fide purchaser for value without notice of a defect in the title.

The Act undoubtedly confers the power of alienation of public land upon the NLC. However, the disposal of such land can only be done by the NLC, with the consent of the National or County Government. The requirement of consent to such transactions is certainly a check-and-balance relationship. The NLC’s function of monitoring the registration of all rights and interests in land (Section 5), is another mechanism of checking the powers of the body responsible for registration—the National Government.

3.1.6 Challenges in moving forward the land integrity debate

3.1.6.1 Inconsistencies in the current Land Acts

First, the statutory framework before the enactment of the Constitution of Kenya, 2010 is relevant to this baseline study. This is because the old land statutes continue to be in force in respect of rights, interests, titles, powers or obligations they confer, vide the saving provision in Section 107 of Land Registration Act, 2012. Further, the process of implementing the new land laws is too slow, with some categories of land still being registered under the old land laws as of August, 2013. In addition, no litigation on indefeasibility of title has been referred to court under the new land laws. To this extent, the old land laws are still alive. Kenyans will recall the rampant abuse of state power under the previous constitutional dispensation. Clearly, such legal review does not necessarily contribute to land reform.

Second, and specifically, Section 14 of the National Land Commission Act, 2012 seems to usurp the role of the Environment and Land Court which has exclusive jurisdiction to deal in land disputes. Further, it goes against the principle of separation of powers which provides that the adjudication of disputes should be the role of the Courts and not the Executive to which the Commission falls under—the Supreme Court advisory indeed suffice. However, it is based on an express constitutional provision, which would override any provisions of an Act of Parliament. The net effect of this provision is that it creates multiple structures for invalidating illegal titles and therefore inherent difficulties in monitoring such processes.

Third, Section 26 of the Land Registration Act, 2012 creates no difference between first and subsequent registrations, allowing blanket invalidation through the courts of any land registration which has transaction which has been acquired illegally, unprocedurally, through a corrupt scheme, by fraud or misrepresentation. However, Section 53(1) of the same Act protects a person who acquires land in good faith and without knowledge of any illegality that may have been committed in the process. Equivalently, Section 14(7) of the National Land Commission Act, 2012 protects a bona fide purchaser for value without notice of a defect in the title. This, documented in the *Ndungu Land Report*, has a net effect of making people to transfer the titles to third parties who act as their proxies in a bid to defeat any effort by the government to recover illegally acquired public land. Yet, by holding such transactions void, Section 158 of the Land Act, 2012 allows for cancellation of illegally acquired titles. This provision further denies any form of compensation, without protecting an innocent purchaser for value and without notice.

Fourth, Section 108 of Land Act, 2012 directs that compulsory acquisition of land be subject to prompt and adequate payment of compensation. Compulsory acquisition has been identified as one of the options towards repossession of illegally acquired land. This baseline study is however opposed to this avenue as it would validate illegal acquisitions of land, and allow persons to benefit from an illegality. But this has happened before. On acquiring titles, most grabbers mentioned in *the Ndungu Land Report* would quickly sell the land to state corporations at hugely inflated prices.

3.1.6.2 Rolling back the gains: the Land Laws (Amendment) Bill, 2015

The roadmap to land reforms informed by the various reports adopted in the Sessional Paper No.3 of 2009 of the National Land Policy and enacted in Chapter 5 of the Constitution on Land & Environment. Subsequently, the Land Acts of 2011-2012 (earlier mentioned in this report) were enacted to give effect to specific constitutional provisions. Kenyans will recall that the Land Acts were rushed through Parliament in a bid to beat the set constitutional deadline as well as cement the legacy of the coalition Government whose tenure was coming to an end. In the process, the country ended up with conflicting, poorly done and even unconstitutional provisions in the said Acts. This had to be cured. Therefore, the Land Laws (Amendment) Bill, 2015 was welcome to the extent that it was rationalizing the provisions in the Land. However, this Bill went over and beyond this expectation to include amendments with the potential to roll back the land reform gains made thus far.

First, the Land Laws (Amendment) Bill, 2015 at Clause 45 abolishes the County Land Management Boards (CLMBs), performing NLC functions at the county levels contrary to Article 6(3) as well as 174(f) and (g) of the Constitution of Kenya, 2010 as read with Section 18 of the National Land Commission Act, 2012. As mentioned elsewhere in this report, CLMBs are a break from the past as they not only decentralize land services but also reduce opaque land administration and management processes.

Second, Clause 7(5) of the Land Laws (Amendments) Bill, 2015 gives the Registrar broad discretion to delete 'entries that have ceased to have effect'. The Bill does not provide for the definition of such entries nor due process safeguards such as the requirement for notice to the affected persons and the right to contest such decisions prior to cancellation. The high level of discretion granted to the Registrars in the exercise of their duties increases the likelihood for corruption by providing opportunities for unethical actions on the part of the officers.

Third, Section 13(1) of the Land Act, 2012 requires that upon expiry of a lease, land reverts back to the national or county government and the Commission may offer immediate past holder of the leasehold interest pre-emptive rights, if the lessee is a Kenyan citizen and the land is not required for public purposes. However, Clause 54(4) of the Land Laws (Amendments) Bill, 2015 allows compensation to the departing lessee for lawful improvements if application for renewal is not granted. The proposal to compensate departing leaseholders perpetuates permanence and goes against the leasehold tenure arrangement whose enjoyment is for a defined period of time. Equivalently, the requirement for compensation imposes practical challenges in extinguishing leases for the benefit of the wider public. Yet again, this provision can very well be used to compensate lease holders who obtained such interests through illegal or corrupt schemes.

3.1.6.3 Theoretical mischaracterization of corruption

The baseline survey findings have confirmed that the land sector is not immune to corruption. Owing to the centrality of land in Kenya's socio-cultural and economic development, reducing corruption in land management is an effort worth pursuing. That corruption is both a major cause and a result of

poverty in Kenya (and around the world) is not disputed. Therefore, with an increased awareness of the detrimental effects of corruption on development; strategies to fight it are now a top priority in Kenya's policy circles. However, Corruption in the land sector can be generally characterized as pervasive and without effective means of control (TI, 2011). Since attaining self-rule, successive Governments have initiated anti-corruption measures in Kenya. To date, however, few successes have resulted from the investment. In fact, corruption even seems to have become more entrenched in step with the efforts to curb it (Persson et al., 2010). As mentioned elsewhere in this report Kenya's bribery index has remained disappointingly low and stagnant over a long period of time.¹⁸ Clearly, a new approach to anti-corruption drive is required.

Corruption is subject to a number of theories. This is justified by the fact that the literature on it is both vast and diverse. Sadly, corruption does not easily render itself to theorization. Be that as it may, the *principle-agent* theory is mainly advanced by scholars. The principal-agent model rests on the assumption that the principal will take on the role of controlling corruption (Klitgaard, 1988; Galtung and Pope, 1999; Rauch and Evans, 2000; Andvig and Fjeldstad, 2001; Mungiu-Pippidi, 2006). Sadly, many of the varying concepts of this model are not apt. By implication, if the supposed principal(s) are also corrupt and do, as such, not act in the interest of the public good, the principal-agent framework becomes useless as an analytical tool since there will simply be no actors willing to monitor and punish corrupt behavior (Andvig & Fjeldstad 2001). Consequently, even if most individuals morally disapprove of corruption and are fully aware of the negative consequences for the society at large, very few actors show a sustained willingness to fight it.

Analysts opine that contemporary anti-corruption reforms in Africa—including Kenya—have largely failed because they are based on a mischaracterization of the problem of corruption (Persson et al., 2010). Therefore, it is vivid that the war against corruption is bound to fail. As mentioned elsewhere in this report, there has been widespread corruption in the country under the watch of the enacted laws and anti-corruption agencies (Odongo, 2014). The principle-agent theory relies on structural reforms that include *inter alia*, legal and institutional reforms aimed at promoting good governance and curbing corruption. Kenya's legal reform is well documented. In addition to the national values and principles, Chapter Six of the Constitution of Kenya, 2010 sets high ethical standards and requires State Officers to, among others, desist from corrupt practices. Chapter Thirteen further provides the values and principles of Public Service which include *inter alia*, high standards of professional ethics. To establish mechanisms for effective implementation of Chapter Six of the Constitution, the Leadership and Integrity Act, 2012 was enacted by Parliament.

Several other legal and institutional frameworks exist to uphold integrity. The Anti-Corruption and Economic Crimes Act, 2003 not only regards corruption as an economic crime but also provides a tool to fight it. The Public Officers Ethics Act provides for a general code of conduct to be observed by all public officers. The Ethics and Anti-Corruption Commission Act, 2011 establishes the Ethics and Anti-Corruption Commission (EACC) to lead the fight against graft and connected purposes. The Public Procurement and Disposal Act regulates procurement process by the Government. The Public

¹⁸ The 2015 Corruption Perceptions Index ranks Kenya at position 139 out of 168 countries. Yet again, the East Africa Bribery Index Trends Analysis (2010-2014), a report by Transparency International has confirmed that there was no improvement in the bribery experiences reported throughout the five year period. This includes the land sector.

Appointments (Parliamentary Approval) Act, 2011 requires the Parliamentary Committee responsible to investigate, among other qualities, personal integrity of a candidate for office. Lastly, the Judges and Magistrates Vetting Act, 2011 establishes an independent Vetting Board to vet judicial officers in accordance with the provisions of the Constitution. Despite these robust legal provisions, Kenya is still grappling with high levels of corruption and lack of integrity in both private and public sectors (SID, 2015).

IV: Political Analysis and Risk Mapping

4.1 The Liberation Struggle and Land

While the liberation struggle in Kenya was driven by contestation over access to land and land based livelihoods post independent regimes have not proceeded very far with implementation of land reforms to offer some form of redress, land restitution, restoration or compensation to those who suffered land related injustices sown during the pre-and post-colonial periods by white farmers, absentee land owners and outsiders. Victims of settler colonialism, labour migration, and land dispossession, often identifiable by the visible ignominy that surrounds their everyday life, "...have over the years resorted to self-help measures to realize what they believe to be injustices whose redress is long overdue but have been flagrantly overlooked or ignored." (Openda K, 2013). In a country of more than 42 million people and only 43.62 million hectares of land suitable for human settlement, the ethnic identities that define settlement patterns, land scarcity and the dualistic agrarian structure that is characterized by a highly capital intensive export-oriented 'European economy'/commercial farming that sits side by side with overcrowded rural reserves or communal areas, can at best only breed land use conflicts or result in apathy. Obviously the ability to access, own, use and control land has an implication not only on one's ability to feed and provide for his/her family but also determines his/her socio- economic and political standing in society.

4.2 The Parameters of Land Policy Development and Political Debates

It is important however to point out that the parameters of political debate and land policy development in Kenya and most of Africa over the years has been framed and impacted on by narratives, norms and antecedents that most analysts and commentators tend to overlook. Alden C. et al. in their paper, '*Regionalisation of norms and impact of narratives on southern Africa land policies*,' point out how colonialism visited [not only] ignominy upon traditional society through the influence of missionaries and civilian authorities but also a veritable explosion of land dispossession that gave rise to displacement. The legitimation of these displacements by the introduction of laws dispossessing Africans gave rise to the African nationalist movements. In Kenya the Colonial government promulgated an Ordinance in 1908 requiring all persons claiming to have an interest in immovable property to make a claim before the expiry of six clear months. Due to ignorance, narratives confirm that most indigenous people did not make those claims and for purposes of that law land owned by locals was considered "ownerless". Britain's own foreign Jurisdictions Act gave it imperial power to dispose of what they called 'waste and unoccupied' land. Like elsewhere in Africa such actions, "... produced a liberation narrative, which claimed its legitimacy in its historical opposition to colonialism with special emphasis on the peasantry and state control," adds Alden C. et al in their article.

4.3 Elite Accumulation and Post-Colonial State Power

The nationalist movement in Kenya mobilized masses to question the stolen land, the kipande system, forced labour and unjust taxes and like the commentators observe one would have thought that upon taking state power the emerging African leadership would 'transform the socio-economic conditions of the bulk of the African population' but like Kenyatta in Kenya who inherited political structures,

institutions and economic production systems left by the British and thus continued with exploitation, capital accumulation and expropriation at the expense of the masses, most African leaders have been the authors of the numerous claw backs and ambivalence that have attended to land reforms in general but redistributive reforms in particular. Alden and his co-authors make a very important point; that the liberators abandoned restitution, and in its place they favoured “...elite transfer of resources and new ties of dependency with remaining white commercial interests.” In the Kenyan case the conclusion of the independence talks held in Lancaster House from 1960-1962 were predicated on ensuring the protection of private property was assured. Only when the negotiators had worked out an acceptable bargain, did the new rulers set about consolidating their power in the new State. This is how a ‘post-settler oligarchy, black elite accumulation’ that is made possible by use of and/or abuse of state power emerged in Africa.

When confronted this black elite justifies their actions by invoking ‘the liberation discourse’ which is invariably couched in terms of their entitlement as ‘heir to the colonial state’. The process of decolonization which followed in Kenya sometimes erroneously referred to as the nation building project was predicated on ‘Africanising’ the inherited political and economic structures but this was just another euphemism for elite accumulation which placed emphasis on a national identity that constantly reminds minorities who the real citizens are. The process represented an adaptive, co-optive and pre-emptive process which gave the new power elites access to the European economy by allowing settlers instead of going back to adapt to the changed economic and political situation by identifying new centres of influence that were not overtly political and cooperating with the outgoing rulers.

4.4 The Neoliberal Narrative and Land Policy Practice

Following the balance of payment crisis of the early 1980s, western donors, IMF and World Bank began to promote radical restructuring of developing countries through application of economic and political conditionalities. This produced the neoliberal narrative which was the opposite of the liberation narrative. In examining trends in land reforms these narratives are critical. First as the commentators observe the post-colonial state that has been driving these reforms has inherent contradictions the worst form of which Alden describes as “... the complacency and even predatory conduct, that accompanied the installation of a black elite in government.” Racial narratives were discredited by the liberation narratives until settler colonialism lost support internally and externally. Liberation narratives gave way to neoliberal narratives and each of these conflicting narratives became influential sources of policy and political action in the post-colonial period.

The independence constitution for example sanctioned, confirmed and certified all land rights (regardless of how the land was acquired) before 1st June 1963 thus legitimizing and protecting the fraudulent, coercive, deceitful and clearly unjust process of expropriation that took place before independence. This decision was wrongly informed by a feeling that land redistribution should not be made at the expense of economic (mainly agricultural) stability. Secondly the most celebrated Professor of land law Okoth Ogendo had always complained that land relations such as they were structured in colonial Kenya persist and in some cases the post- colonial administrations have even expanded the scope of colonial land policy and law.

4.4 TJRC and its Findings on Land

The Truth Justice and Reconciliation Report 2013 identifies some important facts regarding the land issue in Kenya:

1. ***Land Ownership before the Advent of Colonialism:*** Land ownership was characterized by the various indigenous ethnic communities communally occupying distinct territories in the land and co-existing peacefully while tackling external threats collectively.
2. ***Origins of Land-Related Problems at the Coast:*** Narratives confirm that the Mijikenda, Taita and Pokomo were rendered landless by activities of Arabs and their successors. Slave trade, direct forceful evictions, a Land Titles Ordinance of 1908 all led to the squatter problem where large numbers of families and communities occupy land for which they have no title; that consequently exposes them to forceful and unexpected evictions by those who hold titles to the land they occupy, their assigns or successors in title.
3. ***Origins of Land-Related Problems in Mainland Kenya:*** Through the creation of the 'crown land' concept of land ownership and use of this or the state to assert itself as a political entity that owns land in Kenya and having the right to grant portions of it to individual users led to these other land problems. Introducing terms like land 'in actual occupation' to render land in actual occupation by indigenous communities as undefined and allocating settlers tracts of land up to 1000 hectares in fertile areas considered unoccupied as per the Ordinance gave way to what we know as the skewed land distribution.
4. ***Acquisition of Land through Agreements:*** The 1904 and 1911 Anglo Maasai agreements led to the loss of Maasai land and all user rights to the British fraudulently. This had the effect of causing the British administration to pass the Crown Lands Ordinance of 1915 which prohibited land transactions between white settlers and Africans without prior consent of the Governor of Kenya. The Ordinance also brought all land under control of the 'crown' including lands previously reserved and actually occupied by indigenous ethnic communities and all lands reserved for the use of any particular tribe.
5. ***Acquisition of Lands through Establishment of Reserves:*** Through this strategy the British administration used the so called 'native reserves' confinement areas to further alienate communities' prime land which explains the numerous land conflicts in Kenya.
6. ***Acquisition of Land through Coercive Measures:*** Other strategies that resulted in exposure of individuals and families to landlessness and poverty included forced African labour, military service; taxation, the passbook system among other restrictions.
7. ***Acquisition of Land through Forced Evictions:*** Deceptive interactions by settlers led them to take over the land of the Talai, Pokot and Turkana without compensation, or consideration of their plight at all. The Talai appear to have suffered the worst form of human rights deprivation in Kenya while in Mt Elgon, the Maasai/Sabaot suffered systematic forced evictions and alienation of their land first by the British and later by officials in post-independence governments. The Sabaot Land Defence Force and other militia formed to violently reclaim their land are the unfortunate consequences of inaction by government.
8. ***Land Alienation and Displacement by Multi-national Corporations:*** Several entities, mainly of European origin contributed to landlessness of African communities especially in Kericho and

other parts of the Rift Valley, when they were allocated huge tracts of land with leases for 999 years.

9. ***Land Alienation during the Mau Mau Movement:*** All these repressive tendencies of the British coupled with alienation of evictees land, squalid conditions, overpopulated reserves, restrictions on African commodity production among other factors, produced the African freedom movement in the nature of a land and freedom army known as the Mau Mau. It attacked officers serving the colonial administration and their African collaborators following which a State of Emergency was declared that visited unimaginable horrors to the fighters. The bitter irony of Mau Mau returning from war to find land and other property confiscated by British administration loyalists including home-guards and the provincial administration led to the land scarcity, landlessness and destitution but also inter and intra-ethnic tensions including the Kikuyu; Kikuyu-Maasai; Kikuyu-Kalenjin in the Rift Valley as we know today.

Due to the fact that land occupied settler politics throughout the colonial period and due to the centrality of land in the independence movement land remains a politically sensitive issue in Kenya. Political parties at independence embraced the land question as key and land was fundamental at the independence negotiations raising Kenyans' hopes that all land related claims would be resolved with finality at independence. It is the reason failure by the first independence government to fully address land issues would lead to protracted inter-ethnic conflict for years to come. While at the Coast the Mijikenda are dissatisfied and are organizing a secessionist movement, pastoral communities in North Eastern and parts of Eastern regions exist in the shadow of the North Eastern Frontier or Greater Somalia.

At the 3 Lancaster House Conference negotiations, African elite positioning, settler interests, resettlement programmes as a response to dealing with those displaced during colonialism and the failure to fully address the existing land question at the time sandbagged the dream that the freedom fighters had. Instead elite approaches were preferred rather than comprehensive land reforms. The Mackenzie Scheme, One Million Acre Scheme (specifically Sitatunga, Maridadi and Liyavo Settlements) were all part of these elite approaches and were marred by illegal/irregular acquisitions; ethnic dimensions favouring some over others; willing- buying, willing-seller policies of Kenyatta; the squandered opportunity for the Kenyatta regime to fully and adequately address the land question and prevent current violent conflicts over land with political overtones and Moi's seeming intransigence in protecting Kalenjin land.

Conceptual Analysis of Corruption in the Land Sector

In order to analyse the correlations and establish prevalence and nature of corruption in the land sector for targeted communities; provide indicator baseline drivers; pressures and corresponding interventions and derive an appropriate path for moving forward, the study has adopted the DPSIR framework as illustrated below.

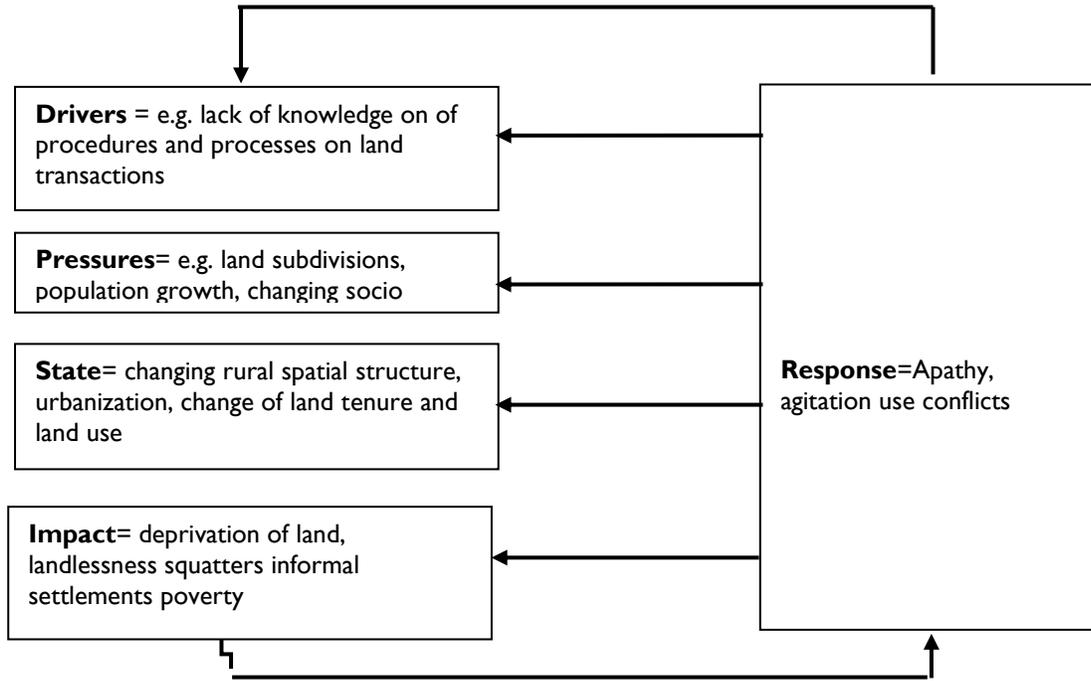


Figure1. DPSIR Framework –Adapt Figure 1:ed from EEA (2001)

TJRC identifies the following irregularities:

Failure to re-settle and register coastal people as owners of land; forced evictions by private individuals from up-country, establishment of settlement schemes benefitting the same; personal and irregular alienation of land at the coast by government officials including the former president's family for their own private use; establishment of protected wildlife areas on land occupied by local communities without recognition of their existence and compensation; lack of title deeds; shifta related war in Lamu.

Fraudulent allocation of government land at the coast focusing especially on Lamu and Taita Taveta where government officials, president Kenyatta and family benefitted from illegal acquisition and allocation of land to themselves and their close associates excluding coastal communities in dire need of resettlement. Officials such as former influential politician Sharrif Nassir and Former District Commissioner Ali Korane are named; others set up companies to acquire land for speculative purposes. This note relies heavily on the Report of the Ndung'u Commission of Inquiry into the illegal/irregular allocation of public land.

Irregularities involving protected wildlife area lands outlines how communities such as those who lived on Kiwayu Island lost their homesteads without alternative land in setting up protected wildlife areas of Kiunga Marine National Reserve and DUNDORI National Reserve. The report observes chances of affected communities recovering their land diminished when the Kenya Wildlife Service then irregularly permitted foreign investors to acquire title deeds to these lands to establish large tourist hotels while continuously harassing community members making it impossible for them to even cultivate the land or earn a living from it.

Outright land grabbing underscores Coastal people's sense of betrayal by the same government meant to protect them; the growth in demand for land as the tourism industry grew and the ensuing grabbing by both local and foreign investors. It names president Kenyatta as the perpetrator who issued a decree giving himself control over the lands and direction of their transactions in his favour allocating a lot of land at the beach and in other parts of the coast in Likoni, Waitike Farm, Casalak in Diani Msambweni, Lunga Lunga among others, to himself, family relatives, friends and politicians such as Darius Mbela. There are also cases where the coastal families were forcibly evicted to pave way for up-country occupation. The Bajuni are singled out who feel they were better off under the colonial government farming and exporting crops without interference and are now landless- their numbers as with other coastal communities decreasing with destitution while those from up-country increase. Thus they are becoming minorities in their own homelands. Locals testified that the grabbing left them poor with no access to education, leading to a majority of volatile, jobless, uneducated and poor youth. Manda Island receives special mention where between 1974 and 1976, PC Mahihu, using DC's, Chiefs and junior officers forcefully acquired land on Manda Island from local people. 6 people were killed in the process, locals lost their right to the property and all developments they were undertaking. Abuse of state office also enabled private individuals to gain from local communities without consultation, compensation or mitigation, extended even to fish landing areas in Kwayu, Mkokoni, Manda Island, Manda Toto, Tenewi among other areas. Uncertainty over what is government land, community land due to poor delineation including large areas in Tana River has allowed the rich and influential to acquire land and title deeds while members of local indigenous communities have none. Demanding land adjudication everywhere especially in Tana River; that government ensures everyone at the Coast has access to land in accordance with the new constitution to prevent up-country people from coming and claiming land and that families who lost members due to forceful evictions be compensated.

In irregular acquisition of the Tiwi and Diani Trust lands, points to the set-up of the Trust Lands Ordinance passed by the colonial government for the benefit of African communities. The report has a detailed analysis of the concept, disposal of trust lands to individuals and issuance of individual titles to trust lands in various pieces of legislation; how Tiwi and Diani were used to settle locals who had fought on Britain's side each beneficiary allocated 2 acres. However in 1972 they were evicted when a private individual allocated the whole 250 acres to himself. Other trust lands with a similar fate were Shimba Hills and Kwale.

Fraudulent acquisitions of trust lands evidently exceeded those established under the Trust Lands Act to those established by private trusts and wakfs (Islamic trusts like the Mazrui Wakf land at Takaungu, Kilifi.) The Report

recommends the declaration of the area as an adjudication area, be revoked with urgency and land reverted to the intended Mazrui beneficiaries among others.

Under failure of illegal settlement schemes at the Coast the report concludes they have been fraught with irregularities and outright discrimination of landless coastal communities. It cites the Magarini Settlement Scheme where despite revelations of irregularities in Parliament, no official action has ever been taken to remedy the situation. The Baraka Settlement Schemes by the British meant to provide land for about 5,000 squatters doing so for a small number in Kilifi. In Lamu 10,000 Kikuyu were settled under a larger programme supported by aid from Germany between 1969- 1979 including ex-Mau Mau raising the population of Kikuyu in the district to 20%.

Failure to consult local communities instances where upcountry people settled on intended land for development and being generously compensated such as for the construction of the Lamu Port planned as early as 1965; Enkamani Ranch in Lamu that was illegally acquired by the head of Kenya Navy who subsequently sold it for 20 million Euros are highlighted. The report maintains that there has not been any historical injustice worse than that which Lamu people suffered because they were evicted at independence and people from up-country brought in and settled on their land. On the on-going development of Lamu, locals are asking for the compensation; when they were not consulted, what other means of livelihood will they get having lost their homelands, pasture lands and fishing areas. They warn of violence.

Incomplete land adjudication, consolidation and registration notes that despite the Land Adjudication Act, the Registration of Titles Act other laws to facilitate land adjudication in the whole country, it has neither been initiated nor concluded in large areas of the Coast including Mombasa, Malindi, Taita, Taveta and Kwale. This has not only caused widespread squatters but also exposed Coastal communities' land to land grabbers and created tension between locals and immigrants.

Detailed Field Issues Nairobi and Kwale, 2015

The study aimed to establish corruption risk, prevalence and nature of corrupt practices in the land sector in target 'communities' (areas and/or sectors) to inform the client's programming decisions as well as determine benchmarks upon which the project's progress shall be measured.

Land Issues	Functions of land administration	Typical Land Admin Activities	Actors in Land Administration	Summary of Findings Nairobi	Summary of findings Kwale	Detailed findings per issue	Way Forward
1. Land Allocation.	Change of user and Subdivision of agricultural land	Answering parliamentary questions	The Chairman Of The National Land Commission	Political Interference	Politicization of the process by interest groups and persons	Corruption in land management, Use & Practices <i>Fake Documents such as letters of allotments, lease documents, title deed and green cards</i> <ul style="list-style-type: none"> Respondents say it is difficult to differentiate a fake deed or fake receipt from a genuine one since they are printed by same machine and contain similar particulars. 	<ul style="list-style-type: none"> Digitisation of all land records
2. Compulsory Acquisition.	Setting apart	Computerisation programs	Commissioners Of The National Land Commission	Conversion Of Freehold And 999 Years Lease Held By Foreigners To 99 years	Transfer of lease without due process	<ul style="list-style-type: none"> It was indicated that it is very easy to own land legally or illegally in Nairobi and this is something practiced every day and viewed as a major claw back to existing land reforms 	<ul style="list-style-type: none"> Repealing obsolete laws and enacting appropriate laws
3. Land Hoarding, Absentee Landlordism & Subdivision into uneconomic units.	Establishment of land control boards	storage of information	The Director Of Land Administration	The minimum and the maximum holding	Absentee landlord (mostly from bara)	<ul style="list-style-type: none"> Land has been grabbed a long road reserves e.g. in Kibera and every space left in slums is under scramble where local leaders fetch huge sums from fortunate residents who can afford the amounts requested. The larger Kibera slums is said to be community land belonging to the government. 	<ul style="list-style-type: none"> Adequate funding and training
4. Numerous Legislations over Land.	Court Cases	Calling for planning to facilitate allocation of land	The Deputy Director Of Land Administration	Old Tattered Files, Registers And Other Land Documents	Old Tattered Files, Registers And Other Land Documents	<i>Grabbing Of Public And Private Land</i> <ul style="list-style-type: none"> It was elaborated that Sycads is a piece of land in Runda was initially a public space owned by a senior business man who sold the same land to some young men. The land was later marked as road reserve and beneficiaries pushed out. The worry was that same authorities who marked the land as road reserve had issued deeds for the land causing more complexions in the case. 	<ul style="list-style-type: none"> Land distribution should be speeded up and carried out in a fair and transparent manner taking into account the concern of the landless poor.
5. Squatters,	Verification of	processing of PDPs and	The Land	Regularisation Of	Forceful	<ul style="list-style-type: none"> The results indicated there is too 	<ul style="list-style-type: none"> The process of land

Baseline Survey, Political Analysis & Risk Mapping in Nairobi, 2015

Land Issues	Functions of land administration	Typical Land Admin Activities	Actors in Land Administration	Summary of Findings Nairobi	Summary of findings Kwale	Detailed findings per issue	Way Forward
Informal Settlements, IDPs, Refugees & Land related disasters.	documents	dps	Administration Officers	Squatter Settlements	evictions	much corruption because of raw greed in fight for land across all socio-economic classes from informal settlements to high incomes areas including buying or encroaching and building on river riparian reserves and water courses .	adjudication, subdivision of company and co-operative farms and group ranches and the allocation of plots in urban areas including the regularization of the informal settlements should be considered as projects to be finalized and completed at the soonest possible.
6. Delays in Service Delivery.	Expunging Of irregular Documents	Attending to members of the public and addressing land complaints appropriately.	The County Land Management Board	Conflicts Of Institutional Interests Between The Ministry And The NLC	Conflicts Of Institutional Interests Between The Ministry And The NLC	<i>Regularisation Of Squatter Settlements</i> <ul style="list-style-type: none"> The County is issuing titles to people who acquired allotment letters even if that was irregular especially in Zone 5 (Umoja, Tassia areas) to circumvent the route of demolition of illegal structures due cost implications 	<ul style="list-style-type: none"> Government should avail financial resources to implement the above projects
7. Access to Land by the Vulnerable Populations.	Documentation Of Public Institutions	Receiving and processing applications for land allocation by various individuals, companies and institutions.	The Land Control Boards	Compulsory Land Acquisition V/S Unregistered Interests On Land	Third party ownership of deeds and land ; Change of ownership	<i>Religious Institutions promoting land grabbing</i> <ul style="list-style-type: none"> It was indicated that religious institutions have encroached road reserves, setting up businesses in public spaces including supermarkets, shops, Filling Stations amongst others. Buruburu National Library is the only public facility left out of many grabbed social amenities such as KAG and PEFA Church grounds, St. James School, Fire Station site amongst others. Containers have been used to grab land by dropping them in particular places at odd hours 	
8. Indefeasibility of Title and Revocation of Allocation.	Parliamentary Questions	Preparation and issuance of letters of allotments to approved applications.	The County Government	Grabbing Of Public And Private Land		Political interference <i>Abuse of political office</i> <ul style="list-style-type: none"> Nairobi Senator was adversely mentioned in a fight with KRA in grabbing Cocoa-beach a public 	

Baseline Survey, Political Analysis & Risk Mapping in Nairobi, 2015

Land Issues	Functions of land administration	Typical Land Admin Activities	Actors in Land Administration	Summary of Findings Nairobi	Summary of findings Kwale	Detailed findings per issue	Way Forward
9. Historical Injustices.	Computerisation	Processing of leases/titles	The Director Of Valuation And Taxation	Unlicensed Land Brokers	Political patronage	Land in Buruburu. The land is said to have been left idle attracting unplanned shops, waste dumping and brooding for criminal gangs. Buruburu MCA also blamed as a serious land grabber in the area.	
						<ul style="list-style-type: none"> Political leaders were blamed as a major cause of land grabbing in the area, they collude with authorities to acquire fake allotment letters from City hall to facilitate public spaces grabbing. It was noted that Kara is currently working with NLC to revoke all deeds issued to those who grabbed public spaces. 	
10. Protection of matrimonial property.	SPRO	Approving of building plans on new grants as per the conditions of allocation	The Director Of Physical Planning	Fake Documents such as letters of allotments, lease documents, title deed and green cards.	Islam vs traditional practices	<ul style="list-style-type: none"> It was reported that many Resident Associations are suffering harassment at the hands of bureaucratic cartels in Lands registry and other government departments as they seek to acquire land deeds, e.g open spaces in Buruburu, Komarock and Runda which are viewed as middle and high income areas have been encroached by land grabbers and public spaces taken away by unknown people shielded by authorities. In Buruburu alone, out of 50 public spaces within the area almost all have been grabbed. 	
11. Community Land and grabbing by religious institutions	Records	Processing of subdivisions	The Director Of Surveys	Low Funding And Low Political Goodwill	Lack of Political Goodwill and No apprehension of legal remedies	Old Tattered Files, Registers And Other Land Documents	<i>The process of Land search is very tedious, time consuming and in most cases marred with irregularities</i>
12.	Land rent	Processing of extension of lease	The Chairman Of The National Land Commission	Pushing bills to parliament		Uncontrolled urban development	<ul style="list-style-type: none"> There is wanton disregard for Urban Planning laws provision that require that 35% of total land should be set aside for public spaces as opposed

Baseline Survey, Political Analysis & Risk Mapping in Nairobi, 2015

Land Issues	Functions of land administration	Typical Land Admin Activities	Actors in Land Administration	Summary of Findings Nairobi	Summary of findings Kwale	Detailed findings per issue	Way Forward
	Coordination Of District Offices	Site inspections to determine the current ground status of the parcel	Commissioners Of The National Land Commission	Corruption (Minister?)		to current situation at 11%. <ul style="list-style-type: none"> It was indicated that Land grabbing is a major problem in the country with major encroachment into public spaces 	
	Staff performance Appraisal	Processing of renewal of lease	The Director Of Land Administration			<ul style="list-style-type: none"> In Kibera for instance it was indicated that 3M by 3M house space is currently sold between Kshs 30,000 to Ksh40, 000 by the local authorities without proper documentations. It was further indicated that for one to get a piece of land, you have to bribe cartels from village elder to district commissioner and still there is no proper documentations given to prove ownership. 	
	Performance reports/returns	Processing of change of user	The Deputy Director Of Land Administration			Conflicts Of Institutional Interests Between The Ministry And The NLC	<ul style="list-style-type: none"> There is inadequate coordination between relevant organizations and stakeholders
	Research and policy developments	Processing of consents to undertake various transactions	The Land Administration Officers				<ul style="list-style-type: none"> The Private Sector, CSOs, NLC, Ministry of Lands, Judiciary, Nairobi City County Government amongst others are some of the bodies working to resolve land grabbing issues but all seem to read from different scripts
	Capacity development	Processing of payments of legal fees	The County Land Management Board				
		Repossessing of irregularly acquired (grabbed) public utility plots	The Land Control Boards				
		Retrieving and dissemination of information					
	Updating of information on maps, plans, files and						

Baseline Survey, Political Analysis & Risk Mapping in Nairobi, 2015

Land Issues	Functions of land administration	Typical Land Admin Activities	Actors in Land Administration	Summary of Findings Nairobi	Summary of findings Kwale	Detailed findings per issue	Way Forward
		cards .					
		Maps management					
		Custody of maps and plans					
		Opening of cards for surveyed plots					
		Processing applications for setting apart of community land alienation.					
		Status confirmation					
		Mail management					
		Receiving all mails					
		Filling all mails					
		Dispatching all mails					
		Files management					
		Coordinating and inspection of district offices					
		Receiving complaints from district offices					
		Receiving and forwarding staff appraisal forms					
		Receiving and analysing performance returns					
		Researching on work process					
		Communicating policies					
		Follow up policy communications and custody of all circulars					
		Assessing of training needs					
		Determination of relevant tools and equipment					
		Staff welfare/staff development					
		Work environment and work conditions					
		Attending to court cases					

Section V: Recommendations and Conclusion

5. **Policy, Legislative and Operational Environment Governing Land and Corruption:** The policy environment is replete with legal and administrative guarantees that define the spaces for land actors and their operations. From a regime where there were many land laws and a missing holistic policy which gave rise to incompatible regimes that informed the breakdown in land administration, led to corruption, inequality in ownership, disinheritance of some groups and deterioration in land quality, today there are a lot less laws, a concise constitutional framework and fewer institutions. The new constitutional dispensation has however not dealt with the problem of complexity, use and abuse of state power and the sanctity of title. Integrity (or lack of it thereof) in Kenya's land administration and management has for long been seen only through the narrow lens of land law reform.

e) **Importance of Land and Land Documentation:** 98.25% of the study respondents view land as a critical resource and classify it as either important 20.8% or very important 77.4%. Yet for such a critical resource it is a paradox that only about 34.8% of the respondents confirm being in possession of a legal title or document and a majority 62.8% in Kwale and 2.5% in Nairobi County are unaware of the existence of legal title. 49.7% linked their tenure security to the title they held while 50.3% felt insecure mainly fearing the possibility of forced evictions in both Counties. Land remains central to Kenya's development. There is however a dominant belief that that giving people unencumbered title to their land is essential to secure their tenure and perhaps to ensure increased productivity, rural/urban job creation, and food security. This emphasis underestimates the texture of customary law communities as titling often is expensive. Communal and customary tenure provides access to communal land which acts as an important safety net that allows people who otherwise would be forced to migrate to cities to become urban unemployed to find reason to be.

The fact that the content of property rights one got under the Registered Lands Act (Cap. 300 Laws of Kenya) was absolute and could only be circumscribed, in theory, in exercise of State's power of compulsory acquisition meant that revocation of title was impossible even where it may have been obtained illegally. Most of these titles are never issued with due process, after public participation and competitive bidding for example. Even land set aside for other purposes has been allocated. This principle of sanctity must be challenged given the circumstances.

- *In this connection the study recommends that government should strengthen customary tenure systems by making them more democratic and transparent. The land policies should be harmonized and made compatible so that corruption in land administration is reduced with more equity in ownership and greater equality in land distribution. Kenya must start registering deeds and not mere titles and other forms of tenure recognition must be accepted and legitimized. Unregistered interests must constitute property given that most communities live and use unregistered land for the most part. Illegally acquired titles must be revoked and those dispossessed restituted.*

- *The study recommends that the land sector should appreciate history, especially its shaping of the present and the lessons that may be learned from it: Kenya's land redistribution programme, initiated some fifty years ago, through the introduction of land titling for everyday people was ultimately a failure, geographically patchy in implementation and over swept by land grabbing carried out by Kenyan elites to an incredible degree this is not a path anyone should want to tread again.*
- f) **Abuse of state power:** On land Information, land laws remain the most popular source of information on land rights at 40.1% followed by public officials/ public institutions at 21.7%, media at 15.2%, Non-Governmental Organizations (NGOs) at 6% among other sources. The process of land law reform is largely confused to equal land reform which is why most respondents seem to consume land laws as their key source of information. Whereas most respondents confirmed knowledge on what they would do if they required more land information on 'land title as collateral for credit' was the most sought after at 20.4%. Only a paltry 5.13% of respondents sought information on land use. This confirms that Kenya's land reform has focused more on land tenure and paid lip service to land use. Land administration and management has for a long time lacked an efficient, accountable and equitable institutional framework which is why the centralization of state responsibility over land matters; lack of government transparency over land management became a byword. This is what led to the use of public land to secure political favors.
- *This study recommends that the state must not be the ultimate authority in matters of control and management of land. The delivery of land services, including registration, allocation, transfers, surveys and dispute processing must be dispersed to other agencies to root out corruption that is prevalent in the ministry that has been providing these services.*
- g) **The problem of complexity and the 'technist' approach to land reforms:** Kenya has had too many land laws at one stage 76 pieces of legislation and 131 regulations and laws. This made administrative decisions too complex and layered leading to inefficient management arising out of the bureaucracy. The corrupt and inefficient management is therefore a function of the inefficient land administration regime. It is the reason jurisdictional turf wars of key agencies has been a big challenge making anti-corruption efforts very futile.
- *The study recommends that the legal and policy framework should be calibrated to ensure the multiple interests that land connotes are addressed. This should ensure the land owning mania is controlled by having traditional institutions also play a role in land management, use and access. The overall agrarian system livestock production, tourism, agriculture and natural resource exploitation must all be dealt with in enabling laws that speak to one another. The colonial laws and their relics must be removed from the statute books and the impact of the inequalities which those laws made possible redressed. The dual system that developed the European economy at the detriment of its African counterpart must be rectified through affirmative actions that incorporate the views of communities.*
- h) **Community Institutions and Land Management:** Despite community's desire to play a part in making decisions on how to administer and manage community land, public

officials/institutions remain the most authoritative on matters of community land 23.5% in Nairobi and group representatives or traditional leaders 41.5% in Kwale. Public participation is therefore hampered by this as well as due to lack of knowledge on procedures for community land management. Most respondents do not belong to any organized group that deals with land issues but quite a number had engaged in self-help actions in their community 11.1% in Kwale and 30.5% in Nairobi. Major actions included attending demonstrations, signing petitions and contacting a lawyer or legal

- *Address the political legacy of dual systems of governance and authority: This is where points of friction have arisen between tradition, custom and constitutional rights. The current land laws undermine customary law by entrenching colonial distortions of it and using the common law lens to understand it not the constitution. We recommend the enactment of a community land law that will not phase out customary land tenure as a system but one that will allow it to evolve.*

6. **The Land and Integrity Debate:** The underlying causes of corruption in the land sector bear political and administrative undertones but also history. Land governance such as is envisaged in the new Land Acts still suffer from debilitating inconsistencies in these laws and the fact that sections of the political leadership are keen to roll back the gains that have been achieved with land reforms makes this matter even more complex. This is in addition to the theoretical mischaracterization of corruption. Old land statutes are still in operation apparently because there are saving provisions in Section 107 of the Land Registration Act. Indefeasibility of title has also been referred to court. Even as the study contemplated the gains in the new land laws, several inconsistencies that are identified in the detailed sections of the report need urgent attention. But even before this is done Parliament has introduced a Land Laws (Amendment) Bill, 2015 that seeks to abolish the County Land Management Boards to stop the decentralization of land services as contemplated by NLC. The Bill also seeks to give the Registrar undefined discretion to 'delete' entries in the register. The Bill also seeks to grant compensation to departing lessees for unlawful improvements if application for renewal is not granted.

For a sector is not immune to corruption and owing to the centrality of land in Kenya's socio-cultural and economic development, reducing corruption in land management is an effort worth pursuing. That corruption is both a major cause and a result of poverty in Kenya (and around the world) is not disputed. Due to the fact that corruption in the land sector is pervasive and that even with more investment applied by the state to anti-corruption measures in Kenya, corruption seems to be even more entrenched. Theoretical considerations that inform the characterization of corruption as a subject must be called to question. Because it seems, even if most individuals morally disapprove of corruption and are fully aware of the negative consequences for the society at large, very few actors show a sustained willingness to fight it. The study takes the view that anti-corruption reforms have largely failed because they are based on a mischaracterization of the problem of corruption (Persson et al., 2010). Legal reforms in and of themselves are far from adequate as a means to tackling corruption because as a country the frameworks are more than one can ask for.

- *Deal seriously with the displaced legacy of urban poverty and inequality: Over the years, many of the people, their livelihoods, and a vast proportion of the wealth their dispossession enabled, have urbanised. Much of the old capital accumulated on farms is now sitting at the stock exchange or has left the country. Merely restoring land itself the symbol of dispossession and accumulation does not therefore reverse this legacy.*
- *Attempt to erase the social and spiritual legacy of division, alienation and invisibility: Forced removals of communities over the years has led to loss of land, homes and livestock, break up of communities, the splitting up of families and the erasing of histories. There is no physical memorial of what was lost and reconciling communities is difficult where policy process only speaks of victims, no perpetrators or beneficiaries. What does the law seek to do with those who benefited from dispossession-elite and corporate owners who acquired land cheaply and developed it using public subsidies and cheap labor? As we all know communities predate the state and most gazetted public lands were appropriated unjustly.*

7. The role of politics, political agents and Institutions in addressing and/or sustaining corruption in the land sector: Kenya's politics and history have defined the parameters of political debate and land policy development. First there was a liberation struggle and a nationalist movement that was driven by the contestation over access to land and land based livelihoods. Despite this land reforms have hardly succeeded to offer some form of redress, land restitution, restoration or compensation to those who suffered land related injustices sown during the pre-and post-colonial periods by white farmers, absentee land owners and outsiders. Often land policy debates are informed by narratives, norms and antecedents that started with colonial dispossession and displacement. These displacements were legitimized by colonial laws which then gave impetus to the liberation movements. However when the liberators took power they inherited political structures, institutions and economic production systems left by the colonists and quickly abandoned the liberation ideals. A post settler oligarchy emerged that was more interested in accumulation through abuse and use of state power using the liberation discourse to justify their behavior. When economic reforms followed in the 80s a neoliberal narrative was introduced to determine how policy and political action is framed. It is these narratives and their policy and political impacts that the TJRC was established to investigate.

- *The study therefore recommends the full implementation of the TJRC report to reduce and rid Kenya of the expanded scope of colonial land law and policy.*
- *Need to Confront the material legacy of rural poverty and inequality: The dual country sides created by the colonial legacy where there is deep poverty and underdevelopment on one side with successful capitalist farming on the large settler economy on the other hand made possible by dispossession and cheap farm labour and decades of politically motivated production and export subsidies, price controls, regulated marketing through state control boards and trade protection ought to be vanguished.*

8. Context and conditions of work on land and corruption: In Kwale and Nairobi communities have varied perceptions of land value. Each community has its own idea (what the ownership question means to them, their common land problems, prevalent land use patterns among other issues), access to land and land tenure (who is allowed to own land and how do people acquire

land?); knowledge, rights, interests and duties in land (land rights, content, practices and challenges); degree of citizen participation in land management (decision making and empowerment); corruption in land services among other things.

- d) **Land Rights and Land Management Institutions:** 49% of the households surveyed confessed possession of knowledge on their rights to land compared to 71.3% in Kwale and 38.2% in Nairobi who did not know about their land rights. While illiteracy played a part in this latter situation some found comprehension of land laws somewhat difficult while others had outright lack of access to land information. 43.9% of respondents in Kwale felt that their land could be taken away anytime while 10.5% were not sure whether their land could be taken away or not. Cumulatively, slightly over half of the respondents are confident that their land cannot be taken away at 55.1%. Family and politicians were the main suspects who could take away the land and this includes relatives (42.8%), parents (13.2%) and children (3.8%). Politicians on the other hand include Governor (20.8%), Member of County Assembly-MCA (8.2%) and Senator (1.3%). The threat of eviction is a reality that residents of informal settlements (mostly in Nairobi) and squatters (mostly in Kwale) confront on a daily basis and is a form of insecure tenure.
- e) **Prevalence and nature of corruption in the land sector for the target communities:** In two case studies presented from the two Counties “The Church and Land Corruption: The Case of Umoja Residents Association vs Redeemed Gospel Church” and “The Case of Tiwi Diani Complex: Tiwi Aggrieved Farmers Struggle Against a Cocktail of Repression” the land injustices that communities go through in the hands of land hungry individuals and institutions are examined. Mechanisms that exist for complaint handling as far as these issues are concerned are discussed too.
- f) **Corruption in Land Services:** Bribery experiences reported by TI throughout the five year period 2010-14 show no improvement in statistics which simply put suggests that, there was no dividend from the Constitution of Kenya, 2010 and the new Land Acts (Land Act, 2012; Land Registration Act, 2012; National Land Commission Act, 2012 and Environment and Land Court Act, 2012) in so far as bribery while seeking land services is concerned. Majority (81%) of respondents view corruption as a major issue in land management (Nairobi 92.3% and Kwale 63.2%). Cumulatively, 77.5% consider corruption in land management high with relatively more respondents in Nairobi considering it very high at 69.5% as compared to Kwale at 25.1%. Perceptions of corruption invariably increase with multiple uses of land. Therefore, the failure of development control in Nairobi can largely be attributed to corruption. Slightly over one-third (38.6%) of respondents for both counties had been asked to pay a bribe. The Ministry of Lands officials were the major culprits in asking for bribes at 88.3%, followed by community leaders at 11.7%. Majority (53.2%) felt the need to pay the bribe, having been asked to, while 46.8% did not feel the need to pay a bribe.

Of the 38.6% of the respondents who had paid a bribe the major reason given for paying a bribe was; to speed up land transaction (27.41%), because it was the norm and everyone did it (15.23%), to avoid eviction (15.23%) and to access relevant information (14.7%). Corruption in the land sector is cited as constraint in the ‘ease of doing business’ survey. Public officials

are the major recipients of bribes in the land sector and they mainly asked for money, gifts in kind and transfer of property deeds.

Article 60(1) directs that land in Kenya shall be managed in accordance with the principles of *inter alia*, equitable access to land as well as transparent and cost effective administration of land. Article 62 affirms that all land belongs to the people of Kenya collectively, as a nation, as communities, and as individuals. To give effect to those terms, Article 67 establishes the National Land Commission (NLC) to, among others; manage public land on behalf of the National and County Governments. In Article 40, the Constitution guarantees the right to every person either individually or in association with others, to acquire and own property of any description and in any part of Kenya. It is clear that the proerty clause makes the land claims by communities a little tricky as the two may in some interpretations be in conflict.

- *The study recommends that all efforts are put in place to implement Section 158 of the Act which provides the necessary legal apparatus to reposess illegally acquired land and all other invalid transactions tainted by corruption. The NLC must notify those occupying land illegally to vacate.*
- *In order to improve transparency in land management all the new land laws should be enacted. This would enhance transparency but would be bolstered if transparency in land registries through digitization of land records, arrest and prosecution of corrupt officials an enhanced civic awareness on land rights is improved.*

ANNEXES

- **Case Studies**

- a) **The Case of Tiwi Diani Complex: Tiwi Aggrieved Farmers Struggle against a Cocktail of Repression**

Tiwi Aggrieved Farmers is a lobby group formed in 2014 by the second generation of inhabitants of the Tiwi Diani Complex to advance the struggle to win back the Complex that was started by the group's forebears in 1972. The group is not registered and does not have plans to do so or open a designated office given the risks such a move may occasion in a governance environment where state actors are quick to label similar groups as MRC, Kayabombo and Mulungunipa sympathisers or adherents and visit dreadful atrocities upon members so labeled. All but two of the group member's grandparents have passed on without achieving their dream of winning back their ancestral land that they were unjustly deprived of. They fought to their graves to access land on which they produced, built and settled; land in which they lived peacefully and co-existed with their Arab neighbours who built the Congo, Kirima and Mwakamba Mosques. When the British introduced the Land Titles Ordinance in 1908 everyday people were expected to show their plots for claims to be recorded of what then became mostly trustland whereas those that were not claimed became crown land. One narrative suggests that in 1969 then Member of Parliament Kassim Mwamzandi together with then District Commissioner Nyarangi and Provincial Commissioner Isaiah Mathenge informed the community of Diani that the President had requested for land to be set aside for tourism development. No documentary evidence has been adduced to back this claim. Surveyors came to the ground from 1972 to demarcate the plots from Tiwi-Kirima to Diani Leisure Lodge but beneficiaries instead of being given allotment letters, were only given plain papers on which numbers, names and acreage were written but that bore no official stamps. They were promised compensation although there were no negotiations. Later the Provincial Administration decreed that compensation of Kshs 600/-per acre would be given to beneficiaries. DC Nyarangi who chaired the Tiwi-Diani Complex project summoned individuals in pairs some of whom accepted the cash while other refused. Aggrieved villagers formed committees and retained a lawyer Macharia Kiumi to take the matter to court for determination. The lawyer however withdrew from the case citing threats, following which other lawyers Ngombo, Marende and Chitembwe were retained successively but all of whom withdrew for fear of reprisals. Following the death of the first President, his successor Daniel Moi is reported in the national newspapers to have issued two orders scrapping the Tiwi-Diani Complex project and decreeing that the land be returned to the original owners who should be capable of negotiating with any developer. Like Kenyatta before him there is no official record of these orders and curiously as it would later turn out several allotments and allocations were given to individuals either directly related to the President or his friends and aides. At a public baraza in Kwale in 1980 then Minister for Lands and Settlement G. G. Kariuki issued a cheque of Kshs 7.2 Million to be used to compensate members of the community who were dispossessed in phase 1 and 2 involving approximately 960 acres of land. Those that were reluctant to take compensation were admonished by the area MP Mwamzandi "to stop cooking bones..." a pejorative remark suggesting there was only one way to this accepting the cash compensation or lose everything. That holding out against the government's wish was futile became even more poignant when members of the provincial administration Eliud Mahihu, senior politicians like Shariff Nassir, Ali Mwakileo, then KANU chairman, Hamisi Jeffar KANU Chairman Tiwi convened a meeting at Diani Chief's office and approved the compensation plans. Records from minutes of a meeting that deliberated on this issue aver that phase 1 was to have consisted of a request to have 250-300 acres in blocks of 10 acres each for hotel development with the rest earmarked to go back to the community while phase 2 was to have I acre plots from Diani to Tiwi for settlement. The allotments which went to influential people like Gideon Moi, Moi himself, George Muhoho, Arap Leting, Kuria Kanyingi, Noah Arap Too among others took up even the plot on which the Congo Mosque stood and a public utility plot that Chief Makaneno of Tiwi had donated for use by civil servants. A group calling itself 'Lagakaya' fought for the Mosque until the allocation was revoked.

An Incomplete Analysis of the Plot situation on the Tiwi-Diani Complex Project

L.R. Plot No.	Situation	Area/Size	Claimant	Registered owner	Interest	Notes
13441	Diani Beach	4.048ha	Mohamed Omar Mwazecha	Mt. Robin/G. Moi	Lease	
13442	Diani Beach	4.042ha	Bakari Athman Mwakunyapa	Moi/Sucham Investments	Lease	
						12962
						12963
13443	Diani Beach	4.424ha		Sucham Investments	Lease	
13444	Diani Beach	4.5ha	Mohamed Bwika, Bakari Mwakunyapa, Hamisi Nasoro Rais, Mohamed Salim Pate	NMK	Lease	
						148816
						Part of the family claim to have turned 13444 to freehold
13445	Diani Beach		Congo Mosque			Returned
483			Peter Mwendwa	Salim Mohamed Mwawende		
484			Darius Mbela	Juma Mohamed Mwachihi		
42			Mainland Estate	Mwakutengeza Welfare Group		

Due to the fraudulent nature of the transactions, the surveyors could not satisfy all the beneficiaries earmarked for the 1 acre plots leading to annexation of village lands that were never part of the trustland. Those involved in these transactions the then Commissioner of Lands Njenga and Gachanja and a Ngelech who was District Lands Officer conducted the affair without regard to the interests of the locals. New officials have declined to release the lists of beneficiaries claiming that "in 1972 when this happened they had not been born..." Essentially upper Tiwi was taken up by the Kaslak and Maruna Farm and lower Tiwi taken over by the Tiwi-Diani Complex. Mbela Farm and Moi's Bixa all combine to push the villagers further to the margins at great cost to their livelihood activities. When villagers took these disputes to the tribunal the grabbers failed to show up and even where the tribunal ruled that original owners should get back their land this has not materialized. The plots have changed hands in some cases six times making it extremely difficult to trace the layers of transactions. In sections where lease conditions prohibited development, the grabbers have gone ahead and developed. Some of the other big names according to the elders are the wife of Isaiah Mathenge's wife for whom communities have been moved and 10 acres fenced off at Kinigi Beach near Twiga Lodge; a lease to David Mwiraria a former Minister has since become a freehold tenure and he is quarrying on the land, land belonging to Kenya Breweries whose lease expired is also secretly being subdivided. This story of despair is complex but the aggrieved farmers still take the view that Tiwi is still at a better place than Diani which is more developed. The only remedy they see is revocation of the titles and illegally extended leases. They recommend that this land must revert back to the original owners. The 35 long years of suffering should be compensated. The question that remains begging is, how can outsiders be settled on 1 acre plots when indigenous owners languish as squatters? "This tragedy of our times requires more than fine words", they conclude.

List of Participants

#	Name	Title	Contact
1	Rashid M. Partty	Chairman	0729665835
2	Shaibu B Athman	Secretary	0706096757
3	Athuman Mohammed Toza	Member	0725894442
4	Hamisi Juma	Treasurer	0727398704
5	Hamisi Ali Mwakutangala	Member	0728489046
6	Mwinyikambo Mwajao	Member	0717782583
7	Hamisi Gowa	Member	0721548725
8	Mohammed Ali Mida	Youth Leader	0722885373
9	Ali Hamisi Mwabugu	Diani Mwamambi Association Village Chairman	0710534449
10	Patrick Ochieng	Consultant	0722706800
11	Kennedy Miheso	Consultant	0720542294

b) The Church and Land Corruption: The Case of Umoja Residents Association versus Redeemed Gospel Church

The relationship between Kenya's Christian Churches and politics has always been complex, ambivalent, and even paradoxical. Since Kenya's independence in 1963, Christian churches, particularly a variety of mainline churches and their clergy, have been in a sort of ambivalent and complicated relationship with the successive Kenyan governments. Given the significant and prominent roles played by Kenya's mainline churches and individual clergy in the late 1980s and early 1990s, from one single police state to a multi-party democracy, it comes as a great surprise to find that, social engagement coupled with evangelistic undertakings led to a sort of friends with benefits relationship with the state. On one hand the church acted as the voice of the voiceless and the conscience of society and time and again questioned the one party rule excesses from the pulpit. On the other hand the clergy were not only motivated by faith, but repeatedly indulged in sacrilegious activities that inadvertently allowed Moi and his regime to closely align themselves with Evangelical and Pentecostal churches even as the regime was increasingly accused of corruption, nepotism, torture and complete disregard for human rights. For example, as Moi faced increased pressure to lift the ban he had imposed on opposition parties, he attended a Redeemed Gospel Church service in which Bishop Gitonga delivered a forceful pro-Moi sermon. As a testament to the illicit relationship with the state, around the same time it is alleged that Bishop Gitonga's Redeemed Gospel Church fraudulently assumed ownership of a public utility plot in Nairobi's Umoja Estate. The said plot, registered as block 107/384 measuring 0.5Hahad been earmarked for construction of a youth resource center. The matter was taken up by the resident association and has been subject to ongoing litigation that has stretched for over 10 years (at the point of generating this report) with no end in sight. The Commission on irregular land allocations (Ndungu Commission) highlighted the said irregularity and recommended remedial action (see Vol. 1 pg. 98). Similarly, of particular importance is that though the litigation preceded the establishment of county governments, the Nairobi County Authorities have during their short existence written a letter to the church notifying them they had reverted back the land for its intended purpose, however the church remains put. Similar efforts by the national Land Commission to revoke the title of the land upon which the church sits have equally not borne fruit.

c) REPORT OF TRANSPARENCY INTERNATIONAL FOCUS GROUP DISCUSSION ON LANDS AND CORRUPTION AT KARA SECRETARIAT OFFICES ON WEDNESDAY 25TH NOVEMBER 2015 FROM 9:30AM.

FGD No: 002	Date: 25 th November 2015	Start time: 10:15am
Sub County: Kilimani	Ward: Kilimani	End time: 2:15pm
Moderator: Elijah Agevi		Rapporteur: Humphrey Otieno
Areas covered: Buruburu, Kibera, Runda		

INTRODUCTION – Seeking Community Opinion

Transparency International Kenya Chapter Kenya aims to reach and increase knowledge levels on corruption and anti-corruption strategies in the land sector among Kenyans, directly and through local mass media. This initiative also seeks to increase the level of responsiveness by the county government and participation by citizens. The first phase of the process involved a series of events designed to understand the contemporary concerns, issues and perspectives of the citizens of Nairobi County as it relates to land. As such a focus group discussion was held at the boardroom of the Kenya Association of Resident Associations on 25th November, 2015 and this report summarizes the findings of the meeting. A select number of stakeholders were identified, representing the interests for each topic and invited to attend a meeting. A total of 12 people participated in the focus group. The focus group sessions involved a small number of individuals in order to hold a constructive dialogue. The participants represented organizations with an active role and a broad understanding of the topic of discussion. The focus group was guided through the introductions and later discussion topics by Dryland Consultants. The sessions involved a dynamic exchange of ideas among all the participants. The following questions were posed;

MAJOR FINDINGS – Common Ground

The focus group identified the most important issues related to their community of interest. The following issues were identified by most of the focus groups:

- Disregard for Urban Planning laws provision that require that 35% of total land should be set aside for public spaces as opposed to current situation at 11%.
- It was indicated that Land grabbing is a major problem in the country with major encroachment into public spaces.
- It was reported that many Resident Associations are suffering harassment at the hands of bureaucratic cartels in Lands registry and other government departments as they seek to acquire land deeds, For instance it was noted that open spaces in Buruburu, Komarock and Runda which are viewed as middle and high income areas have been encroached by land grabbers and public spaces taken away by unknown people shielded by authorities. In Buruburu alone, out of 50 public spaces within the area almost all have been grabbed.

DELIBERATIONS;

1.0 Significance of Land Ownership in Kenya.

The following experiences were shared by participants present with regard to significance of land ownership;-

1.1 Komarock ;-It was noted that majority are concerned about land in Komarock since almost all pieces of land slated for social amenities have all been grabbed. Besides, community leaders protecting land in the area are targeted by land grabbers. It was also indicated Housing Finance left a piece of land which was then unfairly distributed by former City Council staff to the locals, which then resulted to uncontrolled developments and other malpractices.

1.2 Buruburu:-It was indicated that land grabbers have encroached on road reserves, setting up businesses in public spaces. These include supermarkets, shops, Filling Stations amongst others. Buruburu branch of the Kenya National Library is the only public facility left out of many grabbed social amenities such as KAG and PEFA Church grounds, St. James School, Fire Station site amongst others. Peculiarly, disused cargo containers have been used to grab land by dropping them in particular places at odd hours. Political leaders were blamed as a major cause of land grabbing in the area, they collude with authorities to acquire fake allotment letters from City hall to facilitate public spaces grabbing. It was noted that Kara is currently working with NLC to revoke all deeds issued to those who grabbed public spaces. Nairobi Senator was adversely mentioned in a fight with KARA in grabbing Cocoa-beach a public Land in Buruburu. The land which is said to have been set aside for a market attracted unplanned shops, waste dumping and is even a breeding grounds for criminal gangs. The Buruburu MCA has also been pointed out as a serious land grabber in the area.

1.3 Kibera;-Land has been grabbed along road reserves, and every space left in slums is subjected to a scramble by local leaders who collect huge sums from unfortunate residents. This is despite public knowledge that the large Kibera slums is said to be sitting on community land belonging to the government. The meeting was informed that there is need to avoid political expediency in handling land grabbing cases. Instead a more systematic approach should be introduced to facilitate handling of land grabbing cases to their logical conclusions to ensure justice prevails for the victims.

1.4 Runda;-It was elaborated that Sycads a piece of land in Runda was initially a public space owned by a senior business man who sold the same land to some young men. The land was later marked as road reserve and existing beneficiaries pushed out. The worry was that the same authorities who marked the land as road reserve had earlier on issued deeds for the land causing more complications in the case. It was noted that half-acre in Runda currently sells at 40Million. Another significant case of land grabbing from Runda relates to where an influential man grabbed and sold a public space initially designated for education centre to an Asian and the issue is now currently in court to revert back the land for school. It was stated that all public spaces have been grabbed in Runda, and buildings erected without proper change of user documentation. One can only put up a structure covering upto 25% of ½ an acre land in Runda and failure to adhere to that rule; you risk not being connected to essential services like water, electricity amongst others. This is not the case in other areas including Komarock where people build up to 90% of the piece of land leaving less than 10% for public spaces.

2.0 How People Acquire Land;

- In Kibera for instance it was indicated that 10m by 10m house space is currently sold between Kshs 30,000 to Ksh40, 000 by the local authorities without proper documentation. It was further indicated that for one to part with a piece of land, you have to bribe cartels from village elder to district commissioner and still there is no proper documentation that can be used to prove ownership.
- In Komarock, housing construction were commissioned by Housing Finance Company, Former City Council, Real Estate Companies and sold or rented to house owners. In Runda the case is almost the same though majority are home owners.

Land Rights:-

- a) Those who own land individually have deeds or lease for house owners as their right to ownership.
- b) Allotment letters issued by city council/county guarantees land ownership to their receivers.

A. Problems Associated with Land Ownerships:-

- a) Difficult to differentiate a fake deed or fake receipt from a genuine one since they are printed by same machines and contain similar particulars.
- b) Sub-County leaders propagate corrupt land dealings at grassroots level, it was indicated that they collude with cartels to grab land from voiceless Kenyans.
- c) The 72hours rule for land grabbing was cited as a major challenge to recover grabbed lands.
- d) It was indicated that owning land legally or illegally in Nairobi is something practiced every day and viewed as a major claw back to existing land reforms.
- e) It was highlighted that the process of Land search is very tedious, time consuming and in most cases marred with irregularities.

B. Gender in Relation to Land Acquisition:-

- a) It was noted that members of the female gender have been discriminated in land share especially widows and female children during land inheritance.
- b) There was a strong statement to lobby and push NLC to revoke or suspend deeds for grabbed lands.

C. Groups Proactive on Land Issues:-

- a) It was noted that Private Sector, CSOs, NLC, Ministry of Lands, Judiciary, Nairobi City County Government amongst others are some of the bodies working to resolve land grabbing issues.

D. Laws that Support Lands:-

- a) Constitution of Kenya, 2010, Chapter 5 on Lands, National Lands Policy, Lands Act amongst others.
- b) On the policy note, it was indicated that there is need for a simplified lands documents to educate the public on land rights and relevant procedures and processes in handling land issues.

E. Rating Corruption in a scale of 1-10;

- a) The results indicated there is too much corruption because of greed in fight for land.
- b) Neglect of National values was cited as another hindrance to fight against corruption.
- c) Taking advantage of a loophole in law, ignorance and corruption has propelled leaders who failed to meet Chapter six in provisions on integrity to scrupulously acquire huge junk of lands.

WAYFORWARD;

- a) Leaders in authority should be involved in advocating against land grabbing in Kenya.
- b) De-valuing land in the country was identified as a way to reduce corruption and land grabbing in Kenya. A case study of NHIF buying a piece of land at Riara road at 700 Million and constructed

office suites for rental, after a short while recovered the purchase amount, clearly indicates land value is too high in Nairobi.

- c) Kara was urged to explore the possibility of having a courtesy call with President Kenyatta and Nairobi Governor to discuss thorny land issues affecting residents especially recovering grabbed public spaces.
- d) Kara to develop a simplified hand book summarizing Land laws and uses it to educate the public.
- e) Kara to explore options in educating the public on Land issues including development of monthly journals, trainings, publicizing land cases already settled amongst other related issues.
- f) Kara to develop a strategy in mobilizing the media on a massive campaign to rebuke land grabbers on print, electronic and social media.
- g) Kara was encouraged to work closely with National Lands Commission in settling land grabbing issues within residents associations.

Section	Issue/ Questions	
Land Admin	How much fees do you pay for the following transactions at the lands office?	Search is 2000 sh
	<ul style="list-style-type: none"> • Official search • Registering a caution/ caveat • Registering a charge • Obtaining a title deed • Surveying a plot 	
	If you were to seek services from community institutions what would it cost you compared to the scenario above?	do not exist
	How long does it take to obtain the above documents?	Process is marred by irregularities
	Do you go through an intermediary to obtain these services? If yes why?	Yes. Quick and hassle free delivery
	Is the land registration process clear to you? Explain	To many
	Where do you take your land complaints? Do you get effective service?	
	Are there taxes you pay for your land? If yes, Where and How much?	Location and size of the property matters
	To whom do you pay land related taxes?	County Government
	How do you make the payments?	
At what points do you pay the fees before you obtain your land documents?	County Government offices	
Land use planning	Are you aware of land use planning procedures?	Yes
	Have you participated in any land use planning process?	Yes
	are you aware of land allocation procedures?	Yes
	Are you aware of development and building procedures?	Yes
	How much fees do you pay to obtain development permits?	Varies with development
Land Management	Are you aware of who is responsible for land administration and management in your locality?	County Government and Ministry of lands
	Do you know the regulations for?	
	1. leasing land	Yes
	2. acquiring land	Yes
	3. sub-dividing	Yes
	What do you understand about public land?	Held in trust by the Government
Do you know how public land is created?	No	
Do you know who is responsible for managing and safeguarding public land	NLC	
Land tenure	Who protects your land tenure rights	NLC
	Do you pay money to them	No
General administration and services	Do you always obtain receipts for services obtained in lands offices	Yes. however it is difficult to distinguish fake and genuine receipts
	Have you been referred to obtain services outside of office which are otherwise available in the office	Yes
	Name the range of services for which you never obtained official receipts	cartels
	Name the range of services for which you were referred outside the official lands office	Land search

d) REPORT OF TRANSPARENCY INTERNATIONAL FOCUS GROUP DISCUSSION ON LANDS AND CORRUPTION AT GRAND MOTEL UKUNDA 21ST NOVEMBER 2015 FROM 3.00PM.

Perception of Land Value

- *How significant is the land ownership question in this community?*

Questions of land ownership are at the heart of this community's woes. Most lands are owned by outsiders mainly from upcountry even as long term dwellers lack ownership rights. This problem has origins in what the respondents trace to historical narratives. Arab invaders seeking to establish permanent settlements and trade interests clashed with the early Portuguese settlers leading to a bloody battle. Having invited reinforcement from Oman, Arabs won the battle for the control of the Coastline. With the arrival of the British the Sultan of Zanzibar in whose control the Coastline was struck a deal giving the British administrative control while retaining sovereignty (rights to land) following which the British declared a protectorate.

In 1908 the British introduced the Land Titles Ordinance requiring all persons claiming to have an interest in immovable property to make a claim before the expiry of six clear months. Apart from a few families in Waa, the Shafis and Mwavumos in Likoni who have large farms the rest of the lands were claimed by Arabs, Indians and Britons. Lands that were not claimed by locals were considered "ownerless" and disposed of as 'waste and unoccupied land' under Britain's Foreign Jurisdictions Act. Other accounts according to the respondents claim that between 1915-16, forced evictions of indigenous communities on lands that had been claimed followed LTO leading to the problem of squatters and landlessness as we know it today.

Prior to independence the question of the fate of the protectorate was central to the independence negotiations and whether the Coast would be enjoined to a larger Kenya or remain separate entity. In 1961 this question was put to a referendum by the Sultan who wished to have the protectorate as a separate entity. A majority voted in favour of integration to the colony having been convinced by the small elite led by Ngala and Matano and owing to their lack of civic awareness. One Kadhi, Bakuli dissented and started Mwambao a political party which the locals cursed and even burned Bakuli's effigy. In 1963 the independence constitution legitimised all land transactions that had taken place in the past and according a special place to British interests by ensuring the Constitution through a president that was almost above the law protected colonial claims from contestation. The first president thus treated the Coast as a 'colony' of Kenya and "did not award any coastal a title deed from Vanga to Kiunga. In fact crown lands became government lands and while some elite coastals benefited most land went to upcountry people. Despite Mombasa being the oldest town it is by far the most neglected. The general lack of education in the region which ensures the coast communities cannot speak for themselves in the face of a leadership that have become agents of our land loss accounts for this sorry state of affairs," concludes the respondents.

- a. *Which are the more common Land problems?*

At the time that the British set their base in present day Kwale County Headquarters land I Kwale County was distinguished in 3 categories the Zinj Empire, what is famously known as Mazrui land; East African Estates what mainly became crown lands or today government land and Native lands or what is mostly called Trust lands. The colonial era Crown lands predominated the present Golini location, Shimba hills, parcels within Ng'ombeni, Waa, Tiwi, Diani, Kinondo locations moving along bordering the

Zinj empire right to Boboro in Lunga –lunga. What is known as Independence era government lands includes all large farms which were owned by white & Asian farmers that became Government Training Institute and KARI all in Matuga division; the present Diani Estate, Darius Mbelas’ farm, former Ramisi sugar farm and other farms leased to private investors.

- i. *Dispossession*: all the respondents confirmed that dispossession remains the single most common problem in Kwale County. History alluded to above explains this phenomenon in part but it is complicated further by illiteracy, lack of civic awareness, greedy and compromised leadership. The indigenous people “are like high breed chicken who are trapped in an enclosure, we were colonized by the Portuguese, Arabs from whom we sought assistance to fight the Portuguese followed and today our leaders commit similar injustices against us” exclaimed Mzee Rashid Pate. Much of the Mazrui controlled land that should have reverted to indigenous owners was sadly converted to government land by Kenyatta’s administration.
- ii. *Overlapping land rights*: The independence government announced plans to adjudicate and consolidate land in 1971 a process which started in Tsimba in Matuga around 1974. The process met the worst resistance in native lands who mostly adopted the group ranches strategy which explains why large segments of the Kwale hinterland remains as trust land to date. Most of these ranches were however not able to organize for registration. In Ngombeni, Waa, Fimbo within Matuga adjudication started in 1984 following which affected communities were given allotment letters. The respondents reported that 4000 titles have not been collected by the beneficiaries. In Ramisi the Kinondo-Ramisi Phase 2 was surveyed in 1994 and having said there were overlaps in the 5-acre plots that could not benefit everyone the process was cancelled so that smaller plots could be demarcated for everyone to benefit. It is said that the interests of speculators, corrupt civil servants and outsiders led to this situation at the expense of people on the ground. There is a trend that land in the Coast is free and is often the object of scrambles. The competing uses of land has ensured that the rights of farmers, Kaya forests and settlers have to contend with the rights large investors who do sugar (KISCOL), trees (Lafarge), mining, quarrying and stone cutting and absentee landlords.
- iii. *Predominance of settlement schemes*: Owing to the fact that large tracts of land that were formerly owned by Arabs, Indians and British settlers were reverted to government and were generally not in use, many landless people were presented with the opportunity to invade these lands. From as early as 1968 the government established settlement schemes to stave off invasions of private and government lands. Whereas the landless were to be considered and given first priority at 60%:40% ratio with others the reverse was reported by the group to be the case. Most schemes have been undermined by individual interests. Schemes such as Diani, Shimoni, Kanani and several blocks that were parcelled out of leased lands whose terms had ended are now being claimed by outsiders. The leased farms were mostly lands in which communities lay claims as ancestral lands among these were Amu Han in Waa Ngombeni; Tiwi Diani Complex; GEMA Msambweni; Diani Estate; Mbela Farm; and others in Lunga Lunga, Golini and Mbuguni. The farms were allocated fraudulently to outsiders, former District Commissioners, big wigs, politicians etc. instead of the locals who needed land and were on the ground. Several community members who get allotment letters of offer do not know that they are expected to pay within 90 days for the processing of title and many have lost these rights without knowing.
- iv. *Land grabbing*: In the hinterland where most land remained Trust lands the Council that held the land in trust for the communities have corruptly privatized most of the lands without reference to the communities. For those that were registered the elite have taken advantage of the wider

membership and either sold the lands or charged the land to Banks. This is compounded by the fact that senior politicians local and national in collusion with the land department or on directives of the president have facilitated massive land grabbing to the detriment of the locals. The Coast has produced several land ministers from Ngala, Mwamzandi, Shariff Nassir, Gonzi Rai and Darius Mbela all of whom have benefited from abuse of office and bad governance for personal enrichment. Kinango for example has titles but demarcations have never been done. Several ranches that have been sub-divided have no titles ready for beneficiaries just as some adjudication sections have been awarded to outsiders mostly civil servants. Beach plots are the preserve of two families Moi and Kenyatta and their close friends.

- v. *Investors/Speculators*: Following the setting aside of an exclusive economic zone in the coastline for marine protection and tourism development in 1996 without considering alternatives for the displaced locals the land pressure on the locals has been immense. Many who occupied these areas were *evicted forcefully* to pave way for investors and development. Even then islands were never to be allocated to private individuals but of the 9 islands in Bodo save for Funzi which is inhabited the rest have been allocated to politicians who have sold them to third parties.
- vi. *Token titling programs*: A recent drive to issue titles by the Jubilee government has also been found at best to be a fraud. Most of the titles issued had no green cards, many had double registration and some had no indication of how much land had been allocated and where.
- vii. *Conflict*: The foregoing problems the group asserted is what leads to tension and conflicts in Kwale County on account of land issues. People have no places to farm as investors and speculators who don't farm take most of the land. There are reports that the Mbela farm has been allocated to KISCOL a large sugar investment by politicians. This is similar to the claim that Leisure Lodge bought 92 acres of the same farm to settle displaced people but to date the transfer has not happened due to a court case.

b. *What are the most prevalent land use patterns (social, cultural, economic)*

Land in Kwale County is used mostly for subsistence farming, settlement, large investments in farming and extractives, forest cover both indigenous, public and private (La farge), urban development and industries.

c. *Identify the land management institutions*

- ii. Land Control Board
 - iii. County Land Management Board
 - iv. Land Disputes Tribunal (Removed 2013)
 - v. Ministry of Lands
 - vi. National Land Commission
 - vii. Kaya Elders
 - viii. Clan Institutions for family issues
 - ix. Civil Society Organizations e.g. Kenya Land Alliance
- *How do people in this community ascertain the value/importance of land? Does it matter that the land is;*

Communities in Kwale County use and hold land for the benefit of present but also future generations. The proximity to the ocean, lakes, Kaya shrines and fish landing sites make the land value more critical yet this also is the reason most of the land attracts speculators and other land hungry groups. That 95% of these have been grabbed creates the tensions. The practise of selling land by the poor whenever allotted needs to be analysed further. Lands that produce food, are close to natural resources or infrastructure attract more interest from most people.

- *If the land you live on was demanded for public purposes by the government, how much compensation, minimum, would you consider to be a fair compensation for losing your land?*

Kwale residents believe it is necessary that government and the land owners negotiate for a just settlement in cases where government seeks land for public purposes. A just settlement would be one where the land asset being permanent is not subjected to only cash compensation because cash compensation is less resilient than the asset. Loss of the land asset changes the future of the land owner completely and it would be critical to consider compensation not only of the land value but also assets that were on the land, investments but also the lost futures. Alternative land and social dislocation should also be considered.

Access to Land and Land Tenure

1. *Who in this settlement/village is allowed to own land?*

Most land in Kwale County is either unregistered community land or is what was referred to as trust land (sections of which have been privatized as leasehold or freehold with some forms of certificates of title) or belongs to the government. Some pockets are registered private lands or are undergoing adjudication. Villagers still live in communal settings as Mijikenda but use land as families and individuals. The communities follow customs and Islamic religion's land tenure regime where both men and women inherit land. Land vests in the head of the family but both boys and girls are given land for constructing houses. Coconut trees are owned by those who plant the tree. Land that is vested in the father belongs to all his dependants while that which vests in the mother belongs to members of her family. Where a family head dies without a will the farms are divide equally between all the children. In Islamic tenure wealth is distributed equally save that women are entitled to one third.

2. *In general, how do people in this area acquire land?*

Land is acquired when it is bequeathed by elders to their dependents through generations. Others acquire land through awards that are recognized by statutes e.g. settlement schemes, purchase in the open market and claims that are linked to history or restitution on account of recognized forms of dispossession.

3. *For each way to acquire land mentioned by the respondents, please probe to find out if the land owner/user usually:*

For family and clan land use is regulated generally by what use the land was set aside for. Families and individuals are free to use the land for such designated purposes but would require permission to lease and have no right to sell or give the land to someone else without reference to the clan. Apart from coconut all other produce can be used by the owners for the time being using the land. For the individual awards or parcels that are bought owners have all the rights to use or alienate the land.

Knowledge- Rights, Interests and Duties in Land

1. *Land Rights in Kwale County: Content, Practice and Challenges*

Land rights are seen as a bundle or sticks of various rights. Most respondents feel that heritage entitles them to absolute ownership which should enable them enjoy all other classes of rights to use, access, control and alienate. The decisions of the Kadhi on land rights of Muslims are subject to appeals in the High Court which makes statute laws a mitigating factor in the enjoyment of these rights. Residents of Kwale County do not enjoy the full bundle of their rights due to problems of adjudication that successive governments have been unwilling to complete, expired leases that are not being reverted to original owners and token land reforms done often to get political capital and votes. Women are allowed to enjoy their rights to land beyond land use as land for building is awarded to women in their father's homes. Some of the obstacles that prevent communities of the County from enjoying their land rights include the lack of tenure security often referred to as lack of title deeds or the tedious process that prevents villagers from applying to get land titles. That most records were compiled many decades back most of the records bear the names of forefathers who never regularized their rights making succession cases extremely difficult to resolve given the many layers of family members to whom the land has passed without records. All green cards are in Nairobi that is inaccessible to most community members. The case for women being allowed to enjoy their land rights seemed well taken care of in Kwale County thanks to the clarity offered by Islamic tenure. There were however problems of family disputes that require the intervention of other creative mechanisms to ensure that women do not lose their rights to relatives who take advantage of such conflicts to dispossess women.

Participation in land management decision making and empowerment

Land problems in Kwale County are so widespread and span many years without meaningful resolutions. Communities do not have sufficient structures through which they can input in finding solutions to these problems. There is a tendency for state law to trump customary law making it difficult for community institutions to have meaningful interaction with state law that would bring on board community members to decision making regarding their land. Such an interface would enable women to also participate in land decision making which otherwise is not the case now whether we are considering state institutions, non-state land actors or community structures for land management.

The group admitted that most residents do not know the policies and laws that govern land and land-based resources. The Constitution of Kenya, National Land Policy, the Land Acts, EMCA Amendment Act, Forest Act, Water Act, Mining Act all bear important mechanisms and provisions that impact on land management. There have been some initiatives targeted at land civic education by groups such as Haki Yetu, Kwale Human Rights Network, Kituo Cha Sheria, Kenya National Commission on Human Rights, Haki Centre among others. Such initiatives are however sporadic, are led by outsiders are not long term and do not have follow up activities. The most common mechanism used to educate people on land administration and management is the chief's baraza, followed by awareness trainings. These two strategies are counterproductive because most people targeted by such forums are almost always people who have benefited before. The use of Mosques has been effective but owing to problems of security many Imams who have addressed the specific topic of land have found themselves in trouble with the law enforcement as inciters of disaffection with government which could be the cause of radicalization among Muslim youth.

There is need to do more for people to fully understand information related to land. On this front the NLC and the Ministry of Lands must step up to the plate and earmark budgets for community civic engagement. The need for a moratorium to stop wanton sale of land by ignorant community members could be a useful strategy in the short run. In the long term a community land law that has been in discussion for some time

now could prove useful in improving land management and administration. This could be enhanced with the historical injustices bill as well as strengthened CLMBs. Public hearings and field visits are other strategies that could improve land management at the local level.

Corruption in Land Services

Corruption in and services in Kwale County was reported to be rampant and very high. When leases expire the land is never given back to the owners, some leases get extended even before their expiry. A case in point was Diani Settlement Scheme beach block 20 whose expiry was in 2013. The community applied to be considered for the land but even after getting the lease title the award has been revoked in favour of a rich man by the NLC. NLC declared the man's rights as priority and the matter is now before court in which NLC has issued an advisory the import of which may lead to an unfavourable judgement against the interests of the community. All institutions and leadership at all levels are mired in land corruption. The case of the Mbela plot that seems to have been leased to another person without the knowledge of the County government points to corruption too because renewal of leases ought to favor the old lessee while second priority should go to the community. Most of the cases the NLC is dealing with were said to be old issues that were started by previous regimes.

Corruption takes different forms according to the group. That the lease procedures are unclear means that no one can tell whether the procedures followed are right or wrong. Discretion seems to take precedence and with it the room for corruption is open. In demarcations and adjudications land is stolen by surveyors while at registration titles are falsified. There is no information available on leases to enable communities to make informed decisions and choices. The land register is also in shambles giving room to wrong entries. Investors who are prospecting for minerals are also colluding with land officials to buy community lands without due process. Settlement schemes are allocated to communities in a skewed manner while land brokers are having a field day cashing in on the confusion in land management institutions. The confusion between the Ministry and NLC as far as the land register is concerned has also given room to corrupt officials to tamper with land records in favor of land grabbers. Evidence is easily concealed as files disappear. Most plots have too many maps for example the Diani complex was first adjudicated on June 4 1972 but one cannot get the first map now. The group revealed that it is possible that all public land in the county has been alienated and only a few settlement schemes could be left like Vanga, Tiwi Block 10 and 11 and Kombani.

Several actors play a part in tackling corruption in land management. These include the Ethics and Anti-Corruption Commission, Commission on the Administration of Justice, National Police Service Commission, Judiciary, Parliament and CSOs. This war cannot however be won without sufficient political goodwill. It is necessary that land reforms are spearheaded by a champion as critical as the president of the Republic. That he appears to have benefited from the old transactions in Kwale the group found difficulty in holding the hope that this scourge can be dealt with. Legal strategies cannot deal conclusively with the elite in whose favor such strategies work.

Section	Issue/ Questions	
Land Admin	How much fees do you pay for the following transactions at the lands office?	550/-
	• Official search	Varies depending on
	• Registering a caution/ caveat	land size
	• Registering a charge	“
	• Obtaining a title deed	“
	• Surveying a plot	“

	If you were to seek services from community institutions what would it cost you compared to the scenario above?	Token contribution often in kind or cash
	How long does it take to obtain the above documents?	Varies
	Do you go through an intermediary to obtain these services? If yes why?	Mostly. Promise of speedy delivery
	Is the land registration process clear to you? Explain	Not really
	Where do you take your land complaints? Do you get effective service?	Chief. No
	Are there taxes you pay for your land? If yes, Where and How much?	Depends on location
	To whom do you pay land related taxes?	Government
	How do you make the payments?	To the bank
	At what points do you pay the fees before you obtain your land documents?	Ministry offices
Land use planning	Are you aware of land use planning procedures?	No
	Have you participated in any land use planning process?	No
	are you aware of land allocation procedures?	Yes
	Are you aware of development and building procedures?	No
	How much fees do you pay to obtain development permits?	Do not know
Land Management	Are you aware of who is responsible for land administration and management in your locality?	CLMB and Ministry of lands
	Do you know the regulations for?	
	4. leasing land	No
	5. acquiring land	No
	6. sub-dividing	No
	What do you understand about public land?	Belongs to govt.
Do you know how public land is created?	No	
Do you know who is responsible for managing and safeguarding public land	NLC	
Land tenure	Who protects your land tenure rights	MoL
	Do you pay money to them	No
General administration and services	Do you always obtain receipts for services obtained in lands offices	Yes
	Have you been referred to obtain services outside of office which are otherwise available in the office	Yes
	Name the range of services for which you never obtained official receipts	Brokers services
	Name the range of services for which you were referred outside the official lands office	Surveys

#	Name	Organization	Contact
1	Kibibi Mwaka	Rural Women's Assembly	0725906023
2	Jalim Ibrahim	Kwale Human Rights Defender	0711585960
3	Mwanahawa Ali	Kwale Natural Resources Network	0723453911
4	Athuman Rimo	Council of Kaya	0710105043
5	Ismail Mbarak	Lamukani CBO	0703634605
6	Katibu Mkungu	Kwale Human Rights Network	07167091174
7	Said Pore	Kwale County Land Management Board	0716709174
8	Rashid M Partty	Tiwi Aggrieved Farmers	0729665857
9	Patrick Ochieng	Ujamaa Centre	0722706800
10	Kennedy Miheso	Consultant	0720542294

e) Indicator Data

2.1 Introduction

The findings of this survey have been organised under seven thematic areas, including Response Rates and Household Demographics; Perception on Land Value; Knowledge on Land Rights and Duty Bearers (Land Management Institutions); Participation in Decision Making; Empowerment and Taking Action; Corruption in Land Services; and Improving Transparency in Land Management.

2.2 Response Rates and Household Demographics

2.2.1 Response Rates

Characteristics	Name of County		Total
	Nairobi	Kwale	
Household Interviews			
Household Selected	272	171	443
Household Occupied	272	171	443
Household Interviewed	272	171	443
Household Response Rate	100	100	100
Questionnaires administered to HH heads			
	Yes	100.00%	100.00%
	No	0.00%	0.00%

2.2.2 Household Demographics

2.2.2.1 Respondent's Attributes

Characteristics	Name of County		Total
	Nairobi	Kwale	
Respondent's Gender			
Female	36.4%	47.4%	40.6%
Male	63.6%	52.6%	59.4%
Respondent's Marital Status			
Married	72.4%	70.2%	71.6%
Civil partnership	.7%	5.8%	2.7%
Single	17.6%	5.8%	13.1%
Widow/widower	8.1%	18.1%	12.0%
Other	1.1%	0.0%	.7%
Respondents Age			
20-29 years old	17.6%	7.6%	13.8%
30-39 years old	26.8%	29.8%	28.0%
40-49 years old	32.4%	26.9%	30.2%
50-59 years old	17.6%	19.9%	18.5%
60 years and above	5.5%	15.8%	9.5%
Respondent's Education Level			
No formal education	4.4%	29.2%	14.0%

Primary Not Completed (2-5 years)	5.1%	19.3%	10.6%
Primary Completed (6-9 years)	12.9%	21.1%	16.0%
Secondary (10-13 years)	29.4%	24.6%	27.5%
College/University (13+ years)	48.2%	5.8%	31.8%
Total (n)	100%(272)	100%(171)	100(443)

2.2 Household Economic Status

2.2.1 Household (Main) Sources of Income and Expenditure

Characteristics	Name of County		Total
	Nairobi	Kwale	
Main Sources of Household income			
Crop farming	3.3%	24.0%	11.3%
Livestock farming	.4%	4.7%	2.0%
Business	61.0%	28.1%	48.3%
Formal employment	22.4%	13.5%	19.0%
Casual labor	8.8%	21.1%	13.5%
Others	4.0%	8.8%	5.9%
Main Areas of Household Expenditure			
Rent	14.3%	.6%	9.0%
Farm lease	2.2%	.6%	1.6%
Food	42.6%	83.0%	58.2%
Fees	33.5%	7.0%	23.3%
Hospital bills	4.4%	2.3%	3.6%
Others	2.9%	6.4%	4.3%
Total	100%(272)	100%(171)	100(443)

2.2.2 Average Monthly Budget

Characteristics	Name of County		Total
	Nairobi	Kwale	
Average monthly family budget			
Below 5,000	1.5%	43.3%	17.6%
6,000-10,000	12.1%	37.4%	21.9%
11,000-15,000	18.4%	11.1%	15.6%
16,000-20,000	15.8%	3.5%	11.1%
21,000-25,000	7.7%	1.8%	5.4%
26,000-30,000	10.3%	1.2%	6.8%
31,000-35,000	5.5%	.6%	3.6%
36,000-40,000	7.4%	0.0%	4.5%
Over 40,000	21.3%	1.2%	13.5%
Total(n)	100%(272)	100%(171)	100(443)

2.2.3 Household dependency

Characteristics	Name of County		Total
	Nairobi	Kwale	
Respondent has dependents			
Yes	88.6%	84.8%	87.1%
No	11.4%	15.2%	12.9%
<i>n</i>	272	171	443
Number of dependents			
1	9.9%	5.3%	8.1%
2	14.3%	8.8%	12.2%
3	22.8%	11.7%	18.5%
4	14.7%	14.0%	14.4%
5	11.8%	8.2%	10.4%
6	5.5%	9.4%	7.0%
7	3.7%	11.1%	6.5%
8	1.8%	2.3%	2.0%
Over 8	15.4%	29.2%	20.8%
Total(n)	100.0%(272)	100.0%(171)	100.0%(443)

2.2.4 Household Dwelling Structure

Characteristics	Name of County		Total
	Nairobi	Kwale	
Housing structure			
Permanent (Brick and stone)	61.8%	42.7%	54.4%
Semi-permanent (Iron sheet /Mabati, mud and timber)	36.4%	55.0%	43.6%
Temporary (paper, polythene, sticks, tents, etc.)	1.8%	2.3%	2.0%
<i>n</i>	272	171	443
Reason for state of housing structure			
Fear of forceful eviction	5.1%	16.3%	10.7%
Affordability of building materials	75.8%	58.2%	67.0%
Cultural preferences	13.1%	16.3%	14.7%
I will go back to rural home	5.1%	7.1%	6.1%
Lack of security of tenure	1.0%	2.0%	1.5%
Total	100% (99)	100%(98)	100%(197)

3. Perception on Land Value

3.1 Importance of Land

Characteristic	Name of County		Total
	Nairobi	Kwale	
Importance of land			
Not important at all	1.1%	.6%	.9%
Not important	1.1%	.6%	.9%
Important	10.3%	37.4%	20.8%
Very important	87.5%	61.4%	77.4%
Total (n)	100%(272)	100%(171)	100%(443)

3.2 Possession of legal title document

Characteristic	Name of County		Total
	Nairobi	Kwale	
Possession of legal title document			
Yes	47.4%	14.6%	34.8%
No	49.6%	83.6%	62.8%
I don't know	2.9%	1.8%	2.5%
Total	100%(272)	100%(171)	100%(443)

3.3 Nature of Title in Possession

Characteristic	Name of County		Total
	Nairobi	Kwale	
Type or nature of the title in possession			
Leasehold	37.2%	0.0%	31.2%
Freehold	45.7%	72.0%	50.0%
Community land	8.5%	16.0%	9.7%
I don't know	8.5%	12.0%	9.1%
Total	100.0%(129)	100.0%(25)	100.0%(154)

3.4 Title Requires Renewal

Characteristic	Name of County		Total
	Nairobi	Kwale	
Title requires renewal			
Yes	40.3%	0.0%	33.8%
No	41.1%	76.0%	46.8%
I don't know	18.6%	24.0%	19.5%
Total	100.0%(129)	100.0%(25)	100.0%(154)

3.5 Security of land document in possession

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent feel secure with the title they hold			
Yes	55.1%	40.9%	49.7%
No	30.9%	45.6%	36.6%
I don't know	14.0%	13.5%	13.8%
Total	100.0%(129)	100.0%(25)	100.0%(154)

Characteristic	Name of County		Total
	Nairobi	Kwale	
Why respondent does not feel secure with the title they hold			
The fear of fake title documents	8.2%	20.8%	13.9%
The fear of forceful evictions	50.0%	31.7%	41.7%
The fear of double allocation of land	7.4%	5.9%	6.7%
I don't know	16.4%	21.8%	18.8%
Other	18.0%	19.8%	18.8%
Total	100.0%(129)	100.0%(25)	100.0%(154)

3.6 Name on Land Document

Characteristic	Name of County		Total
	Nairobi	Kwale	
Name on land document			
A local NGO	3.7%	2.9%	3.4%
A private investor/company	18.5%	6.4%	13.8%
I do	35.8%	12.3%	26.7%
My spouse	7.0%	6.4%	6.8%
My parents (inherited)	11.8%	23.4%	16.3%
Relatives	1.5%	7.6%	3.8%
The bank/financial institution	.4%	0.0%	.2%
Group ranch leaders/traditional leaders	0.0%	2.9%	1.1%
The county government/ public institutions	11.8%	2.3%	8.1%
Religious entities	1.1%	9.9%	4.5%
I don't know	7.0%	19.3%	11.8%
Others	1.5%	6.4%	3.4%
Total	100.0%(272)	100.0%(171)	100.0%(443)

3.7 Mode of Acquisition of land in use

Characteristic	Name of County		Total
	Nairobi	Kwale	
Mode of acquisition of land currently in use/occupied			
Adjudication	6.7%	34.4%	21.7%
Purchase	33.7%	14.8%	23.5%
Inheritance	16.3%	4.1%	9.7%
Gift	43.3%	46.7%	45.1%
Total	100.0%(104)	100.0%(122)	100.0%(226)

4. Knowledge on Land Rights and Duty Bearers (Land Management Institutions)

4.1 Knowledge on Land Rights

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent has knowledge of land rights			
Yes	61.8%	28.7%	49.0%
No	38.2%	71.3%	51.0%
Why			
I cannot read or write	6.7%	34.4%	21.7%
The land laws are not easy to read	33.7%	14.8%	23.5%
It is not useful to me	16.3%	4.1%	9.7%
Other	43.3%	46.7%	45.1%
<i>n</i>	104	122	226
Total	100.0%(272)	100.0%(171)	100.0%(443)

4.2 Main Sources of Information on Land Rights

Characteristic	Name of County		Total
	Nairobi	Kwale	
Main sources of information on land rights			
Land laws	36.9%	51.0%	40.1%
Media	16.1%	12.2%	15.2%
A local NGO	7.1%	2.0%	6.0%
A private investor/ company	2.4%	6.1%	3.2%
Neighbors	4.2%	0.0%	3.2%
Public officials/ public institution	23.2%	16.3%	21.7%
Relatives	3.6%	4.1%	3.7%
Religious leaders	1.2%	0.0%	.9%
The bank/ financial institution	1.2%	0.0%	.9%
The cooperative/ farmers' association	1.8%	0.0%	1.4%
I don't know	.6%	6.1%	1.8%
Others	1.8%	2.0%	1.8%
Total	100.0%(168)	100.0%(49)	100.0%(217)

4.3 Knowledge on how to acquire more land

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent knows how to acquire more land should they need it			
Yes	81.3%	37.4%	64.3%
No	15.8%	55.0%	30.9%
I don't know	2.9%	7.6%	4.7%
Total (n)	100.0% (272)	100.0% (171)	100.0% (443)

4.4 Satisfaction

Characteristic	Name of County		Total
	Nairobi	Kwale	
Level of satisfaction with the source of information on how to acquire new land			
Not satisfied at all	2.3%	1.6%	2.1%
Not satisfied	14.0%	3.1%	11.6%
Satisfied	55.2%	87.5%	62.5%
Very Satisfied	28.5%	7.8%	23.9%
Total	100.0%(221)	100.0%(64)	100.0%(285)

4.5a Type of Information on Land Needed

Characteristic	Name of County		Total
	Nairobi	Kwale	
Access and condition of loans	17.99	26.29	20.4
Availability of land	10.23	9.48	10.01
Laws and regulations relating to land	14.64	27.59	18.4
Conditions of land use	5.29	4.74	5.13
Evictions	10.58	3.88	8.64
Land adjudication processes(including waiting lists)	3.35	3.02	3.25
Land contracts	4.94	0.86	3.75
Land inheritance rights	7.58	12.93	9.14
Land prices	10.93	2.59	8.51
Land transactions	8.47	2.59	6.76
Use of communal land	2.82	1.72	2.5
I don't often need to know about these issues	3.17	4.13	3.51
Total	100%(272)	100%(170)	100%(442)

4.5b Source of Info on Land

Characteristic	Name of County		Total
	Nairobi	Kwale	
Source of information on land issues			
A lawyer/ legal advice organization	22.58%	15.1%	19.97%
Bank/ financial institution	6.11%	0%	3.98%
Community leaders/traditional leaders	9.43%	28.22%	15.99%
Internet	4.38%	0.5%	3.03%
Local NGO	5.84%	4.7%	5.45%
My children	2.12%	2.23%	2.16%
My spouse	1.73%	0%	1.12%
Neighbors	4.38%	1.49%	3.37%
Newspapers	7.04%	1.73%	5.19%
Public officials/ public institutions	13.68%	16.83%	14.78%
Radio	6.77%	11.88%	8.56%
Relatives	3.32%	5.69%	4.15%
Religious leaders	1.99%	1.24%	1.73%
The police	4.65%	3.96%	4.41%
There is nowhere I can get this type of information	3.32%	1.49%	2.68%
I don't know	2.66%	4.95%	3.46%
Total	100%(272)	100%(171)	100%(443)

4.5a

Characteristic	Name of County		Total
	Nairobi	Kwale	
Land can be taken away anytime			
Yes	30.9%	43.9%	35.9%
No	61.0%	45.6%	55.1%
I don't know	8.1%	10.5%	9.0%
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)

4.5b

Characteristic	Name of County		Total
	Nairobi	Kwale	
Who can take away land any time			
A local NGO	2.4%	6.7%	4.4%
My children	2.4%	5.3%	3.8%
Parents	8.3%	18.7%	13.2%
My relatives	33.3%	53.3%	42.8%
Chief	6.0%	2.7%	4.4%
Governor	35.7%	4.0%	20.8%
MCA	8.3%	8.0%	8.2%
NLC	1.2%	1.3%	1.3%
Senator	2.4%	0.0%	1.3%
Total (n)	100.0%(84)	100.0%(75)	100.0%(159)

4.6a

Characteristic	Name of County		Total
	Nairobi	Kwale	
Threatened with eviction from land currently occupying			
Yes	26.1%	39.8%	31.4%
No	73.2%	59.6%	67.9%
I don't know	.7%	.6%	.7%
Total	100.0%(272)	100.0%(171)	100.0%(443)

4.6b

Characteristic	Name of County		Total
	Nairobi	Kwale	
Level of satisfaction with place respondent went for help when threatened with eviction			
Not satisfied at all	3.7%	0.0%	2.3%
Not satisfied	14.7%	12.3%	13.8%
Satisfied	50.4%	81.3%	62.3%
Very Satisfied	31.3%	6.4%	21.7%
Total(n)	100.0%(272)	100.0%(171)	100.0%(443)

5. Participation in Decision Making

5.1 Decision on Community Land

Characteristic	Name of County		Total
	Nairobi	Kwale	
Who decides on how community land is used			
Cooperative s/ farmers' associations	8.8%	0.0%	5.4%
Local NGOs	11.0%	7.6%	9.7%
My children	0.0%	1.8%	.7%
My spouse	2.6%	1.8%	2.3%
Neighbors	2.9%	0.0%	1.8%
Private investors/ company	7.4%	4.7%	6.3%
Public officials/ public institutions	23.5%	6.4%	16.9%
Relatives	6.6%	10.5%	8.1%
Religious leaders	0.0%	8.8%	3.4%
Group representative/ community leaders/ traditional leaders	15.8%	41.5%	25.7%
I don't know	18.8%	14.6%	17.2%
Others	2.6%	2.3%	2.5%
Total n	100.0%(272)	100.0%(171)	100.0%(443)

5.2

Characteristic	Name of County		Total
	Nairobi	Kwale	
Membership of any community group involved in land issues			
Yes	13.2%	5.3%	10.2%
No	86.8%	94.7%	89.8%
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)

5.3

Characteristic	Name of County		Total
	Nairobi	Kwale	
Participation in community discussion/consultations regarding land and associated land issues			
Yes	20.6%	17.5%	19.4%
No	79.4%	82.5%	80.6%
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)

5.4

Characteristic	Name of County		Total
	Nairobi	Kwale	
Who organized discussions/consultations			
Local NGOs	100.0%	100.0%	100.0%
<i>n</i>	56	30	86

5.5

Characteristic	Name of County		Total
	Nairobi	Kwale	
Rating on meaningfulness of participation in community discussions/consultations			
Not meaningful	3.4%	11.5%	7.3%
Meaningful	3.4%	57.7%	29.1%
Very meaningful	93.1%	30.8%	63.6%
Total (n)	100.0%(29)	100.0%(26)	100.0%(55)

6. Empowerment and Taking Action

6.1 Name on Land Documents

Characteristic	Name of County		Total
	Nairobi	Kwale	
Presence of respondent's name on land docs			
Yes	56.5%	15.2%	40.5%
No	43.5%	84.8%	59.5%
Why			
I do not own the land	83.2%	77.9%	80.3%
I do not think I have the right to have my name on a land title	1.7%	3.4%	2.7%
I do not want my name in there	4.2%	.7%	2.3%
My children do not allow it	.8%	.7%	.8%
My parents do not allow it	0.0%	1.4%	.8%
My relatives do not allow it	5.9%	0.0%	2.7%
My spouse does not allow it	.8%	.7%	.8%
It is in my investment group's name (Chama)	3.4%	15.2%	9.8%
Total	100.0%(271)	100.0%(171)	100.0%(442)

6.2 Importance of name on land Document

Characteristic	Name of County		Total
	Nairobi	Kwale	
Importance of name on land document			
Not important at all	1.7%	0.0%	.8%
Not important	9.3%	4.8%	6.8%
Important	6.8%	55.9%	33.8%
Very important	82.2%	39.3%	58.6%
Total(n)	100.0%(118)	100.0%(145)	100.0%(263)

6.3

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent has taken action regarding land related issues			
Yes	30.5%	11.1%	23.0%
No	69.5%	88.9%	77.0%
Total	100.0%(272)	100.0%(171)	100.0%(443)

6.3b Action taken by respondent

Characteristic	Name of County		Total
	Nairobi	Kwale	
Action taken by respondent			
I have asked my local NGO to take action	4.06%	18.13%	8.92%
I have attended community meeting	0.58%	0%	0.38%
I have attended demonstrations	39.71%	46.15%	41.94%
I have contacted a journalist about my case	0.58%	0%	0.38%
I have contacted a lawyer/legal organization	15.94%	4.95%	12.14%
I have initiated a petition	0.87%	0.55%	0.76%
I have joined a community group	1.45%	0%	0.95%
I have lobbied local businesses	1.45%	1.65%	1.52%
I have lobbied my political reps	1.45%	0.55%	1.14%
I have put in a complaint	0.58%	0%	0.38%
I have requested access to this information	2.32%	0.55%	1.71%
I have set up a community group	0.58%	0%	0.38%
I have signed a petition	27.54%	25.82%	26.94%
I have not taken any action	2.90%	1.65%	2.47%
Total	100%(272)	100%(171)	100%(443)

6.4

Characteristic	Name of County		Total
	Nairobi	Kwale	
Why respondent has taken no action regarding land related issues			
Because I am scared of being discriminated against as retaliation	13.8%	41.4%	25.8%
Because I do not know what actions to take	43.6%	21.4%	33.9%
Because I feel no actions were necessary	11.2%	9.7%	10.5%
Because my community leaders/ traditional leaders advised me against it	8.0%	5.5%	6.9%
Because others also did not take action	5.9%	3.4%	4.8%
I don't know	15.4%	12.4%	14.1%
Others	2.1%	6.2%	3.9%
Total(n)	100.0%(188)	100.0%(145)	100.0%(333)

7. Corruption in Land Services

7.1 Corruption considered a major issue

Characteristic	Name of County		Total
	Nairobi	Kwale	
Corruption a major issue in land management			
Yes	92.3%	63.2%	81.0%
No	7.7%	36.8%	19.0%
Total(n)	100.0%(272)	100.0%(171)	100.0%(443)

7.2 Corruption Prevalence

Characteristic	Name of County		Total
	Nairobi	Kwale	
Prevalence of corruption in land management			
Very low	4.8%	10.5%	7.0%
Low	7.4%	28.7%	15.6%
High	18.4%	35.7%	25.1%
Very high	69.5%	25.1%	52.4%
Total(n)	100.0%(272)	100.0%(171)	100.0%(443)

7.3 Incidence of Corruption

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent has been asked to pay a bribe			
Yes	54.0%	14.0%	38.6%
Occurrence in the last 12 months			
Yes	54.0%	14.0%	38.6%
No	46.0%	86.0%	61.4%
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)

7.4Characteristic	Name of County		Total
	Nairobi	Kwale	
Person/institution who asked for the bribe			
Community leaders/ traditional leaders	10.2%	20.8%	11.7%
Ministry of lands officials	89.8%	79.2%	88.3%
Total(n)	100.0%(147)	100.0%(24)	100.0%(171)

7.5

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent felt necessary to pay the bribe			
Yes	55.1%	41.7%	53.2%
No	44.9%	58.3%	46.8%
Total(n)	100.0%(147)	100.0%(24)	100.0%(171)

7.6

Characteristic	Name of County		Total
	Nairobi	Kwale	
Respondent paid bribe in the last 12 months			
Yes	54.0%	14.0%	38.6%
No	46.0%	86.0%	61.4%
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)

7.7 Reason for Paying Bribe

Characteristic	Name of County		Total
	Nairobi	Kwale	
Reason for paying bribe			
To access relevant information	16.18%	4.17%	14.7%
To avoid eviction	13.29%	29.17%	15.23%
To get a land related loan	1.73%	0.0%	1.52%
To get legal advice	4.62%	4.17%	4.57%
To jump the queue on a land adjudication waiting list	8.67%	4.17%	8.12%
To secure a land title	1.73%	0.0%	1.52%
To speed up a land transaction	27.75%	25.0%	27.41%
Everyone does it	13.29%	29.17%	15.23%
I don't know	12.72%	4.17%	11.68%
Total(n)	100.0%(144)	100.0%(24)	100.0%(168)

7.8 Person who received bribe

Characteristic	Name of County		Total
	Nairobi	Kwale	
Institution/Person that received bribe			
Community leaders/ traditional leaders	8.8%	16.7%	9.9%
Private investor/ company	0.0%	4.2%	.6%
Public officials/ [public institutions	91.2%	79.2%	89.5%
Total(n)	100.0%(147)	100.0%(24)	100.0%(171)

7.9 Nature of Bribe

Characteristic	Name of County		Total
	Nairobi	Kwale	
Nature of bribe			
Gifts in kind	3.4%	8.3%	4.1%
Transfer of property deeds	2.1%	0.0%	1.8%
Money	94.5%	91.7%	94.1%
Total(n)	100.0%(145)	100.0%(24)	100.0%(169)

8. Improving Transparency in Land Management

8.1

Characteristic	Name of County		Total
	Nairobi	Kwale	
Activities that may enhance transparency			
Enact/ implement existing laws on land and integrity	22.27	17.75	20.84
Promote transparency in land registries (digitization of land records, staff bad	15.9	29	20.03
Intensify civic awareness on land and integrity	18.89	16.88	18.26
Strengthening public participation in land management	13.52	17.32	14.71
Arrest and prosecute corrupt officials	24.85	9.09	19.89
Others	4.57	9.96	6.27
Total	100%(272)	100%(171)	100%(443)

Characteristic	Name of County		Total
	Nairobi	Kwale	
Who has the final say in stopping corruption in land administration and management			
Myself	32.0%	21.6%	28.0%
Elders	1.5%	17.0%	7.4%
Provincial administration (Chief, Sub-chief)	4.0%	13.5%	7.7%
Legislature (National Assembly, Senate, County Assembly)	9.9%	17.0%	12.6%
MP	1.8%	.6%	1.4%
Executive (National govt, County govt)	26.8%	25.1%	26.2%
Judiciary (Environment and Land court)	16.2%	2.3%	10.8%
Constitutional commissions (NLC, EACC, CA)	7.7%	2.9%	5.9%
Total (n)	100.0%(272)	100.0%(171)	100.0%(443)

f) Questionnaire

Household Questionnaire for the Land and Corruption in Africa TI-Kenya Baseline Survey

Introduction

Good morning/afternoon/evening. My name is _____. I am a researcher with Transparency International-Kenya. We are conducting research on land administration and management issues in your community.

Reason for the Research

You are being asked to take part in the research to help TI-Kenya and its partners understand your community's way of life, knowledge, attitudes and practices with regards to land management and administration. We would like to invite you to participate because your participation and that of others like you will help TI-Kenya and its partners get useful information on how to implement its project on land and corruption. Kindly answer all questions that will be asked as genuinely as possible. It will take between 20 to 35 minutes.

Confidentiality

If you agree to participate, I will ask you some questions. We will protect the information about you and your part in this research to the best of our ability. You will not be named in any reports. The information you are giving TI-Kenya and its partners will only be used to better support the project beneficiaries including your community

Leaving the Research

You may leave the research at any time. If you choose to take part, you can change your mind at any time and withdraw. Now, ask the respondent if they have any questions about the research you have described. Give them adequate time to formulate and articulate their questions.

.....

PART I: IDENTIFICATION CHARACTERISTICS

Village Data

#	Question	Code	Skip Pattern
1	Name of County	Nairobi.....1 Kwale.....2	
2	Name of Constituency (Sub-County)		
3	Name of Location		
4	Name of Sub-Location		
5	Name of Village/Estate		
6	Is locality an urban, rural or a mixed one?	Urban.....1 Rural.....2 Mixed(Peri-urban).....3	

Household Data

1	Respondent is household head	Yes.....1 No.....2	If No end interview
2	Gender	Female.....1 Male.....2	
3	How old are you	15-19 years old.....1 20-29 years old.....2 30-39 years old.....3 40-49 years old.....4 50-59.....5 60 years and above.....6	
4	Marital Status	Married.....1 Civil partnership.....2 Single.....3 Widow/Widower.....4 Other.....5	
5	What is your highest level of	No formal education.....1	

	education?	Primary not completed. 2-5 years)2 Primary completed.(6-9 years).....3 Secondary(10-13 years).....4 College /University (13+ years).....5	
6	What is your Main source of living?	Crop farming.....1 Livestock farming.....2 Business.....3 Formal employment.....4 Casual labour.....5 Others (Specify).....6	
7a	What is your monthly family budget? (probe for estimation if unsure about exact budget)	Below 5,000.....1 5,000- 10,000.....2 10,000-15,000.....3 16,000-20,000.....4 21,000-25,000.....5 26,000-30,000.....6 31,000-35,000.....7 36,000-40,000.....8 OVER 40,000.....9	
7b	What is the major area of household expenditure	Rent.....1 Farm lease.....2 Food.....3 Fees.....4 Hospital Bills.....5 Other (Specify).....6	
8a	Do you have any family members who are financially dependent on you?	Yes.....1 No.....2	If No Skip to Qn9
8b	If yes, how many?	1.....1 2.....2 3.....3 4.....4 5.....5 6.....6 7.....7 8.....8 Over 8.....9	
9a	Observe housing structure of the household	Permanent (Brick and Stone walls)1 Semi permanent (Ironsheets/Mabati, Mud and Timbe)2 Temporary (Paper, polythene, sticks, tents, etc).....3	
9b	If option 2 or 3 Qn9a above ask Respondent why they have the structure in that state (Multiple Response)	Fear of forceful eviction..1 Affordability of building materials.....2 Cultural preferences.....3 I will go back to rural home.....4 Lack of security of tenure.....5 Other.(specify).....6	
Part II: Perception of Land Value			
10	How important is land for you, on a scale of 1 to 4 with 1 being not important at all and 4 being very important	Not Important at all.....1 Not Important.....2 Important.....3 Very Important.....4	If 1 and 2 Skip to Qn 11
11	Why is land important for you? (Please select up to 3 most	As an investment.....1 As savings.....2	

	important options)	For respect, influence and status in my community.....3 Housing.....4 To grow food for my family's consumption.....5 To grow crops for sale.....6 To rear livestock.....7 Land is not important for me8 I don't know.....9 Other.(Please specify).....10	
I2a	Do you have legal title document(s) to the land you currently occupy/use?	Yes.....1 No.....2 I don't know.....3	If I proceed, Else skip to Qn 14
I2b	What is the type or nature of title you hold.	Leasehold.....1 Freehold.....2 Community Land.....3 Any Other.....4 I don't know.....5	If I Proceed, Else Skip to 12d
I2c	What is the period of Lease ? (where answer in 12 b is yes on leasehold)	99 years.....1 76 years.....2 50 years.....3	
I2d	Does the title you hold require to be renewed	Yes.....1 No.....2 I don't know.....3	
I3a	As a land owner/user, do you feel secure with the title you hold to your land?	Yes.....1 No.....2 I don't know.....3	If I Skip to Qn 14
I3b	If option 2 or 3 Qn I3a above, please explain	The fear of fake title documents.....1 The fear of forceful eviction.....2 The fear of double allocation of land.....3 I don't know.....4 Other.....5	
14	In Whose name is the land that you currently use/occupy registered? (Please select all options that apply.)	A local non-governmental organisation....1 A private investor/ company.....2 I do (My Self).....3 My children.....4 My spouse.....5 My parents (Inherited).....6 Relatives.....7 The bank/ financial institution.....8 Group ranch leaders/ traditional leaders.....9 The cooperative/ farmers' association.....10 Investment Group (Chama).....11 The county government / public institutions [specify which institutions].....12 Religious entities.....13 I don't know.....14 Others. Please specify.....15	
15	How did you acquire the land you currently occupy/use?	Adjudication.....1 Purchase.....2 Inheritance.....3 Gift.....4 Allotment.....5	

		Using force6 No response 7 Other (Specify).....8	
Part III: Knowledge of Land rights and duty bearers (Land Management Institutions)			
16a	As a land user/owner, do you know your land rights?	Yes.....1 No.....2 I don't know.....3	If I Skip to 16c, Else proceed
16b	If the answer in Qn16 a is 2 or 3 , please explain	I cannot read or write.....1 The Land laws are not easy to read.....2 It is not useful to me.....3 Other (specify).....4	Skip to Qn17a
16c	If yes, what are your three main sources of information on land rights?	Land Laws (specify, e.g. Constitution, Land Acts).....1 Media (specify, e.g. TV/Radio/Newspaper social media).....2 A local non-governmental organisation.....3 A private investor/ company.....4 Neighbours.....5 Public officials/ public institutions [specify which institutions].....6 Relatives(specify).....7 Religious leaders.....8 The bank/ financial institution.....9 The community leaders/ traditional leaders.....10 The cooperative/ farmers' association.....11 I don't know.....12 Others. Please specify.....13	
17a	As a prospective land owner/user/when you require more land, do you know how to get it?	Yes.....1 No.....2 I don't know.....3	If No and I don't know Skip to Qn 18
17b	If yes above, where would you source this information? (Please select up to 3 most important options.)	Land Laws (specify, e.g. Constitution, Land Acts).....1 Media (specify, e.g. TV/Radio/Newspaper social media).....2 A local non-governmental organisation.....3 A private investor/ company.....4 Neighbours.....5 Public officials/ public institutions [specify which institutions].....6 Relatives(specify).....7 Religious leaders.....8 The bank/ financial institution.....9 The community leaders/ traditional leaders.....10 The cooperative/ farmers' association.....11 I don't know.....12 Others. Please specify.....13	
17c	What was your level of satisfaction with the feedback in Qn17b above, on a scale of 1-4 with 1 being not satisfied at all and 4 being very satisfied	Not satisfied at all.....1 Not satisfied.....2 Satisfied.....3 Very satisfied.....4	If 1 and 2 proceed, Else skip to Qn 18
17d	If options 1 and 2 in Qn17c above, why?	
18	What type of information related to land do you most often need to know about? (Please select up to 3 most important options.)	Access and conditions of loans.....1 Availability of land.....2 Laws and regulations relating to land3 Conditions of land use.....4 Evictions.....5 Land adjudication processes (including waiting lists).....6 Land contracts.....7 Land inheritance rights.....8 Land prices.....9	

		A private investor/ company.....2 My children.....3 Parents4 My relatives.....5 My religious leaders.....6 My spouse.....7 Public officials/ public institutions [specify which institutions].....8 The bank/ financial institution.....9 The community leaders / traditional leaders.....10 The cooperative/ farmers' association.....11 I don't know.....12 Others. Please specify.....13	
24	If you felt that your ability to use your land was being threatened, where would you first go for help? (Please select 1 option)	A lawyer/ legal advice organisation.....1 The judiciary.....2 A local non-governmental organisation.....3 A private investor/ company.....4 Community leaders/ traditional leaders.....5 Cooperatives/ farmers' associations.....6 Neighbours7 Police.....8 Public officials/ public institutions [specify which institutions].....9 Relatives (specify).....10 Religious leaders.....11 The bank/ financial institution.....12 There is nowhere I can go to for help.....13 I don't know.....14 Others. Please specify.....15	
25	What was your level of satisfaction with the feedback in Qn24 above, on a scale of 1 to 4 with 1 being not satisfied at all and 4 being very satisfied	Not satisfied at all.....1 Not satisfied.....2 Satisfied.....3 Very satisfied.....4	
26	If 1 and 2 in Qn 25 above, what more would you do?	
Participation in Decision Making			
27	In your community who decides how the community land is used? (Please select up to 3 most important options.)	Cooperatives/ farmers' associations.....1 Local non-governmental organisations.....2 My children.....3 My spouse.....4 Neighbours.....5 Private investors/ company.....6 Public officials/ public institutions [specify which institutions].....7 Relatives.....8 Religious leaders.....9 The bank/ financial institutions.....10 Group Representatives/community leaders/ traditional leaders.....11 I do.....12 I don't know.....13 Others. Please specify.....14	
28a	Are you a member of any community group involved in land issues?	Yes1 No.....2 I don't know.....3	If 2 or 3 Skip to Qn29

28b	If Yes, please specify	
29	In the last 12 months have you participated in community discussions/ consultations regarding land and associated land issues (e.g. land rights, land use, land allocation, and all other issues on land acquisition listed under Qn19 above)?	Yes.....1 No.....2 Can't Remember/I don't know.....3	If 2 or 3 Skip to Qn33
30	Who organised the discussions/ consultations in Qn29 above? (Please select all options that apply.)	Community leaders/ traditional leaders.....1 Cooperatives/ farmers' associations.....2 Local non-governmental organisations.....3 My children.....4 My spouse.....5 Neighbours.....6 Private investors/ company.....7 Public officials/ public institutions [specify which institutions].....8 Relatives.....9 Religious leaders.....10 The bank/ financial institutions.....11 I did.....12 I don't know.....13 Others. Please specify.....14	
31	How would you rate the meaningfulness of your participation in processes of decision making related to land issues on a scale of 1 to 4, 1 being not meaningful at all because concerns were neither voiced nor taken into consideration and 4 being very meaningful because concerns were listened to and taken into consideration.	Not meaningful at all.....1 Not meaningful.....2 Meaningful.....3 Very meaningful.....4	
Empowerment and Taking Action			
32	Is your name (or that of your investment group) on any land documents for ownership	Yes.....1 No2	If I skip to Qn35a
33	Why is your name not in a written document for land ownership?	I do not own the land1 I do not think I have the right to have my name on a land title.....2 I do not want my name in there.....3 I think the law does not allow it.....4 My children do not allow it.....5 My parents do not allow it6 My relatives do not allow it.....7 My spouse does not allow it.....8 It is in my Investment group's(chama) name.....9 I don't know.....10 Other. Please specify.....11	
34	On a scale of 1 to 4 how important it is for you to have your name in a written document for land ownership, 1 being not important at all and 4 being very important.	Not Important at all.....1 Not Important.....2 Important.....3 Very Important.....4	

35a	In the last 12 months have you taken action regarding land related issues (e.g. land rights, land use, land allocation, and all other issues listed under Qn19 above)?	Yes.....1 No2	If 2 skip to Qn36
35b	If Yes, what action? (Please select up to 3 most important options.)	I have asked my local non-governmental organisation to take action on my behalf (I have attended community meetings (I have attended demonstrations I have contacted a journalist about my case I have contacted a lawyer/ legal organisation I have initiated a petition I have joined a community group I have lobbied local businesses I have lobbied my community leaders/ traditional leaders I have lobbied my political representative I have organised community meetings I have organised demonstrations I have put in a complaint I have requested access to information [if this option is selected ask respondents to specify what information they requested] I have set up a community group I have signed a petition I have not taken any action Others. Please specify)	Skip to 37
36	If no, why have you not taken any action? (Please select up to 3 most important options.)	Because I am scared of being discriminated against as retaliation Because I am scared of physical violence as retaliation Because I do not know what actions to take Because I feel it would have been counter-productive Because I feel no actions were necessary Because I prefer to deal with these issues discretely and on my own Because my community leaders/ traditional leaders advised me against it Because my cooperative/ farmers' association advised me against it Because my local non-governmental organisation advised me against it Because my religious leaders advised me against it Because my spouse advised me against it Because of the lack of opportunities to take actions Because others also did not take action I don't know Other. Please specify	
Corruption in Land Services			
37	In your opinion, is corruption a major issue in land management?	Yes1 No.....2 I don't know.....3	
38	On a scale of 1 to 4 what is the prevalence of corruption in land management in your area? 1 being very low and 4 being very high.	Very low.....1 Low.....2 High.....3 Very High.....4	
39a	Have you ever been asked to pay a bribe in the process of trying to resolve land related issues (consider	Yes1 No.....2 I don't know.....3	If 2 or 3 Skip to Qn43

	all issues listed under question 19 above)?		
39b	If Yes, was it in the last 12 months	Yes 1 No.....2	
40a	Which institution/person asked for the bribe? (Please select all options that apply.)	Community leaders/ traditional leaders..... 1 Cooperatives/ farmers' associations.....2 Local non-governmental organisations.....3 Private investors/ company.....4 Ministry of lands officials5 Other Public officials/ public institutions [if this option is selected ask respondents to specify which institutions].....6 Religious leaders.....7 The bank/ financial institutions.....8 I don't know9 Others. Please specify.....10	
40b	Did you feel it necessary to pay or give any amount of money in order to have the process of obtaining title or any land transaction fast tracked	Yes..... 1 No.....2	
41	Did you pay a bribe in the last 12 months in the process of trying to resolve land related issues (consider all issues listed under question 19 above)?	Yes 1 No2 Can't Remember/ I don't know.....3	If 2 and 3 Skip to Qn45
42	Why did you pay a bribe? (Please select all options that apply.)	To access relevant information 1 To avoid eviction2 To get a land related loan3 To get legal advice4 To jump the queue on a land adjudication waiting list.....5 To secure a land title6 To speed up a land transaction7 Everyone does it8 I don't know9 Other. Please specify10	
43	To which institution have you paid a bribe? (Please select all options that apply.)	Community leaders/ traditional leaders 1 Cooperatives/ farmers' associations.....2 Local non-governmental organisations3 Private investors/ company4 Public officials/ public institutions [if this option is selected ask respondents to specify which institutions]5 Religious leaders6 The bank/ financial institutions7 I don't know8 Others. Please specify9	
44	What was expected from you? (Please select all options that apply.)	Gifts in kind..... 1 Sexual favours (from you or from your relatives).....2 Free labour (e.g. domestic work, agricultural work).....3 Transfer of property deeds.....4 Money5 Other. Please specify6	
Recommendations for improved transparency in land management			
45	What more needs to be done to	Enact/Implement existing laws on land and integrity (Specify, e.g.	

	<p>enhance transparency and accountability in land management?</p>	<p>Access to Information law, Constitution, Land Acts.....1 Promote transparency in Land Registries (Specify, e.g. Digitization of land records, staff badges, open office.....2 Intensify civic awareness on land and integrity.....3 Strengthen public participation in land management.....4 Arrest and prosecute corrupt officials5 Other (Specify).....6</p>	
46	<p>Who has the final say in stopping corruption in land administration and management?</p> <p>(Select One option)</p>	<p>Myself.....1 Elders.....2 Provincial Administration (Chief etc).....3 Legislature (Specify, e.g. National Assembly, Senate, County Assembly).....4 MP.....5 Executive (National government, County government).....6 Judiciary (Environment and Land Court).....7 Constitutional commissions (NLC, EACC, CAJ).....8</p>	
<p>Thank you for your time</p>			

- g) TOR: REFERENCE NUMBER: TI K/ 045/CD/ 2015 DESCRIPTION: CONSULTANCY TO CONDUCT BASELINE SURVEY, POLITICAL ANALYSIS AND RISK MAPPING (Re-Advertised)
DATE: 1st October 2015
DEADLINE FOR SUBMISSION: 12th October 2015 1.**

INTRODUCTION

Transparency International–Kenya (TI-Kenya) is a not-for-profit organisation founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The global movement provides a platform for sharing knowledge and experience, developing strategies to respond to regionally distinct patterns of corruption and initiating advocacy campaigns at both the regional and sub-regional level. The vision of TI-Kenya is that of a transparent, accountable and corruption-free Kenya and the mission is to transform the society and institutions by supporting the development of high integrity leadership in all sectors and at all levels. TI-Kenya's key goals are: Institutions that are efficient and deliver quality services; and, a society that upholds and promotes integrity.

TI-Kenya remains the leading civil society organisation in anti-corruption with over 15 years' experience in governance work both at the national and county levels, including direct engagement with the Government, the private sector, individuals and groups . TI-Kenya has its main office in Nairobi and a regional presence in the Coast, Rift Valley, the larger Western Kenya and parts of Eastern Kenya through its four Advocacy and Legal Advisory Centres (ALACs¹) in Mombasa, Eldoret, Kisumu and Nairobi. Through the ALACs TI-Kenya has increased the coverage and reach of its services at the community level.

2. BACKGROUND

Kenya has several historically unresolved land issues. Issues range from huge tracts of land held by absentee landlords, numerous squatters, unregistered land, internally displaced persons who remain un-resettled, and land grabbing especially of public spaces. The National Land Policy has further itemized the issues facing the country as deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilization and abandonment of agricultural land, tenure insecurity and conflict. Most recently the country has suffered from alienation of large swathes of indigenous peoples' land for mining,² large scale farming³ and land intensive capital projects⁴. Most recently, land belonging to public schools has become a key frontier for land grabbing. Statistics from the National Land Commission have shown that in major towns such as Nairobi – Kenya's capital city, only 3 out of every fifty schools has a title to the land that the school sits on. This has left over 90% of all school land exposed to grabbing. The National Land Commission has indicated that by May 2015 it had received 350 cases of grabbing of school land. There is therefore urgent need to help in securing tenure rights for land held by public schools. However on deep interrogation of the issues at hand, there is a clear relation between management systems of land, lack of transparency and accountability and the resultant land problems. The land issues in the country are not merely a management issue and neither are they just mere 'talk'. Kenya generally has a common history of settler colonialism, labour migration, and land dispossession characterized in the pre-independence period and perhaps even currently by a highly capital intensive settler-owned agricultural land sitting side by side with overcrowded rural reserves or communal areas. The East African Bribery Index 2014 ranked land services in Kenya as the second highest in the average size of bribe paid. In terms of the likelihood of encountering bribery, land services

¹ Advocacy and Legal Advice Centre (ALAC) is a walk-in, call-in or mail in centre where victims and witnesses of corruption can obtain free and confidential advice on corruption cases.

² Mining projects include Titanium mining in Kwale, coast region and coal mining in Kitui, eastern region.

³ One of the projects includes the Galana-Kulalu Ranch which has about 1000 Ha under irrigation.

⁴ This includes projects such as the standard gauge railway and the Lamu Port project.

were leading with respondents having a 17% chance of encountering corruption. In the aggregate index for Kenya, land was ranked second with a score of 55.0 rising by 8.3 from 46.7 from 2013. TI- Kenya believes that respecting land and tenure rights – whether traditional / customary or modern – is the basis for good land governance in Africa. Proper Land governance brings together men and women as users of and producers on land and the state as a service provider to its citizens and developer and protector of their prosperity. If the state is corrupt, and laws to protect citizens’ rights do not exist and are not enforced, land governance and land rights fail. In that case, the livelihoods of men and women whose prosperity is based on secure access to land are severely undermined. Kenya has also been the bedrock of irregular land allocations further exacerbated by runaway graft and high handedness by government officials. The government’s reaction to the issues at hand has been largely reactionary. Notably despite several commissions of inquiry⁵ that have probed the land question, recommendations have remained largely unimplemented.

3. OUR STRATEGIC APPROACH

TI-Kenya with support from the Transparency International Secretariat will be implementing a project entitled “land and corruption in Africa” This initiative therefore seeks to explore mechanisms on how people-centred land-governance can be supported at national and local levels, and land-related corruption can effectively be addressed in the country.

The purpose of the initiative is to also build linkages with state and non-state actors involved in land governance⁶, and gather and share relevant data on corruption in the land sector⁷, its trends, nature and strategies that have been utilized to combat it. TI-Kenya will seek to contribute to the development of a body of evidence on land and corruption in Africa. The initiative will assess various laws, regulatory provisions and practices and how well these work. TI- Kenya will seek to 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, 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.

The main goals of the project are:

- Enhancing transparency and accountability in land management within Kenya.
- Promoting the realization of secure tenure rights for land within Kenya.
- Significantly curbing corruption in land management and land administration within Kenya.

⁵ The most renowned being the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, more commonly referred to as the ‘Ndung’u Land Commission’

⁶ E.g. concerned NGOs and CBOs, the county government, traditional authorities, Ethics and Anti-Corruption Commission, The National Land Commission

⁷ E.g. through TI’s Global Corruption Barometer; data from the TI Advocacy and Legal Advice Centres

4. PURPOSE OF THE ASSIGNMENT

For this consultancy, TI-K seeks to procure the services of an independent, external consultant(s) to design, plan and conduct a rigorous study that will encompass the following: a baseline survey; a political analysis; and a risk mapping. The study is anticipated to begin on 1st Oct, 2015 and final report should be received by 15th November 2015. The study is aimed at establishing corruption risk, prevalence and nature of corrupt practices in the land sector in target 'communities' (areas and/or sectors) to inform TI-K programming decisions and determine benchmarks for possible outcomes and impacts of the project's interventions. The baseline study is also intended to provide programme staff with detailed baseline data on key project indicators to enable changes in land governance to be measured over the course of the project.

5. SPECIFIC OBJECTIVES

1. To provide TI-Kenya with an in-depth understanding of the context and conditions of its work in the country on land and corruption.
2. Establish prevalence and nature of corruption in the land sector for targeted communities.
3. Provide indicator baseline values i.e. establish benchmarks on the status of security of land tenure for targeted communities.
4. Inform identification of direct beneficiaries and development of project targets & relevant interventions for the beneficiaries.
5. Provide clear guidance and recommendations on ways to strengthen on-going monitoring of the project to maximize learning and adjust/improve the project design, logic of intervention and monitoring indicators, if necessary.
6. Provide the donor and the different stakeholders involved in land and corruption with accurate, reliable information, with which to inform their interventions and advocacy activities
7. Through the political analysis and risk mapping provide project staff with an in-depth understanding of the underlying causes of corruption in the land sector, the political and legal dynamics and how these impact on land governance.
8. Analyze and assess the country's political and legal context, and particularly the role of key political agents and institutions in sustaining corruption as well as in effectively addressing it via anti-corruption efforts.

6. INDICATORS TO BE MEASURED IN THE BASELINE

The baseline will cover the indicators as outlined in the Monitoring and Evaluation log-frame (Impact Matrix) provided by TI-Kenya for this project. The Evaluation will also make use of the tool developed for this project. The evaluation questions will be further refined with the successful consultants.

7. ISSUES TO BE EVALUATED IN THE POLITICAL ANALYSIS AND RISK MAPPING

The analysis and risk mapping will address itself to questions with operational relevance for TI- Kenya and its partners working on land and corruption. The particular issues are as further enumerated in the "land and corruption in Africa Survey tool" developed by TI-Kenya and its partners.

8. METHODOLOGY

Interested parties will be asked to tender a short outline methodology of how they would tackle this Study and evaluation, both on a theoretical and practical basis. This should include:

1. Desk research (plans, research outputs, conference reports, monitoring data);
2. A rapid assessment of all laws relating to land and their effectiveness in curbing corruption.
3. Interviews with key stakeholders including partners and targets within and outside of the focus counties;
4. Collation of evidence on the issues critical to this project.

9. DELIVERABLES

A final and compressive baseline report focusing on the:

1. Policy and legislative environment, level of adoption and implementation of the policies and legislations.
2. The current mechanisms that exist on complaint handling as far as land related issues are concerned.
3. Key findings on the perception of citizens on the degree of participation in land management issues.
4. Key findings on the status of beneficiaries current knowledge on land rights and polices (Awareness/Knowledge/Participation/Activism/Empowerment) All the above deliverable should be in line with the Indicators as stated in the Monitoring Evaluation and Learning approach for the project.

10. DETAILS ON CONSULTANTS

- A. Interested consultants are strongly advised to apply as a multidisciplinary consortium with capacities to support the baseline evaluation, political analysis and risk mapping. The competencies of individual team members should be complementary. The team must have a clear leadership structure, quality assurance and point of communication. The team members of the consortium should have expertise in the following areas:
1. Land governance including land management, urban planning, surveying and valuation of land.
 2. Law and policy development and analysis with provable experience in land related legislation.
- B. At a Minimum the individual consultant(s) must possess the following:
1. At least a Masters Degree in law, Social Sciences, Development Studies, Land Economics or land governance.
 2. At least 5 years demonstrated experience in social research and policy analysis in Kenya.
 3. Good understanding of the land issues within the country with demonstrated practical working experience or research in the country.
 4. Experience of effective interaction with local national organizations, government departments, and international land actors.
 5. Good spoken and written communication skills in English.
 6. Proven experience of using participatory appraisal tools as the means of data collection for Baseline purposes.
 7. Excellent analytical and report writing skills.

11. BID REQUIREMENTS

Consultants who meet the requirements should submit a maximum of 5 pages expression of interest, by 15th September 2015 which should include the following:

- i. A suitability statement, including commitment to availability for the entire assignment.
- ii. A brief statement of on the proposed study methodology including a detailed work plan.

- iii. A detailed financial proposal, including total costs for all activities.
- iv. Curriculum vitas for each consultant.
- v. Contacts of 3 organizations that have recently contracted the consultant to carry out a Baseline survey or political analysis/risk mapping

12. RESOURCES

Ti-Kenya will provide the resources required for this task. The consultants cost will be an amount commensurate with the normal TI-Kenya rates for consultants.

13. COMPLAINTS PROCESS

This call for Expression of Interest does not constitute a solicitation and TI-Kenya reserves the right to change or cancel the requirement at any time during the EOI process. TI-Kenya also reserves the right to require compliance with additional conditions as and when issuing the final solicitation documents. Submitting a reply to a call for EOI does not automatically guarantee receipt of the solicitation documents when issued. Invitations to bid or requests for proposals will be issued in accordance with TI-Kenya rules and procedures. Any grievances and or complaints arising from the evaluation process and final tender award can be addressed, in writing, to the Executive Director and the TI-Kenya Tender Complaints Committee.

14. SUBMISSION OF BIDS

The completed bids should be sent to the attention of: The Executive Director Transparency International-Kenya, 1st Floor, Wing D, ACK Garden House 1st Ngong Avenue, Off Bishops Road P.O. Box 198- 00200, Nairobi Tel: 020-2727763/5, 0722296589, 0733834659 Email: procurement@tikenya.org

h) Inception Report



Baseline Survey, Political Analysis and Risk Mapping in Kwale and Nairobi Counties

Inception Report

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November, 2015

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1.0 INTRODUCTION

In line with the TOR for this study, consultants are required to present an inception report to Transparency International (hereinafter, the client). The underlying report intends to clearly outline the proposed approach to the baseline study, complete with a detailed work plan. Essentials of proposed approach and work plan have already been thoroughly discussed between the client and Drylands consultants. The Inception report attempts to put all agreements, insights and plans in writing. It is meant to serve as another mechanism to ensure alignment and clarity among all parties involved in the study. We therefore still invite the client to make the necessary corrections and adjustments and possibly even add new ideas.

2.0 BACKGROUND TO THE STUDY

The problem of land and governance in Kenya are deeply intertwined into the cultural and socio-political history of the country. Land is both a treasured community and individual asset as well as an explosive political issue. As evidenced during Post-Election Violence (PEV) that followed the disputed 2007 general elections brought to fore the deep-seated ethnic tensions that hitherto manifested sporadically (and regularly) after the re-introduction of multiparty politics in the early 90s. In the capital city, Nairobi, land is both a blessing and a curse. Nairobi in its growth has produced significant pockets of poverty and inequality. Statistics estimate 60% of the population live in informal, overcrowded settlements occupying only 5% of the city's land (UN-Habitat, 2014). These settlements are mostly unplanned, resulting in inadequate infrastructure, poor housing, high occupation density and extremely low levels of basic services. On the other hand, Kwale County in the south east of Kenya is similarly beset by land issues. Lying side by side are extreme levels of poverty alongside global renowned tourist beaches. Betraying the calm is the visible devaluation that has morphed into high levels of food poverty and dependence attributed to landlessness. Accompanying this is the ever present threats and occasional acts of violence linked to land disposition grievances targeted at different actors.

As a departure from the dark echoes of the past, Kenya in 2010 adopted a new constitution anchored upon the promise of entrenching transparency and accountability in all spheres of social, political and economic life. Key among the transformations related to the question of land ownership and use under chapter five of the CoK, 2013. The formulation had been informed by the National Land Policy 2009, The Agenda 4, Ndungu and Njonjo Commissions on Land as well as the Akiwumi and Waki ethnic violence commissions. Subsequently a number of land laws have equally been promulgated to realize the aspiration of equity and equality in land ownership and use. Alongside a number of key institutional developments related to land have now been put in place.

2.1 Project Overview

TI-Kenya is currently undertaking a project in Nairobi and Kwale counties. TI-Kenya aims to reach and increase knowledge levels on corruption and anti-corruption strategies in the land sector among Kenyans, directly and through local mass media. This initiative also seeks to increase the level of responsiveness by the county government and participation by citizens. The overall project goal is encapsulated in three broad objectives that seek first, a strong citizenship of men and women of different generations and social and cultural backgrounds that 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. Secondly, 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. Thirdly, 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.

2.2 Understanding of the Terms of Reference

This inception report responds to the Terms of Reference extended by Transparency International (Hereinafter 'The Client') requesting for consultancy services to design, plan and conduct a rigorous study that will encompass the following: a baseline survey; a political analysis; and a risk mapping in Kwale and Nairobi Counties. We understand that the study is aimed at establishing corruption risk, prevalence and nature of corrupt practices in the land sector in target 'communities' (areas and/or sectors) to inform the client's programming decisions as well as determine benchmarks upon which the project's progress shall be measured. Having reviewed the tools mentioned in the Terms of Reference we understand that the key components of the assessment will focus on perception of land value, knowledge of citizen's rights and duty bearers, participation in decision making, empowerment and corruption in land services. We also understand that specific objectives of the baseline survey are provided which include, *inter alia*, establish prevalence and nature of corruption in the land sector for targeted communities; provide indicator baseline values; inform identification of direct beneficiaries and corresponding interventions and report authorship which includes recommendations going forward. Based on this understanding, we appreciate the geographical scope and other study parameters provided. As a consultancy firm, we also take cognizance of the deliverables expected from us.

3.0 METHODOLOGY

3.1 Study design

The study will be a cross-section rapid assessment of the knowledge, attitude, perception and capacity of the sectoral conditions in land management and land administration in select Sub-Counties of Nairobi and Kwale Counties. Therefore, the survey will rely on both quantitative (household survey) and qualitative (desk review, key informant interview and focus group discussion) approaches to collect and analyze data.

3.2 Sampling

Quantitative Survey

A multistage sampling approach will be used. The total household population will be divided into L strata (2 counties and further into sub counties) and random samples selected from each stratum. In each sub county, cluster random sampling will be employed with due consideration to population size, regional coverage among others. The required sample size will be given by:

$$n = z^2 \sum_{i=1}^L \frac{N_i^2 p_i (1 - p_i) / w_i}{N^2 d^2}$$

$$w_i = \frac{N_i}{N}$$

Where:

P_i = the proportion of population in stratum

N = the total population size (i.e. the population proportion as a weighted average of the stratum-specific proportions, where the weights are the relative sizes of the strata)

p = Confidence interval level

d = Confidence limit (such that the uptake of project goal can be estimated within 10% of the true population uptake with 90% confidence)

w_i = Proportional allocation for the i^{th} stratum.

Table 27: Sampling Technique

County	Constituency	N_i	w_i	N_i^2	p_i * (%)	$(1 - p_i)$	$N_i^2 p_i (1 - p_i) / w_i$
Kwale	Matuga	183156	0.038803	3.35E+10	0.5	0.5	2.16E+11
	Kinango	252550	0.053504	6.38E+10	0.5	0.5	2.98E+11
	Msambweni	149793	0.031735	2.24E+10	0.5	0.5	1.77E+11
	Lungalunga	197762	0.041897	3.91E+10	0.5	0.5	2.33E+11
Nairobi	Westlands	222048	0.047042	4.93E+10	0.5	0.5	2.62E+11
	Dagoreti North	230629	0.04886	5.32E+10	0.5	0.5	2.72E+11
	Dagoreti South	227271	0.048149	5.17E+10	0.5	0.5	2.68E+11
	Langata	232540	0.049265	5.41E+10	0.5	0.5	2.74E+11
	Kibera	223940	0.047443	5.01E+10	0.5	0.5	2.64E+11
	Roysambu	240779	0.05101	5.8E+10	0.5	0.5	2.84E+11
	Kasarani	249875	0.052938	6.24E+10	0.5	0.5	2.95E+11
	Ruaraka	243831	0.051657	5.95E+10	0.5	0.5	2.88E+11
	Embakasi South	252526	0.053499	6.38E+10	0.5	0.5	2.98E+11
	Embakasi North	227839	0.048269	5.19E+10	0.5	0.5	2.69E+11
	Embakasi Central	233566	0.049482	5.46E+10	0.5	0.5	2.76E+11
	Embakasi East	205819	0.043604	4.24E+10	0.5	0.5	2.43E+11
	Embakasi West	226954	0.048082	5.15E+10	0.5	0.5	2.68E+11
	Makadara	201518	0.042693	4.06E+10	0.5	0.5	2.38E+11
	Kamukunji	266279	0.056413	7.09E+10	0.5	0.5	3.14E+11
	Starehe	208565	0.044186	4.35E+10	0.5	0.5	2.46E+11
Mathare	242947	0.05147	5.9E+10	0.5	0.5	2.87E+11	
Total		4720187	1	2.23E+13	0.5	0.5	5.57E+12

*Since the outcome of interest is knowledge of land management and corruption and it is unknown, it is assumed at the rate of 50%.

Therefore:

$$n = 1.96^2 \left(\frac{5.57E+12}{5.57E+10} \right)$$

$$n = 3.842 \times 100$$

$$n = 384.2$$

The sample is proportionally distributed among the 2 strata (counties) as follows which includes a design effect of 1.0 to correct for cluster random sampling:

Therefore:

$$n = 1.96^2 \left(\frac{5.57E+12}{5.57E+10} \right)$$

$$n = 3.842 \times 100$$

$$n = 384.2 \approx 400$$

Using population proportionate to size (PPS) sampling;

$$\text{Kwale} = (400 \times 0.17) = 65.28 \times 1.0 = 68$$

$$\text{Nairobi} = (400 \times 0.83) = 318.72 \times 1.0 = 332$$

Total Sample = 400

Note:

For purposes of this survey; the sample size allocation was readjusted to improve on the sample size for Kwale. As such, 33% of the sample will be apportioned to Kwale whereas 67% will be apportioned to Nairobi.

The readjusted sample sizes are:

$$\text{Kwale} = (400 \times 0.33) = 65.28 \times 1.0 = 132$$

$$\text{Nairobi} = (400 \times 0.67) = 318.72 \times 1.0 = 268$$

Total Sample = 400

Qualitative Sampling

Purposive sampling will be undertaken for the qualitative survey. Here, Key informants in the evaluation will be interviewed at the policy level and also the stakeholders identified in the Sub-Counties will participate in FGD. Each group will consist of 8-12 participants.

3.3 Study area

The baseline will cover selected sub-counties in Nairobi and Kwale Counties. The evaluation will be conducted in such a way that it provides county and sub-county specific project related information since these counties may have different infrastructural profiles and are deemed autonomous planning and implementation entities. Such an undertaking will require an adequate sample of the different stakeholders in each sub county in order to make reliable measures at a sub-county level.

No	County	Sub County
1	Kwale	Matuga; Kinango; Msambweni; Lungalunga
2	Nairobi	Dagoretti North , South; Westlands; Embakasi North, East, South, Central; Kamukunji; Langata; Kibra; Mathare; Ruaraka; Kasarani

3.4 Study population

The study population will comprise all stakeholders to be involved in the project in target area and working or partnering with the implementing agency.

Inclusion criteria:

1. Male or females aged 15 years and above (household heads)
2. Willingness to voluntarily participate in the study
3. Preferably land owners or those actively involved in land acquisition and management processes, ordinary land users

Exclusion criteria:

1. Unable to understand the purpose of study, and answer the interview questions
2. Minors and Refusals

Persons shall be eligible to participate solely on the basis of the inclusion and exclusion criteria, regardless of nationality, religious, ethnic or other characteristic

3.5 Data Collection

Data will be acquired through a multi-stage approach. The activities in the first stage will be to collect information on the scope of the intervention, existing policies and barriers and opportunities and gaps. This stage will involve acquisition of secondary data and desk review of publications, documents and reports on operational background, organizational background, any history on land management, a rapid assessment of relevant policy, legislative and institutional frameworks relating to land and their effectiveness in curbing corruption and the project documents among others. A preliminary list is provided hereunder;

Overarching Policy	Statutes	Draft Legislations (Bills)
The Constitution of Kenya, 2010	Land Act, 2012	Land Laws (Amendment) Bill, 2015
	Land Registration Act, 2012	Community Land Bill, 2015
The National Land Policy, 2009	National Land Commission Act, 2012	Physical Planning Bill, 2015
	Environment and Land Court Act, 2011	Mining Bill, 2015
	Matrimonial Property Act, 2013	Land use Bill
	Land Control Act (Cap. 302)	Natural Resources (Classes of Transactions Subject to Ratification), Bill 2015
	Law of Succession Act (Cap. 160)	
	County Government Act, 2012	
	Urban Areas and Cities Act, 2011	
	Mining Act (Cap. 306)	
	Leadership and Integrity Act, 2014 [2012]	
	The Law of Succession Act (Cap. 160)	
	Physical Planning Act, 2012 [2010]	
	Public Procurement and Disposal Act, 2010 [2005]	

During the desk review, assessment indicators will be re-developed and the data on the same will be collected using an investigator developed checklist. The second stage will involve field missions and assessment visits to the targeted beneficiaries and relevant organization to conduct key informant interviews and to engage focus group discussants using investigator developed questionnaire. Key informants will be sampled based on their incumbency. This tool will be developed upon further consultation and approval by the client. The third stage will involve the collection of primary data using a household targeted tool. In addition to the structured interview questionnaire, direct observation will be a key complimentary data collection method.

3.6 Household Survey

Mobile data collection

The consultancy team will rely on mobile phone data collection to source and analyse quantitative data from the household interviews. **(See Annex Below)**

3.7 Focus Group Discussion

Focus group discussions (FGDs) will be conducted with groups of individuals to get information on particular aspects related to the baseline survey. Focus group discussions will involve community groups of targeted beneficiaries. Each group will consist of 8-12 participants. FGDs shall be sampled purposively. We propose to undertake 3 FGDs in both Counties (2 Nairobi, 1 Kwale).

In Nairobi, we shall undertake 2 FGDs;

- i) Residents of informal settlements e.g. Kibera, Mukuru, Embakasi Village, Kiambiu (to look up at eviction issues)
- ii) Residents in Syokimau, Ruai, Rongai, Kitengela (to look up on experiences with land transactions, perceptions of corruption thereof) (Kenya Alliance of Residents Association)

In Kwale, we shall undertake one FGD with the landless in Kwale, those squatting on public/private land (evictions), fishermen (grabbing of fish landing sites), ordinary land users, land/property owners (perceptions of corruption), beneficiaries of settlement schemes and members of group ranches (subdivision and fraudulent dealings).

Quorum	Inclusion criteria	The timing & venue	Recruitment
-8 to 12 per group	-Project beneficiaries (direct and indirect)	<ul style="list-style-type: none"> -FGDs sessions should not coincide with major social events in the community e.g. market day/hours, religious meetings, political rallies, weddings, etc. -Venue should provide adequate space for a semi-circle seating arrangement. -Should have minimal distractions from curious onlookers, children, eavesdroppers or vehicular traffic. -Venue should guarantee confidentiality, at least audibly. 	<ul style="list-style-type: none"> -Should be a day or two to the scheduled date of FGD. -Request for punctuality. -The meeting duration will be about 50 to 60 minutes depending on the topics to be covered.

3.8 Key Informant Interviews (KIIs)

Key informants in the study will be interviewed at the policy and project levels. These include but not limited to;

#	County	Name	Organization
1	Kwale	Sebastian Mwanza	Haki Yetu
		Nagib Shamsan	Kenya Land Alliance
		Daud Omar	Secretary – Kwale County Land Management Board
		Anastasia Nabukenya	Kituo Cha Sheria
		Esha Mohamed	Ombudsman
		Paul Manyala	County Land Physical Planning Officer
		Hon Ngoro	Chair Land and Natural Resources Kwale
2	Nairobi	Official	Ministry of Lands
		Dr Fabian Lukalo Director of research and advocacy	National Land Commission
		Aimee Ongweso Gertrude Angote	Kituo Cha Sheria
		Dr Steve Akoth	Pamoja Trust
		Brian Kazungu Mwenda Makathimo Ibrahim Mwathani	Land Development & Governance Institute
		Moses Kiambuthi	Institute of Surveyors of Kenya

	Official	Director for Planning, Nairobi County
	Official	Chair of the Land Committee, Nairobi County

3.9 Data Collection Tools

The following study tools have been developed

- e. **Household survey questionnaire:** this is the main study tool which shall be customized for use during household surveys.
- f. **Focus group discussion (FGD) Guide:** this tool will serve as a study discussion guide conducted with target groups in order to flag out their lived experiences, land management and perceptions of corruption thereof.
- g. **Key Informant Interview (KII) Guide:** this tool will be used during discussions with target communities (for example, community-level opinion shapers, policy makes and implementers) to get a better understanding of their experiences and perceptions on land management. For state and non-state actors, this tool will be instrumental in getting insights into the prevailing policy and practice with respect to land management and corruption in Kenya.
- h. **Direct observation and Photography** will be used as key complimentary data acquisition methods. The consultancy team intends to deploy Open Data Kit (ODK) which relies on mobile phones to capture data. These phones are also camera enabled which avails an opportunity to take photos from the household level.

We propose to collect the requisite information using five modules of data collection instruments, as indicated hereunder.

Tool		Target respondent	Implementer
T101: Household Questionnaire		Households in Nairobi and Kwale	Research Assistants Supervisors
T102: FGD Guide		- Key Community Elders, leadership in Kwale and Nairobi - Land management stakeholders - opinion leaders	Consultants
T105: KII Guide I		Stakeholders (Partners)	Consultants
T106: KII Guide II	Section A	Line Ministries (Min of Lands); Directorate of Physical Planning; Directorate of Urban Development; Directorate of Surveys; Directorate of Land Adjudication	Consultants
	Section B	Provincial Administration (e.g. Chiefs, County Commissioner)	
	Section C	Relevant government agencies (CAJ, EACC, NLC, CLMB, LCB)	
		Heads of public institutions whose land is prone to grabbing e.g. primary schools, public hospitals	
	Section D	Respective County Executive Members (CECs) e.g. Planning, Land; Chief Officer; Directorate of Urban Planning etc	
	Section E	Non-state actors (e.g. NGOs, CBOs) e.g.	

		Pamoja Trust, Action Aid, Kenya Land Alliance (Nagib/Odenda), Ujamaa (Patrick), Kituo cha Sheria, Land Development and Governance Institute, Society for International Development (ShuleYangu campaign) etc	
TI07: KII Guide III		Project staff – Executive Director, Project Manager, Project Officers (Kwale and Nairobi)	Consultants

3.10 Human resource

The consultants will identify and recruit suitable persons to support data collection, as Research Assistants and Note Taker.

3.11 Training and pretesting

The objectives of training will be to remind RAs about basic data collection skills and approaches; create a forum for RAs to share outstanding data sourcing skills and experiences, as well as enable RAs to understand and validate the study instruments. The consultants will work closely with project staff to train RAs for two days using participatory methodologies. The training will provide skills on how to: identify households, identify and approach respondents, pause questions, record responses, communication skills, manage body language and control biases, disengage from interviews and replace respondents, among other practical aspects of field research. The training on the questionnaire will review the background, objectives and rationale of the household survey for the project, overview of the proposed scientific methodology for the survey, and an item-by-item familiarization with the instrument for fieldwork, contextualization of issues raised and potential responses and case studies. The training will also outline the project management structure, including reporting lines, roles and conduct of each team member, potential challenges and implications, documentation and field reports as well as relationships with respondents. As part of training, we shall pre-test the questionnaires on the second day, identify and discuss issues arising, agree on solutions, as well as amend the instruments to enhance their applicability, validity and accuracy. The pre-test sites shall be selected purposively.

3.12 Data Management

Data collection using ODK enables easy transfer of data online or storage in a local server, thus enabling real-time access to information for immediate analysis. The consultancy team will dispense with data entry when ODK methodology is used. Data cleaning will be conducted by running frequency distributions to track missing information, re-organize misplaced codes and ensuring adherence to the SKIP instructions, in case of filter questions. Variations will be addressed as appropriate; this will ensure that RAs key in data as collected. The study team will work closely with Statisticians (Data Analyst), who will form part of the consultancy team to the field.

Data Analysis

Qualitative data

The individual KIIs and FGDs interviews will be simultaneously translated into English and transcribed. Thereafter, Data coding and analysis will be undertaken. The KIIs and FGDs interviews will be analyzed using a grounded theory approach, which is a commonly-used method in qualitative research for inductively

developing a theory of a phenomenon “grounded” in the actions and social interactions of people. This will be followed by the examination of relationships among categories. Analyses will proceed in a cumulative and will aim to develop an understanding of experiences, beliefs, attitudes and practices surrounding land management in communities in Nairobi and Kwale counties.

Quantitative Data

Quantitative data will be cleaned and analyzed using R Gui® statistical software or Statistical Package for Social Scientist (SPSS). Data cleaning will involve validation and checking for outliers during exploratory analysis. The data will then be weighted in readiness for analysis. At the first stage of analysis, we will use descriptive statistics such as means and proportions to present the sample data characteristic and also to explore the distributional properties of the data. At stage two, we shall fit bivariate analysis such as cross tabulation, bivariate logistic models to examine the association between respondents’ characteristics and the outcome variables.

Conceptual Analysis of Corruption in the Land Sector

In order to analyze the correlations and in establish prevalence and nature of corruption in the land sector for targeted communities; provide indicator baseline drivers; pressures and corresponding interventions and derive an appropriate path for moving forward, the study will adopt the DPSIR framework as illustrated below.

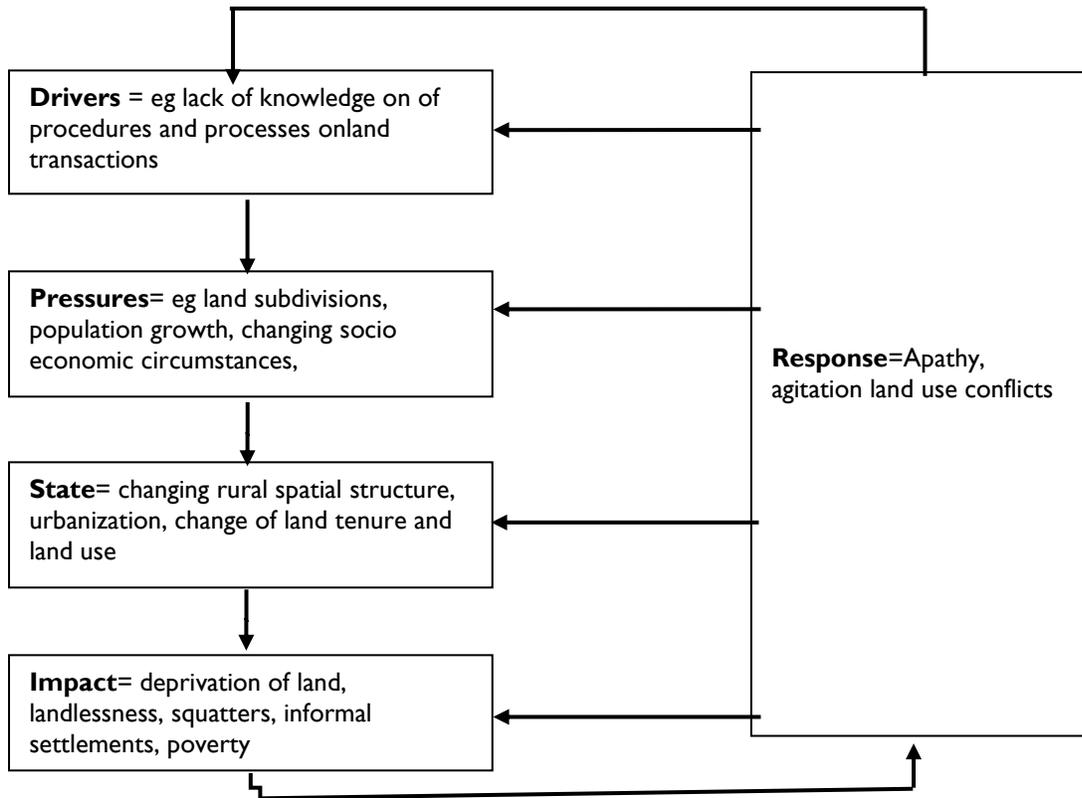


Figure 1. DPSIR Framework -Adapted from EEA (2001)

3.13 Reporting

Validation and dissemination

The consultants shall share a draft report with TI-Kenya staff who will read the draft report and provide comments and suggestions within an agreed timeframe. The consultancy team will review the draft report to incorporate feedback and prepare PowerPoint slides in readiness for dissemination. The client shall then organize a dissemination forum, bringing together key stakeholders if need be. Participants are expected to provide their perspectives and validate the findings based on their professional experience.

Final review, editing and submission

The consultancy team shall then review the report once again to incorporate new issues arising from the validation forum, edit the report and submit a final draft, along with all electronic, audio-visual data materials.

4.0 LIMITATIONS OF THE STUDY

Being a cross sectional study, this research is subject to a wide range of limitations. Thus, lots of efforts must be done to minimize these potential confounders;

Refusal bias: The questionnaire might ask the respondents personal and often socially prohibited behavior. Therefore some respondents might refuse to participate in the survey. Refusal bias arises when those who refuse to participate have different behavior than those who agree. Thus refusal bias may underestimate true levels of community practice because some respondents may avoid participating because they do not want to admit to behavior that they recognize are risky. To guard against such a bias extensive training of the interviewers will be done to explain the purpose of the study to the respondents, their full consent to participate will be obtained before questioning begins and confidentiality and privacy would be assured.

Selection bias: This might result if the selected respondents systematically differ for the general population. Issues around proper sampling frame, sampling technique and sample size estimation might create such bias. The use of recent updated county statistics might help in identification of proper sampling frame and the contribution of a professional statistician would help minimize this bias.

Measurement bias: This specific bias which might occur when the respondent deliberately gives the wrong answer due to embarrassment connected with the nature of the questions in this study or the wrong perception of legal implications of it. This is better minimized by better explanation of the study purpose and assurance of privacy and confidentiality by the interviewers. The questionnaire will be pre-tested, thoroughly reviewed and adapted.

5.0 GUIDING PRINCIPLES OF THE STUDY

5.1 Bond Principles

The consultancy team shall adhere to the quality standards specified in the Bond Evidence Principles Tool²⁶, including voice and inclusion, appropriateness, triangulation, contribution and transparency. Under the *voice and inclusion* principle, the study will capture the perspectives of the target groups, including the most marginalized groups such as those living with disability, In *triangulation*, the study will capture data using a variety methods, data sources, and perspectives. Observing this principle will be crucial for managing risk of possible bias and getting different stakeholders with different perspectives.

5.2 Ethical Considerations

While conducting the study, the consultancy team will observe three universal ethical principles, including *respect for participants, beneficence and justice*²⁷. The principle of respect for participants states that all human participants in a research process have the right to self-determination; hence should be consented. In this regard, all participants will be consented by fully explaining purpose of the study, potential benefits, and the fact that their participation will be voluntary. Participants will also be informed about their right to withdraw consent of participation at any time during the process without a penalty. The principle of beneficence requires a researcher to ensure the physical, mental and social well-being of all participants. In

²⁶ www.bond.org.uk/effectiveness/principles

²⁷ The Nuremberg Code; The Declaration of Helsinki; Belmont Report; U.S. Code of Federal Regulations, etc

this regard, all information will be kept confidential; personal interviews will also remain confidential, at least audibly. Participants will be informed that the research process will enable implementing partners to inform responsive climate change policies going forward. In this regard, we shall adhere to provisions of 45 CFR 46.101 (b)(2). The principle of justice demands that a researcher must ensure that benefits and risks are equally distributed among participants and that all participants accorded equal opportunity for participation if they so consent.

6.0 WORK-PLAN

The detailed work plan is outlined in the table below while the survey tools are presented in the annexes that follow.

Activities	Specific activities	Time
1. Training & Pretesting	-Participate in a 1-2day researcher training to understand the tools -Train RAs, pre-test data collection instruments & approaches; Discuss issues arising with participants & agree on solutions; Process, analyze & interpret pre-test data & discuss results with project staff; polish & produce instruments, as appropriate in readiness for data collection.	2 days
2. Data collection	-Coordinate & supervise data collection activities, including household interviews conducted by RAs; monitor performance and ensure data quality. -Facilitate FGDs and KIIs.	5days
3.Data Sets	- Quantitative data coding, digitalization, cleaning & transformation, -Generating of data sets for quantitative data in Excel -Generating qualitative data in Word for submission to TI	2days
4. Data processing & analysis	-Quantitative data analysis; run frequency distributions, crosstabs, bivariate analysis and <i>one-way ANOVA</i> significance tests as appropriate; generate presentation tables, graphs & pie charts; -Qualitative data synthesis for patterns and meaning for the project.	5 days
5. Interpretation & report writing	-Interpret qualitative data, and develop a coherent and evidence-based report; Submit first draft report and discuss findings with Client and partners	5 days
6. Validation & dissemination	-Review the first draft to include comments, suggestions and positive critique; develop PowerPoint presentations. -Disseminate findings in a stakeholders' workshop.	3 days
7. Editing and submission	-Review the draft to incorporate workshop deliberations, edit the final draft and submit to Client and partners	
Total		22 days

7.0 Annexes

Annex 1: Household Questionnaire

Annex 2: FGD Guide

Annex 3: KII Questionnaire

