



ONLINE WORKSHOP REPORT

THE FUTURE OF LAND GOVERNANCE IN KENYA

2 NOVEMBER 2023



INTRODUCTION

The Regional Futures project workshop titled 'The Future of Land Governance in Kenya' was held on November 2nd, 2023, at the BIEA as a hybrid event between 3:00PM to 6:00PM. The panel invited speakers from the National and County Governments, Kajiado community, Pamoja Trust, Institution of Surveyors of Kenya (ISK), and Law Society of Kenya (LSK). Representatives from the Kajiado county and community were not able to join the workshop. The panels were moderated by Prof. Ayona Datta, Dr. Dennis Mbugua, and Dr. Melissa Wanjiru. The moderators were assisted by Sara Khaliq and Medhanit T. Ayele from the BIEA Graduate Attache Scheme.



Part of the BIEA team together with Prof. Ayona Datta during the online workshop

WORKSHOP CONCEPT

The objective of the workshop was to critically analyse and conceptualize the increasing adoption of digital technologies in land governance in Kenya. This is based on the premise that land is a basic resource that is highly valued by the Kenyan populace. Land governance here refers to the statutory and customary regulation of how land is accessed, controlled, marketed and used and the institutions involved in these processes. Poor land records management due to outdated manual systems among other reasons has been identified as one of the key impediments to the efficient and effective carrying out of land transactions in Kenya. As such, in recent years, both the national and county governments have embraced digitalisation, with platforms like Ardhisasa being created to ensure that most land services are provided online. The aim of this workshop was to bring together stakeholders from the government, civil society, and the community to discuss various land issues, and primarily answer the question: If the future of land governance is digital, then what is the position of local communities within that future?

The overarching questions guiding the workshop were as follows:

1. Which policies have been introduced by government to support digitalisation and what challenges have been faced in their implementation?
2. What new digital paradigms and approaches to land governance are being implemented at the



county level?

3. What role does civil society play in the implementation of digital technology in land administration?
4. How has rapid urbanisation in Kajiado impacted communal land ownership?

INTRODUCTORY AND WELCOMING REMARKS

Before proceeding to the first panel, Prof. Ayona Datta made some introductory remarks to welcome the workshop panelists and attendants. In her remarks she also gave a brief overview of the REGFUT project and the overall objective of the workshop which she noted was to understand the impact of urbanisation on digitalisation and vice versa, this includes the role of the state, bureaucracy and how such bodies administer land governance in urban-peripheries in times of digital transformations. Following her remarks Prof. Ayona welcomed Dr. Eric Kioko who was standing in for the British Institute in Eastern Africa (BIEA) Country Director Dr. Kennedy Gitu. In his remarks Dr. Kioko gave a brief overview of BIEA which he noted a research centre that facilitates researchers working on projects within the region and also collaborates on different types of research projects ranging from archaeological and heritage centred studies to urban studies research projects. He also added that the Regional Futures project was timely because in addition to addressing an emotive issue in Kenya i.e., land governance, the project would lead to an understanding of the future trajectories of land governance in urban peripheries within the ongoing digitalisation context. Such understandings underpin Kenya's development.

THE FIRST PANEL

This panel was moderated by Dr. Dennis Mbugua. Three panelists had been invited for the session, the three included two representatives of the two levels of government i.e., National and County Governments, and one representative from the National Land Commission. However, the Kajiado County Government representative was not able to attend. Mr. Jerome Omondi (hereinafter Jerome) represented the National Government while Ms. Saida Isak (hereinafter Saida) represented the National Land Commission (NLC). The overarching question guiding this panel discussion was: Which policies are being introduced by two levels of the government to facilitate digitalisation and what challenges have been faced in the implementation?

In his remarks, Jerome gave a brief overview of how the National Land Information Management Systems (NLIMS) popularly known as Ardisasa and the other Land Information Management Systems (LIMS) initiatives that preceded it. These initiatives included the enactment of laws such as the Land Registration Act. In his view the key objective of the various land digitisation projects is to enhance the citizens' confidence with land records and as a result, land transactions. Further, he also added that the next stage of the NLIMS development would be its integration with other national government systems such as the Kenya Revenue Authority database to ease payments of the relevant national land based tax such as stamp duty.

Jerome highlighted the following as some of the key challenges of the new land administration dispensation.



- In the transition from paper based to digital systems there needs to be more training to ensure a smooth transition.
- Most of the people in the national government are elderly and may struggle to facilitate such transitions due to illiteracy and or reluctance and struggles in adapting to new systems.
- Many land records are incomplete and unclear, changing this can be time-consuming.
- There are also funding constraints as such a transition requires significant financial and human resources.
- There are also cyber security concerns, as in order to safeguard such information there needs to be the assurance of cyber-security.
- Digitization requires resources which might not be readily available here (in Kenya) which makes it hard to realise the digitization in the coming few years.

In her presentation, Saida emphasised that the adoption of digital technology in land administration was unstoppable. Her presentation emphasised the different roles digital technology has played in the administration of public land ranging from research to automation of basic NLC office processes. This holistic application and implementation of digital technology within the administration of public land realm, she added, is significant in securing public land. For example, in her view, when land parcels are digitised it reduces the likelihood of public land grabbing. The effective administration of public land is also important in the national development priorities realisation because it will make the implementation of Vision 2030 Medium Term Plans (MTPs) seamless. Further, digitisation is important for effective environmental conservation and documentation e.g., the NLC and its partners employed digital technologies in developing the National Resources Atlas. Within the NLC bureaucracy processes she opined the digital tools would be useful in processes such as historical land injustices cases management. She also noted that as the NLC County Coordinator she works closely with the county department in charge of land administration which is in the process of digitising some of its land administration and urban planning processes.

PANEL Q&A

Following the two presentations the panelists answered questions from the moderator and the workshop attendants.

In response to the first question, Jerome noted that the national government was working on entrenching the NLIMS with other systems to enable effective integration of land administration processes and resolution of arising and emerging matters such as how best to handle complex land succession matters. On her part Saida noted that within Kajiado County, there are digitisation efforts being undertaken through a multi-stakeholder engagement platform. She added, that as it concerns public land digitisation within the county, they are in the initial data collection phase. She anticipates they will face three key challenges namely, one lack of adequate funding, missing land records, and land related disputes.



When asked about the impact of technology on land acquisition of public and community land the two panelists were of the view that the allocation of public land follows the legal procedures as laid out in the relevant laws. In addition, they both noted technology is relevant in the capturing of both ownership and sale of such lands, this means that it is easier to understand who owns what especially where undertaking public projects that require public land acquisition and compensation.

On the future of digital governance in Kenya, the two panelists agreed that technology is the future in land governance. However, the realisation of this future in 10 years or more, would be gradual and dependent on a number of enabling factors. These factors include a permissive local political environment, change in the organisation culture, and the general acceptance and embrace of technology in land transactions by the general citizenry.

Regarding how the digital land administration system address informal settlements the two panelist were of the view that due to the complexity of land issues in informal settlements a layered approach would be needed. First they noted it would be necessary to first address the land ownership question before proceeding to other key land administration processes. This as Jerome noted would require high level political support as was the case with the mass land titling programme undertaken by the previous administration, this underscores the highly political nature of land tenure administration matters in informal settlements. It is after addressing this, and as Saida noted, that proper surveying and planning can be done to sort out the squatter's issues.

On why it is harder to digitalise the land sector when compared to sectors such as the financial sector, the two panelists agreed that one of the key issues is the complex nature of land administration. For instance, as Jerome noted, land interests in a particular parcel of land have a long history. This means that when transacting on a particular parcel of land you are also transacting on its history. Any complexity in that long land transaction history means delayed land transactions and complex land matters to handle. It is this historical injustices complexity that the new age i.e., digital, systems are not able to handle. On her part Saida added that complexity is also brought about by the varied actors involved in land administration. As a result, a land transaction will involve different institutions. For example, a parcel of land within public land parcel may involve national government and the relevant agency, NLC, county government. As such a transaction moves from one institution to the next challenges may arise and should one institution not undertake its role the whole process may stagnate. Other sectors do not have to deal with these complexities which are further complicated by the high interest in, and emotive attachment, to land by the public.

On the land administration functions, Jerome was of the view that since much of these functions are legislated and entrenched within the existing institutional framework no department or institution would be willing to relinquish its mandate thus making processes streamlining difficult. He also noted that another possible future concern will be the proliferation of County Land Information Management Systems that are not linked to Ardhisasa. To Saida, in addition to the legislative framework constrain, the other main challenges to the effective streamlining of land administration functions is the lack of political goodwill, sabotage by those who benefit from the land administration functions complexity and historical/ancestral/ethnic land issues.

After the Q&A, the moderator gave the participants a five minutes health before the start of the second panel discussion.



THE SECOND PANEL

This panel was moderated by Dr. Melissa Wanjiru. Four panelists had been invited for the session, the four included one Kajiado community representative, two professionals a land valuer and a lawyer, and representatives from a civil society organisation. However, the Kajiado community representative was not able to attend. Ms. Irene Kinoti (hereinafter Irene), Mr. Alex Mwangi (hereinafter Alex), and Mr. Derrick Orangi (hereinafter Derrick). The overarching question guiding this panel discussion was: what role does civil society play in the implementation of digital technology in land administration?

In her presentation, Irene highlighted the exclusionary nature of conventional land administration systems. She noted this is evident in the government's emphasis on formalisation of land interests through legal and administrative procedures undertaken by the ministry responsible for land administration. As it relates to areas where they mainly work i.e., informal settlements, Irene noted that official or conventional land administration systems have ignored these areas on the premise that those who reside in these areas do not own the plots on which they reside. To protect the residents' interests and investments from evictions CSOs such as Pamoja Trust working with partners such as UNHabitat, have collaborated in the design, testing, and implementation of new land tools meant to ensure the recognition and documentation of land rights within informal settlements. For example, in Kenya Pamoja Trust has used the Social Tenure Domain Model to document and recognise the different land rights that within different informal settlements. Such tools she noted digitise the spatial and ownership details. This information she added is useful in processes such as formal planning interventions. In her view, the national government should complement the CSOs efforts by working with them to see how best the land can be integrated with Ardhisasa.

Alex, in his presentation, first highlighted advantages of the NLIMS once fully implemented. These included improvement in revenue collection through elimination of leakages caused by manual administration of these processes among other advantages. In addition, he noted that the NLIMS was anchored on a land legislation and regulatory framework such as the Land Registration Act of 2012. In his view the comprehensive move towards digitalisation is important for the different categories of land i.e. public, private, and community. Regarding the valuers user experiences of the NLIMS, Alex noted that the process of verifying a landowner's details takes too long and in some cases continued for up to one year, this he argued goes against the spirit of digitalisation i.e., quick service delivery. Related to this is the difficulty encountered in setting users accounts. In addition, Alex also decried the low awareness by landowners which makes these landowners vulnerable to conmen under the guise they can help with some of the processes. These and the other highlighted challenges such as the lack of cooperation from the owner of a distressed property meant that the system experience for valuers was underwhelming. In his view, the main issue at the County level will be level lack of adequate infrastructural services to effectively mount the digital systems.

Derrick started by highlighting the relevant land registration Act section s 9 and 10 that mandate the Land Registrar to maintain the Land Register. As it relates to the register's credibility Derrick noted that lawyers apply a three pronged test that includes the following key aspects, a) security i.e., is the system and its processes secure from breaches? b) accessibility i.e., is the system accessible to all stakeholders?, and c) reliability - is it a system that can be relied at all times?. In his view, the implementation of the NLIMS would should aspire to meeting these principles so that Kenyans can embrace the system like they have done with



Derrick Orangi making his presentation on the role of LSK in Land Governance in Kenya

the National Transport and Safety Authority system which they use to undertake car transactions. However, on the NLIMS, what is evident is that the NLIMS implementation has not been smooth as evidenced by the numerous protests on the matter. What these protests and the challenges encountered with system have shown is that: NLIMS was not subjected to adequate public participation, vested interests with the different land transaction networks such as brokers may be sabotaging the system to maintain the manual processes, and there was no consideration of the varied context within which the system was to be applied. For example, did the system designers consider that the digital literacy level in

Kenya are varied and not uniform? Despite these and the other challenges highlighted in his presentation, he was of the opinion that the effective implementation of the system will help to address the community land disputes.

PANEL Q&A

On the issue of how best to handle the tensions and conflicts between the different land management stakeholders I have noted that an important aspect that needs to be considered is the role of participation in the process of recording data and information on land. She also added it is important that the different ways people relate with their land parcels should be acknowledged. On his part, Alex noted that the NLIMS is one way through which such conflicts can be resolved. For example, if all records are available digitally through a system that is accessible by other departments then maps and plans cease to be a point of conflict. Continuous education is also another way that those tensions and conflicts can be resolved.

On whether middlemen will still play a role in digital land transactions Derrick was of the view that it is more likely their rules will evolve with the new system in explaining this he gave the example of KRA where despite the taxes filing process being digitised brokers have emerged to assist taxpayers that don't understand the system or find it difficult to navigate the digital process. In addition, since lawyers will be required when undertaking a land sales agreement their middlemen roles will persist.

On the limits of governance more specifically on the matter of legislating technological advances Derrick was of the view that this is a new area of law application and as a result, progress will be incremental. Despite implementation of laws such as the Data Protection Act, Kenya as country is still learning from its implementation. This is an important consideration more so given that laws and their application are contextual.

According to Alex, land ownership in Kenya is both a secretive personal affair and proud social achievement.



Similarly, as a professional Alex was of the view that the system should protect private land information data but also be accessible to professionals like him in a secure manner. On the one-stop-shop he was of the view that such a mechanism would ease land transactions and facilitate effective land related disputes resolution.

Regarding the adoption of digital technology in the management of land by indigenous and pastoralists societies Irene was of the view that similar to informal settlements these technologies can be used to develop a community members list more so if they are registering their community land. Further, the community data can be used to inform their planning interventions. To be able to effectively use these systems capacity building of the local community skills will be required.

Following the second panel discussions, Prof. Ayona Datta closed the workshop by thanking all the panelists, BIEA, the European Union and European Research Council (ERC). She also highlighted the next steps in the project such as next year's project workshop whose theme is tentatively on **Mapping**.