



UNIVERSITY OF NAIROBI
RRI ON CONSTITUTIONAL IMPLEMENTATION AND PUBLIC
SERVICE INTEGRITY PROGRAMME
MANAGEMENT SENSITIZATION PROGRAMME

Land, Environment and Natural
Resources

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Presented by:



The University of Nairobi



TEAM MEMBERS

Dr. Winifred Kamau
Prof. Patricia Kameri-Mbote,
Dr. Daniel Ichang'i,
Dr. Winnie Mwangi
Dr. Robert Kibugi



Significance of Land



- * Land is an emotive issue in Kenya – significant for livelihood, identity, security
- * Land has **multiple values**-
 - An **economic resource**
 - It's a significant resource for **equitable access** of livelihood
 - A **finite** resource
 - A **cultural heritage** with socio-cultural and religious import
 - Concept of land is broader than surface above ground



Historical and contemporary context of land relations



- Legacy of unlawful acquisition of public and community lands by the colonial administration
- Continued dispossession in post-colonial era: IDP, grabbing, loss of integrity of land registration system
- Issue of land rights for minority and marginalized groups, e.g. women, pastoralist groups, indigenous communities
- Complex and weak land regime
- Failing of land administration: corruption, inefficient administration
- Environmental degradation and poor land use practices



Constitution of Kenya, 2010



- * Represents a new era in dealing with land relations
- * Recognizes the unique and complex nature of land: captures the multiple values of land
- * Mandates regular review of land policy
- * Underpins land management on sustainability: equity, security, productivity; dispute settlement
- * **Land + Natural Resources + Environment**
- * **New laws: Land Act, Land Registration Act, NLC Act (all of 2012) + Environment and Land Court Act**



Changes brought by the Constitution



New classification of land

- * Public land – Art. 62: unalienated land; land held by State organs; minerals and mineral oils and other natural resources
- * Community land – Art. 63 – land vested in and held by communities identified on the basis of ethnicity, culture or **similar community of interest.**
- * Private land – Art. 64 – land held under freehold or leasehold tenure

Limitation on ownership

- * Foreigners – tenure type and length
 - * On leasehold only for maximum 99 years



Changes brought by the Constitution



- * **Limitation on land sizes**
 - Envisages limits on land sizes - Parliament to prescribe minimum and maximum holdings (Art. 68(c))
- * **Seeks to promote gender equality:** particularly the matrimonial home
 - * Joint or common property (Land Registration Act)
 - * Spousal consent to charging matrimonial home (Land Act)

Impacts role of land as a commercial security

- * **Extends protection for lawfully acquired land from taking without compensation**



Changes brought by the Constitution



- * **Opens up possibility for review of titles to determine their propriety or legality**

Art. 68 – unlike in the past where sanctity of title was upheld irrespective of means of acquisition

- * **Sets a basis for enactment of national land use law**
 - * Important foundation for spatial & physical planning; and development control
- * **Land taxation** – (basis of designation, assessment and collection)
 - * Land rent
 - * Land rates
 - * Idle land <what is *idleness?*>
- * **Dispute resolution - Environment and Land Court**



New land institutions



- * National Land Commission
- * County Land Management Boards
- * Chief Land Registrar
- * County Governments
- * Environment and Land Court



Environment and Natural Resources



Meaning of environment

Environment has a very broad meaning and includes:

- the **physical** factors of the surroundings of human beings including land, water, atmosphere, sound, odour, taste,
- the **biological** factors of animals and plants; and
- the **social** factors of aesthetics, and includes both the natural and the built environment.



Environment



Significance of the environment

- * Crucial for the survival and socio-economic wellbeing of mankind
- * Fragility of ecosystems and finite resources
- * Environmental degradation in Kenya stems from two main types of human activities:
 - Unsustainable resource use and environmental contamination
 - **Constitutional Preamble:** recognition of the need to *respect and sustain the environment* for the benefit of future generations.
- * **Art. 10 National values and principles of governance** in the Constitution includes the *principle of sustainable development*.
- * **Right to a clean and healthy environment**



Constitution of Kenya



Article 69: State obligations with regard to the environment:

- * Ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits
- * **Work to achieve and maintain a tree cover of at least 10% of the land area of Kenya**
- * Protect and enhance intellectual property in, and indigenous knowledge of biodiversity and genetic resources and biological diversity
- * **Establish systems of environmental impact assessment, environmental audit and monitoring of the environment**
- * Eliminate processes and activities that are likely to endanger the environment
- * Utilize the environment and natural resources for the benefit of the people of Kenya



Legal Framework



Environmental Management and Coordination Act, 1999 (EMCA)

Framework law which establishes the legal and institutional framework for the coordination of diverse sectoral initiatives for the conservation and management of the environment in Kenya.

Establishes National Environment Management Authority (NEMA)

Sectoral laws: There are various sectoral laws relating to the environment. These regulate agricultural, water, forests, trade, health, mining and industry sectors which have significant implications on the environment.

Natural Resources Development and Management Policy, 2013 – envisages legislation providing a framework architecture in the management, coordination and regulation of natural resources in Kenya

National Environment Policy (draft)

International obligations which has ratified (significance in light of Art. 2 (6))



Natural Resources



Importance of natural resources for livelihood and economic development

Kenya has diverse natural resources, namely:

- Biodiversity in its widest sense, including fisheries, etc;
- Forest and Water Towers; Wildlife; Water; Industrial Minerals and Rocks e.g. limestone, trona, feldspar, mica, salt, etc.
- Ore (Metallic) Minerals e.g. gold, copper, zinc, iron, titanium, uranium, niobium and rare earth metals, etc.
- Gemstones.
- Energy Resources: Coal, Oil and Gas, Geothermal resources, Wind, Sunlight, the Ocean
- Recent discoveries of oil and valuable minerals
- Holds potential for economic transformation of Kenya.
- Need to develop our natural resources in a way that benefits all the Kenyan people and avoid the “resource curse”



Implications on land rights



- * Implications of natural resources on land rights:
 - * Additional set of permits required
 - * Government may exercise right to compulsory acquisition
 - * Opportunity for investments: 10% forest cover, etc
 - * May require granting lease to investor
 - * Environmental Impact Assessment
 - * Compliance with development control rules
- * Parliament is responsible for ratifying grant of rights or concessions for exploitation of any natural resources in Kenya



THE END

Thank you!