

Monitoring Land Administration and Management in Kenya

Inclusive Land Governance

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<p>¹State Departments for Lands and Physical Planning, mbogocm2@gmail.com, Nairobi, Kenya</p> <p>²State Departments for Lands and Physical Planning, wanyonyiagatha@gmail.com, Nairobi, Kenya</p> <p>³National Land Commission, murugiesther@gmail.com, Nairobi, Kenya</p> <p>⁴National Land Commission, marywandia@gmail.com, Nairobi, Kenya</p> <p>⁵National Land Commission, rbrtkoech@gmail.com, Nairobi, Kenya</p>	<p>ABSTRACT</p> <p>Context and background Land Monitoring is critical for continuous implementation of land reforms and general growth and development in the sector. It guides the deployment of policy by identifying and highlighting the fundamental problems affecting sustainable land development. Kenya in the recent past, has been involved in land monitoring activities including Land Governance Assessment Framework (LGAF) by the World Bank and the Global Land Indicators Initiative (GLII) by UN Habitat. The reporting under these monitoring activities have been affected by unavailability of data.</p> <p>Goal and Objectives: The objectives of the exercise were: to establish the existence of comprehensive policies and extent to which the policy formulation process is consultative; Determine the extent of land tenure security and proportion of women and men with legally recognized documentation; Establish the extent of land disputes and the access to effective resolution; Establish the efficiency of land administration services and generation of revenue by government from the land services; and Determine the capacity of land administration systems and determine sustainability of land use.</p> <p>Methodology: The exercise was carried out by a multi-agency National Land Monitoring Working Group (NLMWG) whose membership was drawn from technical staff from the various Government Agencies in Kenya. The basis of data collection was a land monitoring framework with the six indicators areas. Secondary data from administrative sources was collected and key informant interviews were carried among the land registrars, surveyors, physical planners, valuers, land adjudicators and judiciary registrars. The quantitative data collected was analyzed using descriptive statistics while qualitative data was analyzed using content analysis, narrative analysis and framework analysis.</p> <p>Results: The total area of land under cadastral maps/land information system was approximately 11,288,916.12 ha, representing 19.38 % of the total land area. The exercise further established that 1.58 % of the total filed court cases were land related in 2021/2022. In the same year, 2.17 % and 2.60 % of resolved and pending respectively of the total court cases were land related. The exercise further established that forest land decreased by 0.5 percent (255,851 ha) between the year 2008 and 2018. The data indicated that 10 out of 47 Counties (21.27 %) have prepared and approved County Physical and Land Use Plans. The exercise recommended the need to disaggregate land related data at the point of collection, design and fund new strategies for collection and managing data, develop National Land use/Land cover mapping and modernize land information management to allow for easier collection, collation, storage and dissemination of land information.</p> <p>Keywords: <i>Land Monitoring, Land Tenure, Land Disputes, Land Governance, Data</i></p>
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1. INTRODUCTION

Kenya is approximately 582,646 Square Kilometers in size, comprising of 97.8 percent land and 2.2 percent water surface. Approximately, 20 percent of the land area can be classified as medium to high potential agricultural land and the rest of the land is mainly arid or semi-arid. Forests, woodlands, national reserves and game parks account for 10 percent (Kenya National Land Policy, 2009). The country population is estimated at 49.4 million (KNBS, 2022) with a population density of 82 persons per square kilo meter (km). The population growth rate is estimated at two (2) percent per annum. This points to an increased demand for land and the need to strengthen its governance for optimum use and management in meeting the current and future needs.

Land is critical to the economic, social, and cultural development of Kenya. Access to land and secure tenure rights boosts social and economic opportunities that are needed to eradicate poverty, contribute to food security and foster peace and security. This makes Land Monitoring to be critical for continuous implementation of land reforms and general growth and development in the sector. It guides the deployment of policy by identifying and highlighting the fundamental problems affecting sustainable land development. The challenges may have risen from previous omissions in developing of previous policies like weak engagement of stakeholders, unbalanced gender representative, inadequate budget allocation, poor communication and training among others.

Towards the land monitoring in Kenya, the Sessional Paper No. 3 on National Land Policy in 2009, requires the Government to; establish mechanisms for identifying, monitoring and assessing the vulnerable groups so as to secure their access to land and land-based resources; establish an effective surveillance and performance monitoring systems as a principle to guide institutional reform process and also establish an institutional framework that would monitor and evaluate land reform programmes at local level. The Land Act, 2012 bestows upon the Cabinet Secretary in charge of lands, overall responsibility of monitoring and evaluating land sector performance. The National Land Commission is required, under the Constitution of Kenya, to monitor and have oversight responsibilities over land use planning throughout the country.

Kenya in the recent past, has been involved in land monitoring on specific thematic areas. The initiatives were mainly carried out by other agencies such as the World Bank and UN Habitat. The Land Governance Assessment Framework (LGAF) by the World Bank, for instance, is one of the monitoring tools being implemented. It gauges the efficiency of land processes and procedures. The reporting under this addresses the steps, time and cost involved in registering property. Additionally, it measures the quality of the land administration systems in five dimensions: reliability of infrastructure, transparency of information, geographic coverage, land dispute resolution, and equal access to property rights. The Global Land Indicators Initiative (GLII) by UN Habitat tracks progress made by countries on tenure security by measuring the proportion of adult population with secure tenure rights under indicator 1.4.2 while indicator 5.a.1 measures access to agricultural land for all genders.

These past initiatives have been hampered by unavailability data and the fact that some of the data is domiciled in other Ministries Departments and Agencies (MDAs) that are not centrally coordinated. The lessons from these points to the need for government led multi-agency collaboration to undertake land monitoring. To address the existing gaps, Kenya, with support from IGAD, undertook a National Land Monitoring exercise in 2022. The exercise was a significant step towards strengthening efforts towards land monitoring in the region, while fulfilling the principles of AU declaration on land and frameworks and guidelines on land policy initiatives.

1.2 Objectives of the Land Monitoring Initiatives in Kenya

The overall objective of the exercise was to establish baseline data for use to improve land governance in Kenya. The specific objectives are as follows:

- a) To establish the existence of comprehensive policies and extent to which the policy formulation process is consultative, representative and participatory in Kenya
- b) To determine the extent of land tenure security in relation to proportion of women and men with legally recognized documentation
- c) To establish the extent of land conflicts and land disputes and the access to effective dispute resolution in Kenya.
- d) To establish the efficiency of land administration services in terms of timelines, cost and generation of revenue by government from the land services in Kenya.
- e) To determine the capacity of land administration systems in terms of the proportion of transactions concluded per year in relation to the total of transactions submitted in Kenya.
- f) To determine sustainable land use measured through land use land cover changes and land use planning in Kenya.

2.0 METHODOLOGY

2.1 Formation of National Land Monitoring Working Group (NLMWG)

A multi-agency working group was constituted to support this exercise. The membership was drawn from the technical staff from the various Ministries and Government Agencies, specifically, SDLPP, NLC, Directorate of Resource Surveying and Remote Sensing (DRSRS), Judiciary, Kenya National Bureau of Statistics (KNBS), State Department for Gender & Affirmative Action (SDfG&AA) and FIDA - Kenya. The NLMWG was coordinated by a National Land Monitoring Coordinator (NLMC) from SDLPP.

The NLMWG was guided by the Terms of Reference provided to the NLMC by IGAD and the IGAD Region Land Monitoring Framework.

2.2 Inception Workshop

The inception workshop bringing together all the members of the NLMWG was convened on 19th October 2022. The workshop sought to enhance understanding among the members on the land monitoring framework, approaches in data collection, data sources and gaps, analysis and reporting.

2.3 Secondary Data Collection

The team reviewed the relevant policy, legal and institutional frameworks, administrative data and other literature and/or available data sources. Specifically, the NLMWG reviewed relevant reports

from the government agencies particularly, SDLPP, Judiciary, DRSRS, SdfG&AA, KNBS, NLC, The National Treasury, County Governments and Civil Society.

The committee held discussions with specific government officers particularly, land registrars, surveyors, physical planners, valuers, land adjudicators and judiciary registrars. These discussions provided complimentary information relevant to the exercise.

2.3 Data Analysis

The quantitative data collected, was analyzed mainly using the descriptive statistics. Qualitative data on the other hand, was analyzed through content analysis, narrative analysis and framework analysis.

2.4 Working Modalities

The multi-agency committee developed a work-plan to guide successful execution of the assignment. Weekly working sessions were held to review the progress of the assignment. The NLMWG held regular consultations with IGAD to ensure harmony in reporting among the member states.

3.0 FINDINGS AND ANALYSIS

3.1 Presence/Absence of Comprehensive National Land Policy

3.1.1 Land Category Indicator 1: Policy Development/Reform:

(a) Presence/Absence of Comprehensive National Land Policy

Records from the State Department for Land and Physical Planning revealed that;

1. Kenya has a comprehensive National Land Policy in the name of *Sessional Paper No. 3 of 2009* which is currently under review. The Policy provides an overall framework and defines the key measures required to address critical issues of land administration including, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management.
2. Kenya has developed and adopted Sessional Paper No. 1 of 2017 on National Land Use Policy (NLUP), which addresses issues relating to the use of land and its resources. It guides Kenya towards an environmentally and socially responsible use of land and land-based resources for socioeconomic transformation of the people of Kenya.

(b) The Extent to Which the Policy Formulation Process is Consultative, Representative and Participatory

The Constitution of Kenya, 2010, require all policies and legal reforms to be developed in consultative, representative and participatory manner. The following was therefore observed: -

1. Article 118(1) (b) requires Parliament to facilitate public participation and involvement in legislative and other business of the Parliament and its committees. It further provides that Parliament conducts its business in an open manner, and holds its sittings and those of its committees in public.

2. The formulation of National Land Policy took a multi-sectoral approach with stakeholders drawn from public, private and civil society organizations. There were six sectoral thematic committees with 52.6 percent representation from public sector, 20.2 percent representation from private sector and 27.2 percent from civil society. In terms of gender, 67 percent of the committee members were male while 33 percent were female.
3. The Public Service Commission in 2015, developed generic guidelines for public participation in policy formulation for use by MDAs. The MDAs are required to domesticate the guidelines in line with their mandate.

3.1.2 Land Indicator Category 2: Land Tenure Security

(a) Proportion of National Land Areas with Rights Holders Identified that is Incorporated into Cadastral Maps / Land Information Systems

1. The total size of land that had been adjudicated/titled by November 2022 in rural areas and Nairobi stood at approximately 11,288,916.12 hectares, representing approximately 19.38 percent of the total land area.
2. The variance of 46,975,683.88 hectares (80.62 percent), comprise of ongoing adjudication sections, community land, land in other urban areas, large scale land under leases, water bodies, forests and roads, which could not be ascertained.

(b) Proportion of Women and Men with Legally Recognized Documentation or Evidence of Secure Rights to Land

The data on the proportion of women and men with legally recognized documentation or evidence of secure rights to land could not be retrieved as the land ownership data was not segregated at the point of collection.

(c) Percentage of Women and Men who Perceive their Rights to Land are Protected

An analysis on the percentage of women and men who perceived their rights to land were protected was not done. This is because this type of information required carrying out a household survey which could not happen within the short timelines and limited funding resources.

(d) Level to which Women and Men have Equal Rights to Land Including Right to Use, Control, Own, Inherit and Transact these Rights

Kenya is party to Committee on the Elimination of Discrimination against Women (CEDAW). Table 1 show an analysis of Kenya’s performance in implementing the six CEDAW proxies.

Proxy	Description	Finding	Remarks
A	Is the joint registration of land compulsory or encouraged through economic incentives	Yes	Finance Act Number 4 of 1999, Section 71 paragraph 12B exempts payment of Stamp Duty when transferring property between a husband and wife.

			There is however no compulsory joint registration
B	Does the legal and policy framework require spousal consent for land transactions?	Yes	Provided under Land Registration Act 2012 and the Matrimonial Property Act 2013
C	Does the legal and policy framework support women's and girls' equal inheritance rights?	Yes	Provided for under Constitution of Kenya, 2010 and Law Succession Act, 2021
D	Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land?	No	
E	In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?	Yes	The Community Land Act 2016, recognizes equality of all persons including equal treatment of applications for women and men and non-discrimination of any person based on gender, sex, disability, minority, culture or marital status.
F	Does the legal and policy framework mandate women's participation in land management and administration institutions?	Yes	Art. 10 of the Constitution stipulates National values and principles of governance to include participation of people, equality and non-discrimination

Table 1: Kenya's performance in implementing the six CEDAW proxies

The content of the table notwithstanding, according to SDFG&AA, Kenya's women land rights continue to trail men, despite the existing policy and legal provisions. Furthermore, implementation of the legal provisions on land at national and county levels towards women is ineffective. There still existing retrogressive/discriminatory cultural norms and practices at institutional and community level-including cultural laws on land that are patriarchal in nature.

3.1.3 Land Indicator Category 3: Land Conflicts and Land Disputes

(i) Proportion of Land Cases to Total Court Cases

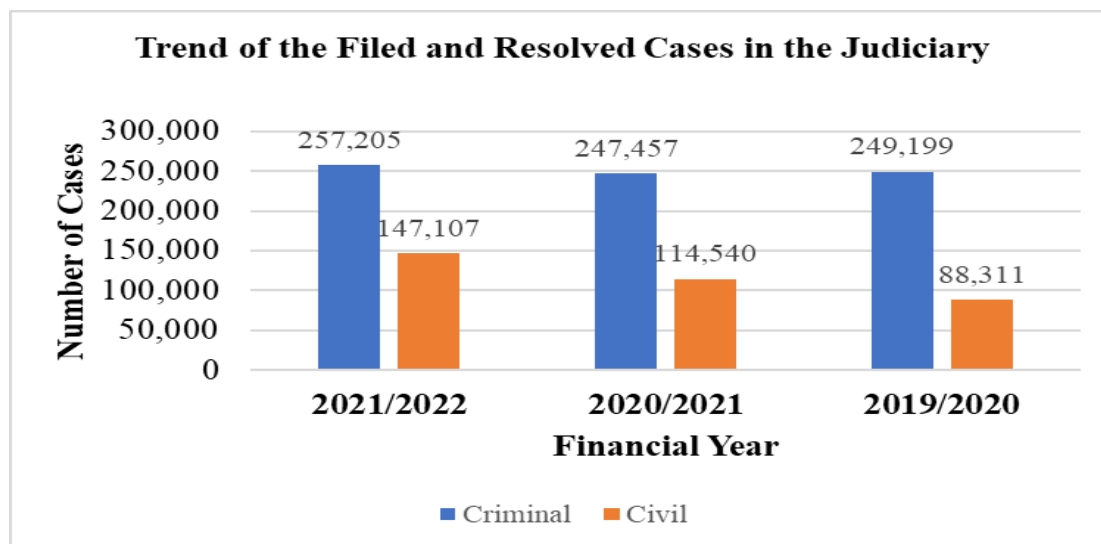
An analysis of aggregate data from the all courts and specifically from the courts that deal land related cases (ELC, Rent Restriction Tribunal, Business Premises Rent Tribunal and National Environmental Tribunal) indicated that, 1.58 percent of the filed total court cases were land related in 2021/2022.

In the same year, 2.17 percent and 2.60 percent of resolved and pending respectively of the total court cases were land related.

(a) Filed and Resolved Cases in the Judiciary

In the year, 2021/2022 there were 1,060,014 court cases that comprised of 404,312 registered in the year and others as spillover. Out of the 404,312 cases, 257,205 were criminal cases and 147,107 civil cases. During the year 381,317 were resolved and 678,697 were pending. The following Figure 1 indicates the trend of court cases in Judiciary.

Figure 1: Trend of Filed and Resolved Cases in the Judiciary



(b) Filed and Resolved Cases in the Land Courts and Tribunals

In the Financial Year 2021/22, there were 25,880 cases in 38 ELC stations, out of which 6,401 were filed

within the year. In the same year, 8,264 cases were resolved and were 17,616 pending.

(ii) Percentage of Women and Men, that Perceive to have Access to Effective Dispute-Resolution Mechanisms

The study did not undertake perception survey of women and men on access to effective dispute-resolution mechanisms or having accessed one.

3.1.4 Land Indicator Category 4: Land Administration Services

The Land Administration Services indicator category sought to answer two research questions: (i) range of time and cost required to conduct land transactions and (ii) government revenue derived from land-based transactions as a percentage of total government revenue. The findings were as follows:

(a) Range of Time and Cost Required to Conduct Land Transactions

Table 2 shows service timelines and costs as provided in the existing service charter by the SDLPP for charges/mortgages, land transfer and sublease transactions. Charges and subleases take 3 days to execute while land transfers take 4 days. In terms of costs, charges and subleases cost KES 500 (USD 4.2) and land transfers costs KES 1000 (USD 8.3)

Table 2: Cost Required to Conduct Land Transactions

Land Transaction	Registration	Time in Days	Cost	
			KES.	USD (1 Dollar = KES. 120) in Nov. 2022
Charge/mortgage		3	500	4.2
Transfers of ownership		4	1,000	8.3
Sub-leases		3	500	4.2

(b) Government Revenue Derived from Land-based Transactions as a Percentage of Total Government Revenue

The main revenue streams from land-based transactions comprise of Land Registration fee; Conveyance; Valuation fees; Land rent; Stamp Duty on land transactions; Stand Premium; Land Adjudication Case fees; and Other Land Revenues (among them physical planning and survey fees). The findings that during the year 2021/2022, land-based transactions revenue was 0.78 percent in comparison total government revenue realized.

3.1.5 Land Indicator 5: Capacity of Land Administration Systems

The Capacity of Land Administration Systems indicator sought to answer the questions on the capacity of land administration systems in terms of the proportion of transactions concluded per year against the total of transactions submitted in the same year. This was analyzed as follows:

The Proportion of Transactions Concluded per Year against the Total of Transactions Submitted

Data was sought from the field stations of the SDLPP. Out of 67 stations, we managed to receive data from 47 stations. It was noted that four (4) station had not started operations hence did not have any data. This reduced stations to 63. The total number of transactions received in financial year 2021/2022 were 1,099,826 from 35 stations. The total number processed was 1,048,867. This transaction comprised of the title deeds processed, documents booked, title searches issued, documents assessed and boundary dispute resolved. The proportion of data processed against the total applied was estimated at 95.37 percent.

3.1.6 Sustainable Land Use

The Sustainable Land Use indicator sought to answer two questions: (i) Changes in the Sustainable land use, measured by land cover and (ii) proportion of rural and urban administrative units with sustainable land-use plans. The findings were as follows;

(a) Changes in the Sustainable Land Use, Measured by Land Cover

The information on the Land Use and Land Cover (LULC) in Kenya is domiciled in the DRSRS and at the SDLPP. The data is generated through the System of Land-based Emission Estimation in Kenya (SLEEK) since 2014 on LULC. The data was obtained by processing respective Lands at Imagery of 30m resolution and then validated by ground truthing.

The findings indicate that forest land (Dense Forest, Moderate Forest and Open Forest) between the year 2008 and 2018 decreased by 0.5 percent which is equivalent to 255,851 hectares. According to DRSRS, the observed decrease did not take into consideration the newly established forests and farm trees. Land use, under human settlements which includes industrial activities, educational facilities, commercial areas, recreation areas, facilities for public purposes, public utility and transportation is classified under other land in Table 3. In 2018, other land was 10.9 percent, a decrease from 11.8 percent recorded in 2008.

Table 3:
Land Cover
Hectares

Source:
of Resource
and
Sensing,

Land Cover	Year 2008		Year 2018	
	Area (Ha)	%	Area (Ha)	%
Dense Forest	2,375,857	4.0	2,205,189	3.7
Moderate Forest	829,481	1.4	816,174	1.4
Open Forest	513,049	0.9	441,173	0.7
Forestland-total	3,718,387	6.3	3,462,536	5.8
Wooded Grassland	31,053,450	52.5	32,271,452	54.5
Open Grassland	10,520,365	17.8	8,980,656	15.2
Grassland-Total	41,573,815	70.3	41,252,108	69.7
Perennial Cropland	279,007	0.5	284,357	0.5
Annual Cropland	5,406,606	9.1	6,455,816	10.9
Cropland-total	5,685,613	9.6	6,730,173	11.4
Vegetated Wetland	50,023	0.1	40,212	0.1
Open Water	1,188,933	2.0	1,227,320	2.1
Other land	6,987,097	11.8	6,481,438	10.9
Grand Total	59,203,868	100.0	59,203,788	100

Table Showing
of Kenya in
and Respective
Percentages
Directorate
Surveys
Remote
2022

(b) Proportions of Rural and Urban Administrative Units with Sustainable Land-Use Plans

The Country has three (3) types of County Plans: (i) The County Integrated Development Plans (CIDPs), (ii) Sector Plans prepared by various sectors of a county every 5 years and; (iii) Physical and Land Use Development Plans (PLUDPs) that consist of County Physical and Land Use Development Plans (CPLUDP) and Local Physical and Land Use Development Plans (LPLUDPs). The data from SDLPP and NLC indicate that there exists the National Spatial Plan (2015 – 2045) and that three counties: Machakos, Makueni and Kajiado, have attempted to prepare an inter – CPLUDP that is ongoing. Out of the 47 Counties 11 (23.4 percent) have prepared and approved CPLUDPs (Table 6). Further, a total of 117 towns/urban centers/rural centers within 20 Counties have had their LPLUDPs prepared and approved, 79 had been completed and were awaiting approval, 96 were ongoing and Plans for 223 towns/urban centers/rural centers had not been started.

4.0 GAPS IDENTIFIED

The exercise identified the following gaps:

1. The guidelines for public participation as developed by the Public Service Commission require MDAs to domesticate these guidelines in line with their mandate. This has not been done, particularly for the MDAs under the land sector.
2. The data on the proportion of women and men with legally recognized documentation or evidence of secure rights to land could not be obtained because these are not segregated at the point of collection. This is partly because it is not a requirement under the current land

registration laws and land registration form. A deliberate effort is required to ensure that the data is captured at source.

3. The data on the total land size titled within the urban areas could not be obtained in a short period of time because records are manual and require more time to be retrieved.
4. The data on percentage of women and men who perceive their rights to land as protected could not be obtained. This information can only be obtained through household surveys. This could not be done within the limited time and resources.
5. The data on the percentage of women and men that perceive to have access to effective dispute-resolution mechanism could not be obtained. This information can only be obtained through household survey. This could not be done within the limited time and resources.
6. The information on the range of time to conduct land transaction is based on the information from the service charter. Subsequent monitoring should consider feedback from the user so that it can reflect the user experience.
7. The Judiciary has comprehensive reports on the cases before courts. It is therefore possible to assess the progress over time. However, it is worth noting that there are a number of land disputes that do not reach the courts.
8. The data on the proportion of transactions concluded per year as the total transaction submitted was presented as reported from the field stations. The information is also manual. Subsequent monitoring would require verification of the data to eliminate any error.
9. The data on land use land cover changes has been validated up to the year 2018. Up to date, data has not been collected due to resource constraints. There is need to provide for further classification on other lands to provide up to date data on existing land uses in the Country.
10. There is need to carry out further research on up-to-date information on preparation of the various types of Physical and Land Use Development Plans by the various counties.

5.0 CONCLUSIONS

Land monitoring is an important exercise with potential to gauge progress and inform on areas that need improvement and identification of strategies for achieving good and sustainable land governance. The data in this report provides a crucial baseline for future comparison in the country and within the IGAD region. This Land Monitoring in Kenya Report has provided baseline information on land indicators.

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We wish to thank all the institutions and staff who went out of their way to provide the requested

information. Key among these include; the Directorate of Survey, Land Adjudication and Settlement Directorate, Land Registration Directorate, National Land Commission, the land registrars and officers in the field stations of the State Department for Lands and Physical Planning and the land courts.

We also wish to acknowledge the members of the National Land Monitoring Working Group (NLMWG) for their dedication and commitment. This was indeed a worthy exercise, and it is the expectation of the National Land Monitoring Working Group that it shall go a long way in improving Land Governance in Kenya.

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4. AUTHOR CONTRIBUTIONS:

1. Mr. Mbogo, Cyrus M. was the team leader and the main researcher. He was the consultant and the key contact person between the team and IGAD.
2. Wanyonyi, Agatha, was a member of the NLMWG and sourced for information related to land tenure and Land Administration Services
3. Macharia, Mary was a member of the NLMWG and sourced for information related to Land policy
4. Koech Robert was a member of the NLMWG and sourced for information related sustainable land use. He also provided secretarial and editorial support
5. Comm. Hon. Esther Murugi was a reviewer

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7. KEY TERMS AND DEFINITIONS

Land governance: involves the set of rules, processes, institutions (statutory, customary, religious and informal) and State structures through which decisions are made about access to land and its use, the manner in which those decisions are implemented and enforced, and the way in which competing interests in land are managed (<https://www.fao.org/land-water/land/land-governance/en/>).

Land tenure: the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and land-based resources (FAO,), the bundle of rights and responsibilities under which land is held, used, transferred, and succeeded (Sumner, 2002)

Sustainable land use: refers to the rational development, use, and protection of land resources that ensures a fair and balanced distribution of land, water, biodiversity and other environmental resources between the various competing claims, in order to secure human needs now and in the future (<https://www.wur.nl>).