



National Land Commission

Public Land Administration and Management **Understanding acquisition, ownership, disposal and securing of** **public land by Public Institutions**

By

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Our Land, Our Wealth, Our Heritage



Outline

- What is public land?
- Public land inventories
- Documentation of public land
- Disposal of public land
- Securing public land
- Linkage to zero-fault audits

Public Land

- Article 62 (1) provides a clear definition of public land.
- Public land belongs to the people of Kenya and is held by either the National or County Governments in trust for the people of Kenya – *Art. 62(2)&(3)*.
- National Land Commission administers and manages public land on behalf of both Governments.
- Public Land may be converted to private or community land through allocation or transfer.
- Private and community land may be converted to public land by: compulsory acquisition, reversion of leasehold interest to Government after the expiry of a lease, transfers or surrender.

Public Land Inventory

- NLC has a statutory mandate to identify, prepare and maintain a database of all public land.
- The NLC, through the office of the Head of Public Service, has previously reached out to institutions to share data on public land.
- About 40 institutions shared their databases on public land – ***the rest are yet to share***
- NLC has worked with IGRTC to document over 60,000 parcels of land now transferred to County Governments via Special Issue of Kenya Gazette Notice No. 11164 dated 11th August, 2025.
- NLC is continuously engaging public institutions to share their inventories.

Documentation of Public Land

Land is reserved through the physical planning process. Holding can be:

Leasehold:



A form of private land tenure granting limited right to use and occupy land owned by another party (the lessee) for a defined period. Leasehold agreements outline terms and conditions for land including use, period of lease, rent or other payments to the lessor.

Freehold



An absolute form of private land tenure, providing complete and perpetual ownership rights, allowing full control over the land, subject to applicable laws and regulations

Reservation



The setting aside a designated portion of public land for specific purposes or uses, such as infrastructure development, public facilities, conservation, recreation, and other public-oriented needs.

Why Reserve Public Land?

- Reservation of public land is well defined in law - *provides a robust and unique way to secure land for public purposes.*
- Reserved public land does not establish a lessor-lessee relationship - *the primary requirement being compliance with the conditions outlined in the reservation orders.*
- The Conditions can easily be varied.
- Reservation does not attract statutory fees.
- It does not have time limit.
- It places management and control of the reserved land in the hand of a public institution/agency or department.
- Good practice – *USA, India, Germany, Singapore & Australia*

Legal Framework

- Section 15 (1) of the Land Act 2012 provides that: the Commission shall, upon request by the national or county government by **order in the Gazette**, reserve public land
- Section (2) of the Act provides that Land that has been reserved by the Commission **shall only be used for the purpose set out by the Commission** in the order designating the reservation.
- Section 105 (2) of the Land Registration Act provides that the Registrar shall:
 - (a) register the relevant public land in the name of the county or national government in trust for the people resident in the county or national government;
 - (b) comply the direction of the Commission as contained in any Gazette notice made under section 15 of the Land Act;** and
 - (c) include **any special provisions** relevant to the public land.

Requirements for Documenting Public Land

- Planning – approved plan by the planning authority,
 - Authenticated survey plan, and
 - Confirmation that the proposed use is compatible with the specific parcel of land
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- Upon approval by the Commission, the Chairman of the Commission publishes the reservation order in the Kenya Gazette.
 - The NLC forwards the Gazette Notice to the Land Registrar for registration

Proposed Certificate of Reservation

- Documentary evidence, in addition to Gazette Notice.
- The proposed Certificate of Reservation is intended to hold the same significance as traditional certificates of lease and certificates of title, serving as a valuable tool to affirm rights to reserved land.
- The proposed certificate will require to be anchored in law.


REPUBLIC OF KENYA
—
THE LAND ACT
(No. 6 of 2012, Sections 15, 16, 17 & 18)

Certificate of Reservation

TITLE NO.
APPROXIMATE AREA
REGISTRY MAP SHEET No.
RESERVEE

This is to certify that

.....

is now recognized as the holder of the reserved land comprised above and specified in the reservation orders published under Gazette Notice No. of subject to full compliance with management orders prescribed in the gazette notice. The Commission retains powers to vary conditions through a Gazette Notice as provided for in Section 16 of the Land Act, 2012.

Given under my hand and the seal of the

National Land Commission

this Day of 20 ...

.....
Secretary/CEO



Role of Certificate of Reservation

a) A stature equal to traditional certificates

b) Recognizing the custodial relationship

c) Facilitating effective planning – development of management orders by the State Agency

d) Record of land custody

e) Role in accountability and compliance



Disposal of Public Land

- Allocation to individuals and entities – *Section 12 of the Land Act*
- Leasing to investors.
- Transfer to other parties.
- Requires NLC consent/approval, public participation, and valuation.
- Certain categories of land cannot be disposed (e.g. ecologically sensitive areas) – *Section 12(2) of the Land Act*.

Securing Public Institutions Land

- Putting the land into the intended use.
- Physical measures: *fencing, signage, patrols.*
- Legal measures: *planning, survey and registration.*
- Social Measures: mutually beneficial engagements with host communities.
- Protection from encroachment and fraud.
- Use of digital land records and GIS monitoring.
- Encroached public land - *can be reclaimed as provided for under Section 152(C) of the Land Act*

Linkage to Zero-Fault Audit Drive

- **Roles of BACs & IAFs - Land:**

- Oversight, assurance and advisory services over security of land rights for institutional land.
- Land being a cross-cutting fixed asset - is well under the purview of the BACs and the IAFs.

Audit Statistics - OAG Report(s) FY2023/2024)

- **An AI scan of the report(s) published by the OAG for the year ended 30th June 2024:**
 - Land is picked as one of the major contributor to flagging audit opinions across State Corporations and MDAs.
 - About 6 State Corporations highlighted to have land issues (ownership):
 - ✓ On this front, the distance to zero-fault audit is very small – some slight effort and we reach absolute zero.
 - MDAs – A number (relative to total) reported to have land ownership issues:
 - Quiet some combined/collaborative effort is expected to close the gap.

Existing/ Emerging Aspects

- **Towards Eliminating/Minimizing Audit Issues on Land:**

- Compliance to law being path to the goal:
 - ✓ Allotment letters – Evidence ownership?
 - ✓ Title deeds – freehold areas
 - ✓ Lease titles – leasehold areas
 - ✓ Reservations – section 15 of Land Act 2012 and section 105(2)(b) of the Land Registration Act 2012
- **Note:** Auditors awareness of the prevailing legal basis is key to provision of assurance/advisory services.
 - ✓ Demonstrated evidence of reservations to be considered (persuasive & convincing) conclusive on security of the institutional land rights.

Existing/ Emerging Aspects - continued

- **Control:**

- Matters expected to spring up based on accrual reporting.
- Land under IPSAS 45 (definition of land and control) Vs Article 62 of the CoK 2010
- Control conflicts?:
 - ✓ What is the case for shared spaces: whether physical boundaries are defined or not?
 - ✓ Reserved user (records) Vs user in occupation?
- **Note:** To avert impending audit issues, taking advantage of the timelines to full transition to accrual reporting, direction/action is imperative:
 - ✓ Recognition, separation (sub-divisions) or transfers.

THANK YOU

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