

COUNTY GOVERNMENT OF NYERI

**DEPARTMENT OF LANDS, HOUSING, PHYSICAL PLANNING AND
URBANIZATION.**

NYERI COUNTY LAND SURVEY POLICY

DECEMBER 2020

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ABBREVIATION AND ACRONYMS

COK- Constitution of Kenya (2010)

GIS-Geographical Information System

SWOT-Strengths, Weaknesses, Opportunities and Threats

KURA-Kenya Urban Roads Authority

KERRA-Kenya Rural Roads Authority

NCA-National Construction Authority

NLC- National Lands Commission

KENHA- Kenya National Highways Authority

MEAL-Monitoring, Evaluation, Accountability and Learning

DEFINITION OF SELECTED TERMS

Arable land –This land is suitable for growing crops.

Non-arable land-This land is not suitable for the growing of crops.

Sessional Paper- Any document tabled in the House or filed with the Clerk during a given **session**.

Surveyor- refers to a person stated as such under the Survey Act CAP 299 of the Laws of Kenya

Director of Survey- refers to a person stated as such under the Survey Act CAP 299 of the Laws
of Kenya

CHAPTER ONE: BACKGROUND INFORMATION.

1.1 Introduction.

A. Whereas **Article 186(1)** of the COK (2010) provides for the respective functions and powers of the National and County Governments that except as otherwise provided by this Constitution, the functions and powers of the National Government and the County Governments, respectively, are as set out in the Fourth Schedule. Further, under the Fourth Schedule, Part 2 Section 8, County Planning and Development includes:

- i Statistics;**
- ii Land Survey and mapping;**
- iii Boundaries and fencing among others.**

In addition, **Article 187(2) of the COK** states that if a function or power is transferred from a Government at one level to a Government at the other level:

(a) Arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and

(b) Constitutional responsibility for the performance of the function or exercise of the power shall remain with the Government to which it is assigned by the Fourth Schedule.

Furthermore, **Article 185 (3) & (4)** of the COK do provide that a County assembly, while respecting the principle of Separation of Powers, may exercise oversight over the County executive committee and any other executive organs. A County Assembly may receive and approve plans and policies for-

i) The management and exploitation of the County's resources; and

ii) The development and management of its infrastructure and institutions.

B. Land is the most important factor of production, besides labour and capital in Nyeri County. It is the foundation of economic development for the County. A larger population in the County derives their livelihoods from land-based activities.

The processes of land surveying and mapping are integral to an efficient land administration and management system. In addition to preparing the maps and plans to support land registration, they map the earth for land use planning. These processes have been hampered by slow, cumbersome and outdated modes of operation, and failure to regulate non-title surveys leading to the development of incompatible maps.

Constructions such as roads, buildings, water supply, dams, etc, and the services that go to facilitate technical civilization cannot be planned without survey of the land.

1.2 Situational analysis

In drafting this policy, it is hereby admitted that there is a huge challenge in respect to the scope of the recommendations herein. This challenge is primarily from the provisions of **Article 186(1)** of the COK (2010) to the extent that the Counties are limited in operation of laws.

From a policy and operational point of view, it is understood why the drafters of the COK limited the scope of powers of the Counties. Among the would-be reasons are;

- (a) Land is an important factor of production and the Central Government would wish to have substantial control.
- (b) Surveying is a global exercise with global institutional standards that may not change from one county to another.
- (c) In Kenya, all Surveyors must operate with a regulated framework that must be centrally controlled by the National Government.

The upshot of the above limitations results to a restricted policy which can only operate with the above stated limitations.

The National Government and Nyeri County Government do not have a single clearly defined or codified Survey Policy. The problems posed by the lack of a policy have been exacerbated by the existence of very many land laws, some of which are inconsistent and incompatible. The result is a very complex land administration system.

The County Directorate of Survey is under the department of Lands, Housing, Physical Planning and Urbanization. The Nyeri County does not have existing legal framework on survey thus the challenge of settling issues on survey activities.

Pursuant to a **Gazette Notice volume CXVIII No.32 dated 1st April, 2016** on unbundling of functions as exercised by the National and County Government in accordance with the Fourth Schedule of the COK. There are various challenges that arise in clearly performing the duties allocated to the County Government where survey and land use is concerned. The following are the various concerns and or challenges posed and which this policy is meant to address within Nyeri County;

1. The set Regulation on survey and mapping practice under the land surveying and mapping functions

The autonomy of the County Governments envisaged by devolution is denied when the National Government takes full mandate of some of the functions provided in the fourth schedule that are to be handled by County Governments.

County Governments are required to implement policies and guidelines on survey and mapping activities at the County as per the legislations.

2. Provision of Survey Controls-The County Government is to roll out 3rd - 4th Geodetic controls, lower order vertical controls. However, the National Government is still taking

control in Quality Control whereas the County Government is in a position to carry this task. This thus creates the task of the County Governments forwarding all Survey Controls conducted at the County level to the National office for checking and authentication.

3. The provision and maintenance of up to date cadastral provide that the National Government should have control on the georeferenced survey and mapping datasets. County Governments are only expected to provide the access of these datasets to both private and public institutions. The Land Registrar is the one to Determine and pass resolution of property boundaries as per the Land Act, 2012 which is a mandate of the National Government according to this specific law. Clearly this is very confusing.

4. **County Boundaries.**

Under the said Gazette Notice, County Governments are required to come up with modalities of solving a boundary dispute between itself and other counties, after preparing the modalities and reporting structures to the National Government.

The National Government will be the one to amend, alter or approve and the decision which will be final. The County Government of Nyeri may have special situational circumstances that may be unique only to The County Government of Nyeri. This would thus make the involvement of the National Government not to be helpful in this regard.

5. **Land Development.**

Under this subheading, the following are the challenges;

- a. **Photogrammetry**- Submission of photogrammetric datasets to the National database for authentication and archival undermines the County mandate on surveying and retrieval of datasets at the County level. Photogrammetry takes time and resources and thus it tends to be a very expensive activity. Thus, the County Government is at a disadvantage considering that it is the National office at Survey of Kenya that will archive all data sets acquired in this manner. There is no mechanism to retrieve the datasets and thus there should be a framework on how to retrieve back the datasets of need arises.
- b. **Cartography**-At the moment, the County Director of Survey is unable to provide perusal and archiving of datasets collected from surveys of utility infrastructure such as: installation of sewers, water pipes, communication and power lines. This has been occasioned with the fact that the primary and secondary data collected should be deposited with the National Office instead of the County Office to enable an update topographical base map at the County level.
- c. **Photolithography**- The lack of a framework in the printing and production of County tourist maps, County attraction sites, road/route maps has the potential of unscrupulous and techno- savvy businessmen producing all sorts of plans that are yet to be authenticated by the County Director of Surveyors thus placing the County in a disadvantaged position.
- d. **Geospatial Data Management/Spatial Data Infrastructure (SDI)** - The lack of a framework on Geospatial Data Management/Spatial Data Infrastructure has made the

acquisition of datasets in the different units difficult considering that Spatial Data Infrastructure (SDI) relies on County Geospatial Information System (GIS) for its implementation.

6. Separation of powers between the National Government and County Governments in respect to surveying.

Good governance is the backbone of surveying. However, the failure to separate powers as above demonstrated has caused non-adherence to Chapter 6 of the COK. This has brought about interference and delay in implementation of some of the laws, regulations and tasks in surveying and as a consequence, the County Government cannot carry out their mandate in surveying.

Even though the Fourth Schedule of the COK provides for the distribution of functions between the National Government and the County Governments, a clear separation of roles in and land surveying and mapping has been provided under Article (8) (b) of the COK.

The National Government at the national level is yet to come up with framework to which extent both the National Government and County Government work without interfering with each Government's mandate. This has greatly interfered with majority of tasks done at the County level with reference to land surveying and mapping.

The County Government of Nyeri is thus through this policy coming up with a framework to bridge the gap in the department of survey to enable efficient and effective running of the entire Directorate of Survey within Nyeri County.

County Governments are required to have reliable sources of revenue that will enable them to deliver services effectively. However, that is not made possible when the National Government under the Survey of Kenya undertakes majority if not all of the activities under the Directorate of Survey in Nyeri County.

7. Finances and Human Resource.

In the past, the Directorate of Survey has been experiencing difficulties while carrying out its mandate due to inadequate budgetary allocation which has thus has great impact on its mandate.

In essence, inadequate budgetary allocation translates to inadequate technical staff and man power within the directorate. This thus would automatically translate into poor or below standard services to the people of the County Government of Nyeri.

1.3 Geographical description.

Nyeri County Government is located in the Central region of the Country. It covers an area of about 3,337 square kilometers.

Nyeri County shares its borders with five other counties; Kirinyaga to the East, Nyandarua to the West, Muranga to the South, Laikipia to the North and Meru to the North East. The County is divided into 6 Constituencies, 8 administrative sub-counties and 30 wards. Further, the County has 21 divisions, 69 locations and 256 sub locations constituting the administrative sub-units of the National Government.

The eight administrative sub counties include; Kieni East, Kieni West, Mathira East, Mathira West, Nyeri Central, Mukurwe-ini, Tetu and Nyeri South Kieni East Sub County is the largest with a land size of 817.1 square kilometers while Mathira East is the smallest with an area of 131 square kilometers. Mathira East has got the highest number of locations and sub locations while Nyeri Town has got the least.

The topography is often characterized by steep ridges and valleys. The Northern part of the District is flat, whereas further Southwards and Western, the topography is characterized by steep ridges and valleys, occasionally interrupted by hills such as Karima, Nyeri and Tumu tumu.

The County has a total area of 987.5 Km² and 758.5 Km² of arable and non-arable land respectively.

1.4 Purpose and Scope.

The Policy will lay out principles and guiding values related to equitable access, secure land rights, access to land information, transparent and good democratic governance of land in accordance with Article 10 of the COK.

The Policy aims to address the numerous factors that affect and challenges the activities involved in surveying which include Geographic and Ecological features, Population Distribution, Social, Historical, Cultural and Economic factors. Other key factors are Administrative, Institutional and Policy Instruments, Investment, Urbanization and Land tenure.

1.5 Objectives of the Policy.

The overall goal of the Survey Policy is to provide Legal, Administrative and Institutional framework for optimal utilization and productivity of land related resources in Nyeri County. This can only be possible through a strict following of all existing and binding laws and the provisions and the spirit of this policy.

The policy will provide:

1. Efficient and effective utilization of land and land-based resources;
2. Efficient and transparent land dispute resolution mechanisms.
3. Secure land ownership.
4. Effective regulation of land development.
5. Sustainable land use.

6. Access to land information and effective records management and retrieval.
7. Transparent and democratic administration of land.
8. Clear articulation of roles in line with the devolved functions.

1.6 Policy development process.

Policies are sets of measures that are put in place with the aim of guiding future development. The policy will seek to address the gaps and challenges that have affected the proper and effective working of the survey department in the County. It will also help in the control of order, nature and direction of development patterns on land. The policy will lay an institutional framework that will support effective functioning of the survey department by addressing the needs, challenges and proposed strategies.

The process will involve engagement of the relevant stakeholders through public participation. The participants include representatives from the general public, professional bodies, Government institutions among others.

After synthesis of the stakeholder's views, a cabinet paper is prepared by the CECM on the policy to facilitate discussion and adoption by the County executive committee. On adoption the policy is then forwarded to the County assembly for approval. On approval it is forwarded to the department for implementation as a sessional paper.

1.7 Linkage with stakeholders

The County Government and the Department of Lands, Housing, Physical Planning and Urbanization will continue to play the lead role in formulating strategic plans to implement this policy, building partnerships among stakeholders and ensuring controlled development and land use. In addition, the County Government is committed to playing a key role in the participatory partnership with investors has been invaluable and the County Government will continue to encourage this collaboration and partnerships for the purposes of realizing synergies, providing linkages, promoting trust goodwill and ownership among all stakeholders.

CHAPTER TWO: POLICY GUIDELINES AND WAY FORWARD

2.1 Overview

In response to the issues raised in the earlier chapters, the following policy guidelines and strategies have been identified to ease the immediate long-term operations of the County Government of Nyeri in respect to surveying of land within the County.

It must be restated at this point that this policy has and is limited to the extent of the existing one-sided laws which clearly favour the National Government in respect to Surveying. The policies are as hereunder;

2.2 Proposed Principles and Values (policies)

i: To establish a Geographical Information System.

The County Government of Nyeri ought to come up with a one stop shop where all Geographical, surveying, boundaries and other related information can be stored. The storage may be either manual, digital or a combination of both.

These records would easily assist the Government and its inhabitants in easing identification of problems and easing resolutions of the same.

The information may be manned through establishment of a sub-office within the Directorate of Surveying. The implementation ought to be achieved through guideline (2) and (3) below.

Strategies

- To enable the County to keep track of the existing zones and it may also other zones that the County may deem necessary.

ii: To mobilize resources to develop survey framework.

As a Department Surveying is quite Central in the development of a County. All efforts must be made to make it financially independent. The strategies and proposals are;

- Lobby for increased budgetary allocation.
- Providing the means of achieving the key elements of the Survey Policy.

iii: To build capacity on survey in the County

Strategies

- Recruit skilled personnel.
- Provide relevant training to staff to equip them with adequate skills and enhance use of technology.
- Develop development application tools and automate the approval process.
- Sensitize the members of the public on the need to comply with the law.

2.3 Legal Framework.

The County Government of Nyeri ought to lobby for efficient harmonized and cost-effective legal environment on surveying within the County. This may be achieved through the following values and principles;

1. Efficient and sustainable survey within the County.
2. Integrity and adherence to the rule of law.
3. Amicable resolution of land conflicts.
4. Access to land information.
5. Order and harmony in surveying.
6. Equity, inclusivity and transparency in decision making.

a) Constitutional Provisions

The policy is anchored on Article 186 (1) of the COK (2010), and the resultant Fourth Schedule (Part 2, Section 8) which provides for County Planning and Development which includes:

- a) Statistics;
- b) Land Survey and mapping;
- c) Boundaries and fencing;
- d) Housing; and
- e) Electricity and gas reticulation and energy regulation.

The following legal and regulatory frameworks may be referred to in conjunction with the COK on matters of Surveying:

- The County Government Act, 2012
- Survey Act, Cap 299
- The Land Registration Act, 2012
- The Land Act, 2012
- National Land Commission Act, 2012
- The Sectional Proprieties Act No. 21 of 1987
- The Community Land Act, 2016
- The Building Surveyors Act, 2018
- The Physical and Land Use Planning Act, 2019
- Environmental Management and Coordination Act, Cap 387
- The Public Finance Management Act.
- Urban Areas and Cities Act, 2011
- The Nyeri County Revenue Administration Act, 2014
- The Nyeri County Tax Waivers Administration Act, 2014
- The Nyeri County Finance Act, 2018

The above will be guided by the Nyeri County Finance Act for the time being in force.

2.4 Sessional Papers

The Nyeri County Survey policy is geared towards the improvement of the land administration and land rights delivery processes to enable majority of the Kenyans living in Nyeri to access land

and put such land into productive economic activities. These general principles have in the past been the subject of Sessional Papers which ought to be a source of guidance to the Directorate of Surveying within the County. They are as follows;

- (a) **The Sessional Paper Number 3 of 2009 on the National Land Policy:** The purpose of the National Land Policy is to guide the country towards sustainable and equitable use of land for prosperity and posterity. The policy also recognizes the processes of land surveying and mapping as integral to an efficient.

The policy provides for an overall framework that defines the key measures required to address the critical issues of land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, the legal framework, institutional framework and information management.

- (b) **The Sessional Paper, No. 1 of 2017 on National Land Use Policy:** The goal of the national land use policy is to provide legal, administrative, institutional and technological framework for optimal utilization and productivity of land related resources in a sustainable and desirable manner at national, County and community levels.

The Policy is premised on the philosophy of economic productivity, social responsibility, environmental sustainability and cultural conservation. Key principles informing it include efficiency, access to land use information, equity, elimination of discrimination and public benefit sharing. The Policy is cognizant of numerous factors that affect land use in Kenya which include geographic and ecological features, population distribution, social, historical, cultural and economic factors. Other key factors are administrative, institutional and policy instruments, investment, urbanization and land tenure.

- (c) **Harmonization of laws with neighbors**

The County Government of Nyeri ought to make deliberate effort of;

- (i) Familiarizing itself with laws and policies of neighboring counties.
- (ii) Learning the governing principles and policies on agriculture, water, tourism in respect to its neighbor which in effect influences the Survey operations within the County.

2.5 Institutional Framework.

The implementation of the survey policy will require a well-coordinated institutional framework in collaboration with the following County departments and state agencies inter alia;

- County Public Service Board
- Finance Department
- Agriculture Department
- Public Administration
- National Environmental Management Authority
- National Construction Authority (NCA)
- National Land Commission (NLC)

- National Department of Lands and Physical Planning
- Kenya National Highways Authority (KENHA)
- Kenya Rural Roads Authority (KERRA)
- Kenya Urban Roads Authority (KURA)

It is recommended that the above County Departments as well as State Agencies work harmoniously and in consultation with each other prior to any implementation and or projects. This harmony would translate to good service delivery devoid of any unnecessary court challenges that would normally delay implementation of otherwise good survey decisions.

Further, these departments and agencies would ensure that land designated for specific functions and or roles is specifically utilized for that purpose where the agencies would support each other in seeing to it the full implementation of the decisions.

2.6 Summarized policy recommendations

This Survey policy was majorly based on the Survey Act (CAP 299) of the Laws of Kenya but bearing in mind that there is currently in parliament the Survey Bill, 2020 and which if enacted will impact the Survey Policy as it is now. This policy recommends the following solutions which will seek to cure challenges faced at the County level. They include;

1. Introduction of the County Survey Office, which will be an office in the County public service. Currently there is only the office of Director General who handles all matters pertaining survey.

With devolution as envisaged under, Article 186(1) of the Constitution of Kenya (2010) the introduction of this office helps cure the challenge of the National level failing to allow the Counties to carry out their function with regard to survey even after the separation of functions between the National Government and the County Government.

2. That the County Director of Surveys shall be made the adviser of the County Government on all matters relating to land surveying and may perform functions that may be conferred by this act.
3. The County Director of Surveys shall be able to come up with policies, procedures, standards on the performance of the County Director of Surveys and other surveyors at the County level.
4. The County Director of Surveys shall be made responsible for among other functions submission of reports on the status of the National and County boundaries to the Surveyor General and establishment of parcel-based County Geospatial Information System (GIS). This helps solve the challenge of County boundaries and maintaining of Geospatial Information System at the County level.
5. Land Surveying shall be carried out by County Director of Survey which is a clear depart from the current act which only recognizes either a Licensed Surveyor or a Government Surveyor.

6. That all land surveying and mapping activities carried out by the County Governments shall be carried out in accordance with the provisions of the law. Which should not be construed to mean control by the National Office, but should be treated as a cure for acrimony and confusion of using different coordinate reference systems by different counties.
7. There should be more budgetary allocation to the Directorate of Survey to enable the different departments under it to carry out their respective tasks.
8. There should be a clear framework on the extent to which the National Government may act on matters of survey at the County level and where the mandate of the County on survey stands without any interference from the National Government.
9. That the Directorate may bring all the Surveyors operating within the County to form a Nyeri Chapter of Surveyors caucus for ease of communications and operations.

CHAPTER THREE: MONITORING, EVALUATION, ACCOUNTABILITY & LEARNING. (MEAL SYSTEM)

For any policy proposals to work effectively, there ought to be effective monitoring, evaluation and strict accountability within the ranks of the offices and the officers within it. This policy, must be governed by **Chapter Six 6 of the COK** on Leadership and Integrity of state officers and specifically Article 75 provides that;

(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids--

(a) any conflict between personal interests and public or official duties;
(b) compromising any public or official interest in favour of a personal interest; or
(c) demeaning the office the officer holds.

(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2)--

(a) shall be subject to the applicable disciplinary procedure for the relevant office;
and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.

It is proposed that a proper hierarchy of powers within the directorate be clarified. At the same time, this ought to be a defined hierarchy of officers within the Directorate to enable proper accountability and effective monitors.

It is this policies recommendation that qualified staff professional fit for a specific job be employed. For this to be effective the provisions of specific National Government Laws governing behavior of the professionals e.g. The Survey Act, Advocates Act etc.

The implementation of the policy will include the institutions responsible to actualize the policy putting in place the required plans and mobilizing resources needed to effect the policy. The Directorate of Survey will be required to work together with the National, Regional and Local organizations on matters of mutual interest.

The MEAL system adopted for this policy will be designed to provide feedback to stakeholders to ensure accountability, transparency, facilitate appropriate decisions on future implementation and review of the policy to ensure that the input delivery, work schedules and target outputs are progressing according to the plan.

The County Government undertakes to periodically carry out MEAL activities at the various phases. This policy makes provisions for establishment of effective monitoring, evaluation,

research, learning and application to all programs. This policy stresses for an effective MEAL system which should also include:

- I. Regular review and assessment of the goals and strategic interventions.
- II. Sharing information with all relevant stakeholders.
- III. Dissemination of quarterly reports.
- IV. Implementation and review of County Integrated Development Plans, Annual Development Plans and annual work plan.

CHAPTER FOUR: POLICY REVIEW.

The Survey Policy is a living document which comprises an overall framework and set of principles to guide Sectoral, Legislative and Institutional reforms in Land Administration and Management.

The Policy will be reviewed after every 3 years to take into account emerging issues and development in the governance dynamics of survey in the country and as well as the County Developments.

CHAPTER FIVE: TRANSITION AND POLICY IMPLEMENTATION.

Legal Notice No. 16 of 2013 and Section 23 of the Transition to devolved Government Act, 2012 transferred functions to the County Government. Existing agencies and initiatives will remain in force and guidelines will be issued by implementing institutions as and when need arise to operationalize this policy.

5.1 EXCEPTION CLAUSE.

It is noteworthy that this policy guidelines will be implemented based on the Constitution and both National Governments laws and the Nyeri County Government enacted laws. These policies are mere guidelines that guide the direction and operationalization of the Directorate of Survey under the department of Lands, Housing, Physical Planning and Urbanization.