Paper laid by the Deputy Majority Whip on Thurs 23/3/2017.

Performance Audit Report of the Auditor-General

Waiting-time in Registration of Land Titles

Ministry of Lands, Housing and Urban Development

March 2014

I am pleased to publish and publicize this audit report that examines the registration of titles in land by the Ministry of Lands, Housing and Urban Development. My Office carried out the audit under the mandate conferred to me by the Public Audit Act, 2003. Section 29(1) of the Act mandates me to assess the economy, efficiency and effectiveness with which the Government, a state corporation or local authority uses its resources.

Performance audits together with financial and continuous audits form the three-pillar audit assurance framework that I have established to give focus to the varied and wide scope of audit work done by my Office. The framework is intended to provide high-level of assurance to stakeholders that public resources are not only disbursed, recorded and accounted for in the correct manner, but also that their use results in beneficial outcomes in the lives of Kenyans. Therefore, the main goal of our performance audits is to promote effective use of public resources and delivery to Kenyans of public services of outstanding quality.

The report shall be tabled in Parliament in accordance with Article 229(7) of the Constitution. I have submitted the original copy of the report to the Speaker of the National Assembly to table in Parliament. In addition, I have remitted copies of the report to the Cabinet Secretary for Lands, Housing and Urban Development and to the Principal Secretary at the Ministry.

EDWARD R O OUKO

AUDITOR-GENERAL

March 25 2013

KENAO	- Kenya National Audit Office
MOL	- Ministry of Lands
OAG	- Office of the Auditor General (KENAO)
RIM	- Registry Index Map
RLA	- Registration of Land Act
RTA	- Registration of Titles Act
SPRO	- Senior Plan Records Office
SFT	- Settlement Fund Trustee
DLASO	- District Land Adjudication and Settlement Officer
DOS	- Director of Survey
LAS	- Land Adjudication and Settlement

1. Executive Order No 2/2013 issued by the President of the Republic mandates the Ministry of Lands, Housing and Urban Development to provide land management services and develop and implement policies on housing and urban planning. Thus, the functions of the Ministry include land policy and physical planning, registration of lands, facilitation of land transactions, land survey and mapping, adjudication and settlement. Others are valuation and administration of state and trust lands and the development and maintenance of the national land management information system. Under land registration, the Ministry provides titles in land to those who purchase, transfer or acquire the asset for any legal consideration.

2. The Land Registration Act No. 3 of 2012 provides the framework under which the Ministry registers and issues titles in land. The need to register and issue the titles may arise, for example, when land previously held by the Government or entrusted to local communities is adjudicated for settlement under the Settlement Fund Trustee Program or under any other arrangement. In addition, whenever registered land is sub-divided or the ownership of such land legally changes hands from one party to another, new titles have to be registered to reflect the change.

3. Land may be registered as leasehold or freehold in urban areas; or as agricultural land in rural areas. Whichever the form of registration, the preceding statutory and administrative activities should be executed in a timely manner for the title is to be issued without delay. However, in Kenya, there have been persistent reports of delays or failure to complete land transactions due to various reasons, many of which relate to land registration activities carried out by the Ministry of Lands, Housing and Urban Development.

4. The objective of the audit was to assess the efficiency of the Ministry of Lands, Housing and Urban Development in registering titles in land. In particular, the audit examined the extent and causes of delay by the Ministry in registering and issuing titles in land.

5. The audit examined the system applied by the Ministry of Lands, Housing and Urban Development to register and issue titles to land. The focus of the audit was on the time taken to register and issue the titles and on the causes of any delays thereof. All forms of land registration including those arising from land adjudication, the Settlement Fund Trustee Programme, Government and Trust land allocations as well as transfers of freehold and leasehold lands were examined. The registration activities examined occurred or were pending between the 2006/07 and 2012/13 financial years.

6. In authorizing the audit, the Auditor-General considered the importance of land registration in facilitating social and economic development of the country and particularly that;

   i. registration of land guarantees ownership and security of tenure, serves as a basis for taxation of property and provides land owners with collateral useful in securing financial credit; and

   ii. minimizes disputes over ownership of land and facilitates the development and monitoring of land markets by enabling transfer and lease of the assets.

7. In addition, Kenya's long-term economic blue-print, the Kenya Vision 2030 document indicates that secure access to land contributes to social and economic development and guarantees tenure which builds confidence in citizens as well as investors. The document however notes that most land in Kenya has not been registered an anomaly that hinders citizens from asserting their rights over land.

8. Further, the Constitution of Kenya prescribes that land shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. On land administration, the Constitution requires that the resource be administered in an efficient manner and that land rights be secured. Therefore, the Executive, Parliament, citizens and other stakeholders of the Ministry of Lands, Housing and Urban Development expect the Ministry to fulfill its responsibilities on land administration by;

   i. facilitating access to the resource by citizens and investors;

   ii. promoting its sustainable use for national development and

   iii. guaranteeing security of tenure.

9. The audit revealed that the Ministry of Lands registers 71% of all land title applications within seven days of receiving the applications in instances where applicants submit all information and documents required by the Ministry.

10. However, the overall efficiency of the Ministry in facilitating registration of land was unsatisfactory. Delays in registering lands and issuing titles under the Settlement Fund Trustee Program, as well as in adjudications of Government and Trust lands were common and widespread. Occasional delays also occurred in registrations of leasehold and freehold lands whose ownership had changed hands through sale or other forms of transfer.

11. Delays under the Settlement Fund Trustee (SFT) Programme mainly occur because mandatory activities that precede the registration process are executed at a slow pace. For example, audit examination of a batch of discharge applications filed in Nairobi, Mombasa, Nakuru, Nyeri, and Kakamega district land registries by 652 settlers indicated that the Ministry had prepared only 178 (27%) discharges thus leaving 474 (73%) outstanding. Among the 474 outstanding applications, discharge certificates for 242(51%) persons had delayed for between seven and twelve months, and 132 (28%) had delayed for more than one year.

12. Other records of the Ministry sampled for the audit revealed that the Ministry's head office took an average of seven months to determine whether SFT settlers had repaid their loans in full. Further, responses on 41% of requests for information on outstanding loan balances sent by district land registries to the head office were received in the districts after long delays ranging from between one and six months. In some instances, relevant loan files were reported as missing. Additionally, some of the schemes were not registered in due time and as a result land parcels in the schemes could not be registered either.

13. Some of the delays had no plausible explanation. For example, the audit analysed a batch 118 requests for discharge certificates sent to the Ministry's head office by District Lands Adjudication and Settlement Officers but for which, no response had been received at the time of the audit. Out of the 118 requests, records at the head office indicated that enquiry files for 37 (31%) were not opened after the requests were received there.

14. Records held by the Ministry indicated that there were 485 settlement schemes in the country as at 19 April 2013 out of which, 383 measuring 1,076,265.4 hectares in area had been registered while the balance numbering 102 had not been registered. Approximately 291 (60%) of the 383 schemes were registered at least ten years after they were established while eight (8) of the 102 unregistered schemes were more than 40 years old.

15. Delays are also common in registering land under adjudication. The Strategic Plan of the Ministry of Lands for the period 2009-2012 notes that although adjudication in trust lands started before independence, only a third of such lands had been adjudicated. Among the main reasons for the delays is that appeals filed with the Minister for Lands by aggrieved parties take too long to be heard and determined. For example, records on the appeals indicated that there were 11,047 outstanding appeals as at 21 December 2009. Approximately three years later as at 30 April 2013, only 392 of the appeals had been determined leaving the balance of 10,655 pending. At the time of the audit, 58% of the sampled appeals on record had been outstanding for between 26 and 30 years. Also, the records indicated that on average, orders issued by the Minister on appeals took between two and six years to be implemented while the Director of Surveys took between two and three years to finalize maps for adjudicated areas. The data further revealed that 52% of the adjudication sections were completed after twenty or more years. The Ministry says that provincial administrators over whom it has no operational control delay the process because they take too long to make important decisions relating to the appeals.

16. Similarly transfers and issues of titles on registered lands occasionally take longer than expected before they are effected by the Ministry. The sample of records examined revealed that it takes the Ministry at least one week to issue land rent clearance certificates. The certificate is one among several documents that the Ministry demands from any party that wishes to transfer land. Similarly, valuations of parcels to determine the stamp duty payable often take long before they are done. For example, examination of a random sample of 2,005 cases at both the Ministry`s head office and in the district land registries revealed that valuations for 1,146 (57 %) of the cases were carried out within the 21-day period provided for in the Service Delivery Charter. Therefore, 43% of the valuations were delayed.

17. Likewise, the Ministry took long to verify most deed plans for lands due for sub-division. For example, in a batch of one hundred and seventy one (171) cases referred to the Surveys Department of the Ministry for verification, the average waiting time was one month. The delays ranged between ten days and 13 months. The Department attributed the delays to absence of proper records on land and delays in provision of transport services to staff assigned to survey and value plots due for registration.

18. Under all forms of land registration, the most common cause of delay in the registration process was the inability of the Ministry to access its own land records in a timely manner. The records are either not stored in an easily accessible format or are said to be missing or misplaced. A new computerized record management system procured by the Ministry failed to function as expected and thus only brought minimal improvement in the land records management system

19. The Ministry of Lands, Housing and Urban Development does not register and issue titles in land as fast as it has promised in its Service Delivery Charter document or as its stakeholders would expect. The delays occur because the activities that precede the registration are not executed in due time. Weaknesses in the land registration system deployed by the Ministry are the main causes of the delays. The record management systems used by the Ministry does not provide timely access to data that the Ministry's management require to process applications. In addition, co-ordination of land registration activities among its departments, and between the head office and its district offices is poor. Some of the delays are caused by unexplained failure by Officers to make decisions in time and/or take actions required to move the registration process forward. Liaison between the Ministry and the provincial administration and delayed Court cases complicate the problem further.

20. The delays hinder investors and citizens from accessing land for economic production and settlement. They, in addition, deny landowners security of tenure over land and therefore, discourage effective and sustainable use of the land for national development.

21. To improve efficiency in land registration activities, the Ministry should improve the effectiveness of its land records management system and ensure that its Departments co-ordinate the activities that precede the registration of titles in an efficient manner. The Ministry should, in addition, improve liaison with other Government Ministries that share responsibility on registration of land. Chapter 6 of this report outlines the specific recommendations that the Auditor-General has proposed to the Ministry following the audit.

22. The Accounting Officer has read the report and provided detailed comments on its findings and recommendations. In addition, the Accounting Officer has outlined several measures that the Ministry is taking to improve efficiency in registration of lands. The measures include converting land records into electronic format and procuring software to enhance management of records; decentralizing some registration activities to the districts; and enforcing the efficiency targets set in its Service Delivery Charter. In addition, the Ministry says it has sought to include district leaders in planning settlement schemes and strengthened district lands management committees. The comments of the Accounting Officer are outlined in Appendix VII of the report.

1.01 This audit report examines the efficiency of the system applied by the Ministry of Lands in registering titles in land. The audit was carried out as provided for in Section 29 of the Public Audit Act, 2003 and the report prepared for tabling in Parliament under Article 227(9) of the Constitution.

1.02 Ownership and management of land is a lingering challenge and source of much concern to all Kenyans. Indeed the Constitution enacted in the year 2010 includes a chapter on land management. The chapter defines the principles under which land shall be managed in Kenya and goes further to outline the forms of land ownership that shall apply in the country. All land in Kenya is defined as belonging to the people of Kenya collectively as a nation, as communities and as individuals. Article 60(1) states that land shall be held used and managed in an equitable, efficient, productive and sustainable manner in accordance with the following seven principles:

i. Equitable access to land;

ii. Security of land rights;

iii. Sustainable and productive management of land resources;

iv. Transparent and cost effective administration of land;

v. Sound conservation and protection of ecologically sensitive areas;

vi. Elimination of gender discrimination in law, customs and practices related to land and property in land; and

vii. Encouragement of communities to settle land disputes through recognizing local community initiatives consistent with the Constitution.

1.03 In view of the importance that matters relating to land have attained in Kenya, stakeholders expect authorities given responsibility for managing the national land resource to fulfill their responsibilities by facilitating access to land by citizens and investors, guaranteeing security of tenure and promoting sustainable use of the resource for national development. To attain these outcomes, one among the critical functions that the authorities would be expected to perform well is registration of titles to land.

1.04 The Auditor-General authorized the audit after having considered the following factors:

i. In addition to guaranteeing ownership and security of tenure, land registration serves as a basis for land property taxation, provides land owners with collateral useful in securing financial credit, minimizes land ownership disputes and facilitates development and monitoring of land markets by supporting transfers and leases.

ii. Land remains a contentious subject in Kenya and as such debates on land are emotive. As in any modern economy, the sanctity of property rights is an important pillar for investment and economic growth.

iii. Kenya's long-term economic plan, Kenya Vision 2030, asserts that secure access to land contributes to social and economic development and guarantees tenure which builds confidence in citizens as well as investors. The document however notes that most of the land in Kenya has not been registered, which anomaly hinders citizens from asserting their rights over land.

iv. The levels of public satisfaction with the quality of services delivered by the Ministry of Lands were reported to be quite low in a customer satisfaction survey report issued by the Ministry in June 2009. The overall rating of satisfaction of the Ministry's stakeholders with the services stood at only 42.2%. Therefore, a performance audit on the registration of titles to land by the Ministry would result in recommendations on ways in which the Ministry could improve the quality of services it delivers to the public.

3.01 The mandate of the Ministry of Lands, Housing and Urban Development is outlined in Executive Order No.2/2013 issued by the President of the Republic. The Order assigns the Ministry responsibility for managing the national land policy, physical planning, facilitation of land transactions, land adjudication and settlement and land registration and valuation. The Ministry is, in addition, responsible for land property valuation services, rural settlement planning, land reclamation, management of the national spatial data infrastructure, and management of the land information system and administration of public land as designated by the Constitution.

3.02 The strategic objectives of the Ministry of Lands are outlined in its 2009-2012 Strategic Plan and include the following;

i. to provide an appropriate policy and legal framework for land administration and management;

ii. to improve data capture, storage, access, and dissemination for effective and efficient management of land resource;

iii. to establish institutional structures that will ensure efficient management of land;

iv. to review and harmonize various laws governing land;

v. to meet increased demand for land services and enhance service delivery;

vi. to facilitate security of tenure by ascertaining and recording rights and interests on land; and

vii. to provide security of land tenure, facilitate land registration and access to land rights, and speed up land dispute resolution.

3.03 The Ministry of Lands, Housing and Urban development was re-organized into its current form following the election of a new government during the General Election held in March 2013. Previously and for most of the period this audit was underway, the Ministry dealt with land matters only and was therefore called the Ministry of Lands.

3.04 However, in its new form, the Ministry also manages national policy on housing and administers government buildings which two functions were previously managed by the defunct Ministry of Housing. In addition, the Ministry is responsible for urban development policy previously managed by the Ministry of Local Government which is also defunct.

3.05 The Ministry undertakes its responsibilities on land management through five Departments namely;

i) Administration and Planning;

ii) Department of Surveys;

iii) Department of Lands;

iv) Department of Land Adjudication and Settlement and

v) Physical Planning.

3.06 The organizational structure of the Ministry is illustrated in Appendix II of this report.

3.07 The Department of Lands registers titles and other documents, values land and undertakes all other functions of the Ministry on land administration. The functions entail management and custody of land records, preparation of titles, grants, leases, alienation of Government and Trust Land and resolution of land and boundary disputes.

3.08 The Department of Land Adjudication and Settlement is responsible for land consolidation and adjudication, management of the Settlement Fund Trustee Program and arbitration of land disputes. The Department of Survey publishes and maintains plans of property boundaries. It also prepares and maintains the Registry Index Maps (RIMS) and preliminary index diagrams that support registration of land.

3.09 Land administration is governed by various statutes which establish the processes to be followed in managing land. In addition to the statutes, the Ministry of Lands, Housing and Urban Development has developed its relevant administrative and managerial processes and procedures over time. Described here below are the land administration processes relevant to our audit:

3.10 The legal requirement to register land with the Ministry of Lands is provided for in the Land Registration Act No. 3 of 2012. The need to register land occurs, for example, when the Government allocates previously unregistered land to private parties. Registration here serves to recognize the transfer of land from the state to private parties. Registration may also occur when ownership of private land changes hands on sale from one party to another or for any other consideration. Such lands would previously have been registered with the

Ministry and the re-registration and issue of new titles merely recognizes the change of legal ownership from the transferor to the transferee. Under each of the two broad types of land registration, are the varying circumstances under which the Ministry registers and issues titles to and. The circumstances are explained in paragraphs 3.11 to 3.22 below.

3.11 In Kenya, land for settlement may be acquired through;

i. purchase of private land;

ii. setting apart of Trust Land for adjudication or;

iii. reservation of Government land.

3.12 Under private purchase, the Government provides funds to the Settlement Fund Trustee (S.F.T) to buy land for allocation to the landless. The selection of settlers and allocation of plots is done under procedures laid down by the SFT. Upon purchase the land is surveyed and demarcated into viable agricultural units. Each settler makes a down payment equivalent to 10% of the value of the land and is immediately loaned the balance (90%) by the SFT. The settler is expected to repay the loan within a period of 28 years at half-yearly instalments.

3.13 Each parcel assigned to a settler remains under the SFT until the oan is repaid whereupon a discharge-of-charge certificate and land transfer documents are prepared and issued by the SFT. The settler is only issued with the title-deed after presenting the discharge and transfer documents to the respective District Land Registry. The Surveys Department of the Ministry is responsible for mapping SFT schemes. In the event that the settler completes the repayment of the loan before the settlement scheme is title mapped and registered, the SFT issues the settler with a certificate of outright purchase to be held while awaiting the registration of the scheme.

3.14 Trust Land which has no title falls under one of the following two categories:

i. Unadjudicated Trust Land areas;

ii. Areas still undergoing consolidation or adjudication.

3.15 For land in unadjudicated Trust Land areas, titles are not issued until the respective land is consolidated or adjudicated and a certificate of finality issued by the Director of Land Adjudication and Settlement. The process of land adjudication is illustrated in Appendix III. The Director of Lands Adjudication and Settlement passes the following documents to the Chief Lands Registrar to enable the latter to issue the title:

i. A registry of owners of land in the respective area together with their related parcel numbers;

ii. The Registry Index Map (RIM) and;

iii. An area list showing the sizes of the parcels.

3.16 The Ministry allocates Government and Trust land plots to private parties through allotment letters. The letter indicates the name of the beneficiary, the size of plot allocated, its area and location and the terms and conditions of the allocation. After the beneficiary fulfils the terms and conditions of the allotment, the land-title is prepared dependent on whether the land has been surveyed or not as follows:

i. If the plot has not been surveyed previously, the Commissioner of Lands (C.O.L) requests the Director of Survey (D.O.S) to carry out the survey, or;

ii. If the plot is already surveyed, the C.O.L requests the D.O.S to supply the following documents as required under the Registration of Titles Act ;

- A deed plan for the title issued or;
- A Registry Index Map (RIM) together with an area list in respect of the plot .

3.17 After the receipt of either the deed plan or the RIM and area list as the case may be, the Commissioner of Lands prepares the grant or lease document based on the terms and conditions contained in the Letter of Allotment. After the lease document is signed by the Commissioner of Lands, it is forwarded to the appropriate Lands registry for registration and issue of the title to the plot:

3.18 To sell or transfer any parcel of land registered as a leasehold land, the leaseholder must first apply to the Commissioner of Lands for consent. If the plot includes any developed structure, and there are no rents and rates outstanding, the consent is granted right away. The consent is not granted if the beneficiary has not developed the plot or is in breach of any of the conditions of the lease.

3.19 After the Commissioner grants authority for sale of the plot, the owner proceeds to prepare and execute the transfer documents which are presented to the Registrar for registration upon payment of stamp duty and registration fee. When presenting the transfer document for registration, the applicant is required to submit the following additional documents to the Ministry:

i. Land Rent Clearance Certificate from the Commissioner of Lands;

ii. Clearance Certificates on rates and other charges from the local authority ;

iii. Letter of consent from the Commissioner of lands;

iv. Stamp Duty valuation forms from the Registrar duly completed by the land owner;

v. An advocate's letter of professional undertaking to pay additional stamp duty if the property has not been valued;

vi. The current leasehold title.

3.20 Freehold land is not subject to special conditions. Therefore, owners of such lands do not require consent of the Commissioner of Lands before they sell, transfer or accept charges or mortgages. They are only required to present the transfer documents together with the following certificates to the Registrar:

The Title Deed;

i. Stamp duty valuation forms from the registrar duly completed by the owner in case of sale/transfer;

ii. The applicant's Attorney letter of professional undertaking to pay additional stamp duty in case of sale/transfer;

iv. The Rates Clearance Certificate from local authority.

3.21 The consent to sell, transfer and to charge or mortgage agricultural land outside urban areas is granted by the respective Land Control Boards. After consent has been granted by the respective Board, the process of registering the documents follows the same procedure as those outlined under freehold land in urban areas.

3.22 The Ministry of Lands, Housing and Urban Development is funded by the Government through appropriations made by Parliament. The table below shows gross expenditure estimates for the Ministry between the 2006/07 and 2009/2010 financial years:

Financial Year	Gross Recurrent Estimates	Gross Development Estimates	Gross Total Estimates
2006/2007	1,702,970,928	361,670,000	2,064,640,928
2007/2008	1,647,177,544	1,842,497,780	3,439,675,324
2008/2009	1,659,001,684	649,035,000	2,308,036,684
2009/2010	1,756,252,464	860,000,000	2,616,252,464

Chapter 4

Findings of the Audit

The Ministry registers and issues titles to land without delay in most instances where all documents required to support applications are submited together with the applications

4.01 The audit revealed that the Ministry registers and issues land titles efficiently in most instances where relevant supporting documents accompany the applications. Analysis of a sample of 265 titles registered in various district land offices found that 71.3% of the applications that had the requisite supporting documents were finalized within seven days of submission as shown in Table 2 below:

Table 2: Registration of Titles

Time Period	Within 7 days	8-30 Days	31-180 Days	Over 180 Days	Total
No. of cases	189	42	23	11	265
%	71.3	15.8	8.7	4.2	100

Source: OAG Analysis of MOL data

The MOL processes within seven days the majority, 71% of the applications that had the requisite supporting documents.

However processes for auditing supporting documents take inordinately long before they are completed.

4.02 Samples and batches of applications examined during the audit revealed that long delays in preparing documents required for registration of plots under the Settlement Fund Trustee Schemes and adjudicated lands were common and widespread. Occasional delays were also noted in registrations of titles for leasehold and freehold lands transferred from one owner to another on sale or other consideration.

4.03 As a result of delays by the Ministry in registering lands and issuing the legal documents, applicants take long to gather all the supporting evidence that the Ministry requires before it accepts applications for land registration. Inevitably, the registration process takes longer to complete than it should.

4.04 The remainder of the findings of the report discuss the extent and causes of delays in registering lands under the respective forms of tenure administered by the Ministry:

4.05 After a settler under the SFT programme pays back the whole balance of the land-purchase loan in full, the SFT Section of the Ministry prepares a discharge- of-charge certificate as well as documents to transfer ownership of the land from the Trust to the settler. The set of documents enables the Lands Registrar to register the land and issue a title deed in the name of the settler. The Ministry, in its Service Delivery Charter, states that it shall prepare a discharge-of-charge certificate as well as transfer documents within 15 days of the repayment of each SFT loan.

4.06 To assess how long the Ministry takes to discharge land charges under the SFT Programme, the audit sampled a total of 652 case files of fully repaid loans drawn from Nyeri, Mombasa, Nakuru, Kakamega and Nairobi district registries. Out of the 652 cases, discharges had been prepared for only 178 (27.3%) thus leaving 474 (72.7%) outstanding. Among the 474 outstanding applications, discharge certificates for 242 (51.0%) had between seven and twelve months delay and 132 (28%) had more than one year delay as shown in the following table:

Table 3: The Ages Pending Discharge of Charge Cases Sampled in 2007

	Age (Waiting-time)					
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nyeri	0	0	0	3	26	29
Mombasa	0	22	50	233	95	400
Nairobi	5	3	20	6	11	45
Total	5	25	70	242	132	474
Percentage	1%	5%	15%	51%	28%	100%

3.16 The Ministry allocates Government and Trust land plots to private parties through allotment letters. The letter indicates the name of the beneficiary, the size of plot allocated, its area and location and the terms and conditions of the allocation. After the beneficiary fulfils the terms and conditions of the allotment, the land-title is prepared dependent on whether the land has been surveyed or not as follows:

i. If the plot has not been surveyed previously, the Commissioner of Lands (C.O.L) requests the Director of Survey (D.O.S) to carry out the survey, or;

ii. If the plot is already surveyed, the C.O.L requests the D.O.S to supply the following documents as required under the Registration of Titles Act ;

- A deed plan for the title issued or;
- A Registry Index Map (RIM) together with an area list in respect of the plot .

3.17 After the receipt of either the deed plan or the RIM and area list as the case may be, the Commissioner of Lands prepares the grant or lease document based on the terms and conditions contained in the Letter of Allotment. After the lease document is signed by the Commissioner of Lands, it is forwarded to the appropriate Lands registry for registration and issue of the title to the plot:

3.18 To sell or transfer any parcel of land registered as a leasehold land, the leaseholder must first apply to the Commissioner of Lands for consent. If the plot includes any developed structure, and there are no rents and rates outstanding, the consent is granted right away. The consent is not granted if the beneficiary has not developed the plot or is in breach of any of the conditions of the lease.

3.19 After the Commissioner grants authority for sale of the plot, the owner proceeds to prepare and execute the transfer documents which are presented to the Registrar for registration upon payment of stamp duty and registration fee. When presenting the transfer document for registration, the applicant is required to submit the following additional documents to the Ministry:

i. Land Rent Clearance Certificate from the Commissioner of Lands;

ii. Clearance Certificates on rates and other charges from the local authority ;

iii. Letter of consent from the Commissioner of lands;

iv. Stamp Duty valuation forms from the Registrar duly completed by the land owner;

v. An advocate's letter of professional undertaking to pay additional stamp duty if the property has not been valued;

vi. The current leasehold title.

3.20 Freehold land is not subject to special conditions. Therefore, owners of such lands do not require consent of the Commissioner of Lands before they sell, transfer or accept charges or mortgages. They are only required to present the transfer documents together with the following certificates to the Registrar:

i. The Title Deed;

ii. Stamp duty valuation forms from the registrar duly completed by the owner in case of sale/transfer;

iii. The applicant's Attorney letter of professional undertaking to pay additional stamp duty in case of sale/transfer;

iv. The Rates Clearance Certificate from local authority.

Agricultural lands outside urban areas

3.21 The consent to sell, transfer and to charge or mortgage agricultural land outside urban areas is granted by the respective Land Control Boards. After consent has been granted by the respective Board, the process of registering the documents follows the same procedure as those outlined under freehold land in urban areas.

Sources of Funds for the Ministry of Lands

3.22 The Ministry of Lands, Housing and Urban Development is funded by the Government through appropriations made by Parliament. The table below shows gross expenditure estimates for the Ministry between the 2006/07 and 2009/2010 financial years.

Financial Year	Gross Recurrent Estimates	Gross Development Estimates	Gross Total Estimates
2006/2007	1,702,970,928	361,670,000	2,064,640,928
2007/2008	1,647,177,544	1,842,497,780	3,489,675,324
2008/2009	1,659,001,684	649,035,000	2,308,036,684
2009/2010	1,756,252,464	860,000,000	2,616,252,464

Chapter 4

Findings of the Audit

The Ministry registers and issues titles to land without delay in most instances where all documents required to support applications are submitted together with the applications

4.01 The audit revealed that the Ministry registers and issues land titles efficiently in most instances where relevant supporting documents accompany the applications. Analysis of a sample of 265 titles registered in various district land offices found that 71.3% of the applications that had the requisite supporting documents were finalized within seven days of submission as shown in Table 2 below:

Table 2: Registration of Titles

Time Period	Within 7 days	8-30 Days	31-180 Days	Over 180 Days	Total
No. of cases	189	42	23	11	265
%	71.3	15.8	8.7	4.2	100

Source: OAG Analysis of MCL data

The MCL processes within seven days the majority (71.3%) of the 265 titles that have the requisite supporting documents

However processes for acquiring supporting documents take unordinately long before they are completed

4.02 Samples and batches of applications examined during the audit revealed that long delays in preparing documents required for registration of plots under the Settlement Fund Trustee Schemes and adjudicated lands were common and widespread. Occasional delays were also noted in registrations of titles for leasehold and freehold lands transferred from one owner to another on sale or other consideration.

4.03 As a result of delays by the Ministry in registering lands and issuing the legal documents, applicants take long to gather all the supporting evidence that the Ministry requires before it accepts applications for land registration. Inevitably, the registration process takes longer to complete than it should.

4.04 The remainder of the findings of the report discuss the extent and causes of delays in registering lands under the respective forms of tenure administered by the Ministry:

4.05 After a settler under the SFT programme pays back the whole balance of the land-purchase loan in full, the SFT Section of the Ministry prepares a discharge- of-charge certificate as well as documents to transfer ownership of the land from the Trust to the settler. The set of documents enables the Lands Registrar to register the and and issue a title deed in the name of the settler. The Ministry, in its Service Delivery Charter, states that it shall prepare a discharge-of-charge certificate as well as transfer documents within 15 days of the repayment of each SFT loan.

4.06 To assess how long the Ministry takes to discharge land charges under the SFT Programme, the audit sampled a total of 652 case files of fully repaid loans drawn from Nyeri, Mombasa, Nakuru, Kakamega and Nairobi district registries. Out of the 652 cases, discharges had been prepared for only 178 (27.3%) thus leaving 474 (72.7%) outstanding. Among the 474 outstanding applications, discharge certificates for 242 (51.0%) had between seven and twelve months delay and 132 (28%) had more than one year delay as shown in the following table:

Table 1: The Ages Pending Discharge of Charge Cases Sampled in the Audit

	Age (Waiting time)					
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nyeri	0	0	0	3	26	29
Mombasa	0	22	50	233	95	400
Nairobi	5	3	20	6	11	45
Total	5	25	70	242	132	474
Percentage	1%	5%	15%	51%	28%	100%

4.07 All the 178 discharge certificates were prepared after the lapse of the 15-day waiting period promised in the Ministry's Service Delivery Charter. Further, 74.2% of the discharges were processed after one or more years as shown in the following table:

Table 4: Waiting time for Discharge of Charge Certificates in Select Stations

District	Waiting-time					Total No. of Months
	Within 15 days	Between 15-30 days	Between 1-6 Months	Between 7-12 Months	Over 12 Months	
Nyeri	0	0	1	1	17	19
Mombasa	0	0	4	20	80	104
Nakuru	0	0	7	3	12	22
Kakamega	0	0	3	7	23	33
Total	0	0	15	31	132	178
Percentage	0%	0%	8.4%	17.4%	74.2%	100%

Source: OAG analysis of MOL data
The Ministry took more than one year to process 74.2% of discharge of charge requests

4.08 Further, the Ministry did not know the actual number of un-discharged SFT plots but estimated these to be in excess of 5,000. The audit team further analysed a batch 130 applications with a view to assess the points at which bottlenecks in the system were located. The team found that 97 (74.62%) cases had been held-up for over 100 days in the Accounts Section with some having stayed there for more than two years. Similarly, 42 applications (32.31%) delayed for over 100 days in the Estate Manager's office. The Estate Managers' office verifies the legality of land transfer documents in addition to other of its functions.

4.09 However, there were minimal delays at the Deputy Director's office with 59 % of the files in the sampled having been processed within 10 days of receipt at the Office. Further, 40% and 70% of the discharges were processed within one day at the Director's and the Permanent Secretary's office respectively. The following

table provides a detailed analysis of durations over which files sampled were processed in various sections of the Ministry:

	Between 0-10 days	Between 11-20 days	Between 21-50 days	Between 51-100 days	Over 100 days	Totals
Chief Accountant	2	6	19	6	97	130
Internal Auditor	93	5	4	26	2	130
Estate Manager	26	16	39	7	42	130
Deputy Director LAS	77	25	15	10	3	130
Director LAS	101	29	0	0	0	130
Permanent Secretary	125	0	2	1	2	130

4.10 The Ministry requires settlers under the SFT programme to pay back their respective loans in full before they apply for the discharge-of-charge certificates. Settlers willing to clear their loans are required to request for loan balance statements through their respective District Lands Officers. The officers are expected to obtain the information from the Ministry's heac office in Nairobi.

4.11 An analysis of 88 requests received at the Ministry's head office from district land offices in various parts of the country revealed that in 41% of the cases, the appropriate feedback from the head office was received one to six months upon requests. The Ministry attributed the delays to difficulties in retrieving information from the record-storage system used in the Accounts Section. An analysis of the delays relating to the 88 cases is shown below:

Time Taken To Process Final Loan Balance Statements						
	Waiting-time					
District	Between 0-15 days	Between 15-30 days	Between 1-6 Months	Between 7-12 Months	Over 1 Year	Total
Nyeri	2	1	10	4	19	36
Kisumu	1	3	3	0	2	9
Nakuru	2	0	2	2	5	11
Kakamega	1	1	21	3	6	32
Total	6	5	36	9	32	88
Percentage	6.8%	5.7%	41%	10.2%	36.4%	100%

Source: OAG Analysis of MOL Data

41% of requests for loan balance statements took between one and six months to get a response from the ministry

4.12 In addition, the audit analysed 118 requests for discharge-of-charge certificates sent to the Ministry's head office by District Lands Adjudication and Settlement Officers but for which no response had been received at the time of the audit. Records at the head office indicated action had only been taken on 47 of the 118 requests. No enquiry file had been opened on an additional 37 (31%) of the requests as the Ministry's procedures demand pointing to the likelihood that no action had been taken on the requests. Files relating to the balance of 34 (29%) requests were said to be 'missing'. Further, although, 16 (14%) of the 118 had already been discharged, the records in the districts they emanated from indicated that they had not been discharged at the time of the audit. The discrepancy suggested that communication and the co-ordination of work between the head office and district land offices was poor. The detailed analysis of the 118 cases is shown in the following table :

Status	No. of Cases	Percentage
File not opened	37	31%
File not found/provided	34	29%
Chief Accountant	13	11%
Not discharged but not in accounts	18	15%
Discharged	16	14%
Total	118	100%

4.13 After the request for a certificate-of-discharge is received at the Ministry's head-office, the Director of Adjudication and Settlement remits the application to the Accounts Section to confirm whether the applicant has paid the loan balance in full. An analysis of 128 cases forwarded to the Accounts Section revealed that 69% of the files had stayed in the Section for over seven months. The Ministry attributed the delays to the inadequacy of the records it maintains on the loans. At the time of the audit, an electronic SFT billing system purchased and installed by the Ministry in the year 2007 had not been fed with loan balances in existence before its purchase. The system could thus only extract loan balances outstanding as at the end of 2007. Besides, the system could not capture repayments made by settlers at district land offices. Further, the increase in the quantity of SFT data over time has reportedly overwhelmed the current system which runs on a database software platform of limited capacity. An analysis of the time taken to verify balances on the 128 cases is as shown in the following table:

Verification of Balances at the Accounts Department		
Duration	Number	Percentage
Within 15 days	0	0
Between 15-30 days	0	0
Between 1-6 months	40	31.3
Between 7-12 months	47	36.7
Over 1 year	41	32.0
Totals	128	100

Source: OAG Analysis of MOL data
68.7% of the cases had delayed in the Account Section for over six months

4.14 In July 2009, the Ministry procured a Sequential Query Language (SQL) database server but data on the SFT had not been captured into the new system at the time of the audit. Records held by the Ministry indicated that the delay in capturing the data into the new system was caused by failure by the Ministry to buy two critical software packages that would have enhanced the utility of the system.

Failure to register Settlement Schemes in due time

4.15 The Ministry of Lands only prepares discharge-of-charge certificates and transfer documents after the respective settlement scheme is title mapped and registered and the respective loan paid back in full. In the event that a settler clears the loan in a settlement scheme that has not been title-mapped and registered, the SFT issues the settler with a certificate of outright purchase while awaiting the registration of the scheme.

4.16 Records held by the Ministry indicated that there were 485 settlement schemes in the country as at 19 April 2013 out of which 383 measuring 1,076,265.4 hectares in area had been registered while the balance numbering 102 had not been registered. The distribution of registered and unregistered settlement schemes in each province is shown in the following table:

Provinces	Coast	Eastern	Central	Rift Valley	Western	Nyanza	Total
No of Registered schemes	69	29	80	164	22	19	383
No of unregistered schemes	48	24	11	15	1	3	102
Total	117	53	91	179	23	22	485

4.17 Analysis of the 383 registered settlement schemes indicated that 54 schemes were registered during the period 2006/2007 to April 2013. Analysis of 96 unregistered schemes as at 19 April 2013 indicated that 44 had remained unregistered for between eleven and twenty years. Eight schemes included in the balance of 96 had remained unregistered for more than 40 years as shown in the following table:

Years the Schemes have remained unregistered	No of schemes	Percentage
0-5 Years	29	30.2 %
6- 10 Years	10	10.4%
11-20 Years	44	46.00%
21-30 Years	2	2.00%
31-40 Years	3	3.10%
Above 40 Years	8	8.30%
	96	100%

4.18 The records further indicated that 92 settlement schemes were at various stages of registration as at 19 April 2013. As shown below, the majority of the schemes were at the mapping stage:

Table 11: Status of Unregistered Settlement Schemes as at 19 April 2013

Status of Unregistered Schemes		No. of Schemes	Percentage
Maps with Chief Land Registrar for registration		10	10.87%
Maps with Director of Land Adjudication & Settlement	Title Mapping	4	4.35%
Maps with Director of Surveys	and Survey	12	13.04%
Maps with District Land Adjudication and Settlement Officers	Work Process	21	22.82%
Maps with District/Provincial Surveyors		36	39.13%
Survey work done/ongoing		1	1.09%
Surrender/ de-gazettement of land not finalized		8	8.7%
Totals		92	100

Source: OAG Analysis of MOL data
Approximately 76% of unregistered schemes were at the mapping stage as at 19 April 2013

Delays in the Adjudication Process

4.19 Examination of records on adjudication areas identified by the Ministry revealed prolonged delays in completing the processes required before plots of land under the schemes are registered:

Delays in Issuing Certificate of Finality

4.20 The statutory process for adjudication of land begins when the Minister declares a given land location as an adjudication area and publishes a public notice defining the boundaries of the area. The process ends with the issue of the Certificate of Finality. Parcels of land within the declared area can only be registered and titles issued after the adjudication exercise is completed and a Certificate of Finality issued by the Director of Land Adjudication and Settlement.

4.21 Review of adjudication records indicated that 2,119,658 parcels measuring 8,690,536.59 hectares had been registered as at 19 April 2013 as shown in Appendix IV of this report. The records further indicated that 256 sections were undergoing adjudication as at 15 March 2013. The geographical distribution of the 256 sections is shown in the following table:

Region	Eastern	Rift Valley	Nyanza	Coast	Western	Total
No. of sections	117	64	39	34	2	256
%	45.7%	25%	15.2%	13.3%	0.8%	100

4.22 The records further indicated that the 256 on-going adjudication sections were at various stages of completion as at 15 March 2013. Analysis of the sections indicated that 89 (34.8%) were at demarcation and survey stages, 55 (21.5%) were at hearing and implementation of Land Adjudication Officers decisions or hearing and implementation of objections, 52 (20.3%) were with the Director of Survey, 56 (21.9%) were at other stages of adjudication while work had not commenced on 4 (1.6%) sections.

4.23 Our further examination of the 256 sections indicated that 81.6% were past the three-and-a-half year time-frame for completion of adjudication work as defined in the Ministry's Service Delivery Charter. A detailed analysis showing the delays as at 15 March 2013 is shown in the following table:

Duration	0-3.6 Years	3.6-10 Years	11-20 Years	21-30 Years	31-40 Years	Above 41 Years	Total
Number	47	37	48	71	27	26	256
Ratio	18.4%	14.5%	18.8%	27.7%	10.5%	10.1%	100%

Source: OAG Analysis of MOL data
About 8[illegible]% of the on-going adjudication sections as at [illegible] March 20[illegible] have passed their due dates of completion

4.24 The target of the Department of Land Adjudication and Settlement is to complete each land adjudication project within three-and-a half years of its initiation. However, our analysis of 189 adjudication sections finalized between 1 July 2006 and 19 April 2013 indicated that the adjudication processes exceeded the target completion period in 178 (94%) of the sections. In 48 (25%) of the 189 Sections (23%) the process had taken over 30 years to complete. The cases are analysed in the following table:

Table 14: Time taken to Complete Sampled Adjudication Cases

Duration	Within 4 Yrs	Between 5 & 10 Yrs	Between 11 & 20 Yrs	Between 21 & 30 Yrs	Above 30	Total
Number	12	22	56	51	48	189
%	6.3%	12%	30%	27%	25%	100%

Source: OAG Analysis of MOL data
Approximately 52% of [illegible] adjudication [illegible] were completed [illegible] years after they were [illegible]

4.25 Audit review of the adjudications completed during the six-year-period between the 2006/2007 and 2011/2012 financial years revealed that the Ministry finalised about 30 sections in each of the financial years. At this pace, it would have taken the Ministry more than eight years to finalise the 256 sections under adjudication at the time of the audit. The period could be longer were adjudication to be carried out in all areas of the country. There are 131 sections of the country where adjudication has not been declared not to mention many other areas where the process has not even commenced.

Pending Delays in Finalizing Appeal Cases Filed with the Ministry			
Duration	Between 20 & 25 Years	Between 26 & 30 Years	Total
Number of cases	13	18	31
Ratio	42%	58%	100%

4.31 Upon determination and conclusion of the appeals, the Minister through the Chief Lands Registrar, issues orders on implementation of the decisions of the District Committees. District Lands Registrars are required to implement the orders of the Minister. However, the audit revealed that delays in implementing the Minister's orders were common as 50 (60%) out of 84 orders took between two and six years to implement. The analysis of the 84 cases is shown in the following table:

Province	Nyanza		Eastern		Coast		Western		Total	
Duration	No. of Cases	%	No. of Cases	%	No. of Cases	%	No. of Cases	%	No. of Cases	%
Within 1 Month	1	8%	1	3%	-	-	-	-	2	2%
2-6 Months	7	54%	1	3%	2	13%	-	-	10	12%
7-23 Months	5	38%	17	46%	-	-	-	-	22	26%
2-6 Years	-	-	18	49%	13	87%	19	100%	50	60%
Total	13	100%	37	100%	15	100%	19	100%	84	100%

4.32 The Strategic Plan of the Ministry of Lands indicates that although the adjudication of trust lands began before independence, only a third of the country had been adjudicated as at July 2009. Therefore, land in areas which are yet to be adjudicated will have to be consolidated and adjudicated before it is registered and titles issued to the respective landowners by the Ministry. Our analysis of the records of the Ministry revealed that as at 19 April 2013, large parts of the country had not been adjudicated. For example, 131 sections which are listed in Appendix VI are yet to be adjudicated. A snapshot of the un-adjudicated areas is shown in the following table:

Table 20: Un-adjudicated Areas in Kenya as at 19 April 2013

Province	No. of Sections	%
Eastern	72	55%
Rift Valley	31	24%
Western	4	3%
Nyanza	4	3%
Coast	20	15%
Total	131	100%

Source: OAG analysis of MOL Data
55% of the pending adjudication sections as at 19 April 2013 are located in Eastern Province. Further, no adjudication has ever been done in North Eastern Province.

4.33 In addition to the 131 undeclared sections, adjudication had not commenced in Isiolo County, the whole of North Eastern region, East Pokot District, Marigat Division and Makutani Division in Baringo County, Loita Division and parts of Mara Division in Narok County.

4.34 The Ministry attributes the delays in commencement of adjudication in these areas to shortage of funds, inadequate and unreliable transport and in some instances resistance to the adjudication owing to social and cultural attitudes of the inhabitants.

4.35 Land transfers occur when a registered owner sells the land to a third party or gives it away for any consideration resulting in change in ownership of the land. Re-registration of land may also be necessitated by sub-divisions of land into smaller parcels registered separately. Each land transfer transaction must be supported by a land rent clearance certificate, a receipt of stamp duty payments and deed plan verification among others. The certificate is only issued at the head-office of the Ministry. We noted that the Ministry delays in issuing land rent clearance certificates, valuing land for payment of stamp duty and verifying deed plans. The delays result in a lag in the issue of the requisite legal documents by the Ministry which in turn delays transfers of land.

4.36 To ascertain the lengths of the delays in transfers of registered land, a batch of 60 land rent clearance certificates was analysed during the audit. The analysis showed that only 35% of the rent clearance certificates were processed within seven days. The Ministry's Service Delivery Charter does not state the length of time that any applicant for a land rent clearance certificate is expected to wait before the Ministry issues the certificate. Detailed analysis of the time taken to process 60 applications for certificates sampled by the audit team is shown in the following table:

Analysis of Completed Land Rent Applications		
Duration	Days	Percentage
Between 1 Day & 5 Days	21	35.0%
Between 6 Days & 15 Days	19	31.7%
Between 16 Days & 30 Days	8	13.3%
Between 31 & 60 Days	7	11.7%
Above 2 Months	5	8.3%
Total	60	100%

4.37 Our analysis of 94 applications for land rent clearance certificates pending at the land rents section of the Department of Lands revealed that 80% had spent between one and six months in the Section as shown in the following table:

Table 22: Pending Applications for Land Rent Clearance Certificates

Duration	Number	Percentage
Between 9 Days & 30 Days	19	20%
Between 1 Month & 2 Months	41	44%
Between 2 Month & 6 Months	33	35%
Above 6 Months	1	1%
Total	94	100%

Source: OAG Analysis of MOL data
Only 20 % of sampled applications for land rent clearance certificates were issued within one month of submission of the respective applications

4.38 Out of the 94 cases included in the audit sample, the Ministry could only process three after failing to confirm outstanding rent balances for the remainder 91 whose rent cards could not be traced at the rents section of the Department of Lands. At the time of the audit, the new electronic land rent Management Information System installed by the Ministry could not generate the correct land rent balances. The Ministry had thus gone back to using manual rent cards to confirm outstanding balances.

Delays in valuing land for payment of stamp duty

4.39 Persons who apply for registration of land are required to pay stamp duty to the Government. The amount due is determined after a certified professional values the land. The Ministry`s Service Delivery Charter states that land valuations for payment of stamp duty should be completed within 21 days of the filing of the respective applications with the Ministry. Examination of a random sample of 2005 cases presented at both the Ministry`s head office and in the district land registries revealed that valuations for 1,146 (57 %) of the cases were carried out within 21 days as provided for in the Service Delivery Charter. Therefore 43% of the valuations were delayed. The detailed analysis is shown in the following table:

Duration	No. of Cases	%
Within 21 Days	1146	57.2%
Between 22 Days & 3 Months	701	35%
Between 3 & 6 Months	87	4.3%
Between 6 & 1 year	59	2.9%
Above 1 Year	12	0.6%
Total	2005	100%

4.40 Further, out of the 414 valuations examined in the district lands offices visited during the audit, 394 (95%) had been processed within the 21-day standard waiting-time period set by the Ministry. However, the Ministry's staff assigned to undertake the valuations clarified that most of the valuations were 'desk-top' estimates they had made in their offices because they lacked transport services to visit the respective plots of land. They also blamed the delays in valuing the lands on the absence of updated SPRO (Senior Plan Records Office) maps and lack of sufficient numbers of professional land-valuers in the Ministry.

4.41 Before any land transfer that entails the sub-division of a registered plot is executed, the Surveys of Kenya must inspect the deed plans for the land. An analysis of a batch of one hundred and seventy one (171) cases referred to the department revealed that it took an average of one month to complete the verification process. Waiting-time ranged from ten days to 13 months. The delays are highlighted in the following table:

Period	No. of Cases	Ratio
Within 10 days	3	1.8
Between 11-20 days	34	19.9
Between 21-30 days	6	3.5
Between 31-60 days	73	42.7
Between 2-3 Months	39	22.8
Between 3-6 Months	12	7
Between 6-12 Months	2	1.2
Over one year	2	1.2
Total	171	100%

Source: OAG Analysis of MOL data, MOL data

The Ministry took at least one month to verify and approve 75.4% of Deed Plans on land subdivisions

4.42 The Surveys of Kenya Department maintains a manual deed plan database. However, the plan is not linked with records held at the Ministry. Therefore, whenever there is need to confirm any of the deed plans, the plan has to be carried to the Survey of Kenya Offices for scrutiny. Officers of the Ministry that verify the deed plans explained that the delays were caused by lack of transport facilities between the Survey of Kenya offices and the head office of the Ministry. The two offices are located in Nairobi.

Chapter 5

Conclusions

5.01 The Ministry of Lands is only partly efficient in registering and issuing titles in land. In instances where applicants submit to the Ministry all documents that it requires to register and issue the respective titles, the Ministry provides the service in a timely and efficient manner to as much as 71% of the applicants. However, delays are common in registrations and issue of titles on parcels under the Settlement Fund Trustee Scheme, as well as in adjudicated Trust and Government lands. Occasionally, the delays also occur in transfers and re-registration of registered lands. The delays range in time from a few days to several decades.

5.02 The delays result from inefficiencies in the operational system used by the Ministry to administer its land registration functions. The system is inefficient because it depends on, among other factors, a weak management information system that does not provide the Ministry with all the information it requires to administer matters relating to registration and issue of titles to land. In addition, co-ordination of activities between the Ministry's Head Office and its district land offices as well as among the Departments of the Ministry involved in land registration is poor. The absence of information hinders efficient planning as well as execution and control of land registration activities. In addition, committees appointed by the Minister of Lands take long to hear and rule on appeals made against land adjudication decisions of the Ministry.

5.03 Efforts made by the Ministry to improve its land information management system have only been partly successful. Computerized systems procured by the Ministry in recent years, were at the time of the audit, not providing the span and quality of information needed by the Ministry to administer its statutory mandate on land registration in an efficient manner. As a result of the delays, the Ministry takes long to issue land registration applicants with the documents they require to successfully apply for legal titles to their parcels of land.

5.04 Delays in registering land hinder citizens and investors from enjoying security of land tenure and therefore hamper economic and sustainable management of the resource. Further, the delays could hinder the attainment of the vision of the Ministry to attain excellence in land management. The delays are therefore likely to hamper the attainment of the social economic development goals envisioned in the long term national development strategy, Kenya Vision 2030.

5.05 The audit has revealed that the inadequate land information management system operated by the Ministry of Lands, Housing and Urban Development and contributes much to delays in registering titles to land. Therefore, among the key elements of the registration process that require urgent reform is the land records system of the Ministry. An improved system would make it easy for the Ministry and persons transacting in land to have timely access to accurate, relevant and complete information on the land parcels they intend to register. Chapter 6 of the report contains the measures that the Auditor-General has recommended to the Accounting Officer to implement in order to reduce the time taken to register and issue titles to land.

Chapter 6

Recommendations

6.01 In view of the findings and conclusions of the audit, the Auditor-General has proposed the following recommendations to be implemented by the Accounting Officer, Ministry of Lands, and Housing and Urban Development:

To enable timely registration of land parcels under the Settlement Fund Trustee (SFT) Scheme, the Ministry of Lands, and Housing and Urban Develoopment should

i. Improve its record management systems and maintain accurate and updated SFT loan repayment data to allow for timely issue of discharge-of-charge certificates to settlers who have completed the repayment of loans issued under the scheme.

ii. Decentralize the issuance of Settlement Fund Trustee bills to the district lands offices.

iii. Feed its recently acquired electronic SFT data-base with information on all outstanding loans; upgrade the database to capture loan repayments made at district level and; complete the procurement of all the software and hardware components required to enable the database reach its expected utility levels.

iv. Set and accomplish timeframes within which all unregistered Settlement Fund Trustee Schemes will be registered so as to allow the processes that precede the registration of individual parcels in the schemes to commence.

v. Undertake, as the law permits, public education programs and explore alternative means for resolution of long standing land disputes that have over the years prevented the completion of several land adjudication schemes.

vi. Identify, develop and implement strategies and activities that address the causes for delays in the hearing and determination of appeals on land adjudication cases as well as on implementation of orders issued by the Minister.

vii. Ensure that case files on appeals lodged at district-level are opened quickly and information on determined appeal cases is forwarded to the Chief Lands Registrar from the districts without delay.

viii. Commence adjudication processes in areas where adjudication has been declared.

ix. Facilitate the Director of Surveys to prepare and publish fair and final print maps on adjudicated areas.

x. Upgrade its land-rent billing system to enable it provide up-to-date and accurate data on outstanding land-rent arrears in a timely manner.

xi. Enhance the availability of transport and other services and facilities that its officers require to undertake land valuations in a timely manner.

xii. Set waiting-time and other relevant service delivery standards on all registration activities and monitor and ensure compliance with the standards.

xiii. Implement strategies to enhance co-ordination and flow information between its registries and Department of Survey to hasten verification of deed plans.

xiv. Improve co-ordination and flow of information among its Departments and between the head office and district offices so as to hasten the completion of activities that precede the registration of titles.

6.02 The Accounting Officer has read the report and submitted detailed comments on the findings and recommendations to the Auditor-General. The comments are summarized in Appendix VII of the report.

Appendices

Appendix I: Methods Used to Gather Audit Evidence

We conducted the audit in accordance with Auditing Guidelines set by the International Organisation of Supreme Audit Institutions (INTOSAI) and audit policies and procedures established by the Office of Auditor General (OAG). The guidelines and policies fulfil the requirements of ISAs.

To understand the operations of the Ministry of Lands, Housing and Urban Development, we reviewed the Ministry`s Service Charter and the functions and processes manual and other documents.

To obtain data showing the extent and nature of waiting time in registering land we examined samples and batches of various land registration records maintained by the Ministry. The records related to the processes followed by the Ministry in registering land. The examinations yielded the data and information that support our audit findings.

To obtain information on the operations of the Ministry of Lands, we interviewed the Chief Lands Registrar, the Deputy Director Department of Surveys, the Deputy Director Department of Land Adjudication and Settlement, the Assistant Director of Physical Planning and the heads of both the Nairobi Central and District Land Registries.

Cabinet Secretary

Principal Secretary

Director of Surveys	Director of Physical Planning	Director of Administration& Planning	Director of Land Adjudication & Settlements.	Commissioner of Lands

The Department of Lands is responsible for;

1) Land Administration–Management and custody of land records, preparation of titles/ grants/ lease, alienation of Government and Trust Land, resolution of land and boundary disputes;
2) Valuation of land and landed properties for purposes such as stamp duty and sub-division;
3) Registration of land titles and other documents.

The Department of Land Adjudication and Settlement is responsible for;

1) Certification of land rights and interests through Land Consolidation and Adjudication;
2) Management of Settlement Fund Trustee;
3) Administration of Group Ranches, and;
4) Arbitration of land disputes.

The Department of Survey is responsible for;

1) Producing and maintaining plans of property boundaries in support of land registration and to ensure guarantee and security of tenure;
2) Preparing and maintaining Registry Index Maps (RIMS) and Preliminary Index Diagrams to support land registration and to ensure security of tenure.

1. Gazette Notice by Minister of Lands declaring adjudication area

2. Land/Adjudication Officers appointment by Minister

3. Acquisition of Maps from the Director of Survey

4. Clearance from Commissioner of Lands (SPRO)

5. Declaration of Adjudication Section and Election of Committee members and appointment of Arbitration Board members by Land/Adjudication Officers

6. Demarcation and Survey by Demarcation Officer

7. Filing and hearing of committee and Adjudication Board cases by Land Owners Committee Arbitration Board.

8. Compilations of adjudication register by Demarcation Officer

9. Signing of Adjudication register by the Land owners

10. Publication of Adjudication register and 60 days of objections by the Lands Adjudication Officer

11. Hearing objections & implementation of objection decision and filing of appeals to the Minster by the Lands Adjudication Officer

12. Checking of records, forwarding maps to Director of Survey & records to Director of Land Adjudication and Settlement

13. Solution of field Queries by Lands Adjudication Officer/ Demarcation/ Survey Officers

14. Publication of Maps by Director of Survey

15. Issuance of certificate of Finality by Director of Land Adjudication and Settlement

16. Forwarding of Records to Chief Land Registrar for registration by Director of Land Adjudication and Settlement.

17. Hearing of Appeals to the Minister of Lands

Source: MoL Procedures Manual

Note: Delay in the adjudication process [illegible]

[illegible]	[illegible]	[illegible]	[illegible]
Busia	34,602	131,124.25	36
Kakamega	181,411	251,901.71	152
Bungoma	39,833	177,706.09	44
Muranga	104,165	144,723.00	127
Nyeri	50,298	87,377.18	83
Kirinyaga	29,367	86,743.77	67
Kiambu	60,992	93,441.90	64
Kisii	93,890	209,322.55	60
Kisumu	207,731	111,479.99	70
Siaya	168,735	178,528.18	116
Bondo	9,108	8,927.58	2
Nando	15,147	15,747.13	3
Migori	50,225	191,739.00	46
Kuria	4,413	45,581.39	9
Homa Bay	72,816	105,982.78	55
Rachuonyo	23,608	26,722.21	14
Suba	15,898	36,667.73	8
Kericho	60,280	246,839.56	67
Nandi	35,160	141,065.35	67
Keiyo	17,258	48,678.65	29
Marakwet	14,072	51,802.15	22
Baringo	24,787	106,454.76	34
Koibatek	8,305	38,699.06	46
Narok	8,847	758,951.68	51
Narok South	149	117,726.58	2
Transmara	12,203	140,212.12	28
Kajiado	6,377	2,003,612.03	49
West Pokot	8,389	202,894.34	25
Samburu	526	724,731.09	17
Laikipia	70	44,664.00	4
Nakuru	3,588	9,989.00	5
Embu	64,422	228,496.96	37
Meru	55,472	134,680.96	69
Tharaka Nithi	29,622	71,262.74	33
Meru South	7,615	8,368.18	3

District	No. of Parcels	Area in Hectares	No. of Sections
Tharaka	5,293	10,438.81	3
Meru North	80,391	38,898.12	24
Machakos	157,904	278,338.22	96
Makueni	90,471	307,260.49	66
Kibwezi	7,820	13,560.92	5
Kitui	83,118	268,991.47	66
Kyuso	3,564	13,204.00	2
Mutomo	3,680	22,701.00	3
Mwingi	35,094	113,676.40	17
Marsabit	2,528	3,487.89	2
Taveta	686	263.28	1
Taita/Taveta	42,718	82,618.98	29
Kwale	52,439	357,792.96	59
Kinango	1,519	5,021.35	1
Kilifi	26,013	171,359.62	44
Malindi	6,739	19,577.43	4
Total	2,119,658	8,690,536.59	1966

Source: Ministry of Lands, Housing and Urban Development

Igembe	Akirang'ondu	7/30/1966	28.4.97	4998	With DOS for fair printing w.e.f. 23.3.2012
Tigania East	Antuamburi	7/30/1966	8.7.08	12,290	Maps with DOS for fair printing
Tigania East	Athinga/	6/30/1966	15.5.02	8790	With DOS W.E.F 22.1.2011
Makueni	Ikalyoni	6/21/1994	21.8.03	2316	With DOS for fair printing w.e.f.13.7.2011
Kilungu	Kalongo	11/21/1985	17.6.09	5130	With DS for Checking
Tharaka	Kamanyaki/ Kamarandi	5/13/1995	18.6.08	1351	Maps with DOS for fair printing
(Kitui)	Kangau	9/8/1990	28.1.05	3619	With DOS w.e.f June 2011
Mwingi	Kavaini	6/26/1990	16.5.96	1765	Sent to DOS for fair printing on 20.1.2010
(Mutitu)	Kawala	8/5/1986	22.9.2010	435	Maps with DS for checking
Igembe	Kiengu/ Kanjoo	7/8/1982	14.6.06	4255	With DOS for fair printing w.e.f 28.6.2012
Kibwezi	Kilome	10/25/1974	4.9.89	2204	Maps with DOS for fair printing
(Mutitu)	Kitoo	8/7/1996	28.1.2002	1399	With DS w.e.f 22.11.2010
Mbooni-East	Mangani	6/21/1994	22.2.07	993	Maps with DOS for fair printing w.e.f. 6.9.2012
Kibwezi	Mikuyuni	12/3/1990	14.5.98	1230	Maps with DOS for fair printing w.e.f.22.6.2011
Mutomo	Mivuni	6/9/2006	24.2.2011	578	Maps with DOS for fair printing w.e.f. 10.9.2012
Kibwezi	Mumela	5/13/1998	14.6.06	1570	Maps with DOS for fair printing
(Mutitu)	Musukini	8/6/1986	21.5.03	1757	With DOS w.e.f. 30.8.2010
Kibwezi	Ngulu	12/14/1990	27.11.08	2014	Maps with DOS for fair printing
Mbeere	Riachina	1/12/1980	4.6.81	6593	With DOS for fair printing w.e.f.24.6.10
Kitui-East	Thua	5/26/1992	6.5.04	1141	With DS w.e.f 23.11.2010
(Makueni)	Utangwa	6/15/1994	5.6.07	3695	With DOS for fair printing w.e.f. 13.7.2011.
(Makueni)	Yandue	8/15/1997	13.5.09	2710	With DOS for fair printing w.e.f 13.7.2011
Kilifi	Vitengeni 'B'	5/2/1998	16.4.05	465	With DOS for fair printing
Kilifi	Mwijo/ Milimani	2/25/1993	27.4.11	687	Maps with DS w.e.f. Feb., 2013 for checking and transmission to DOS for fair printing
Kisumu	Kadhiambo	3/19/1983	21.1.1999	3620	With DOS for fair printing w.e.f. 14.4.12
Migori	Kakelo /kakoth 'A'	5/29/1905	37311	2232	With DS w.e.f. 23.6.2011

Suba	Kaksingiri	6/25/2003	14.4.10	5280	Maps with the District Surveyor for checking and onward transmission to DOS for fair printing
Rachuounyo Ndhiwa	Kamenya	6/4/1905	17.2.94	5860	Maps with DOS for fair printing
Suba	Kamwenda	11/25/1983	17.2.03	5775	Maps with the District Surveyor for checking transmission to DOS for fair printing
Homa-Bay	Kanam 'A'	8/20/1984	19.3.97	2528	With DOS w.e.f. 10.11.2010
Kisumu	Kawino	3/5/1983	1998	4330	With DOS for fair printing w.e.f. 14.4.12
Rachuounyo Ndhiwa	Kogembo	8/7/1984	26.2.2002	1711	With DOS w.e.f. 10.11.2010
Rachuounyo Ndhiwa	Kothidha	10/29/1989	26.2.2002	3885	Maps w ith DOS w.e.f. 10.11.2010 for fair printing
Rachuounyo Ndhiwa	Kotieno	3/20/1988	27.2.2001	2147	Maps with DOS w.e.f. 10.11.2010 for fair printing
Busia	Magombe	12/26/1984	22.12.00	5684	Maps with DOS for fair printing
Bondo	Nyangoma	3/15/1979	9.11.01		Map with DOS for fair printing
Bondo	Usenge	8/15/1975	21.9.89		Maps with DOS for fair printing w.e.f. 21.3.11
Suba	West Kubia	11/9/1997	20.3.08	6976	Maps with DOS w.e.f. Oct., 2010.
West Pokot	Chebon	8/26/2002	27.6.07	1312	Maps with DOS for fair prints
Nandi	Kamwega	6/16/1988	13.8.2000	1632	With DOS for fair printing w.e.f 7.9.2012
Baringo	Kapkoiwo	2/14/1990	31.3.04	3943	With DOS for fair printing w.e.f. 11.6.2010.
Nandi	Legemet	8/16/1988	16.2.07	482	With DOS for fair printing w.e.f 9.9.2012
Keiyo	Lower Muskut	1/31/1976	26.10.06	413	PIDs with DOS for publication
Koibatek	Maji Moto	6/25/1992	7.9.06	618	With DOS w.e.f. 20.5.2010 for fair printing.
West Pokot	Wakor	1/1/1995	25.2.02	1510	Maps with DOS for fair prints

Eastern	Mutomo	35
	Kitui	4
	Tigania	5
	Tharaka	6
	Mwingi	17
	Kyuso	1
	Makueni	4
	Isiolo	
Rift Valley	Marakwet	17
	Baringo	10
	Narok	4
Western	Busia	4
	Suba	2
	Bondo	2
	Kwale	2
	Taita	2
	Kinango	3
	Tana River	9
	Taveta	2
	Kilifi	1

Audit Finding	The Response of the Accounting Officer	Remarks of the Office of the Auditor General
The Ministry registers and issues titles to land without delay in most instances where all the requisite documents are submitted together with the applications. However, processes for acquiring the supporting documents at the Ministry take inordinately long periods before they are completed.	Agreed. The delays are caused by applicants' failure to submit all documents required for registration of land transactions, an inefficient manual records management system and insufficient number of staff to manage the ever increasing paper records in the registry.	
Recommendation To facilitate timely registration of land parcels under the Settlement Fund Trustee Scheme, the Ministry of Lands should:		The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry.
i. Improve its record management systems and maintain accurate and updated SFT loan repayment data to allow for timely issue of discharge-of-charge certificates to settlers who have completed the repayment of loans issued under the scheme;	Agreed. The Ministry is in the process of procuring a web-based system to address the underlying issues raised in the audit report. The system will resolve records management issues related to the SFT and help decentralize some functions to the districts.	
ii. Undertake, as the law permits, public education programs and explore alternative means for resolution of long standing land disputes that have over the years prevented the completion of several land adjudication schemes.	Agreed. The Ministry has taken up public sensitization on the land adjudication programme as part of routine activities. Also, the Ministry has procured and issued motorcycles to field offices to hasten the disposal of land disputes. In addition, the Ministry has introduced the use of satellite imagery and modern survey equipment to improve the accuracy of survey and demarcation work so as to minimize the disputes.	

iii.	Set waiting-time and other relevant service delivery standards on all registration activities and monitor and ensure compliance with the standards.	The Ministry has reviewed and enforced the implementation of the Service Charter.	
		The delays are caused by the use of manual accounting systems in computing loan repayment balances; lack of an electronic communication link (Wide Area Network) with district offices; shortage of qualified staff; lack of a data back-up system; slow retrieval of information due to manual records; and delay by the Courts in finalizing succession documents.	
	The Ministry of Lands should improve the efficiency of the SFT administration system by decentralising the issuance of bills to the district lands offices;	The Ministry has decentralized the issuance of Demand Notices to the district offices. The procurement of a web-based system will facilitate access to information by district offices from headquarters and vice versa. This will improve efficiency in service delivery.	The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry

- the inadequacy of loan records maintained by MOL;
- delay by MOL accounts section at the head office to confirm whether applicants for certificate-of-discharge have cleared their loan and;
- Loan balances in existence before the purchase of the electronic SFT billing system purchased and installed by the Ministry in the year 2007 were not input into the system The system could thus only extract balances outstanding as at the end of 2007. Besides, the system could not capture repayments made by settlers at district land offices. Further, the increase in the quantity of SFT data over time has reportedly overwhelmed the current system which runs on a Microsoft Access database software platform of limited capacity

Recommendation: The Ministry should feed its recently acquired SFT data–base software with data on all outstanding loans, upgrade it to capture loan repayments made at district level and procure all the software and hardware components that would enhance the utility of the database

Agreed: Information on outstanding SFT loan balances is not readily available because of:

- the manual recording systems and processes in use,
- shortage of qualified staff and;
- missing reconciliations of payments between in the District Offices and the Ministry's Headquarters (Nairobi).

However, the ministry has acquired Sequential Query Language (SQL) software. The system process of installing the system is in process. The system is an improvement over the previous one and will handle more data. It will allow faster retrieval of information on outstanding loan balances.

Agreed: The capacity of the system is slow. It will be upgraded and thereafter casual staff will be hired to uphold the data.

The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry

The failure to register Settlement Schemes in due time is caused by:

- the slow processes applied in title-mapping by the Surveys Department.
- Some of the unregistered settlement schemes are in gazetted forest lands. The Ministry has initiated de-gazettement of the forest lands to pave way for the registration of the settlement schemes.

The Ministry should set and accomplish timeframes within which all unregistered Settlement Fund Trustee Schemes will be registered to allow the processes that precede the registration of individual parcels in the schemes to commence ;

The Ministry has initiated Title Mapping in the other unregistered settlement schemes.
To ensure faster registration of new settlement schemes, the Ministry now plans the schemes through District Management Committees. District Surveyors are members of the Committees.

The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry.

- the inadequacy of loan records maintained by MOL;
- delay by MOL accounts section at the head office to confirm whether applicants for certificate-of-discharge have cleared their loan and;
- Loan balances in existence before the purchase of the electronic SFT billing system purchased and installed by the Ministry in the year 2007 were not input into the system The system could thus only extract balances outstanding as at the end of 2007. Besides, the system could not capture repayments made by settlers at district land offices. Further, the increase in the quantity of SFT data over time has reportedly overwhelmed the current system which runs on a Microsoft Access database software platform of limited capacity

Recommendation: The Ministry should feed its recently acquired SFT data–base software with data on all outstanding loans, upgrade it to capture loan repayments made at district level and procure all the software and hardware components that would enhance the utility of the database

Agreed: Information on outstanding SFT loan balances is not readily available because of:

- the manual recording systems and processes in use,
- shortage of qualified staff and;
- missing reconciliations of payments between in the District Offices and the Ministry's Headquarters (Nairobi).

However, the ministry has acquired Sequential Query Language (SQL) software. The system process of installing the system is in process. The system is an improvement over the previous one and will handle more data. It will allow faster retrieval of information on outstanding loan balances.

Agreed: The capacity of the system is slow. It will be upgraded and thereafter casual staff will be hired to uphold the data.

The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry

The failure to register Settlement Schemes in due time is caused by:

- the slow processes applied in title-mapping by the Surveys Department:
- Some of the unregistered settlement schemes are in gazetted forest lands. The Ministry has initiated de-gazettement of the forest lands to pave way for the registration of the settlement schemes.

The Ministry should set and accomplish timeframes within which all unregistered Settlement Fund Trustee Schemes will be registered to allow the processes that precede the registration of individual parcels in the schemes to commence ;

The Ministry has initiated Title Mapping in the other unregistered settlement schemes.
To ensure faster registration of new settlement schemes, the Ministry now plans the schemes through District Management Committees. District Surveyors are members of the Committees.

The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry.

Delays in issuing certificates of finality. The Director of Surveys takes too long to publish the final maps of adjudicated areas.	**Agreed.** The delays in issuing certificates of finality are occasioned by the Director of Surveys taking too long to publish the final maps of adjudicated areas; outdated survey equipments; lack of resources (staff, vehicles, funds) and the high number of land disputes	
Recommendation: The Ministry should facilitate the Director of Surveys to prepare and publish fair and final print maps on adjudicated areas.	• The Department of Land Adjudication and Settlement and the Department of Surveys now have a common performance Contract of finalizing 30 Adjudication Sections in 2012/2013 financial year. • The Ministry has introduced the use of satellite imageries and purchased modern survey equipment such as GPS's to speed up demarcation and survey, ensure accuracy and faster publication of maps by the Director of Surveys.	The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry.
District Land Officers take long to submit appeal records to the Adjudication Register to Lands.	**Agreed.** The delays result from the long time that appellants take to submit the requisite appeal documents; time taken to implement the decisions made in the objections to the Adjudication Register and non-availability of landowners when they are required to attend appeal hearings.	The Office will assess the implementation of the recommendations during the follow-up audit to be conducted at a date agreed with the Ministry.

	Delay in issuance of land rent clearance certificates mainly occur because updated information on Land Rent Cards are unavailable because the Ministry uses a manual records management system. Further the new land rent management information system installed by the Ministry is does not generate the correct land rent balances.	The Office will assess the status of the issues reported on here during the Follow-up audit to be conducted at a date agreed with the Ministry.
The Ministry should upgrade its land-rent billing system to enable it provide, in a timely manner, up-to-date and accurate data on outstanding land-rent arrears	*The Ministry did not comment on this recommendation.*	The Office will assess the status of the issues reported on here during the Follow-up audit to be conducted at a date agreed with the Ministry
	Delays in conducting land valuations and assessing of stamp duty payments is occasioned by lack of sufficient number of staff and transport services.	
The Ministry of Lands should enhance the availability of transport and other services and facilities that its officers require to undertake land valuations in a timely manner.	*The Ministry did not comment on this recommendation*	

The delays are caused by the absence of a direct link between the registries and the mapping division at the Survey of Kenya. Delays in accessing background information on the deed plans also make it difficult for the plans to be verified quickly.

Enhance flow of information and sharing of information between registries and Department of Survey to hasten verification of deed plans.

The Ministry did not offer any comments on this recommendation.