



# **Responsible Land Governance: Towards an Evidence Based Approach**

**ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017**



## **LAND FOR INFRASTRUCTURE DEVELOPMENT: COMPULSORY ACQUISITION AND COMPENSATION OF UNREGISTERED/UNDOCUMENTED LAND IN KENYA**

**AGATHA WANYONYI, MONICA OBONGO, PETER MBURU, JANE NDIBA**

Ministry of Lands and Physical Planning, Kenya

[monica.obongo@gmail.com](mailto:monica.obongo@gmail.com)

**Paper prepared for presentation at the  
“2017 WORLD BANK CONFERENCE ON LAND AND POVERTY”  
The World Bank - Washington DC, March 20-24, 2017**

*Copyright 2017 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.*



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



## Abstract

Kenya's Vision 2030 aims at transforming the country into a newly industrialized middle income country and infrastructural development is high on the agenda to achieve this. Competing land uses and existing interests in land make the use of eminent domain by government in acquiring land inevitable. However most of the land earmarked for compulsory acquisition comprises of un- registered land whose interests are not formally documented. Kenya has progressive statutes that provide for compensation of land that is compulsorily acquired even where the owners/ occupants do not hold legal titles. The paper explores how the government while implementing infrastructural development projects on land acquired using the principle of eminent domain; was able to identify genuine land owners and holders of different interests, value the land and award fair and just compensation. It looks at how grievances were resolved using alternative dispute resolution mechanisms. It also explores the benefits negotiated for the affected communities and safeguards being put in place to guide future compensations, protection of family interests and ways of ensuring participation by women, the youth and vulnerable members of the community.

Key Words: Fair Compensation, Participation, Unregistered Land,



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



## ACRONYMS

ADR	Alternative Dispute Resolution
AFdB	African Development Bank
ASAL	Arid and Semi Arid Land
AVMs	Automated Valuation Methods
CLA	Community Land Act
FAO	Food and Agricultural Organisation of the United Nations
G.L.A	Government Lands Acts
GOK	Government of Kenya
IVSC	International Valuation Standards Commission
KETRACO	Kenya Electricity Transmission Company Limited
LAPSSET	Lamu Port South Sudan – Ethiopia Transport
LRA	Land Registration Act
LTA	Land Titles Act
MOLPP	Ministry of Lands and Physical Planning
MW	Mega Watts
NLC	National Land Commission
RAP	Resettlement Action Plan
R.L.A	Registration of Lands Act
R.T.A	Registration of Titles Act
UN - HABITAT	United Nations Human Settlement Program



## Table of Contents

<b>Abstract .....</b>	<b>2</b>
<b>ACRONYMS .....</b>	<b>3</b>
<b>CHAPTER 1 .....</b>	<b>7</b>
<b>1.0 BACKGROUND OF THE STUDY .....</b>	<b>7</b>
<b>1.1 INFRASTRUCTURAL PROJECTS THAT HAVE REQUIRED COMPULSORY ACQUISITION OF LAND IN KENYA .....</b>	<b>7</b>
<b>1.1.1 NAIROBI-THIKA SUPER HIGHWAY .....</b>	<b>7</b>
1.1.2 KONZA TECHNO - CITY .....	8
1.1.3 LAPSET PROJECT.....	8
1.1.4 ELECTRICITY TRANSMISSION INFRASTRUCTURE BY KETRACO .....	8
1.1.5 DEVELOPMENT OF THE DONGO KUNDU FREE PORT .....	9
<b>1.2 HISTORY OF UNREGISTERED/UNDOCUMENTED LAND IN KENYA.....</b>	<b>9</b>
<b>1.3 LAND LAWS SUPPORTING COMPENSATION WITHOUT FORMALLY REGISTERED LAND RIGHTS.....</b>	<b>13</b>
<b>1.4 STATEMENT OF THE PROBLEM .....</b>	<b>13</b>
<b>CHAPTER 2 .....</b>	<b>14</b>
<b>RESEARCH METHODOLOGY .....</b>	<b>14</b>
2.1 INTRODUCTION.....	14
2.2 RESEARCH DESIGN .....	14
2.2 DATA COLLECTION .....	15
2.2.1 DATA ANALYSIS .....	15
2.3 LESSONS LEARNT AND CURRENT GOVERNMENT ACTION TO SAFEGUARD FUTURE ACQUISITIONS .....	15
<b>CHAPTER 3 .....</b>	<b>16</b>
<b>LITERATURE .....</b>	<b>16</b>
<b>3 KENYA'S INFRASTRUCTURE DEVELOPMENT GOALS .....</b>	<b>16</b>
<b>3.1 LAND ACQUISITION AND COMPENSATION IN KENYA.....</b>	<b>16</b>
<b>3.2 LAND TENURE .....</b>	<b>17</b>
<b>3.3 UNREGISTERED/UNDOCUMENTED INTERESTS IN LAND .....</b>	<b>18</b>



<b>3.4 SAFEGUARDING LAND RIGHTS FOR WOMEN VULNERABLE GROUPS.....</b>	<b>19</b>
<b>3.5 VALUATION FOR COMPULSORY ACQUISITION.....</b>	<b>20</b>
3.5.1 THE CONCEPT OF MARKET VALUE.....	20
3.5.2 CONVENTIONAL VALUATION METHODS.....	21
<b>CHAPTER 4 .....</b>	<b>22</b>
<b>4. RESEARCH FINDINGS.....</b>	<b>22</b>
<b>4.1 IDENTIFICATION OF OWNERS OF UN-REGISTERED/ UNDOCUMENTED LAND DURING COMPULSORY ACQUISITIONS .....</b>	<b>22</b>
4.1.1 IDENTIFICATION OF OWNERS OF LAND UNDER CUSTOMARY TENURE .....	22
4.1.2 IDENTIFICATION OF LAND UNDER LEASEHOLD TENURE .....	23
4.1.3 IDENTIFICATION WHERE THE OWNER IS DECEASED.....	24
4.1.4 IDENTIFICATION OF OWNERS OF LAND UNDER SETTLEMENT SCHEMES.....	24
4.1.5 IDENTIFICATION OF SQUATTERS AND THE CONCEPT OF “OCCUPANTS IN GOOD FAITH” .....	24
4.1.6 CHALLENGES EXPERIENCED DURING IDENTIFICATION .....	24
<b>4.2 VALUATION OF UNREGISTERED LAND AND AWARD OF COMPENSATION .....</b>	<b>25</b>
4.3.1 DEFINITION OF LAND VALUE INDEX .....	26
<b>4.4. THE USE OF HEDONIC PRICING IN DEVELOPING A REAL ESTATE PRICE INDEX... 26</b>	
4.4.5 REPEAT SALES AND LAND VALUE INDEX .....	27
<b>4.4 FINDINGS IN PILOT CONSTRUCT OF A LAND VALUE INDEX CARRIED OUT ON A SECTION OF THIKA SUPER HIGHWAY .....</b>	<b>28</b>
<b>4.5 DATA ANALYSIS .....</b>	<b>28</b>
<b>4.6 DATA COLLECTED IN THE STUDY AREA .....</b>	<b>29</b>
<b>4.7 DATA ANALYSIS .....</b>	<b>30</b>
<b>4.8 CHALLENGES FACED IN THE DEVELOPMENT OF A NATIONAL LAND VALUE INDEX .....</b>	<b>36</b>
<b>4.9 THE USE OF A LAND VALUE INDEX IN DERIVATION OF A COMPENSATION MATRIX IN UNREGISTERED/UNDOCUMENTED LAND .....</b>	<b>36</b>
<b>CHAPTER 5 .....</b>	<b>38</b>
<b>5.1 ENACTMENT OF LAND ACTS.....</b>	<b>38</b>
5.1.1 THE LAND REGISTRATION ACT, 2012 .....	38
5.1.2 THE COMMUNITY LAND ACT, 2016 .....	38
5.1.3 REGULATIONS TO ENACT THE LAND ACTS .....	39



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



<b>5.2 MASS TITLING PROJECTS.....</b>	<b>39</b>
<b>5.3 DIGITIZATION OF TITLE PROCESSING SYSTEMS AND LAND RECORDS .....</b>	<b>40</b>
<b>5.4 SAFEGUARDS AND BENEFITS FOR AFFECTED COMMUNITIES .....</b>	<b>40</b>
<b>5.6 PROTECTION OF FAMILY INTERESTS.....</b>	<b>41</b>
<b>5.7 THE EMERGING CONCEPT OF PEOPLE’S CENTERED LAND GOVERNANCE IN KENYA .....</b>	<b>41</b>
<b>5.8 USING LAND-USE PLANNING FOR PRIOR INFRASTRUCTURAL PLANNING .....</b>	<b>42</b>
<b>REFERENCES .....</b>	<b>43</b>



## CHAPTER 1

### 1.0 BACKGROUND OF THE STUDY

In order to achieve sustainable development, governments provide infrastructure and other public facilities that ensure safety and security, social and economic enhancement and protection of the natural environment. To provide such infrastructural facilities, acquisition of the appropriate land is inevitable (FAO, 2009).

Land is a critical resource for the socio-economic and political developments of any country. Respect for property rights to land, whether owned by communities, individuals or companies is an important driver of rapid economic transformation. Kenya occupies 582,646 KM<sup>2</sup> of land; which is categorized as public, community and private. Public land comprises 77,792 KM<sup>2</sup>, 396,315 KM<sup>2</sup> is community land and 107,953KM<sup>2</sup> is under private ownership (GOK, 2013).

Kenya's population increased from 29.9 million in 1999 to 38.8 million in 2009, and is currently at 47.7 million. This constitutes an urban population of 38% and an annual growth rate of 2.65%. Increased population growth in Kenya and its environs has outstripped its infrastructural capacity and led to a scenario where the government finds itself in need of setting aside more land for infrastructure. Generally in the towns and cities, the general planning and zoning sets aside land for infrastructure and especially the needs and other infrastructural establishments. However, because of the delay in developing the reserved public lands, much of this land is sometimes misappropriated or inhabited by squatters. In the rural areas, much of the land is in the hands of either the community or it is shared out amongst community members. Land in Kenya is competing for various uses and since most of this land already has interests it calls for the use of eminent domain i.e. the power of the Government to compulsorily acquire land for use by the public.

### 1.1 INFRASTRUCTURAL PROJECTS THAT HAVE REQUIRED COMPULSORY ACQUISITION OF LAND IN KENYA

#### 1.1.1 NAIROBI-THIKA SUPER HIGHWAY

The Nairobi-Thika superhighway was originally a 45 km dual carriageway stretching from Nairobi and extending to Moyale on the Ethiopian border. This road had to be formed from a four lane and clogged up highway to the now eight lane super highway with service lanes on either side, overpasses, bypasses and underpasses, tunnels and several business nodes. The road was the first of the kind in Kenya; however more have come up (African Development Fund ).



## **Responsible Land Governance: Towards an Evidence Based Approach**

**ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY**  
WASHINGTON DC, MARCH 20-24, 2017



It took approximately five years to construct and there were many social and legal hurdles to deal with before its completion. Most of the reserved land on either side of the initial highway built in the 1970's was now turned into privately owned land, majority which had on it permanently erected structures.

### **1.1.2 KONZA TECHNO - CITY**

Konza Technology City was commissioned by the Government in 2008 as a flagship project of Vision 2030 to capture the growing global business processing outsourcing and Information Technology enabled services sectors in Kenya. The project was initiated in 2009 with the procurement of 5,000 acres of land. The city is being developed as a public private partnership with the government developing the infrastructure and regulatory guidelines

### **1.1.3 LAPSSET PROJECT**

The LAPSSET Corridor Program is a regional flagship project intended to provide transport and logistics infrastructure aimed at creating seamless connectivity between the Eastern African Countries of Kenya, Ethiopia and South Sudan. The project connects a population of 160million people in the three countries. Additionally, the LAPSSET Corridor is part of the larger land bridge that will connect the East African coast from Lamu Port to the West coast of Africa at Douala Port with the objective of providing multiple Eastern African nations access to a large scale economic trade system thereby promoting socio-economic development in the region.

The LAPSSET program consists of several subsidiary projects in Kenya, including Lamu port in Kenya with 32 deep berths, a standard Gauge Railway from Lamu to Juba in South Sudan and up to Addis Ababa in Ethiopia and an interregional highway from Lamu to Juba in South Sudan and Addis Ababa in Ethiopia. It also consists of a crude oil pipeline from Lamu to Juba in South Sudan and international airports and resort cities at Lamu, Isiolo and Lake Turkana all which require land.

### **1.1.4 ELECTRICITY TRANSMISSION INFRASTRUCTURE BY KETRACO**

Electricity transmission will be crucial in attaining Vision 2030 projects and thus the establishment of the Kenya Electricity Transmission Company Limited (KETRACO) in 2008, a wholly owned government entity to provide infrastructural backbone for a national transmission grid was important. In order to fulfil their mandate they acquire land and easements for way leaves corridors which result in displacement of people, loss of shelter, assets, income sources, means of livelihood and may necessitate involuntary relocation and resettlement.





#### 1.1.5 DEVELOPMENT OF THE DONGO KUNDU FREE PORT

The development of the Dongo Kundu free port includes the construction of a road project that connects Mombasa mainland west to Mombasa Mainland South without entering Mombasa Island. The road is a traffic corridor for traffic to and from Tanzania and to the interior of Kenya and beyond to ease traffic on Likoni Ferry. Four bridges will be built in the swamps and across the open ocean water, as part of the highway. The roads bypass will run between Miritini and Kipevu and connecting to Moi International Airport. The project is part of developing the port of Mombasa as a special economic zone. (GOK: Kenya Vision 2030)

#### 1.2 HISTORY OF UNREGISTERED/UNDOCUMENTED LAND IN KENYA

The history of formal documentation/registration of land in Kenya is as old as the history of colonization of the country. Formalization of ownership was introduced in Kenya by the acquisition of the ten mile coastal strip by the Sultan of Zanzibar which was later transferred to the British colonialists in 1895 via a treaty with the Imperial British East African Company. The Crown land Ordinance of 1902 was established to regulate government control of alienation of crown land and later in 1915 the office of Commissioner of Lands was conferred powers on behalf of His Majesty over administration of all land in Kenya (Onalo, 1986). In 1939 the Kenya Native Areas order in Council was established and vested the management of the native land to the Native Lands Trust Board which became the Trust Lands Act (Chapter 288) of the Laws of Kenya and put the County Councils to hold land in trust of the local people within their areas of jurisdiction. Currently it is held by the County Governments. Land registration was effected over years through various legislations i.e. the Land Titles Act (L.T.A) for the ten mile coastal strip, Governments Lands Act (G.L.A) Chapter 280, the Registration of Titles Act (R.T.A) established in 1920, the Trust Lands Act Chapter 288, Registration of Lands Act (R.L.A), Chapter 300 in 1963, the Land Consolidation and Adjudication Act of 1968 and the Sectional Properties Act of 1987 for units within a building.

The above laws have now been rationalized and harmonised on the enacted of the current Constitution in 2010 and the main land acts in force are the Land Act, 2012, the Land Registration Act, 2012 and the National Land Commission Act, 2011.

However it is imperative to note that despite existence of various land acts enacted to actualize land registration, most of the land in Kenya is still unregistered. This is despite the government's policy since independence to prioritize individualization and formalization of land rights in the country. The World Bank estimates that approximately 90% of rural land in sub-Saharan Africa is not registered which make



## **Responsible Land Governance: Towards an Evidence Based Approach**

**ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY**  
WASHINGTON DC, MARCH 20-24, 2017

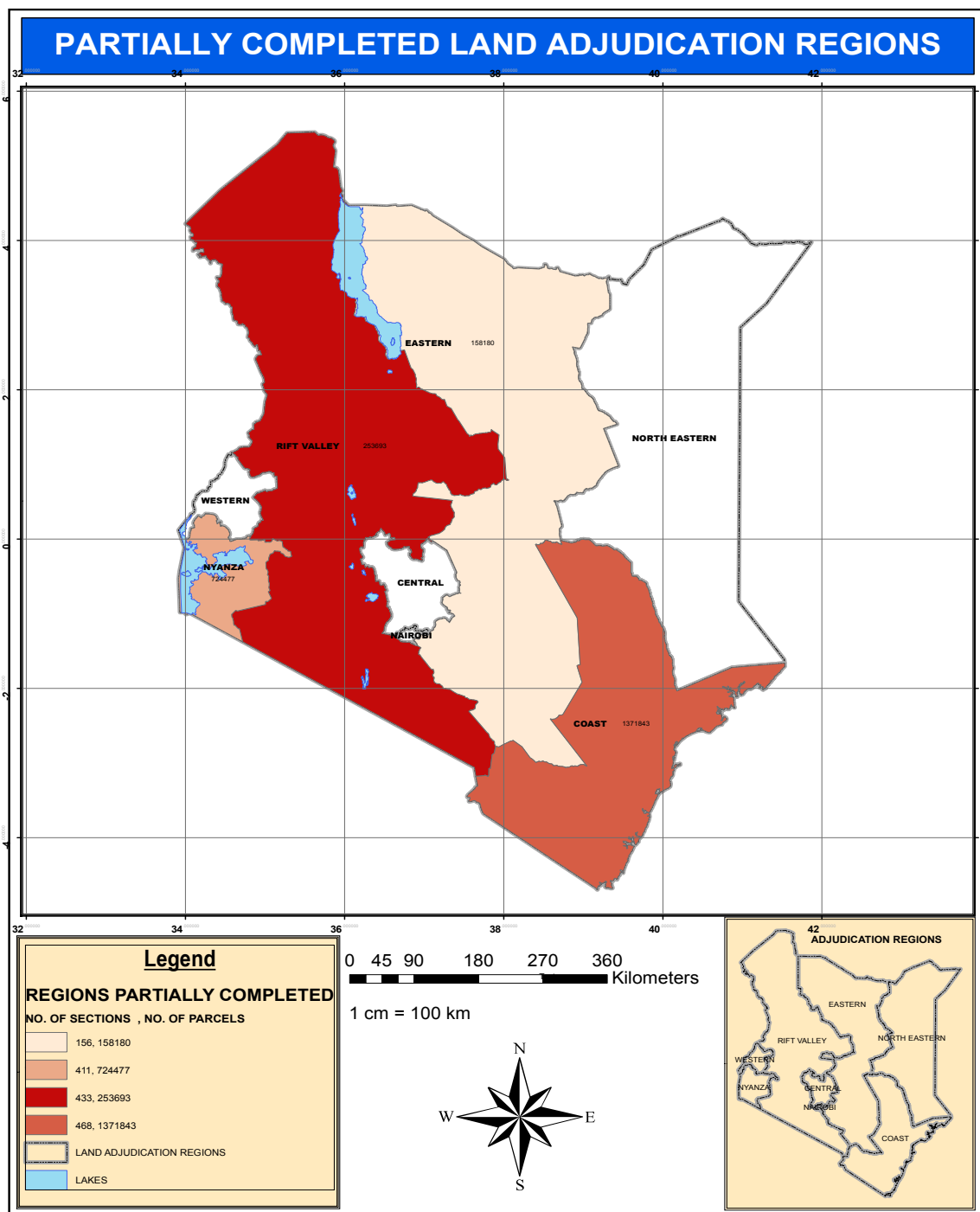


it vulnerable to land grabbing, expropriation without fair competition and corruption. In Kenya land that is not registered is approximated at 60%.( See maps 1 and 2 below)



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017

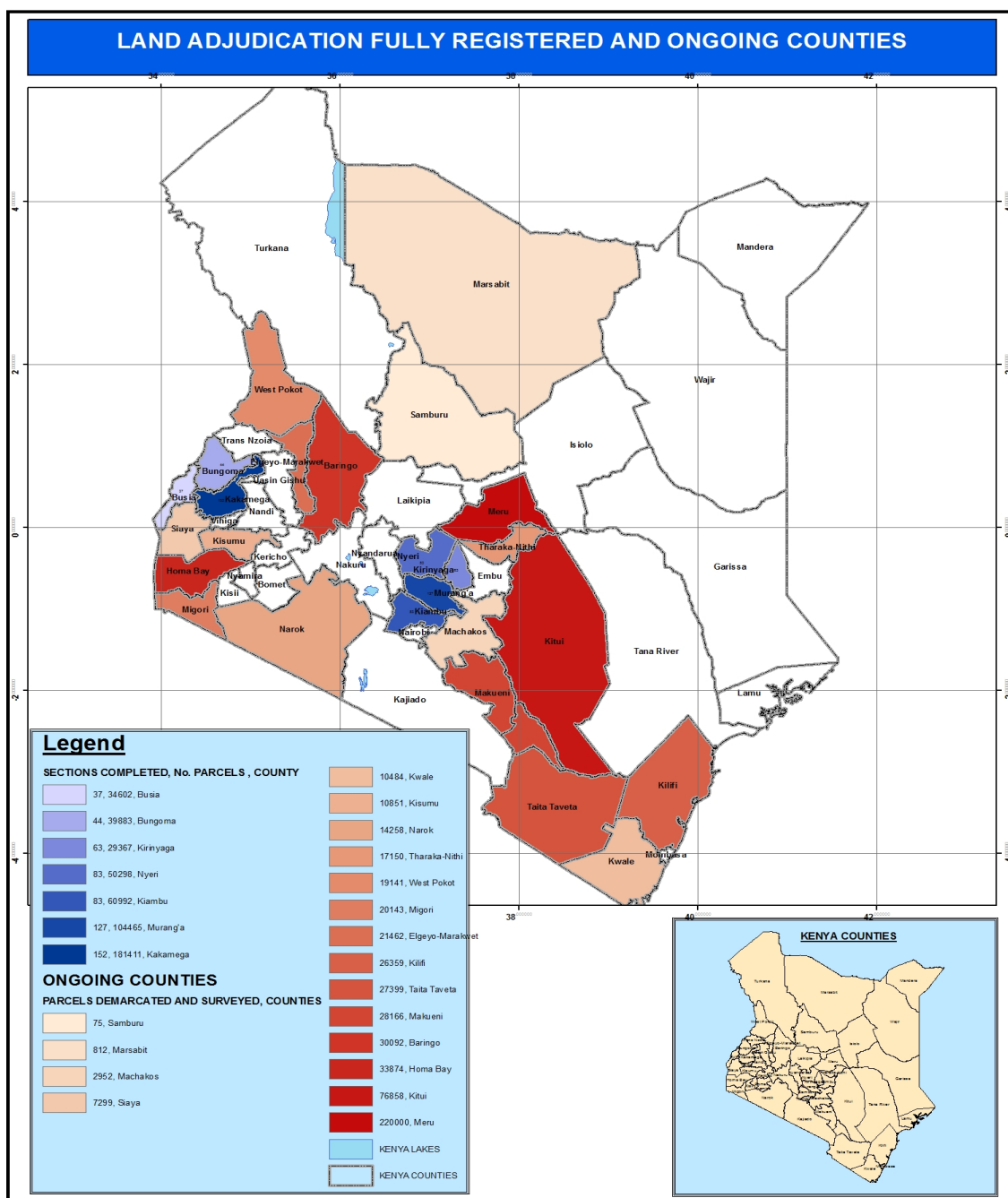


Map 1 - Showing registration of land in Kenya by province (Source: MOLPP)



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



Map 2 - Showing areas of land in Kenya fully registered by county (Source: MOLPP)



## Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



### 1.3 LAND LAWS SUPPORTING COMPENSATION WITHOUT FORMALLY REGISTERED LAND RIGHTS

Kenya has progressive land laws that recognize compensation even in cases where the land is not formally registered. In the Kenyan Constitution, Article 40(3) provides for compensation for land that is compulsorily acquired for a public purpose while Article 40(4) provides for compensation to occupants in good faith of acquired land who may not hold a title to the land. Further in the Land Act 2012, section 5 recognizes Customary land rights whether documented or not, as one of the forms of land tenure in the country. In the Community Land Act, 2016, section 5(3) emphasizes the fact that customary land rights have equal force and effect in law with freehold and leasehold rights.

Rules and regulations to govern the implementation of the above statutes are yet to be developed yet in the above mentioned compulsory acquisition projects the government has largely succeeded in actualizing the envisioned implementation of just and prompt compensation.

### 1.4 STATEMENT OF THE PROBLEM

It is estimated that approximately 60% of land in Kenya is not registered yet many of the infrastructural projects being implemented fall within such lands. The question that this paper seeks to address is, during compulsory acquisition and compensation of un-registered/ un-documented land in Kenya, how were the legitimate landowners of land identified, their interests in land valued and fair compensation awarded in a manner that respects the laws of the land and adopts globally accepted best practices?



## CHAPTER 2

### RESEARCH METHODOLOGY

#### 2.1 INTRODUCTION

The methodological approach used to investigate the research problem was designed to collect data aimed at analyzing evidence of approaches used by various stakeholders to identify land owners and to arrive at fair compensation to affected parties in line with the statutes and other legislation governing compulsory acquisition purposes. The infrastructure development projects selected for this paper were, The Thika Super Highway road construction project, the LAPSET project, the Konza Techno city project, the Dongo Kundu free port project and the Kenya Electricity transmission project. The compulsory acquisition of these major infrastructure projects were done in line with relevant statutes and legislation and by various acquiring authorities. Mechanisms of identifying land owners and payments of compensation were developed in an attempt to adopt a means of formalizing an informal process and ensuring equitable and fair payments of compensation in line with global trends.

#### 2.2 RESEARCH DESIGN

The research design was a descriptive and involved an initial review of literature on existing methods of identifying landowners where these are not documented or registered in cases requiring compulsory acquisition for infrastructure development. Legislation and policies on various forms of land holding, both formal and informal was analyzed to identify those that support the case for compensation of unregistered and undocumented land. Where gaps in legislation was identified; these were highlighted and ways of bridging these gaps discussed, and possible solutions recommended. Spatial and descriptive data from the existing databases within the Ministry of Lands and Physical Planning was collected to show the extent of land that is unregistered and or undocumented and reasons for the lack of such documentation/ ought.

Interviews and focused group discussions with the acquiring authorities, valuers, surveyors, land adjudication officers, community leaders and affected parties in recent compulsory acquisition project were done to gather information on field experiences and methods adopted to identify land owners and arrive at fair compensation. The use of a pilot study to determine the usefulness of the land value index was also done by analyzing value trends in a selected area along the Thika Super Highway and results



presented quantitatively. These findings were then analyzed and lessons learnt using current Government actions to safeguard future acquisitions highlighted.

## 2.2 DATA COLLECTION

Base maps and data on extents of registration of land in Kenya was obtained from the department of Land Adjudication and Settlement of the Ministry of Lands and Physical Planning. Infrastructure maps of projected acquisition areas were also obtained from the various acquiring authorities to identify the land that would be affected by the projects and to determine whether such land is registered and or documented. Focused group discussions were done with the various professionals involved in the acquisition process of the identified projects. This was done by scheduling meetings with various stakeholders to discuss field experiences and map out ways of improving the acquisition process involving unregistered land.

### 2.2.1 DATA ANALYSIS

The analysis of these data was done through the plotting of data obtained from the Department of Land Adjudication and Settlement to show a spatial view of unregistered and registered land in Kenya. Overlaying of the infrastructure maps was done on the base map containing registration and or documentation data to highlight the extent of land earmarked for acquisition that was unregistered. Valuers involved in the acquisition process were interviewed to determine valuation methods used in accessing compensation of properties that were either not documented or registered. Challenges faced by these valuers were recorded and possible solutions sought from them. A pilot development of a land value index on the completed Thika Super Highway was done to analyze the relationship between speculative increases in land values and infrastructure development. The findings of this pilot study were interrogated to determine its viability of its use in curbing speculation in future infrastructural development projects.

## 2.3 LESSONS LEARNT AND CURRENT GOVERNMENT ACTION TO SAFEGUARD FUTURE ACQUISITIONS

The lessons learnt and findings showed various ways of improving legislation to support the process of land acquisition for unregistered and undocumented land, the need for mass titling and digitization of title record processing systems and land records. In view of safeguarding the rights of the marginalized, certain observations were made; derived either from existing legislation or from literature and recommendation mad to embed this in law.





## CHAPTER 3

### LITERATURE

#### 3 KENYA'S INFRASTRUCTURE DEVELOPMENT GOALS

Kenya's Vision 2030 is the development blueprint covering the period 2008 – 2030 and aims at transforming the country into a newly industrialized middle-income country, providing a high quality of life to all its citizens by the year 2030. The Vision aspires for a country firmly interconnected through a network of roads, railways, ports, airports, water and sanitation facilities and telecommunication. One of the key foundations of the Vision, which is also echoed in the Constitution of Kenya 2010 is the inclusion of equity as a recurrent principle in economic, social and political programs. Special attention has therefore been given to investments and infrastructural development in areas that were marginalized and with high incidences of poverty, unemployed youth, women and vulnerable groups. Several infrastructure development projects are in various stages of implementation in some of these ASAL and marginalized areas. Examples include the development of the Dongo Kundu free port, the LAPSET corridor, Energy generation of 23,000 MW of power and distribution. The infrastructural development projects require the acquisition of land by the government. This land may be formally registered and held privately or it may be unregistered but occupied and used by various individuals who claim some levels of ownership.

##### 3.1 LAND ACQUISITION AND COMPENSATION IN KENYA

Land acquisition in Kenya was until recently governed by the provisions of the Land Acquisition Act, Cap 295 (Now Repealed). The Act commenced on 23<sup>rd</sup> August 1968 and was in effect until 2012 when it was repealed by the enactment of the Land Act, 2012. This Act provided for the conditions under which private land would be acquired and methods of such acquisition. Section 8 of the Act provides for full and prompt payment of compensation before vesting and taking possession of the acquired land. The amount of compensation was determined based on an assessment of market value of the land and improvements thereon with an addition of 15% of market value to cater for disturbance.

Various forms of ownership were recognized under the Act, but these had to be documented and registered for an award to be issued.

The Community Land Act, 2016 provides for prompt and fair compensation of persons affected through compulsory acquisitions. This insinuates that there must be a method used in determining value of land whether it is registered/documented or not. This however is a new phenomenon. Most valuations for





## Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



compensations have been done on well-documented and formally registered interests in land. This provision creates a gap in the mechanisms that would be used to arrive at the fair compensation of affected parties. There is need to provide clear and proper guidelines in law for this process to be legally acceptable and admissible in courts of law or in cases of conflict resolution.

The Constitution of Kenya 2010, Article 40 (3) provides for prompt payment of full and just compensation of land that is compulsorily acquired for a public purpose while Article 40 (4) provides for compensation to occupants of acquired land who may not hold title or formal registration to the land. The method of arriving at this ‘just compensation’ is however to addressed.

Section 111 of the Land Act, 2012 states that “if land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined”. Section 2 of the same of the Land Act, 2012 defines interest to mean “a right in or over land”;

In the Kenyan context, legal right has been construed to mean the legally “formally registered right” as evidenced in the Land Register. However, in most cases communities have occupied and used land for many years without any form of formal registration. Examples of such communities are the Bargo in Lamu County and the Turkana community generally.

### 3.2 LAND TENURE

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Land tenure rules define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions. In Kenya the land tenures recognised by the state in law are freehold, leasehold, easements and customary land rights. Freehold estates include the most common form of ownership: single ownership or a fee simple estate, which belongs to one owner for a potentially infinite period of time. Non-freehold estate or leaseholds are interests held with a limited time frame, defined clearly in the lease or tenancy documents.



### 3.3 UNREGISTERED/UNDOCUMENTED INTERESTS IN LAND

Formal land registration systems in Kenya are largely based on statutory land law inherited from the colonial era or imported from western jurisdiction. These systems are centralized, expensive, inflexible and involve complex legal requirements and technical procedure (Augustinus et al; 2004)

This has led to the phenomenon of legal pluralism; where land in some parts of the country is formally registered and administered under statutory land law while other parts remain unregistered and subject to non formal tenure rules. This has resulted in inequalities in security of land tenure in Kenya. Unregistered and undocumented land rights have evolved in under these non-formal tenure arrangements. These include; customary rights especially in rural areas and pastoralist communities. In urban centres, these take the form of informal settlements.

Land tenure in informal settlements in Kenya takes the form of non-formal de facto tenure where land is acquired, occupied and used with or without the permission of its owner.<sup>1</sup> Okoth Ogendo has identified 3 major sub-types of tenure systems within the informal settlements in Kenya:

- Share ownership- this is a situation in which land is acquired jointly by groupings or land buying companies and then individual members of these groupings or the share contributors are issued with share certificates as a proof of joint ownership with others
- Squatting- this is the most popular system in most informal settlements where land is occupied and acquired by the invasion of private or public vacant land by individuals.
- Temporary occupation licenses- this is where individuals are granted permission of occupation of land by the government through the local authority in the area and such occupation is for a limited time by these people.

The UN HABITAT has on the other hand categorized the tenure systems in these informal settlements into two<sup>2</sup>:

- Squatter settlements- which are settlements where land or buildings have been occupied without the permission of the owner

---

<sup>1</sup> Syagga, P.M, Mitulla W and Karira-Gitau S., GOK/UNCHS Nairobi Slum Upgrading Initiatives: Nairobi Situation Analysis. Consultative Report to GOK/UNCHS (Habitat) (2001)

<sup>2</sup> UNHSP, 2003 p. 82-83



- Illegal land development-, which are settlements where initial occupation is legal but where unauthorized land development has occurred.

The overriding characterization of land tenure in informal settlements is that of legality versus legitimacy.<sup>3</sup> This categorization and how policy treats land tenure in informal settlements provides the difference between protection and marginalization.

### 3.4 SAFEGUARDING LAND RIGHTS FOR WOMEN VULNERABLE GROUPS

The National Land Policy addresses the protection of human rights for all specifically dealing with laws, customs and practices that discriminate against women, minorities, children and persons with disabilities, with respect to access to and ownership of land rights.<sup>4</sup> The Policy calls for the ‘recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women’<sup>5</sup> With regard to inheritance, the Policy required the proscription of all customary law which discriminates against women and children.<sup>6</sup> Paragraph 170 (e) requires the government to address land rights of women among a category of issues requiring special intervention. Among the issues raised are: recognition and protection of land rights of women in pastoral communities<sup>7</sup>; legislation to ensure effective protection of women’s rights to land and related resources<sup>8</sup>; repealing laws and outlaw regulations, customs and practices that discriminate against women in relation to land<sup>9</sup>; establishing a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources<sup>10</sup>; provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals<sup>11</sup>; and proportionate representation of women in institutions dealing with land at all levels.<sup>12</sup>

The Policy addresses the issue of matrimonial property separately requiring that laws be reviewed to ensure that they conform to the principle of equality between women and men<sup>13</sup>; enactment of specific

---

<sup>3</sup>For a Discussion of this dichotomy, See Syagga, P., “Land Tenure in Slum Upgrading Processes,” available at [http://hal.archives-ouvertes.fr/docs/00/75/18/66/PDF/Paul\\_Syagga\\_-\\_LAND\\_TENURE\\_IN\\_SLUM\\_UPGRADING.pdf](http://hal.archives-ouvertes.fr/docs/00/75/18/66/PDF/Paul_Syagga_-_LAND_TENURE_IN_SLUM_UPGRADING.pdf)

<sup>4</sup> Ibid para 39 (h)

<sup>5</sup> Ibid. Para 66 (d) i

<sup>6</sup> Ibid. Para 91

<sup>7</sup> Ibid. Para 183 (e)

<sup>8</sup> Ibid. Para 223 (a)

<sup>9</sup> Ibid. Para 223 (b)

<sup>10</sup> Ibid. Para 223 (c)

<sup>11</sup> Ibid. Para 223 (d)

<sup>12</sup> Ibid. Para 223 (h)

<sup>13</sup> Ibid. Para 225 (a)



legislation governing division of matrimonial property<sup>14</sup>; protection of the rights of widows, widowers and divorcees through the enactment of a law on co-ownership of matrimonial property<sup>15</sup>; appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources, before marriage (in cases of inheritance), during marriage, upon dissolution of marriage and after the death of the spouse<sup>16</sup>; and mechanisms to curb selling and mortgaging of family land without the involvement of the spouses<sup>17</sup>.

### 3.5 VALUATION FOR COMPULSORY ACQUISITION

Value is a socially constructed phenomenon and the determination of value cannot be divorced from the social context in which it occurs. (Hutters and Thorsby, 2011 pg 4)

The current International Valuation Standard definition of market value is:

*The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion (IVSC 2016).*

#### 3.5.1 THE CONCEPT OF MARKET VALUE

Market value is not necessarily what the actual seller would accept from the actual buyer, it is what persons of the nature described in this definition would do. That means that market participants require both attention and intention. However, as attention and intention are qualities, both are questions of degree, and valuers have to decide what degrees of both are applicable to meet the definition in their valuation's context. Legal guidance is that the parties have to be "reasonably well- informed and normally diligent" for a transaction between them to be admissible as evidence of market value. We add that this phrase should be interpreted as referring to the standards of the market concerned, and consider that there are special requirements to be so considered in the valuation of unregistered lands.

In Valuation of unregistered land/undocumented land, there is an additional requirement for the value to do extensive research on the social context of the informal land market, reflect upon what that means concerning the value of land or any other associated asset and eventually draw a conclusion on its worth in terms of compensation to affected persons.

---

<sup>14</sup> *Ibid.* Para 225 (b)

<sup>15</sup> *Ibid.* Para 225 (c)

<sup>16</sup> *Ibid.* Para 225 (d)

<sup>17</sup> *Ibid.* Para 225 (e)



### 3.5.2 CONVENTIONAL VALUATION METHODS

There are eight main standard methods used for the valuation of land and property as contained in the globally accepted RICS (Royal Institute of Chartered Surveyors'- *Red Book*). These include; -

1. The Cost Approach
2. The Sales Comparison Approach
3. The Income Capitalization Approach
4. The Profit Method
5. Residual Method
6. Contingent Valuation
7. Travel Cost Method and Hedonic Pricing Model
8. Automated Valuation Models (AVMs)

These valuation methods are increasingly applied not only in developed countries, but also in developing countries and countries with economies with transition. Rietbergen- McCracken and Abaza (2000) explain that:

*“Up to recently, there was considerable scepticism, particularly among international development organizations and developing country governments (as end users of the valuation results) about the possibilities of using valuation methods outside the relatively resource-rich and data-rich environments of developed countries. It was generally felt that developing countries and countries with economies in transition presented too many difficulties (including a scarcity of statistical information; the presence of price distortions or undeveloped markets; and in some cases largely illiterate communities) to allow valuation methods to produce meaningful results. However, over the last five to ten years a growing body of evidence has emerged to refute these claims.”*



## CHAPTER 4

### 4. RESEARCH FINDINGS

#### 4.1 IDENTIFICATION OF OWNERS OF UN-REGISTERED/ UNDOCUMENTED LAND DURING COMPULSORY ACQUISITIONS

Land tenures in Kenya are largely customary, freehold or leasehold. Freehold tenure originates from customary tenure and on adjudication and survey of the land the land owners who can be individuals or communities are issued with freehold title deeds. Leasehold tenure begins with allocation of land by either the relevant local authority or national government after planning and survey. The land is then registered and leasehold titles issued.

##### 4.1.1 IDENTIFICATION OF OWNERS OF LAND UNDER CUSTOMARY TENURE

Much of the areas affected by the acquisitions was land not yet adjudicated and thus still under customary tenure. Interviews carried out on key informants from the acquiring institutions who took part in the compulsory acquisition program outlined the various methods they used to ensure genuine land owners are properly identified to receive compensation and that the whole process is participatory. They reiterated the importance of having methodologies that verified ownership to avoid disputes and litigations after the exercise and thus used up to 3 methods to verify each parcel.

##### **Method 1: Use of Local Administrations**

Without the existence of legal titles the compensation institutions recognised the importance of the social orders in existence in the communities and thus made use of local administrators to identify genuine land owners. An example is in the Resettlement Action Plan (RAP) in the LAPSSET project during the acquisition of the Lamu-Garissa road project where the “*local compensation committees*” comprising of both male and female individuals identified by the local Chiefs and selected by the Assistant County Commissioner were used.

The *Local Compensation Committees* were instrumental in helping to mobilize communities that were affected by the acquisition. During consultation meetings the community’s knowledge and understanding of the LAPSSET project was discussed. They provided local/community knowledge beneficial for the success of the projects as well as sensitize the community on the upcoming projects after being trained. They fostered trust between the stakeholders of the project and ensured participation of the community. They played a major role in building trust between affected community members and the project experts.





On identification of the land to be acquired the local compensation committees assisted in identifying interests existing on the land and in the verification process of identifying affected occupants/owners.

### **Method 2: “Majirani” Concept**

“Majirani” is a Swahili word meaning “neighbours”. In order to identify owners and in the absence of legal titles, neighbours on all the boundary sides were used to confirm whether a claimant was genuine or not in the “*majirani*” concept. In the Majirani concept everyone with an interest in the land to be acquired was asked to be physically present and to stand on their parcel of land after which neighbours on each boundary side would confirm whether the claimant was genuine or not. On clear verification, interests were documented for purposes of compensation. In case an interested party was away during the *majirani* identification process then their identification and confirmation as genuine owner was postponed and compensation would be done later (Kibugi, Mwathane & Makathimo, 2016).

### **Method 3: Holding inquiries for ownership disputes**

Section 112 of the Land Act, 2012 recommends holding of inquiries for those with interests in land that is to be acquired. Consequently the acquisition institution used such forums to inquire into disputed interests in land so as to further verify the genuine land owners. The notice to hold inquiries was published in the Kenya *Gazette* and those with conflicting interests in land would attend to enable the acquiring institution to confirm where there were disputes and whether they can be resolved before the compensation process.

#### **4.1.2 IDENTIFICATION OF LAND UNDER LEASEHOLD TENURE**

For leasehold land where the lessor is the county government and Letters of Allotments had been issued by the relevant local authority yet title deeds had not been issued to the allottees the acquiring institution requested for all the affected persons to submit their Letters of Allotments to the institution. On receiving the Letters of Allotments which are usually issued by the County Government (local authority), the acquiring institution wrote to the relevant County Government to submit a schedule of the land owners as per their records so as to verify with the submitted Letters of Allotments and thus avoid disputes on interests in land. Examples include Isiolo and Meru County Councils during the acquisition of airport land for the LAPSSSET project.

Despite lack of registration of land, on issuance of Letters of Allotments land owners in various instances go ahead and transfer the land using Sale Agreements. In such cases where it was found that a parcel of land had been transferred to another party and thus the County Government could not verify the updated



owner, the new owner submitted the Sale Agreement and also came to the acquiring institution with the former owner to confirm that indeed the new owner is now the current owner of the land. In case the former land owner was deceased the heirs would come with Letters of Administration to confirm the same.

#### 4.1.3 IDENTIFICATION WHERE THE OWNER IS DECEASED

In many instances it was discovered that after the death of a land owner, the heirs did not pursue the relevant Letters of Administration. For such land the heirs were assisted by the local Chief as well as the Legal Officer of the acquiring institution to acquire the relevant Letters of Administration for that specific property to be compulsorily acquired so as to be able to administer the funds of compensation.

#### 4.1.4 IDENTIFICATION OF OWNERS OF LAND UNDER SETTLEMENT SCHEMES

For Settlement Schemes, land is usually allocated with a charge and on payment of the charge money a discharge is registered before issuance of a title. The relevant government department usually keeps records showing the allottees of the land in such Schemes. In order to identify the genuine land owners of land to be acquired which fell under Settlement Schemes the relevant government department submitted a schedule of the owners to the acquiring institution.

#### 4.1.5 IDENTIFICATION OF SQUATTERS AND THE CONCEPT OF “OCCUPANTS IN GOOD FAITH”

For purposes of identification and compensation of affected persons after compulsory acquisitions and due to the fact that regulations to actualize the land acts have not been enacted, the acquiring institution had to come up with a working definition of “...occupants in good faith of land acquired ...” as per the Constitution in article 40(4). It was agreed that “*occupants in good faith*” referred to squatters on private land where the formal land-owner had allowed them to settle on the land temporarily and had thus constructed their shelter and other developments on the land. It also referred to squatters on public land whom the government had allowed to temporarily reside on the land.

For squatters on private land where the land owner had given permission to the squatters to reside on the land, identification was done using verification from the land owner as well as the *majirani* concept where neighbours identified each other. For squatters on public land identification of the squatting occupants was done by the use of the *majirani* concept.

#### 4.1.6 CHALLENGES EXPERIENCED DURING IDENTIFICATION

Key informants interviewed highlighted various challenges experienced during identification of the land owners. In some instances the original owner of the land who had already (informally) transferred the





land would attempt to reclaim the land from the buyer so as to share in the compensation benefits especially since the amount compensated seemed more than what was sold.

Some original land owners would attempt to relocate the buyer to a parcel that was not under acquisition so as to benefit from the acquisition funds. Some would also insist on creation of a new sale agreement so as to get a share of the compensation funds.

There were instances where parents who had given part of the ancestral land to their sons, on realising that it falls under the land to be acquired would reclaim or try to relocate them so as to benefit from the compensation funds.

Normal boundary disputes where neighbours disagree on the extent of their boundaries were also common as each tried to reclaim more land so as to gain more compensation.

In order to resolve the above challenges and to enable the acquisition and compensation to proceed, use of alternative dispute resolution (ADR) was used.

#### 4.2 VALUATION OF UNREGISTERED LAND AND AWARD OF COMPENSATION

UN-HABITATA/GLTN partnering with FIG and RICS commissioned a report entitled “Valuation of Unregistered Lands” (Nzioki, Swazuri, Tracey-White and Yahya), 2013. The study provisionally and conditionally confirmed that valuation can be performed on unregistered land but noted that. The most commonly used method in preparing such valuations was Sales Comparison Method but other methods were also used. The issue therefor was not the valuation method as such but the context and the process in which it was to be applied in the valuation and transfer of rights. The wide range of tenure types that for the continuum of rights need to be accommodated in the valuation process; both formal and informal, legal and illegal, secular and religious (e.g Islamic tenure categories), secure and insecure and modern and customary. This is a similar conclusion to that found in other RICS funded research studies in Kenya, Uganda and China.

#### 4.3 AN ANALYSIS OF THE USE OF A NATIONAL LAND VALUE INDEX AS A TOOL TO REDUCE ESCALATION COMPENSATION COSTS – THE CASE OF THIKA SUPER HIGHWAY

A pilot study was conducted on a section of Thika Super Highway with a view to determining the viability of a land value index to curb speculation in infrastructural development projects



#### 4.3.1 DEFINITION OF LAND VALUE INDEX

A land value index is a transaction-based price index constructed using the hedonic pricing approach. An ideal price index measures the general rate of change in the price level of a group of commodities over time. It is ‘general’ in the sense that the measured change only reflects the price effects common to all commodities in the group, provided that such common effects exist.

A Real estate price index (REPI) is a statistical device that measures changes in prices of land and can be computed and published on a regular basis as a tool for administration of real property. Most countries however do not have an established system of real estate price index scientifically derived purposely for land administration. Kenya has had the problem of high and escalating land compensation prices due to speculative buying of land in areas earmarked for infrastructure development.

In developing the land price index, the project took a number of factors into consideration, such as, existing real property market conditions, availability of data, and applicability of the methodology to the Kenyan situation. Some of the benefits envisioned from the development of a land value index include: -

1. To manage price fluctuations occasioned by speculation as a result of intended land acquisition for public infrastructure developments.
2. To manage economic risks associated with price changes in any given land market and to anticipate such changes to enable accurate budgeting of compensation costs in planned large scale infrastructural development projects. Shiller’s (1998), suggests that whether or not institutions can manage “the largest economic risks” or not relies on real estate price indices, which facilitate the creation of derivatives such as real estate futures and options.
3. The land price indices can be used as a deflator of property expenditures. This allows the comparison of property values/expenditures at different points in time.
4. Other functions may include; improving the accuracy of valuations and subsequently, compensation amounts payable to affected parties, increase the efficiency of collateral and improve mortgage market integration.

#### 4.4. THE USE OF HEDONIC PRICING IN DEVELOPING A REAL ESTATE PRICE INDEX

This approach is based on the principle that the price of a property depends on its characteristics and its location. Only changes in property prices with similar characteristics from one period to another reflect



the changing conditions of supply and demand in the property market. Considering the heterogeneity of properties traded in the real estate market, the implementation of the hedonic method requires the estimation of the effect of a number of characteristics on property price, through econometric equations specified for each elementary area relatively homogeneous and for each type of property.

The advantage of this method is that it can track over time the real value of a sold property. Also, it allows the valuation of property in view of their characteristics. However, it requires a detailed description of the property's characteristics over a period of time.

#### 4.4.5 REPEAT SALES AND LAND VALUE INDEX

The repeat sales method, considered as a variant of the hedonic method, overcomes the problem of heterogeneity of real estate. It consists of constructing a price index based on properties which have been sold more than once during the period under study. It assimilates price fluctuations to the average changes observed on repeat sales. This method, which excludes new property, is difficult to apply at a minute level of strata, because of the relatively small number of such sales. Thus, the lack of data on the characteristics and the technical difficulty of the hedonic method are the main reasons for adopting the repeat sales method.

For the repeat sales method, only the price change and the number of transactions are included in the construction of the index. It creates an index sensitive to the market dynamics, taking into account the time distribution of transactions. Thus, each repeated sale (couple of transactions on the same property) is used to calculate a price change. The index is then constructed on the basis of these individual transactions. Formally, the estimating equation is:

$$\log\left(\frac{P_t}{P_{tr}}\right) = \sum_s \beta_s D_{st} + \varepsilon_{st}, \quad s = 1, \dots, S$$

with

$$D_{st} = \begin{cases} 1 & \text{if } s = t \\ -1 & \text{if } s = \tau, \text{ with } t > \tau \\ 0 & \text{else} \end{cases}$$

- When
- $P_{tr}$  : Price of the property at the time  $\tau$ , date of the first sale.
  - $P_t$  : Price of the same property at the time  $t$ , date of the second sale.
  - $\beta_s$  : coefficient to estimate for the period  $s$
  - $\varepsilon_{st}$  : Error term
  - $S$  : Number of Quarters contained in the study period.

Where  $\tau = t-1$ , price development is assimilated to average price movements on repeat sales observed between  $t$  and  $t-1$ .



Once estimated, the coefficients  $\hat{\beta}_t$  used to construct the index on a base of 100 for the quarter  $t$  :

$$I_t = 100 \exp(\hat{\beta}_t - \hat{\beta}_7)$$

#### 4.4 FINDINGS IN PILOT CONSTRUCT OF A LAND VALUE INDEX CARRIED OUT ON A SECTION OF THIKA SUPER HIGHWAY

Data used to construct this pilot Land Price Index are drawn from the Valuation Record at the Ministry of Land and Physical Planning.

In order to respect the requirements of the ISO 9001 standard for validating computer applications for data processing, two data processing programs were developed separately with two different software (Excel and SPSS), to compare the results obtained and to ensure the reliability of treatment.

The date of transfer and the price of the property per acre were the two variables considered for this study. The variable price per acre is a composite dummy variable depicting relative location, access, user, availability of services, quality of land etc.

#### 4.5 DATA ANALYSIS

The mean and the median of real estate prices are the most common methods used internationally. However, it is subject to serious bias because it does not distinguish between price fluctuations and changes in the composition of properties sold from one year to another. At the same time, data available at national level, despite their importance, are insufficient for estimating the effect of quality, which is the starting point for applying the hedonic method.

To overcome these problems, the key issue is quality control—both quality variations across properties and quality changes of a property over time. There are two major approaches to controlling for quality: valuation-based and transaction-based methods.



The method employed is often dictated by data availability. When market transaction data is not available (due to a lack of transactions, incomplete data records, or publicly inaccessible data), valuation is used to substitute for market prices. Valuation-based indices are usually constructed by the periodic valuation of a representative portfolio of properties or, in some cases, a hypothetical standard unit. For this pilot study, we relied mostly on transaction evidence although for the main study, there will be need for actual inspection of individual parcels.

#### 4.6 DATA COLLECTED IN THE STUDY AREA

##### DATA

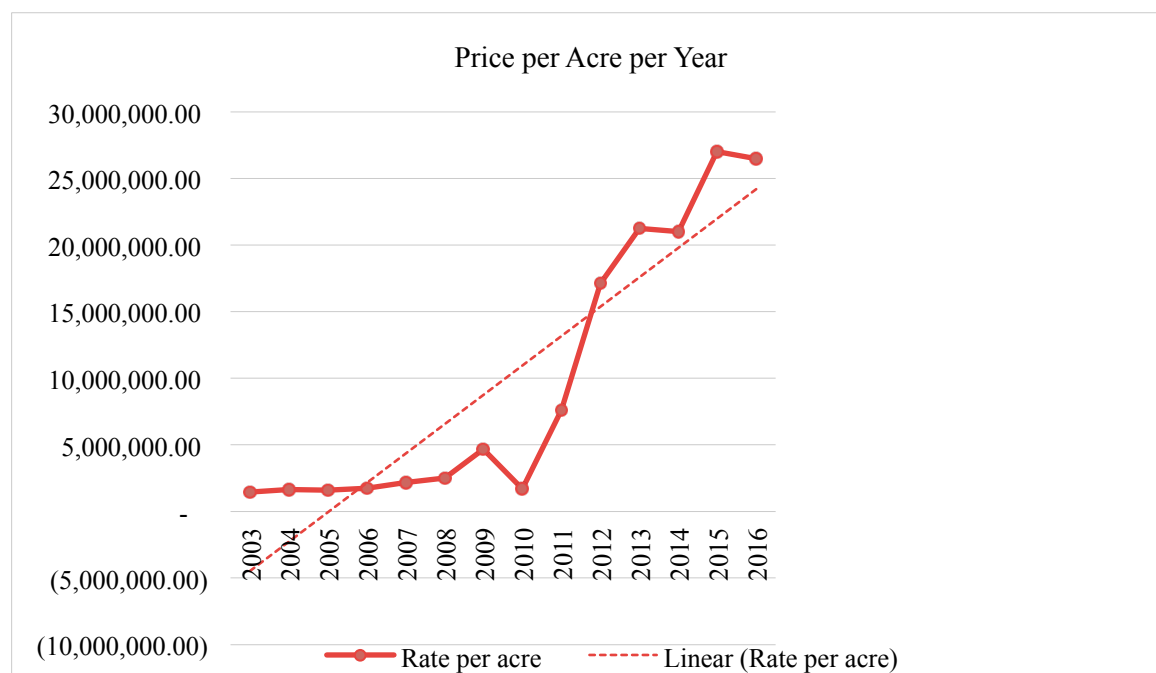
YEAR	No. of Years	PRICE PER ACRE
2003	1	1,443,333.33
2004	2	1,671,666.67
2005	3	1,597,142.86
2006	4	1,760,000.00
2007	5	2,184,000.00
2008	6	2,533,333.33
2009	7	4,673,333.33
2010	8	1,700,000
2011	9	7,625,765.91
2012	10	17,141,868.97
2013	11	21,268,744.63
2014	12	21,007,006.93
2015	13	27,039,271.43
2016	14	26,505,124.27

*Table 1: Average Price of Land per Acre (Source MOLPP)*



#### 4.7 DATA ANALYSIS

##### *Trend line*



*Figure 1: Change in Prices for each year (SOURCE Department of Land Valuation)*

From 2003 - 2008, there was a negligible increase in the value of land per acre in the area under study. 2008 marks the year of inception of Thika superhighway, so prior to this, the land prices were relatively low and stable.

However, upon gazettelement and subsequent commencement of acquisition of parcels for infrastructural development in 2008, there was a marked increase of about 84% from 2008 – 2009. In 2010, there was a drop of 63%, this could however be as a result of minimal sales (1 sale) as proprietors held on their properties to benefit from the anticipated increase in value. Post 2010, there has been an exponential growth in values of land, a slight decrease in 2014 was however noted.



## Regression analysis

In the regression, the assumptions in this case is that 2003 is the first year followed by the second year up to the 14<sup>th</sup> which is 2016; it takes a linear form.

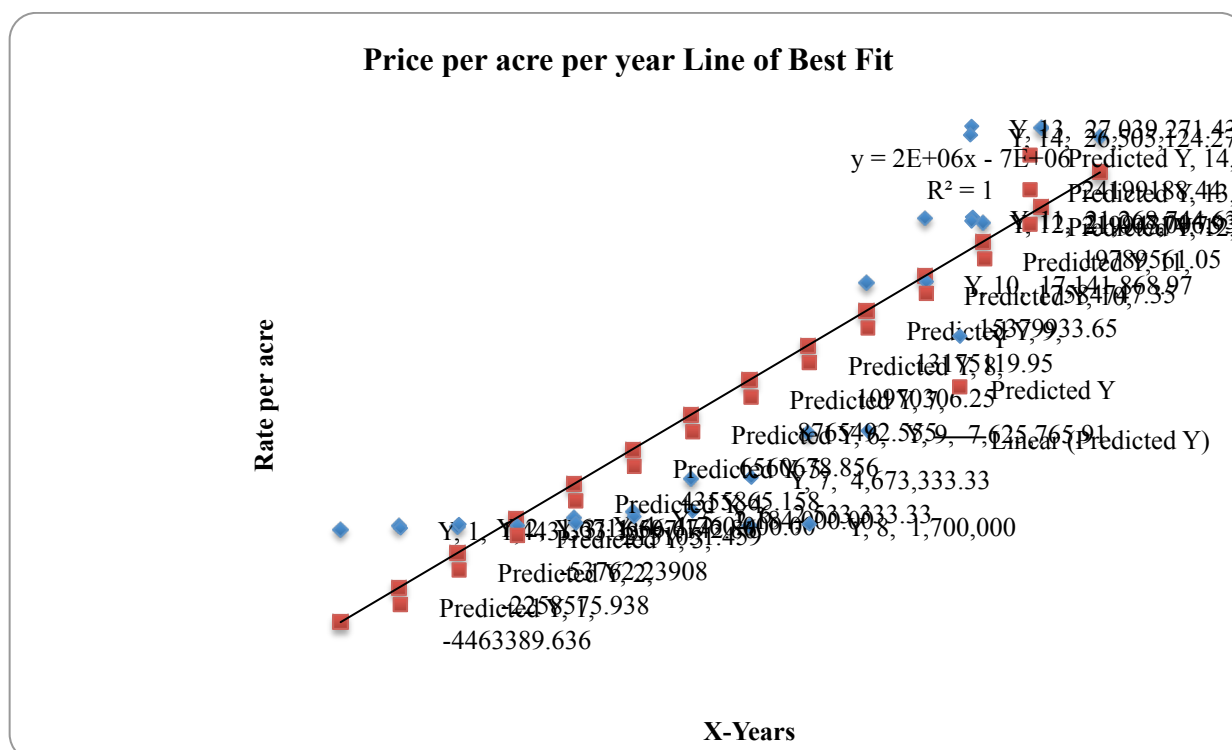


Table 2: Regression Analysis (Source: Department of Land Valuation)

The regression equation is then;

$$Y (\text{predicted}) = B_0 + B_1 \cdot X_1$$

The column of estimates provides the values for  $B_0$  and  $B_1$  for this equation.

$$Y = -6,668,203.33 + 2,204,813.70 \cdot X_1$$

Where  $X_1$  Year

$$Y (\text{Price per acre}) = -6,668,203.33 + 2,204,813.70 \cdot X_1 \cdot (\text{Years})$$





# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



The coefficient for years is 2,204,813.70. So, for every increase in the number of years, there is an increase in price by Kshs 2,204,813.70 putting all factors constant. This is inclusive of the speculation element.

The extrapolation is as noted in the table below:

Predicted		
2017	15	26,404,002.17
2018	16	28,608,815.87
2019	17	30,813,629.57
2020	18	33,018,443.27
2021	19	35,223,256.97
2022	20	37,428,070.67
2023	21	39,632,884.37
2024	22	41,837,698.07
2025	23	44,042,511.77
2026	24	46,247,325.47

*Table 3: Predicted Price of Land per Acre for the next 10 years (Source: Department of Land Valuation – MOLPP)*

## 1. Rate of Change of the price per acre

$$PR = \frac{(V_{\text{Present}} - V_{\text{base year}})}{V_{\text{base year}}} \times 100$$

Where

$V_{\text{base year}}$

PR = Percentage rate

$V_{\text{Present}}$  = Present Value

$V_{\text{base year}}$  = Base Year Value (2003)

Therefore, the growth rate between 2003 and 2004 is:

$$PR = \frac{(1671666.67 - 1443333.33)}{1443333.33} \times 100$$

$$= 15.82\%$$

The data for the remaining years are noted in the table below;

Year	Percentage Change in Price (%)
2003	0.00
2004	15.82
2005	10.66
2006	21.94
2007	51.32





2008	75.52
2009	223.79
2010	17.78
2011	428.34
2012	1087.66
2013	1373.59
2014	1355.45
2015	1773.39
2016	1736.38

Table 4: Percentage change in Price per Acre (Source Department of Land Valuation MOLPP)

The trendline for the change in land prices per annum is as shown in the graph below:

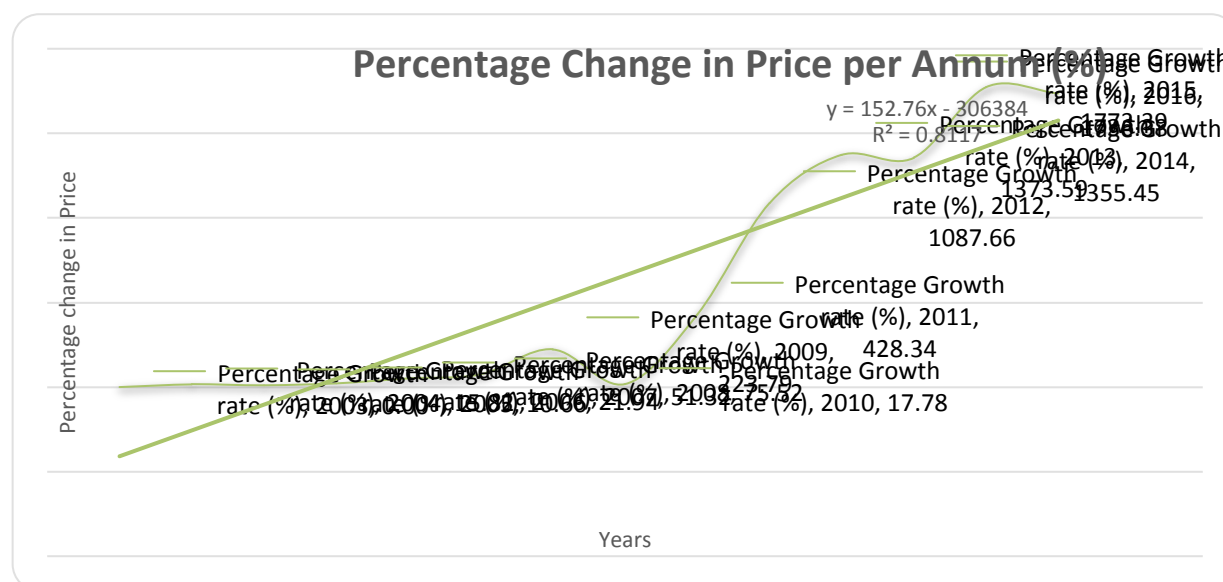


Figure 2: Percentage Change in Price per Acre

The trend shows an upward growth over the period of study. The base year was set as 2003 and the growth rate of the subsequent years benchmarked from this base year.

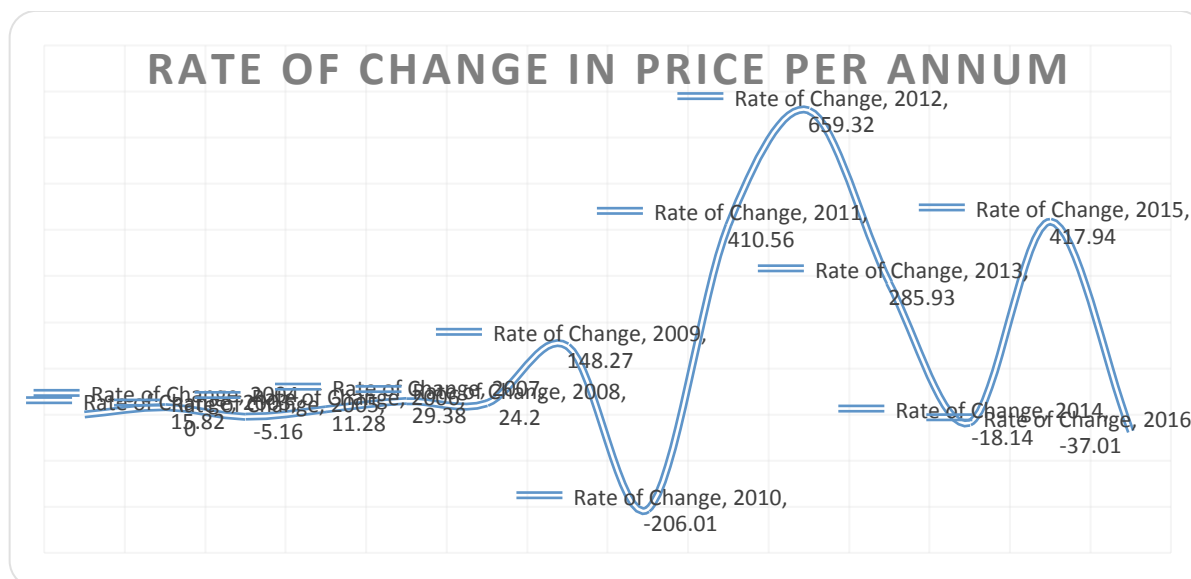


Figure 3: Rate of Change in Price per Acre per Annum

From 2003 to around 2008, there was a steady rise in land prices with the growth rate averaging about 25% increase per annum. After 2008 to about third quarter 2013, the land prices took an astronomical rise (excluding 2010) and averaged about 425%. The growth then took a dip in 2014 by about -18% then assumed on an upward trend in 2015 by about 417%. On the third quarter of 2016, the growth rate has dipped by about 37%.

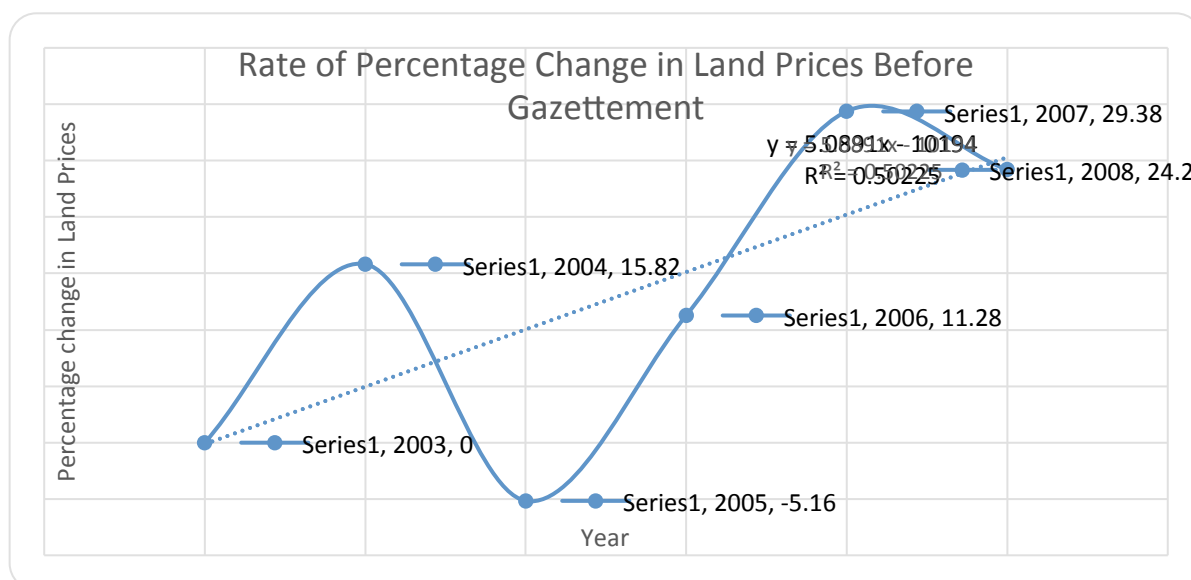


Figure 4: Rate of change in land prices prior to gazettement



Before the gazettement of the Thika Superhighway expansion project, property prices increased by 5% per annum as given by the coefficient of x. This can be taken as the normal growth rate devoid of speculation. The government can therefore rely on this growth rate while compensating for acquired property for the infrastructural development. Based on this growth rate, we can therefore forecast the likely price change over the next 10 years while eliminating the speculation aspect as noted in the graph below;

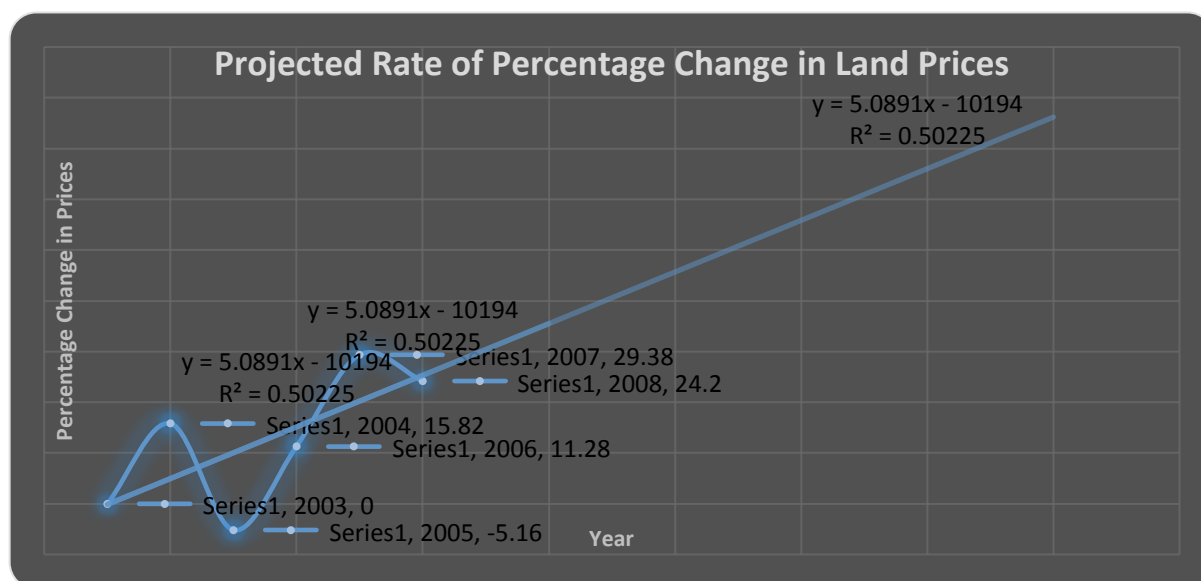


Figure 5: Predicted Land Prices rate of change (Source: Department of Land Valuation MOLPP)

This prediction, devoid of speculation, can therefore be relied on by the valuer after inspecting the properties in coming up with the awards for compensation.

Year	Predicted Rates
2003	1,443,333.33
2004	1,515,500.00
2005	1,591,275.00
2006	1,670,838.75
2007	1,754,380.69
2008	1,842,099.72
2009	1,934,204.71
2010	2,030,914.94
2011	2,132,460.69
2012	2,239,083.73
2013	2,351,037.91



2014	2,468,589.81
2015	2,592,019.30
2016	2,721,620.26

From the table above, the acquisition rates should have thus been 1.8M – 1.9M per acre in 2008 – 2009 instead of 2.5M – 4.8M witnessed during the same period.

#### 4.8 CHALLENGES FACED IN THE DEVELOPMENT OF A NATIONAL LAND VALUE INDEX

The establishment of a real estate price index at the national level is a very difficult task. In fact:

- The heterogeneity of property makes it difficult to adopt a unique approach to pricing. Several characteristics of a property are involved in the formation of its price, including the size, type of soil, shape, gradient and geographical location.
- The wide variation in property prices, which originates in the heterogeneity of real estate. In addition, distortions in the development of average prices over time are always possible: if during a quarter, transactions concerned mainly new properties in good conditions while in the next quarter, they involve properties not well maintained. This can result in price changes that don't reflect the actual trend.
- The difficulty of distinguishing the actual price changes of the quality that evolves over time.

#### 4.9 THE USE OF A LAND VALUE INDEX IN DERIVATION OF A COMPENSATION MATRIX IN UNREGISTERED/UNDOCUMENTED LAND

This would involve the study of an informal land market. Where transactions are either done verbally or transfer of interests in property are based on non-monetary transactions.

Each sub-market with unregistered and undocumented land may have different parameters as regards how members of the community value land. The valuer would have to conduct a thorough assessment of the market including the social economic factors affecting the markets.

The land value index could actually be developed by such a study and may improve the accuracy of valuations of unregistered land.



#### 4.10 CHALLENGES OF VALUATION OF UNREGISTERED LAND IN KENYA

- i. **Determining the real owner(s) of the subject parcels:** As most lands were not registered, it was difficult to identify the real owners of the subject lands. Cases of people claiming ownership were the majority, although proof of ownership could not be ascertained. At times, disputes were reported over more than two people or communities claiming ownership over the same parcels.
- ii. **Lack of ownership documents:** Valuation involves determining the value of an interest in property. Where interests are not recorded, or registered in official and acceptable documents, it is as if the interest is not recognized. In most of the study areas, very few respondents who claimed to be owners were able to show any ownership documents. Cases of multiple ownerships of the same parcels existed and these disputes over ownership lead to uncertainty in the validation process.
- iii. **Hostile land occupants:** Mostly squatters who fear the consequences of any official transactions and activities. Although no valuation was attempted, whenever the land occupiers and others were asked about previous valuation transactions, they almost always gave hostile responses. Even hypothetical questions on valuation were met with resistance. Determining some of the variables necessary for carrying out valuations, or assisting in the valuation process proved difficult.
- iv. **Lack of Comparable Sales data:** Inability to obtain appropriate sales comparable: Some of the parcels under study were adjacent to areas whose lands had title deeds for which transactions were in the formal property markets. Details of comparable sales were relatively easier to obtain than in the informal real property market where transactions are done in secrecy for fear of “exposing yourself” to the authorities. Although there were vibrant real property markets in all the study areas, obtaining acceptable and reasonable direct sales comparable was not easy.
- v. **Documentation:** Due to lack of documents, it is not easy to determine the true boundaries and sizes of the lands: Boundary disputes made it very tedious to determine actual sizes of land plots and parcels owned and/or occupied. Indeed the majority of the respondents could not state with any accuracy the actual size of their parcels. Yet valuation requires that the size of the land must be known (more or less accurately) for its value to be assessed.



## CHAPTER 5

### 5. LESSONS LEARNT AND CURRENT GOVERNMENT ACTION TO SAFEGUARD FUTURE ACQUISITIONS

#### 5.1 ENACTMENT OF LAND ACTS

A functional legal framework that supports land registration to ease identification of land owners whether individual or communal and guide compensation by giving reliable data on boundaries and acreages is crucial in successful land acquisitions. In recognition of this the Kenyan government has enacted various progressive land laws to which will work to facilitate land acquisitions as shown below;

##### 5.1.1 THE LAND REGISTRATION ACT, 2012

The Land Registration Act 2012 was enacted to harmonize and rationalize the various Land Registration Acts that were running concurrently i.e. Government Lands Act (Chapter 280), Registration of Titles Act (Chapter 281), the Trust Lands Act (Chapter 288) and Registered Lands Act (Chapter 300). Using a single Land Registration Act will ease registration and avoid the duplicities that were occasioned by having numerous land registration acts in force (GOK, 2012). This will allow more land in the country to be documented and will enhance authenticity of registration documents which will facilitate land acquisitions in future.

##### 5.1.2 THE COMMUNITY LAND ACT, 2016

Ownership of land in Kenya by communities is an aspect that the former land legislation did not comprehensively address and the enactment of the Community Land Act, 2016 is a milestone in the ownership and registration of Community Land. Section 11 of the Community Land Act, 2016 provides for registration of land held by Communities i.e. organized group of users of Community Land who share a common ancestry, culture, livelihood, socio-economic interests, geographical space or ethnicity. The Act will be instrumental in enabling communities that own land communally to register their land upon the registration of their community (GOK, 2016).

To safeguard Communities during compulsory acquisitions, section 5 of the Act emphasizes the fact that Community Land can only be compulsorily acquired in accordance with the law for a public purpose and upon prompt and just compensation.

In section 4, the Act provides for the relevant County Governments to hold trust for communities in cases where the community land is not registered and any monies payable as compensation for compulsory acquisition should be deposited in an interest earning account and transferred to the community upon registration.





### 5.1.3 REGULATIONS TO ENACT THE LAND ACTS

The Government of Kenya through the Ministry of Lands and Physical planning as its lead agent is working on the implementation of the Land Registration Act (LRA), Land Act and the National Land Commission Act all of 2012. Indeed the National Land Commission Act has already been enforced especially through the creation of the National Land Commission whose commissioners have been in office since the year 2013. The Commission took over the functions formerly performed by the Commissioner of Lands and as guided by the Constitution. Both the Land Act and the Land Registration Act have not been fully enforced because there is need to formulate rules and regulations that will oversee the implementation and the rationalization, harmonization and unifying especially of the land registration laws.

This has left the repealed land and land registration laws operating side by side with the new Acts. LRA for instance has provided for transition under articles 104 to 110. Article 110 provides that until such a time the Cabinet Secretary in charge of lands formulates the rules and regulations, the repealed laws would continue to operate with such adaptations and alterations as may be found relevant. A legal challenge here is that the law has not provided for timelines within which to formulate the rules and regulations nor has it (LRA) set timelines for transition.

There is also a practical challenge in transiting all the laws into the newly enacted LRA. This is due to the fact that all land title holders must surrender their titles and other land ownership deeds in exchange for titles to be prepared under the LRA. This does not only call for massive titling, it also requires conversion of titles and a resurvey of most if not all of Kenya so as to issue a parcel unique identifier as provided for under the new law. LRA is thus enacted in some land registries and to some extent through the ongoing digitalization of records and opening up of new offices. As far as unification of titling is concerned, this has not yet borne fruit. The Cabinet Secretary recently (January 2017) named a multi-disciplinary rules and regulations committee with a two month term to oversee the full implementation of the land laws above mentioned. It is hoped that the committee will deliver a quick implementation of the land laws.

### 5.2 MASS TITLING PROJECTS

In order to increase the amount of land that is registered in the country, a move that is facilitates compulsory acquisitions through ease of identification of land owners and how much land they own, the current government embarked on an ambitious titling program with a goal of producing at least 3million titles between 2013 and 2017 and with 6 months remaining before the end of the 5 year period, the current number of title deeds so far prepared and issued is approximately 2.4 million. It is estimated that by





## **Responsible Land Governance: Towards an Evidence Based Approach**

**ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY**  
WASHINGTON DC, MARCH 20-24, 2017



August the 3 million mark will have been achieved and even surpassed. This includes titles for leasehold and freehold/ customary tenure. Areas currently where mass titling is taking place especially in conversion of customary tenure to freehold tenure through the adjudication process include the Coast region, Nyanza, East and Central Kenya.

To fast-track titling the government has also constructed and opened up more land registries in the country so as to bring services closer to the people. Examples include new registries built in Bondo, Siaya, Uasin Gishu, Isiolo, Trans Nzoia, Meru and Lamu (GOK, 2013).

### **5.3 DIGITIZATION OF TITLE PROCESSING SYSTEMS AND LAND RECORDS**

Digitization of land registries is currently on going and up to 16 land registries have now been digitized. This enables citizens served by such registries to carry out online searches thus easing land transactions.

Scanning of correspondence files which contains the history of parcel files is on-going as a pre-requisite to digitization of the records. On completion it will greatly ease retrieval of information on lease hold land. The government of Kenya has also introduced a lease processing system that has shortened the number of days used to process a lease from 1 month to 5 working days. With the speeding up of formalization of land records through digitization more land will be registered and this will facilitate land acquisition programs in future.

### **5.4 SAFEGUARDS AND BENEFITS FOR AFFECTED COMMUNITIES**

There is a number of measures to be undertaken to ensure that there is proper safeguards to protect the affected communities from disintegration and unfair practices including fair and prompt compensation. The Constitution of Kenya at article 40 (3) stipulates that no one should be deprived of their land with just, fair and prompt compensation and that if dissatisfied, parties have a right of access to courts of law for legal redress. Because land is very emotive in almost all the world, the democratic space created in Kenya over the last couple of years has indeed seen many disputes in land escalated to the environment and land court.

Case law has further elaborated the law's position that, the acquisition must be for a public utility and that lands subject of compulsory acquisition cannot be re-allocated to private individuals for private gain. In that regard it is clear any acquiring authority or agent does so for the benefit of the whole community. The Thika superhighway for instance brought with it nodes which have turned into business hubs over and above the core provision of a transport corridor.



## 5.6 PROTECTION OF FAMILY INTERESTS

Protection of land rights especially for the women and the girl child is an issue that has been sidelined. In Rwanda for instance, any land is registered in the names of both husband and wife. It would thus mean that at compensation, the money is paid to both parties and for the benefit of the whole family. Kenya is highly patriarchal and there is a likelihood that the rights on land for both women and the girls are at jeopardy. However, the LRA at article 28 enumerates spousal interest as an overriding interest and before any land transfer is effected, the spouse is required to give their consent. This can be borrowed and applied at compensation and any monies paid should be paid into a family joint account and/or allocate the family land elsewhere. The Law of Succession Chapter 162 of the laws of Kenya is also quite clear that at inheritance, both male and female heirs should inherit their parents land equally unless they profess a faith or religion whose provision is otherwise..

It is also generally held that any person in whose name the land title appears, holds the land for him/herself and in trust for other family members especially where the land is family or community land. This is both in case-law as well as in the books of law [EsiroyovsEsiroyo] & [LRA section 28].

## 5.7 THE EMERGING CONCEPT OF PEOPLE'S CENTERED LAND GOVERNANCE IN KENYA

In recent years, equitable access to land, particularly in rural areas, has been high on the international policy agenda and is recognized as a crucial determinant of sustainable development and poverty reduction. There has been limited effort to identify rural people and minorities that face absolute landlessness, illegal tenancy, and land alienation. Increasing commercial pressures on land have also led to large-scale land acquisitions often without information or any compensation for displaced, or respect for land ceiling laws. Further, socio-ethnic exclusions and patriarchy perpetrate social barriers to land excluding women and youth.

As a result, concern for 'pro-poor' land policy<sup>18</sup> has coincided with the mainstream promotion of efficient administration of land policies, leading to the concept of 'land governance'. Innovative and progressive land policies and laws, particularly at the national level, are key to determining equitable access to, use of, and control over land and other natural resources.

The Vision of the National Land Policy, 2009 as adopted was efficient, sustainable and equitable use of land for prosperity and posterity. To realize this vision the Policy's mission is to promote positive land

---

<sup>18</sup>Saturnino M. B. Jr and Jennifer C. F. 'Contemporary Discourses and Contestations around Pro-Poor Land Policies and Land Governance' (Journal of Agrarian Change, Vol. 10 No. 1, Jan. 2010)



## Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, institutions and systems dealing with land.

The Policy underscored the importance of land and land governance for Kenya, pointing that land had multiple values. The values of land that the Policy sought to protect were:

- Land as an economic resource that should be managed productively;
- Land as a significant resource to which members of society should have equitable access for livelihood;
- Land is a finite resource that should be utilized sustainably; and
- Land is a cultural heritage, which should be conserved for future generations.

In protecting these values, the Policy makes several reform proposals. First, it sought to depart from Kenya's previous approach to the tenure arrangements, which focused on private property at the expense of other property regimes. The Policy recognized that Kenya's tenure regimes are plural in nature and gave equal status to the three tenure categories that it recognized. The Policy proposed that land be categorized into public tenure, private tenure and communal tenure and detailed guarantees for securing tenure rights.

### 5.8 USING LAND-USE PLANNING FOR PRIOR INFRASTRUCTURAL PLANNING

Prior planning for infrastructure and adhering to set plans is crucial in successful infrastructural development. It ensures that land is set aside for future infrastructural developments and reduces the need for compulsory acquisition of land and compensation of affected persons. Kenya's Vision 2030 aspires for the country to be interconnected through a network of roads, railways, water ways and telecommunication and it is on that strength that the government through the department of Physical Planning in the Ministry of Lands and Physical Planning has come up with a National Spatial Plan proposing an integrated national and urban transport system that seeks to maximize efficiency and sustainability of the transport sector. To add to the existing infrastructure routes the National Spatial Plan proposes new routes to fill the missing links and enhance connectivity (GOK, 2015).

National and regional planning that is provided with infrastructure to service land use patterns in the country is a key element in supporting desired national growth. To minimize future land acquisitions for infrastructure the government of Kenya through the Ministry of Lands is in the process of coming up with a National Land Use policy where the appropriate infrastructure is provided for to support the land use pa



# Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



## REFERENCES

- African Development Fund, Kenya.Nairobi-Thika Highway Improvement Project Environmental & Social Impact Assessment (ESIA) Summary
- Bailey, M.J., Muth, R.F., Nourse, H.O., (1963). “A regression method for real estate price index construction”. J. Amer. Stat. Assoc. 58 (304), 933-942.
- Bourassa, Steven C., Martin Hoesl, and Jian Sun (2006), “A Simple Alternative House Price Index Method,” Journal of Housing Economics 15 80–97.
- Calhoun C.A. (1996): “OFHEO House Price Indexes: HPI Technical Description”.
- Calhoun C.A. and Follain J.R., (1997): “Constructing indices of the price of multifamily properties using the 1991 Residential Finance Survey”, Journal of Real Estate Finance and Economics.
- Case K., Schiller R., (1989). “The efficiency of the market for single family homes”, American Economic Review, 79, p. 125-137.
- Case K., Schiller R., (2006) :“Metro Area Home Price Indices”.
- Chau, K. W., S. K. Wong, C. Y. Yiu and H. F. Leung, (2005), “Real Estate Price Indexes in Hong Kong”, Journal of Real Estate Literature, 13, 3, 337–356.
- FAO.(2009). FAO Land Tenure studies. Compulsory acquisition of land and compensation
- GOK 2013.Kenya Vision 2030.Sector Plan for Land Reforms 2013-2017. Transforming Kenya:Pathway to Devolution, Socio-Economic Development, Equity and National Unity.
- GOK 2016. The Community Land Act
- GOK2015. National Spatial Plan 2015-2045. Optimal Productivity, Sustainability, Efficiency and Equitability in the use of our Land and Territorial Space.
- GOK 2010. The Constitution of Kenya
- GOK 2012. The Land Registration Act
- Goetzmann, W.N. (1992).The accuracy of real estate indices: repeat sales estimators. Journal of Real Estate Finance and Economics.



## Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 20-24, 2017



- Hilbers, Paul, Alexander W. Hoffmaister, AnganaBanerji, and Haiyan Shi, (2008), “House Price Developments in Europe: A Comparison” WP/08/211, October.
- Hutter and Throsby (2012): “Beyond Price Value in Culture, Economy and the Arts”, Cambridge University Press.
- INSEE-Notaire (2005): “Les indices NotairesInsee de prix des logementsanciens”, INSEE.
- Kibugi, R., Mwathane, I., and Makathimo, M., (2016). Large Scale Land Acquisitions for investments in Kenya: Is there Equity for Local Communities through Meaningful Participation, and Benefits? A case study of the situation in Lamu, Isiolo and Siaya Counties. Land Development and Governance institute, Nairobi
- LAPSSET Corridor Development Authority.Brief on LAPSSET Corridor Project. July 2016
- Meese, R.A., Wallace, N.E. (1997): “The construction of residential housing price indices: a comparison of repeat-sales, hedonic-regression, and hybrid approaches”.
- Meissner, C., Satchell, S. (2007): “A comparison of the Case-Shiller house price index methodology with the FT house price index methodology”.
- Mick Silver (2012) “Why House Price Indexes Differ: Measurement and Analysis”, WP/12/125.
- Nagaraja, C.N., Brown, L.B., Zhao, L. (2009): “An autoregressive approach to house price modelling”.
- Shiller, R.J. (1991): “Arithmetic repeat sales price estimators”. Journal of Housing Economics.
- Standards& Poor’s/Case-Shiller (2008): “Home price indices: Index Methodology”.
- The Kenya Electricity Transmission Company Limited.Resettlement Policy Framework. December, 2011.
- Thion B., Favarger P. etHoesli M. (2008): “Indices des ventesrepesées et modification de l’environnementimmobilier”.
- Wood, Robert (2003):A comparison of UK residential house price indices, paper presented at the IMF/BIS conference on real estate indicators and financial stability, Washington.