



REPORT ON FINANCING LAND AND HOUSING REFORMS IN KENYA



Analysis of the National Budget for Financial Year 2015/16

October 2015



ECONOMIC & SOCIAL RIGHTS CENTRE - HAKIJAMII

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ANALYSIS OF THE NATIONAL BUDGET
FOR FINANCIAL YEAR 2015/16**

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Table of Contents

List of Abbreviations and Acronyms.....	v
Preface	vii
Acknowledgments.....	viii
Executive Summary.....	ix
CHAPTER ONE.....	1
1.0 Introduction.....	1
1.1 Background Information.....	1
1.2 People’s Participation in the Budget Process.....	2
1.3 Objectives of the Analysis Report.....	2
1.4 Land Policy in Kenya and Vision 2030.....	3
1.5 Methodology.....	3
CHAPTER TWO.....	4
2.0 Review of the progress made towards the recommendations made in the 2013 Report on “budgeting for land reforms”.....	4
2.1 That the national slum upgrading program should be adequately funded and commissioned to a fully fledged programme as opposed to the ad hoc manner in which it is currently conducted.....	4
2.2 That the ministry of land housing and urban development should increase its funds absorption rate to justify need for more allocations.....	6
2.3 That the National Land Commission (NLC) should have its own separate budget as opposed to depending on funds from MOLHUD.....	7
2.4 That the National Land Commission should be adequately funded if land reforms are to be realized in Kenya.....	7
2.5 That a legislative framework for public participation should be put in place on matters regarding the budget process.....	8

3.0 Analysis of the Budget for the fiscal year 2014/15 & 2015/16 with special emphasis on realization of economic and social rights. Special interest will be on land reforms and in particular extractives and housing.....	9
3.1 Ministry of Lands, Housing and Urban Development.....	9
3.2 National land commission budget 2015/16.....	15
4.0 Analysis of the institutions mandated with land reforms and the strides made thus far.	25
4.1 Analysis of the Land Institutions	25
4.1.1 Ministry of Land, Housing and Urban Development.....	25
4.1.2 National Land Commission.....	26
4.2 Review of the 2015/16 Budget for Lands and Housing.....	29
4.2.1 Budgeting for Land Reform.....	29
CHAPTER FIVE	32
5.0 Review of audit reports regarding spending in the land sector from 2014/15 to 2015/16	32
6.0 Conclusions and Recommendations.....	36
6.1 Conclusions.....	37
6.2 Recommendations.....	37
Bibiliography.....	38

List of Abbreviations and Acronyms

A.I.A	Appropriations-In-Aid
A.I.E	Authority to Incur Expenditure
ABMT	Appropriate Building Materials and Construction Technology
AG	Auditor General
ARD	Agriculture and Rural Development
ASF	Agricultural Settlement Fund
BSP	Budget Strategy Paper
CBEF	County Budget and Economic Forum
CEO	Chief Executive Officer
CFS	Consolidated Fund Services
CLB	Community Land Board
CLMBs	County Lands Management Boards
CoB	Office of Controller of Budget
CoK	Constitution of Kenya
DLBs	District Land Boards
E.A.L.S	East African Land Surveyors
ESCR	Economic, Social and Cultural Rights
FY	Financial Year
GAV	General Account of Vote
GFS	Government Financial Statistics
GoK	Government of Kenya
H/Q	Headquarters
ICT	Information Communication Technology
IDPs	Internally Displaced Persons
IOU	I Owe You
KISM	Kenya Institute of Surveying and Mapping
KM	Kilometers
KPEP	Kenya Primary Education Project
Ksh	Kenya Shilling
LAM	Land Administration and Management

LIMS	Land Information Management System
MLHUD	Ministry of Lands, Housing and Urban Development
MoL	Ministry of Lands
MTEF	Medium Term Expenditure Framework
NLC	National Land Commission
O & M	Operation and Maintenance (Costs)
OAG	Office of the Attorney General
OAG	Office of the Auditor General
PAC	Public Accounts Committee
PBO	Parliamentary Budget Office
PFM	Public Finance Management
PGA	Paymaster General Account
PIC	Public Investments Committee
PMG	Paymaster General
PPP	Public Private Partnership
PY	Project Year
RD	Refer to Drawer
SFT	Settlement Fund Trustees
SIDA	Swedish International Development Agency
SP	Strategic Plan
TOR	Terms of Reference
W.I.P	Work-in-Progress
WBG	World Bank Group

Preface

This report aims to provide an easy read to citizens as well as readers on land and housing sector at the national level. The book has been developed in recognition of the need for people to understand the dynamics in the land and housing sector in Kenya and how the government is committed towards progressive realization of economic, social and cultural rights.

The handbook also introduces readers to the structures and important institutions in the land and housing sector. It highlights their structures, mandate and budgets for enhanced understanding.

The book will play a great role in promoting understanding of the dynamics of the land and housing sector in order for citizens to effectively participate in decision making in terms of policy and oversee the government implementation of projects in this two sectors.

The Economic and Social Rights Centre (Hakijamii) hopes that this report will become a valuable resource for citizens and institutions that are mandated to ensure that people enjoy their rights to land and decent housing. Information in this report is also relevant to appointed, elected and nominated leaders who are obliged as provided by the law to make policy which benefits all citizens.

Ms. Pauline Vata

Executive Director- Economic and Social Rights Centre

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We are also grateful to the officials from various ministries, commissions and agencies, especially Ministry of Land, Housing and Urban Development (MOLHUD) and National Land Commission (NLC) who agreed to share some of the information in their possession.

Finally, we wish to thank Misereor and Ford Foundation for their financial support and encouragement as we developed this publication.

To you all, we shall remain eternally grateful and may you continue to extend similar support in the promotion and fulfillment of all human rights globally.

Thank you and Asante sana!

Executive Summary

The aim of this study was to evaluate and analyze national government financing towards land and housing reforms in Kenya. The objective of this study is to analyze the progress made in land reforms since we published the first report on economic, social and cultural rights in 2013. A number of policies guiding these reforms have been reviewed to inform the drafting of this report. To better understand the financing of these reforms, Hakijamii carried out intensive comparative budget analysis for the land and housing sector for the period under review. At the end of the study, key challenges facing the two sectors were identified and then recommendations and way forward suggested.

The major aim of this report on land and housing is to inform the national government and citizens in terms of budgeting for economic, social and cultural rights (ESCRs). The report has focused specifically on the right to land and housing in Kenya. The methodology used in carrying out the study for this report is the use of secondary data. The organization carefully analyzed the approved budget estimates, the audit reports from the Office of Auditor General and Controller of Budget; the MOLHUD Strategic Plan, NLC Strategic Plan and Hakijamii's previous reports on land and housing.

The report has identified a number of challenges and opportunities facing the land and housing sub-sector in Kenya. The land and housing sectors face the following challenges: Inadequate capacity and low retention of human resources in highly specialized areas; slow pace in reviewing policy and legal frameworks to conform to the constitution; lack of land use policy as well as there is no national spatial plan to guide sustainable development and finally, there is inadequate and unreliable data in the two sectors. This leads to production of low quality plans.

This report has also identified a number of opportunities and emerging issues in the land and housing sector. First, there is rapid urbanization associated with rapid national urban population growth, rural urban migration and influx of refugees. This is an opportunity for the MOLHUD through housing department to ensure all people are provided with decent housing using modern technologies being developed by the ministry. If this is properly done, it will promote economic and infrastructure development in Kenya.

There are a number of findings that were made from this study. To start with, the problem of duplication of roles between the Ministry of Land Housing and Urban Development has always persisted. For instance, the MOLHUD and NLC issue title deeds. This causes a lot of confusion and even laxity because one institution will hope that the other is issuing enough title to achieve the set goals. Research also revealed that the Department of Housing has had a low absorption rate over the years. This is happening despite the fact that the country is lagging behind in terms of provision of decent housing to the urban poor. This explains the emergency of informal settlements in urban areas around the country at a fast pace.

Finally, there are a lot of funds which have been spent by the MOLHUD which has not been properly accounted for. This is what made the Auditor General to give an Adverse Opinion for expenditure of Kshs. 888 million in his annual audit report for 2013/2014 fiscal year.

A number of conclusions and recommendations have been made in this report. The Sector Working Group (SWG) reported that for FY 2015/2016 the sector's resource requirement was Kshs 87.4 billion but it was allocated Kshs 60.9 billion which resulted in Kshs 26.5 billion shortfall. This means that there are a number of priority programmes which will not be implemented for this fiscal year. The programmes under Vision 2030 should be provided for adequately in the next financial years to make sure that the land and housing sector to make a major contribution towards attaining that Vision 2030. Finally, the land and housing sector should work towards aligning all policies and enabling laws towards the Constitution. For instance, all actors in this sector should push for formulation of a national public participation policy which will guide this important element of devolution.

CHAPTER ONE

1. INTRODUCTION

1.2 Background Information

The entrenchment of social and economic rights in the Constitution of Kenya 2010 signifies the states willingness to fulfill its obligation under international law by enhancing the realization of social and economic rights through constitutional machinery. Article 43 of the current constitution enshrines socio-economic rights which, under Article 23, are enforceable by the courts in the event of their denial, infringement or violation. The vehicle through which these rights will be realized is the budget. Therefore, government pattern of allocation of financial resources remains a key indicator of the commitment towards realization of social and economic rights.

The Constitution of Kenya 2010 recognizes the Bill of Rights with notable emphasis on devolution of political, administrative power and allocation of resources in which the state should give priority to ensuring the widest possible enjoyment of this right. Further, the constitution imposes a duty on the State to take legislative, policy and other measures including the setting of standards to achieve the progressive realization of economic and social rights. With regard to the urban low income groups in Kenya the state should develop and implementation policies and legislations as well as adequate allocation of resources that are consistent with accepted human rights standards and in particular ensure that the requirements of the neediest are addressed by such policies or legislations or programs.

Chapter Five of the Constitution of Kenya 2010 (Land and Environment), Article 60 focus on ownership and management of Land, which shall be held, used and managed in accordance with the principles of equitable access, security of land rights, sustainable and productive management of resources, elimination of gender discrimination in law, customs and practices related to land and property in land among others.

Resources for lands and Housing must be allocated through the national budget process in Kenya, both the annual budget cycle and the medium term expenditure framework (MTEF)¹, which sets priorities for the next three years. It is therefore imperative that citizens interrogate and understand the degree to which land issues have been prioritized in the budget and MTEF and, where necessary, advocate for sufficient allocation. They should also monitor and ensure proper budget implementation.

1 MTEF refers to a three year rolling budgeting process with current year estimates and projected allocations for the next two years. Kenya adopted and has used MTEF budgeting process in the last decade

For the last three financial years since 2012/13, Hakijamii has particularly analyzed financial resource allocation patterns towards Lands and Housing sectors in Kenya and the broader ESCR's. During the FY 2013/14 the organization commissioned a study to establish the nexus between adequate resource allocation and land reforms.

The findings of the study largely showed that the government was not matching its policy commitment to lands sector by adequate financial budget. Further, specialized government agencies that were to spearhead land reforms had not been fully formed. Some of the recommendations included: That the budget process should be participatory and monies should be adequately utilized to realize ESCRs. That the national slum upgrading program should be adequately funded and commissioned to a fully fledged programme as opposed to the ad hoc manner in which it was then conducted.

- That the Ministry of Land, Housing and Urban Development (MOLHUD) should increase its funds absorption rate to justify need for more allocation.
- That the National Land Commission should have its own separate budget as opposed to depending on funds from MOLHUD.
- That the National Land Commission should be adequately funded if land reforms are to be realized in Kenya
- That a legislative framework for public participation should be put in place on matters regarding the budget process

1.2 People's participation in the budget process

The Kenya Constitution, 2010 also provides new opportunities for citizens to participate in the budget process, which makes this an ideal time to engage specifically on financing for land and housing issues. Article 201 states that the the following principles shall guide all aspects of public finance in the Republic;

- (a) There shall be openness and accountability, including public participation in financial matters
- (b) The public finance system shall promote an equitable society.

Article 221(5) specifically compels the National Assembly to seek representations from the public on the budget estimates and to take their recommendations into account in the Committee's recommendations to the National Assembly. The budget estimates should be submitted to parliament by 30th April each year (two months before the end of the financial year as provided in article 221 of the Constitution). Consequently, there is a two month period for parliamentary scrutiny and public debate before Assembly approves the budget by 30th June each year.

1.3 Objectives of the Analysis Report

The overall objective of the study is to analyse the national budget for lands and housing for 2015/16 as regards progressive realization of economic and social rights, for a period of the last five years/ since the promulgation of the constitution in 2010.

Specific objectives of the study are:

- i. Analyze the progress in land reforms since the first report of Economic and Social Rights of 2013 (Budgeting for Land Reforms)
- ii. Review policies guiding reforms in housing and lands sector
- iii. To undertake comparative budget analysis for the lands and housing sector over the last five years
- iv. To identify key challenges facing the lands sector ; and
- v. To make recommendations on the way forward

1.4 Land Policy in Kenya and Vision 2030

The Ministry of Lands, Housing and Urban Development is responsible for land policy in Kenya as per the Presidential Circular number 01/2013 issued by the Office of the President in 2013. The ministry is mandated to ensure security of land tenure, equitable distribution of land and sustainable Land use, land planning and management, review and harmonization of laws related to land and its management, preparation and implementation of land use plans for all urban and rural areas, resolution of land and boundary disputes and revision for leased government land.

For a long time in Kenya, inconsistent land policies and poor implementation compromised land ownership, food security, employment and income. The Government has been in the process of formulating a national land policy which is geared towards addressing access to land, land ownership, land use and environment. The formation of a National Land Commission (NLC) was meant to enhance regulation and ensure land rights for all citizens. The national land policy recommends that the Government shall recognize and protect the land rights of all Kenyans regardless of gender or marital status and expand their enforceable legal rights of access, control, ownership and inheritance, access to credit and co-registration in all tenure systems.

1.5 Methodology

This study is undertaken by use of secondary data. Review was done on relevant lands and housing policies, Budget Documents including Budget Policy Statement (BPS), Budget Speech, Economic and Budgetary Strategy Paper and Estimates of Recurrent and Development Expenditure for 2015/16.

CHAPTER TWO

2.0 Review of the progress made towards the recommendations made in the 2013 Report on “budgeting for land reforms”.

During the FY 2013/14 Economic and Social Rights Centre (Hakijamii) commissioned a study to establish the nexus between adequate resource allocation and land reforms. The report of Lands and Housing Study done in 2013/14 made a number of recommendations as a means towards alleviating some of the key challenges identified during the study. Here below is a review of the progress made to-date on dealing with the recommendations:

2.1 That the national slum upgrading program should be adequately funded and commissioned to a fully fledged programme as opposed to the ad hoc manner in which it is currently conducted.

Table 1 below shows budget allocation for Slum Upgrading and Housing Development programme.

Table 1: Budget Allocations for Slum Upgrading and Housing Development (Kshs)

HEAD/PROJECT	Approved 2014/2015	Budgeted	Projected	
		2015/2016	2016/2017	2017/18
Development Expenditure	3,862,000,000	1,570,000,000	2,137,329,284	3,167,188,778
Recurrent Expenditure	6,199,989	8,498,856	6,645,671	7,059,440
Total Budget	3,868,199,989	1,578,498,856	2,143,974,955	3,174,248,218

Recurrent Expenditure

Slum Upgrading and Housing Development programme was allocated Kshs 6.199 Million for recurrent expenditure for the Fiscal Year 2014/2015. In the current financial year 2015/2016, the allocation increased to Kshs 8.49 Million. This was a 37.1% increase in budgetary allocation towards slum upgrading and Housing Development programme. The Kenya Slum Upgrading, Low Cost Housing and Infrastructure was allocated Kshs 35.4 Million in 2014/2015 for recurrent expenditure but no money was allocated for the current fiscal year (2015/2016).

Development Expenditure

Review of the national budget for 2015/16 and all other relevant documents reveals that the national slum upgrading programme was allocated Kshs 3.862 Billion as development expenditure for financial year 2014/2015. In 2015/2016 the national assembly approved Kshs 1.57 Billion as development expenditure for Slum Upgrading. This was a 59.3% decrease in amount allocated compared to 2014/2015. The reduction in budget without any explanation seems to contradict the government policy and

commitment towards slum upgrading. It may be assumed that the government significantly reduced her development budget hoping to realize foreign financing to bridge the gap notwithstanding that foreign financing may fail to materialize hence jeopardize the implementation of the project.

The following projects were funded by donors:

Foreign Funded Projects

During the current budget for 2015/16 the Ministry has budgeted for various activities to be funded with finances from foreign partners. Specifically, Khs. 1.57 Billion has been set aside for Slum Upgrading and Housing Development Project. This expenditure line was not there in the previous financial year 2014/15 and therefore a new project to be funded by donors. It is a good gesture for donors to fund such projects which are geared towards alleviating the living standards of the poor. The concern is however that should the foreign finances fail to materialize then the projects will fail to kickoff or remain incomplete, thereby defeating the purpose for which the projects were set up. The details of the projected donor funding is as shown in the table below:

Table 2: Foreign Funded Projects under MOLHUD

HEAD/PROJECT	Estimates 2015/2016	Projected Estimates	
		2016/2017	2017/2018
Korogocho Slum Upgrading –Nairobi	10 Million	20 Million	30 Million
Korogocho Community Strategy Project Technical Assistance	140 million	140 Million	140 Million
Slum Upgrading Project in Kilifi	55 million	59.6 Million	49.6 Million
Primary and Secondary Phase II	93.7 Million	120 Million	150 Million
Kisumu Urban Project	-	823.4 Million	-
Kenya Informal Settlements Improvement	2.446 Billion	1.74 Billion	2.08Billion
Nairobi Metropolitan Service Improvement Project	4.2 Billion	3.25 Billion	3.04 Billion
TOTAL	6.945Billion	6.153 Billion	5.489 Billion

Source: Budget Estimates 2015/2016

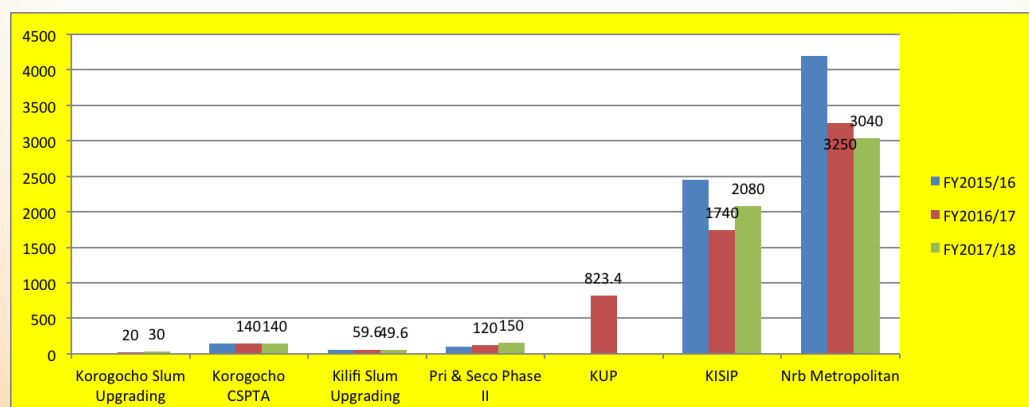


Figure 1: National Budgetary allocations towards slum upgrading projects in Kenya (all figures in millions)

Below are the details about the above slum upgrading projects in Kenya:

Korogocho Slum Upgrading Programme – Nairobi

According to UNHABITAT, Korogocho Informal Settlement is the 4th largest slum in Nairobi. The Slum Upgrading Project aims at improving the living and working conditions of Korogocho residents. There are three partners involved in this project (Korogocho Community, Government of Kenya and Private Sector). The project is expected to cost USD\$230,000 up to completion. The project is wholistic because its activities are physical (land, housing, planning), social (health, education) and economic (employment and income generation activities).

Slum Upgrading Project in Kilifi

The Slum Upgrading project is a partnership project between Community people of Mtwapa, MoLHUD and County Government of Kilifi. The project is funded by the European Commission (\$650,000) and government of Kenya (USD\$550,000 for FY 2015/2016). The pilot activities were implemented in Mzambarauni and Kwa Goa settlements and are expected to benefit 20,000 people. The project started in 2008 and is expected to end on December, 2015. The implementing partners are MoLHUD and Un-Habitat.

Kisumu Urban Project

This is a four year pilot urban development project which is implemented by Kisumu City under the supervision of County Government of Kisumu. The project is funded by Agence Franaise de Development Euro 40 million approximately Kshs 4.7 billion and national government of Kenya (Kshs 823.4 million for FY 2015/2016).

Kenya Informal Settlement Improvement Programme (KISIP)

The KISIP programme was initiated with the objective of improving living conditions in selected Municipalities in Kenya through promoting security of tenure and developing infrastructure based on plans collaboratively developed with the local communities. The project was approved on 24th March, 2011 and is expected to be completed on 30th June, 2016. The project will cost USD\$165 million or approximately Kshs 16.5 billion.

KISIP will be funded by World Bank (60%); SIDA and AFD (30%) and Government of Kenya (10%). In FY 2015/2016, the Government of Kenya allocated Kshs 2.446 billion towards the project.

2.2 That the ministry of land housing and urban development should increase its funds absorption rate to justify need for more allocations.

Table 3 below depicts the Ministry expenditure pattern over a three year period for both recurrent and development budget. For all the years, the maximum absorption rate is 91.95% meaning that allocated resources are not fully utilized by the spending agency.

Table 3: Total Expenditure (Recurrent and Development) (Kshs Millions)

ECONOMIC CLASSIFICATION	Approved Estimates			Actual Expenditure			Absorption Rate		
	2011/12	2012/13	2013/14	2011/12	2012/13	2013/14	2011/2012	2012/2013	2013/2014
Recurrent	19,367	21,706	18,467	17,807	19,395	16,069	91.95%	89.35%	87.00%
Development	36,476	37,390	46,924	29,782	31,016	36,298	81.65%	82.95%	77.35%
Total Expenditure	55,843	59,096	65,391	47,589	50,411	52,367	85.22%	85.30%	80.08%

In 2011/2012 budget, the Ministry of Land, Housing and Urban Development had absorption of 91.9% of the recurrent budget compared to 81.6% absorption of the development budget in that year.

The absorption rate for recurrent budget reduced to 89.35% in 2012/13 to 87% in FY 2013/2014. The development budget reduced from 82.95% in 2012/13 to 77.35% in FY 2013/2014. Generally, the absorption rate for the budget has been decreasing over the years since 2011/2012.

Table 4: Comparison of development and Recurrent Expenditure for FY 2013/2014

FY 2013/14 - Recurrent							FY 2013/14 - DEVELOPMENT					
Name of the Sub-Sector	Rev. Gross Est.	Rev. Net Est.	Exch. Issues	Exp.	% of Exch. To Rev. Net Est.	% of Exch. To Rev. Net Est.	Rev. Gross Est.	Rev. Net Est.	Exch. Issues	Exp.	% of Exch... to Rev. Net Est.	% of Exp. To Rev. G. Est.
MLHUD	4.7	4.1	3.7	4.1	90.2	87	15.2	13.8	8.2	9.9	59.8	65.6
NLC	0.6	0.6	0.6	0.5	99.9	86.6	0	0	0	0	0	0
TOTAL	5.3	4.7	4.3	4.6			15.2	13.8	8.2	9.9		

Source: Office of the Controller of Budget (CoB)

2.3 That the National Land Commission (NLC) should have its own separate budget as opposed to depending on funds from MOLHUD.

Analysis of the 2015/16 budget shows that the Commission budget is now independent. Its budget is now allocated under vote number 2021, and was funded to the tune of Kshs.896 million and Kshs.1,153 Million for 2014/15 and 2015/16 respectively.

2.4 That the National Land Commission should be adequately funded if land reforms are to be realized in Kenya

The budget allocation for the Commission increased 29% from 2014/2015 to 2015/2016. The increase is a positive move towards empowering the Commission with resources to undertake its mandate. The allocation is however short of the the Commission's requirement amounting to Kshs 4223millions. For the period under review, there is no annual audit report from the Office of the Auditor General. This is because NLC budget became independent for the first time in 2014/2015; a period whose audit report was still work-in-progress (WIP).

Table 5: National Land Commission Budget

ECONOMIC CLASSIFICATION	Approved 2014/15	RESOURCE REQUIREMENTS 2015/16	ALLOCATION 2015/16	PROJ. EST 2016/17	2017/18
Compensation to employees	118.6	876	447	450	454
Use of goods & Services	335.7	1,806	266.4	813	996
Current transfers to government agencies	0	0	0	0	0
Other recurrent	0	0	0	0	0
Total Current NLC	454.3	2,682	713.4	1,263	1,450
Acquisition of Non-Financial Assets	414	1,541	411.2	558	574
Capital transfers to government agencies	0	0	0	0	0
Other development	28	0	28	0	0
Total Development NLC	442	1,541	439	558	574
TOTAL VOTE 2021	896.3	4,223	1152.4	1,768	1,821

Source: Agriculture, Rural and Urban Development Sector Report

2.5 That a legislative framework for public participation² should be put in place on matters regarding the budget process

Article 201 (a) of the Constitution of Kenya 2010 states that, there shall be openness and accountability, including public participation in all public finance matters. A number of organizations and government agencies have carried out studies on public participation. Most of these studies found out that the government is not and will never be committed towards getting Kenyans a Public Participation law. Through this research, Economic and Social Rights Centre (Hakijamii) explored the option of working with the willing CSOs to promote a private Member's Bill on Public Participation in Kenya.

² Legislations containing provisions promoting Public Participation (Constitution of Kenya Articles: 174, 201, 232, CGA: 47, 91, 99-100; PFMA: 125, 128, 137; UAC 2011, 21 and 22)

CHAPTER THREE

3.0 Analysis of the Budget for the fiscal year 2014/15 & 2015/16 with special emphasis on realization of economic and social rights.

3.1 Ministry of Lands, Housing and Urban Development

The total budgetary allocation for the Ministry of Land, Housing and Urban Development reduced from Kshs 23.6 billion in FY 2014/2015 to Kshs 17.5 billion in Fiscal Year 2015/2016. This is a Kshs. 6 billion drop which does not reflect the government's commitment towards the progressive realization of people's right to not only to access but also own the land.

The right to decent housing is recognized in several international instruments including the Universal Declaration of Human Rights (Art. 25.1) and the International Covenant on Economic, Social and Cultural Rights (Art 11.1). At the national level, the Constitution of Kenya 2010 (CoK) has a Chapter 4 which is dedicated towards protecting people's Bill of Rights.

Budget for Survey Department- National Titling Centre

The Survey Department – National Bulk Titling Centre was allocated Kshs 2.2 billion in 2014/2015 for development and Kshs 2.9 billion for 2015/2016 for the same purpose. This is projected to increase significantly to Kshs 5 billion in 2016/2017. These funds will be used to provide title deeds to land owners in Kenya. This is good for promoting land reforms in Kenya. With this kind of budgetary allocation, it is possible for the ministry to achieve the target of 1 million title deeds to be issued in 2015/2016. The only problem is that, the Adjudication and Settlement Services department has not been adequately funded to match up with the required services in order to attain the set targets. The department was allocated Kshs 390.2 million in 2014/2015. The amount increased marginally to Kshs 454.7 million in 2015/2016. This slight increment was in recurrent expenditure. Development expenditure remained the same at Kshs 16 million for the two financial years. The budgetary allocation for 2015/2016 will be used for adjudication of 1,350,000 parcels of land.

Women's Land Rights

According to a research by Federation of Women Lawyers of Kenya (Fida-Kenya), despite the fact that the ratio of women to men is 1:1, just 5% of women jointly own title deeds with men. On the other hand, only 1% of title deeds are owned by women alone. While women's right to own land in Kenya has not been fully realized, most of land use activities are done by women. Fida further reports that 89% of labor force in subsistence farming is provided by women. There are a number of obstacles that have been reported as the cause of this scenario. These are: lack of awareness, expensive legal system, lack of participation, cultural beliefs, fear of sexual violence and being ostracized by the society and the discrimination encouraged by the existing laws.

The United Nations Development programme (UNDP) found out that land and property rights has an effect on reducing the vulnerability of women to HIV/AIDs. In addition to

that, a joint research by UNDP and UNAIDS pointed out that women who enjoy land and property rights are able to effectively cope with HIV/AIDS when it strikes.

Headquarters Budget

The Headquarters and Planning Services department has experienced a decrease in funds allocated from Kshs 1.7 billion in 2014/2016 to Kshs 438.6 million in FY 2015/2016. There is no explanation given for this drastic drop in the funds allocated to this budget head.

Kenya Institute of Surveying and Mapping Budget (KISM)

The Kenya Institute of Surveying and Mapping (KISM) is not adequately funded to efficiently work towards producing highly qualified surveyors and other experts. Several counties across Kenya have reported lack of qualified human resources in the department of lands as one of the biggest challenges in their service delivery. If the Ministry of Land, Housing and Urban Development is to achieve their goals of issuing 1 million titles for FY 2015/2016 and during the medium term, then more resources have to be allocated towards training human resources for the housing and lands departments.

The KISM was allocated Kshs 488.8 million in fiscal year 2014/2015 and Kshs 524.2 million for fiscal year 2015/2016. The institute is planning to train 330 students on Surveying and Mapping for Financial Year 2015/2016.

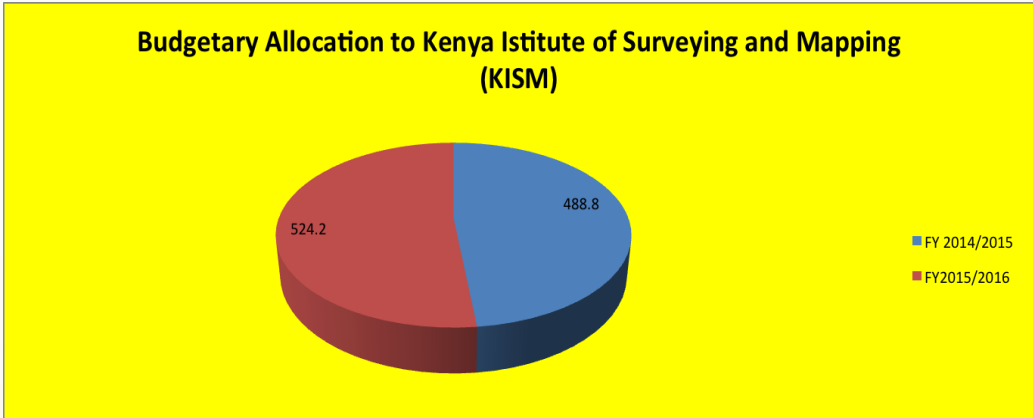


Figure 2: Budgetary allocation towards the Kenya Institute of Surveying and Mapping

Housing Sector Reforms in Kenya

The National Housing Corporation (NHC) is a statutory board which was established by an Act of Parliament Cap. 117 with a mandate of developing decent housing in Kenya. The National Housing Corporation has a subsidiary for building houses called Kenya Building Society (KBS) which is working on a number of housing projects around the country. This includes Komarock Phase 5C (220 units) and Precious Gardens Phase 2 (144 housing units) among others. The corporation at one point planned to raise funds through bonds issue.

Currently, the housing demand in Kenya stands at 250,000 units per annum. The market is only able to supply 60,000 units for the same period. The sector faces a number of challenges including the use of outdated Building Code which is mostly ignored because of the associated low penalty slapped on those who violate the code.

The Housing Department at the Ministry of Land, Housing and Urban Development was allocated a total of Kshs 1.2 Billion for Financial Year 2014/2015. This comprised of Kshs. 644.2 million for recurrent and Kshs. 580 million for development expenditure. The housing sector budget increased significantly to Kshs. 2.3 Billion in 2015/2016 with Kshs 143.5 Million for recurrent and Kshs. 2.2 Billion for development. This is a great increase in the funds allocated towards the housing department. This is a clear sign that the government is committed towards progressive realization of people’s right to decent housing even though their efforts are not enough. The table 6 below compares various departments or vote heads as they compare with the previous financial year.

Table 6: Comparative Analysis for various departments in the Ministry of Land, Housing and Urban Development

MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

HEAD / PROJECT	Approved Estimates 2014/15			Budget Estimates 2015/16			Projections - Development		Projections - Recurrent	
	Recurrent	development	Total	Recurrent	development	Total	2016/2017	2017/2018	2016/2017	2017/2018
Headquarters Administration and Planning Services	636,118,711	1,130,000,000	1,766,118,711	426,972,608	11,663,500	438,636,108	-	-	407,234,751	446,429,756
Adjudication and Settlement Services	374,205,603	16,000,000	390,205,603	438,716,502	16,000,000	454,716,502	19,440,000	20,000,000	450,928,768	526,453,769
Survey Department- National Bulk Tiling Centre	77,117,697	2,262,973,054	2,340,090,751	91,433,993	3,490,163,005	3,581,596,998	5,520,688,400	5,317,734,000	91,671,073	92,983,652
Kenya Institute of Surveying and Mapping	468,831,875	20,000,000	488,831,875	509,286,217	15,000,000	524,286,217	31,363,200	27,713,664	521,942,047	529,995,409
Computerization of Paper Land Records in Land Registries	517,747,185	821,100,000	1,338,847,185	595,894,052	842,350,000	1,438,244,052	1,379,400,000	1,344,600,000	634,472,095	631,084,553
Department of Physical Planning	120,005,355	110,800,000	230,805,355	122,745,813	160,800,000	283,545,813	237,600,000	221,400,000	110,593,966	111,951,448
Supplies Branch	18,492,905	150,000,000	168,492,905	24,099,743	150,000,000	174,099,743	260,000,000	216,000,000	20,693,466	21,002,306
Architectural Department	124,292,355	1,622,703,769	17,469,961,24	130,107,100	1,320,270,432	145,037,532	3,500,328,899	3,607,459,961	126,811,949	159,789,528
Structural Department	56,013,904	290,500,000	3,465,139,04	58,854,677	395,500,000	454,354,677	539,740,000	557,410,000	58,109,175	69,415,546
Electrical Department	80,243,219	38,000,000	118,243,219	83,089,674	28,000,000	111,089,674	28,000,000	28,000,000	84,181,060	86,267,253

Kenya Building Research Centre	19,630,512	12,600,000	322,305,12	22,035,040	12,600,000	346,350,40	12,600,000	12,600,000	21,207,648	21,619,337
Headquarter Administrative Services	88,158,104	3,000,000	911,581,04	45,805,615	3,000,000	488,056,15	3,150,000	3,250,000	43,564,879	46,393,403
Revenue Secretariat	2,100,290	0	2,100,290	2,056,826	0	2,056,826	0	0	2,205,305	2,310,319
Development Planning Services	2,400,037	0	2,400,037	2,264,705	0	2,264,705	0	0	2,397,037	2,611,250
District Land Offices		0		65,935,965	0	65,935,965	0	0	61,190,872	59,347,687
Accounts, Finance and Procurement Unit	29,605,056	0	29,605,056	15,000,655	0	15,000,655	0	0	16,626,870	16,626,870
Central Planning and Monitoring Unit	10,253,110	0	10,253,110	4,617,582	0	4,617,582	0	0	6,763,194	7,863,194
Quantities and Contracts Department	74,491,276	0	74,491,276	78,227,419	0	78,227,419	0	0	77,109,128	79,854,463
Government Buildings	14,431,504	0	14,431,504	15,213,839	0	15,213,839	0	0	9,631,504	9,431,504
Financial and Procurement Services	18,264,773		18,264,773	11,259,142	0	11,259,142	0	0	10,414,931	10,487,036
District Government Estates Management	8,000,000	0	8,000,000	8,000,000	0	8,000,000	0	0	8,000,000	8,000,000
Provincial Housing	30,798,637	0	30,798,637		0		0	0		
Rent Restriction Tribunal	35,912,256	0	35,912,256	27,584,910	0	27,584,910	0	0	28,357,893	29,161,522
Kenya Slum Upgrading, Low Cost Housing and Infrastructure	35,409,577	0	0	0	0	0	0	0	0	0

Finance and Management Services		0	0	0	0	0	0	0	0	0	0
Central Planning and Programme Evaluation	7,724,362	0	7,724,362	9,010,930	0	9,010,930	0	0	0	9,339,178	9,339,178
Government Estates Department	258,315,710	1,415,000,000	1673315710	264,899,217	465,000,000	729899217	650,000,000	935,000,000	288,584,046	306,683,512	
Slum Upgrading and Housing Development	6,199,989	3,862,000,000	3,868,199,989	8,498,856	1,570,000,000	1,578,498,856	2,137,329,284	3,167,188,778	6,645,671	7,059,440	
Housing Department	644,157,920	580,000,000	1,224,157,920	143,522,298	2,203,839,248	2347361546	2,688,800,000	3,213,800,000	148,040,327	191,611,117	
Headquarters and Administrative Services	151,876,383	2,205,000	154081383	144,301,339	3,000,000	147301339	3,000,000	3,000,000	124,656,572	118,109,780	
Infrastructure Transport and Utilities	18,824,547	3,572,189,147	3591013694	21,025,952	693,501,752	714527704	728,977,992	768,975,132	21,764,997	217,64997	
Metropolitan Planning and Environment	26,618,815	20,788,000	47406815	26,360,303	100,000,000	126360303	109,000,000	115,000,000	27,209,088	27,209,088	
Social Infrastructure	10,512,015	-	10,512,015	6,376,329	111,850,000	118226329	126,000,000	134,000,000	6,759,271	6,759,271	
Metropolitan Investments	5,808,019	-			6,000,000		7,500,000	8,800,000			
Headquarters and Administrative Services	283,270,210	50,000,000	333,270,210	428,152,770	390,000,000	818,152,770	390,000,000	390,000,000	517,557,334	555,247,907	
Urban Planning		238,000,000			257,422,000		188,000,000	198,000,000			
Urban Development	69,840,850	3,415,000,000	3,484,840,850	67,095,215	833,000,000	900,095,215	638,000,000	680,000,000	59,953,850	65,153,850	
Urban Mobility and Transport		690,280,000	0	0	0-	0	0-	0-	0	0	

Solid Waste Management and Storm Water Drainage for Urban Areas	134,440,000	0	0	0	0	0	0	0	0
Urban Social Infrastructure and Utilities	739,702,000		28,410,940	783,700,000	812,110,940	890,000,000	940,000,000	38,525,600	
Total for Heads	4,352,583,177	23,679,314,135	3,926,856,226	13,862,659,937	17,526,094,163	20,088,917,775	21,909,931,535	4,043,143,545	4,278,017,945

3.2 National land commission budget 2015/16

The National Land Commission (NLC) has centralized its payroll services. This is clear because in financial year 2014/2015 the basic salaries and allowances were allocated Kshs 234.5 million for the members of 47 County Land Management Boards. This action explains why the budget reduced from Kshs.377 million to Kshs.181 million.

Table 7: Analysis of the National Land Commission budget for FY 2014/2016 and FY 2015/2016

HEAD	TITLE	Approved Expenditure 2014/15	Estimates 2015/16	Projected Estimates	
				2016/2017	2017/2018
County Land Management Board	Basic Salaries - Permanent Employees	172,500,000	-	-	
	Personal Allowances	62,000,000	-	-	
	Domestic Travel and Subsistence, other Transport Costs	43,800,000	45,041,310	54,256,900	58,981,670

	Hospitality Supplies and Services	24,200,000	21,780,000	25,000,000	26,640,890
	Insurance Costs	16,500,000	16,500,000	17,600,000	18,000,900
	Office & General Supplies	25,000,000	25,200,000	26,100,000	26,950,780
	Fuel Oil and Lubricants	5,000,000	4,500,000	5,000,000	35,000,000
	Office Furniture & General Equipment	28,738,149	68,000,000	89,843,950	165,776,605
	Net Expenditure	377,738,149	181,021,310	217,800,850	331,350,845
Research and Advocacy	communication, Supplies and Services	2,000,000	2,080,000	2,350,897	2,380,000
	Domestic Travel and Subsistence, and other Transport Costs	5,000,000	4,500,000	5,500,000	5,550,000
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	2,340,000	2,850,000	2,980,000
	Printing, Advertising and Information Supplies and Services	10,000,000	7,500,000	10,280,000	10,350,000
	Hospitality Supplies and Services	3,000,000	3,240,000	3,900,000	4,100,000
	Fuel Oil and Lubricants	2,000,000	1,800,000	2,300,000	2,400,000
	Gross Expenditure	24,000,000	21,460,000	27,180,897	27,760,000

Audit and Risk Management						
	communication, Supplies and Services	500,000	500,000	550,000	640,000	
	Domestic Travel and Subsistence, and other Transport Costs	1,000,000	1,350,000	1,800,000	1,950,000	
	Foreign Travel and Subsistence, and other transportation costs	600,000	1,170,000	1,490,000	1,610,000	
	Printing, Advertising and Information Supplies and Services	1,100,000	400,000	1,020,000	4,200,000	
	Net Expenditure	3,200,000	3,420,000	4,860,000	8,400,000	
Audit and Risk Management						
	communication, Supplies and Services	2,000,000	2,020,000	2,030,000	2,040,000	
	Domestic Travel and Subsistence, and other Transport Costs	3,000,000	2,880,000	3,200,000	3,230,000	
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,800,000	2,000,000	2,000,000	

	Printing, Advertising and Information Supplies and Services	2,220,000	1,200,000	2,200,000	2,200,000
	Hospitality supplies and services	3,000,000	2,700,000	3,000,000	3,000,000
	Net Expenditure	12,220,000	10,600,000	12,430,000	12,470,000
Land Use Planning					
	communication, Supplies and Services	2,000,000	2,000,000	2,200,000	2,260,000
	Domestic Travel and Subsistence, and other Transport Costs	5,000,000	4,500,000	5,400,000	5,500,000
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,800,000	2,200,000	2,300,000
	Printing, Advertising and Information Supplies and Services	2,200,000	1,200,000	2,350,000	2,500,000
	Hospitality Supplies and Services	3,000,000	2,700,000	3,400,000	3,550,000
	Net Expenditure	14,200,000	12,200,000	15,550,000	16,110,000

Legal and Enforcement							
	communication, Supplies and Services	2,000,000	2,100,000	2,270,000	2,430,000		
	Domestic Travel and Subsistence, and other Transport Costs	3,000,000	2,700,000	3,300,000	3,500,000		
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,800,000	2,270,000	2,530,000		
	Printing, Advertising and Information Supplies and Services	3,000,000	2,000,000	3,200,000	3,420,000		
	Hospitality Supplies and Services	30,000,000	27,000,000	32,000,000	34,000,000		
	Net Expenditure	40,000,000	35,600,000	43,040,000	45,880,000		
Survey Adjudication and Settlement							
	communication, Supplies and Services	2,000,000	2,000,000	2,100,900	2,190,000		
	Domestic Travel and Subsistence, and other Transport Costs	5,000,000	4,500,000	5,200,000	5,400,000		
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,800,000	2,000,000	2,000,000		

	Printing, Advertising and Information Supplies and Services	4,000,000	3,000,000	4,000,000	4,000,000
	Hospitality Supplies and Services	3,000,000	2,700,000	3,000,000	3,000,000
	Net Expenditure	16,000,000	14,000,000	16,300,900	16,590,000
Human Resource Management					
	Communication, Supplies and Services	2,000,000	2,000,000	2,000,000	2,100,000
	Domestic Travel and Subsistence, and other Transport Costs	3,000,000	2,700,000	3,000,000	3,000,000
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,800,000	2,000,000	2,000,000
	Printing, Advertising and Information Supplies and Services	2,200,000	1,200,000	2,350,000	2,350,000
	Training expenses	6,000,000	4,800,000	6,390,000	6,620,000
	Hospitality supplies and services	5,000,000	4,500,000	5,000,000	5,000,000
	Net expenditure	20,200,000	17,000,000	20,740,000	21,070,000

National Land Information Management						
	Communication, Supplies and Services	2,000,000	1,300,000	800,000	850,000	
	Domestic Travel and Subsistence, and other Transport Costs	3,000,000	2,700,000	3,000,000	3,300,000	
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,530,000	1,700,000	1,740,000	
	Printing, Advertising and Information Supplies and Services	3,000,000	1,300,000	2,100,000	2,130,000	
	Net Expenditure	10,000,000	6,830,000	7,600,000	8,020,000	
Natural Resources and Environment						
	Communication, Supplies and Services	4,000,000	2,800,000	2,800,000	2,800,000	
	Domestic Travel and Subsistence, and other Transport Costs	5,000,000	4,500,000	5,100,000	5,100,000	
	Foreign Travel and Subsistence, and other transportation costs	2,000,000	1,800,000	2,100,000	2,200,000	

	Printing, Advertising and Information Supplies and Services	3,000,000	2,000,000	3,150,000	3,270,000
	Hospitality Supplies and Services	3,000,000	2,700,000	3,200,000	3,400,000
	Office and General Supplies and Services	2,000,000	2,000,000	2,200,000	2,200,000
	Net Expenditure	19,000,000	15,800,000	18,550,000	18,970,000
Finance and Administration					
	Communication, Supplies and Services	5,000,000	5,000,000	5,230,000	5,330,000
	Domestic Travel and Subsistence, and other Transport Costs	4,000,000	3,600,000	4,300,000	4,300,000
	Foreign Travel and Subsistence, and other transportation costs	1,300,000	1,170,000	1,300,000	1,300,000
	Printing, Advertising and Information Supplies and Services	5,600,000	1,600,000	5,900,000	5,900,000
	Hospitality Supplies and Services	9,000,000	8,100,000	9,500,000	9,500,000
	Net Expenditure	24,900,000	19,470,000	26,230,000	26,330,000
Corporate Communication					

	Communication, Supplies and Services	5,000,000	5,000,000	5,400,000	2,370,003
	Domestic Travel and Subsistence, and other Transport Costs	4,000,000	2,610,000	3,000,000	3,060,000
	Foreign Travel and Subsistence, and other Transportation Costs	4,000,000	3,150,000	3,700,000	3,900,000
	Printing, Advertising and Information Supplies and Services	35,000,000	15,510,744	45,000,000	46,000,000
	Net Expenditure	48,000,000	26,270,744	57,100,000	55,330,003
Information, Communication and Technology					
	Communication, Supplies and Services	2,000,000	2,500,000	2,580,000	2,650,000
	Domestic Travel and Subsistence, and other Transport Costs	3,000,000	2,700,000	3,100,000	3,250,000
	Foreign Travel and Subsistence, and other Transportation Costs	2,000,000	1,890,000	2,100,000	2,100,000

	Printing, Advertising and Information Supplies and Services	3,000,000	1,280,000	3,100,000	3,200,000
	Net Expenditure	10,000,000	8,370,000	10,880,000	11,200,000
GRAND TOTAL NET EXPENDITURE		1,093,838,149	1,101,365,410	1,263,000,000	1,450,000,000

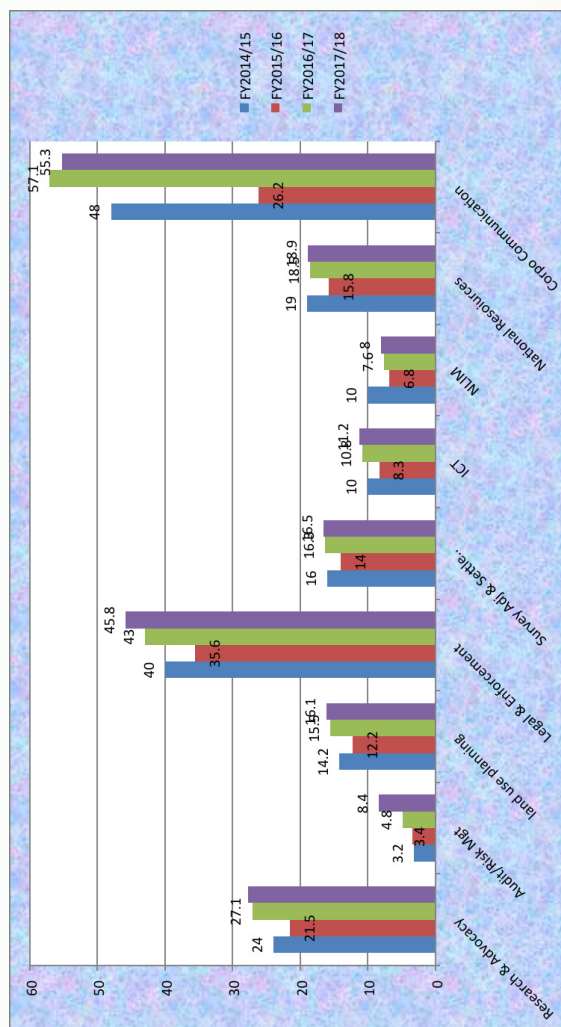


Figure 3: Budgetary allocations towards the various departments of National Land Commission (all figures in KShs = millions)

CHAPTER FOUR

4.0 Analysis of the institutions mandated with land reforms and the strides made thus far.

The Constitution of Kenya 2010 recognized that land is one of the stickiest issues in Kenya faced with lots of historical challenges and responsible for various community conflicts. As such the Ministry of Lands and the then Local Authorities were unable to deal with land matters. As such, other independent organs were formed to deal specifically with land and environment matters with a view to enhancing the management of land matters. Currently, the following state organs are mandated to deal with land reforms:

- i. Ministry of Lands, Housing and Urban Development
- ii. National Lands Commission
- iii. County Lands Management Boards
- iv. Kenya Institute of Survey and Mapping

4.1 Analysis of the Land Institutions

4.1.1 Ministry of Land, Housing and Urban Development

The Land, Housing and Urban Development sub-sector is mandated to provide policy direction on matters related to land, housing and urban development. The sub-sector is guided by detailed mandate through executive Order No. 2/2013 of May 2013. The mandate is: Lands Policy Management, Rural Settlement Planning, Land Transactions, Physical Planning, Survey and Mapping, Land Reclamation, Land Registration, Administration of Public Land as designated by the Constitution, Settlement Matters, National Spatial Data Infrastructure, Land and Property Valuation, Housing Policy Management, Public Works Policy and planning, management of Building and Construction Standards and codes, Management of Housing for Disciplined Forces and Civil Servants, Public Office Accommodation Lease Management, Management of Civil Servants Housing Scheme, Registration of Contractors and Materials Suppliers and Registration of Architects and Quantity Surveyors and other Public Works.

Table 8: Ministry of Land, Housing and Urban Development budget for FY 2014/2015 and FY 2015/2016

	2014/2015		2015/2016	
	RECURRENT	DEVELOPMENT	RECURRENT	DEVELOPMENT
MLHUD	4,352,583,177	21,197,280,970	3,926,131,392	23,608,119,030

The Ministry of Land, Housing Urban Development was allocated a total of Kshs. 25.4 billion for FY 2014/2015. This amount increased to Kshs 27.5 billion in FY 2015/2016.

Major Indicators/Outputs for 2015/2016

1. Construction of land registries constructed
2. 30% of land records digitalized
3. 15 land registries rehabilitated
4. 12 land registries reorganized
5. 330 students trained on Surveying & Mapping
6. 1,350,000 land parcels adjudicated for registration
7. 188 housing units in Kibera Soweto East Zone A completed
8. Disburse Kshs 1 Billion as loans to civil servants for construction/purchase of houses
9. Refurbish 1800 Government Houses
10. Register 600 units of Government Houses

4.1.2 National Land Commission

The National Land Commission (NLC) was established in accordance with the Constitution of Kenya Article 67(2) and the National Land Commission Act, 2012. The NLC is mandated to provide efficient and equitable framework administration, land ownership and management. This is an independent government commission that was established under the Constitution of 2010 to manage all public land on behalf of the county and national government.

Mandate

This is contained in Article 67 of the Constitution of Kenya 2010:

- a) Manage public land on behalf of the national and county governments
- b) Assess tax on land and premiums on immovable property in any area designated by law
- c) Recommend a national land policy for the national government
- d) Monitor and oversee over land use planning throughout the county
- e) Conduct research related to land and use of national resources, and make recommendations to the appropriate authorities
- f) Encourage the application of traditional dispute resolution mechanisms in land conflicts
- g) Advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- h) Initiate investigations, on its own initiative or on complaint, into present or historical land injustices, and recommend appropriate redress
- i) Perform any other functions prescribed by national legislation

Note that the last function gives rise to all other functions in various Acts. This means that all the statutory functions are directly hinged into the Constitution of Kenya. This gives them the strength of the Constitution which they need.

Challenges

- Multiplicity of Legislation (Acts) touching on land management and land use;
- Inadequate financial and human resources
- Inadequate infrastructure facilities and equipment to facilitate institutional development
- Manual records management systems
- Low level of awareness by the public on the mandate and role of NLC
- Conflicts in the land use systems
- Deep rooted land injustices
- Legal suits/litigations due to conflicting land interests
- Data or information insecurity
- Corruption
- Inadequate political goodwill
- Competing land resource management institutions
- Scattered geo-spatial data
- Insatiable demand for land due to high attachment

Opportunities

- Commitment to the attainment of the Kenya Vision 2030 by the government
- Public goodwill and support
- Developed collaboration mechanism between partners/stakeholders
- Parliamentary support
- Increased demand for land services
- Devolution to facilitate effective land administration and management to the grassroots
- Availability of modern information technology
- Strong collaboration with professional institutions and bodies
- Already existing land agencies in the management of public land

Composition

Public Land Administration and Management

Objectives: To facilitate access and use of land for social-economic and environmental sustainability

Monitoring and Evaluation Committee

This is made up of the CEO, four members appointed from among the directors;

Head of Audit & Risk Management or designate; one external member for technical support.

The CEO

The NLC CEO shall be the overall coordinator of the Commission.

The Cabinet Secretary Ministry of Land, Housing and Urban Development: The CS plays an important role in facilitating the NLC executive to achieve their goals.

The Commissioners

The NLC Commissioners provides leadership in the management of the Commission.

The Directors

These will fast track the projects as they appear in the strategic plan.

The NLC operates at two levels. The Commission-wide level and the nine directorates (Audit and Risk Management Unit, Finance and Administration, Communication Unit, Human Resource Management, ICT Unit, Land Administration & Management; Land Survey, Adjudication and Settlement; National Land Information Management System, Land Use and Planning, Land Valuation and Taxation, Legal Affairs and Enforcement, Natural Resources, Research and Advocacy)

Table 9: National Land Commission budget

Budgets

	2014/2015		2015/2016	
	RECURRENT	DEVELOPMENT	RECURRENT	DEVELOPMENT
NLC	1,093,838,149	442,000,000	1,101,365,410	439,200,000

4.1.3 National Land Commission Budget

Mandates of CLMBs

- Allocating public land
- Dispute resolution
- Verification of land ownership documents
- Handling of oral and written submissions from concerned parties
- Renewing leases
- Investors and developers have to apply to the boards for approval
- Processing of the transactions to be approved by the Commission- allocation of public land, change of user, extension of user, subdivision of public land, renewal of leases, extension of leases,
- Inspecting all the public land allotment for adherence to planning requirements
- Encouraging use of alternative and traditional dispute resolution mechanisms in land dispute
- Perform any other functions assigned by the commission or by any other written law

County Land Management Board Budget

Recurrent Expenditure

In the Financial Year 2014/2015, the County Land Management Board was allocated Kshs 377,738,149 for recurrent expenditure. This allocation reduced significantly to Kshs 181,021,310 for the FY 2015/2016. This is a 52.1% or Kshs 196,716,839 decrease in budgetary allocation towards the CLMBs. The County land management boards are the branches of the NLC in the counties and are composed of seven members' members each, making a total three hundred and twenty nine (329) members in totals. The reduced budget majorly affected the personnel costs and is a result of centralizing of payroll at the NLC headquarters. The budget is itemized as shown below:

Table 10: Recurrent budget estimates for National Land Commission

Head	Title	Approved 2014/15	Estimates 2015/16
County Land Management Board	Basic Salaries	172,500,000	-
	Personnel Allowance	62,000,000	-
	Domestic Travel	43,800,000	45,041,310
	Hospitality Supplies & Services	24,200,000	21,780,000
	Insurance Costs	16,500,000	16,500,000
	Office & General Supplies	25,000,000	25,200,000
	Fuel Oil and Lubricants	5,000,000	4,500,000
	Office Furniture & General Equipment	28,738,149	68,000,000
	Net Expenditure	377,738,149	181,021,310

4.2 Review of the 2015/16 Budget for Lands and Housing

4.2.1 Budgeting for Land Reforms

The sector resource requirement for 2015/16 is expected to increase from the current allocation of Kshs. 60,233 million to Kshs 87,450 Million. Despite the requirement, the sector has been allocated Kshs 60,904 million. The sector requires Kshs 108,747 million in 2016/2017 and Kshs 107,522 million in 2017/2018. Some of these funds will be used to finance institutional reforms in the housing and land sector among other needs.

What outputs do we expect from the FY 2015/2016 national land and Housing Budget

In 2015/2016, the national government is targeting to reach the following outputs: construct 10 land registries; rehabilitate 15 land registries; reorganize 12 land registries; increase to 30% the land records digitalized.

- Land Survey
- Secure National and International Boundaries:
- Number of pillars maintained: 500
Parcels of land registered: 45,000
- Number of parcels updated on Registry Index Map:
2014/2015: 1.5 million
2015/2016: 1 million
- Number of plots Geo-referenced on the National Map: 60,000

Land Use

- Percentage of National Spatial Plan prepared: 5%
- Percentage of regional Plans prepared: 20%
- Percentage of National Land Use Policy developed: 15%

The Ministry of Land, Housing and Urban Development had set a target of 5 counties to be provided with technical support in physical planning. For 2015/2016 FY the Ministry is targeting to provide technical support to 15 counties. If this happens as planned, it will help promote land reforms because the action will provide the required skills to those 15 counties across the country.

Land Settlement

According to the recent SWG report for lands and housing, 12,000 landless people will be settled in 2015/2016. This was the same target in the previous FY.

In 2015/2016, the MoLHUD is targeting to 450,000 parcels for Adjudication and Settlement. This is an increase from the previous Kshs 400,000.

In FY 2014/2015 MoLHUD was targeting to issues 1.5 million title deeds. For FY 2015/2016, the Ministry is targeting to issue 1 million title deeds. Then 800,000 titles will be issued in 2016/2017 and 700,000 title deeds in 2017/2018. The question now is how many titles did the ministry actually issues in 2014/2015? The sector report indicates that 963,153 title deeds were issued in 2014/2015 against a target of 1.5 million title deeds. This shows that the ministry missed their target by over half a million title deeds. This might be the reason why they lowered their target to 1 million titles for 2015/2016. This is more realistic for them.

The Ministry is targeting to migrate or convert 5,000 titles under various land registration statutes to county land registries. This is the set target for every year in the Medium Term.

Land Valuation

The Ministry of Land, Housing and Urban Development is planning to value 56,000 land parcels for stamp duty. The target for 2014/2015 was 55,000 parcels.

4.2.2 Budgeting for Housing

In FY 2015/2016, the Housing Department at the Ministry of Land, Housing and Urban Development was allocated a total of Kshs 2.3 Billion. This was a nearly double increased allocation from that of FY 2014/2015 at Kshs 1.2 Billion.

In FY 2014/2015 the national government Housing Development programme was targeting to complete 70% of the 188 housing units in Kibera Soweto East-Zone A. For FY 2015/2016, the department is targeting complete the remaining 30% of the project. This means that ideally the project should be completed during FY 2015/2016.

Mavoko SNP Project

Units: 462

2014/2015: 30 Units

2015/2016: 10 Units

Kibera Soweto East-Zone B

Units: 3,000

2014/2015: 30 Units

2015/2016: 40 Units

Mukhaweli Primary School

Units: 10 classrooms, offices and sanitary facilities

2014/2015: 20 Units

2015/2016: 20 Units

London Area Social Hall- Nakuru

2014/2015: 40 Units

2015/2016: 10 Units

Housing Units in Marigu-ini Slums

This is an informal settlement located in Nyeri County. The project aims at constructing 2,000 units of housing with the first phase of 80 units expected to be completed in 2014/2015 and an additional of 20 units in 2015/2016.

National Slum Upgrading and Prevention Policy

Draft Policy

Kenya Informal Settlements Improvement Project

- Number of kilometers of access roads = 100 km
- KM of drainage works to be constructed (2015/2016) = 25km
- KM of drainage works to be constructed (2014/2015) = 55km
- No of ablution blocks completed = 20km

High Mast Flood Lighting

The housing programme is targeting to install 25 high masts of flood lighting.

10,000 Housing Units in Nairobi PPP

- 60% to be completed in 2015/2016.

Muguga Green – Nairobi

This is a project that will be comprised of 700 housing units. In 2015/2016, 60% of the project is expected to be completed.

Housing Infrastructure

Proper housing infrastructure is necessary for all standard housing projects. The ministry is planning to construct 2 sewer lines, install high mast floodlights and construct a 5 Kms of waterline.

Appropriate Building Materials and Construction Technology (ABMT)

3 collaborative ABMT Research undertaken

CHAPTER FIVE

5.0 Review of audit reports regarding spending in the land sector from 2014/15 to 2015/16

The report from the Auditor General of 2013/2014 gave Adverse Opinion for the Ministry of Land, Housing and Urban Development for funds totaling to Kshs 888,413,444. Below is the summary of the audit opinions on revenue statements:³

a) Unqualified Opinion	
Collecting Ministry	Amount (Kshs)
National Treasury	34,863,767,268
Registrar of High Court	2,068,822
EAC, Commerce and Tourism	24,439,503
Information, Communication & Technology	6,684,455
Total	<u>36,962,979,048</u>
b) Qualified Opinion	
National Treasury – Recurrent Revenue	918,309,994,674
Agriculture, Livestock & Fisheries	188,924,424
Interior & National Coordination	10,265,358,890
State Law Office	283,022,563
Total	<u>929,047,300,549</u>
c) Adverse Opinion	
Land, Housing & Urban Development	888,413,444

The Auditor General also reported the following about the Ministry of Land, Housing and Urban Development:

The Office of the Auditor General Reported that during the year ended 30th June, 2014 the Ministry of Land, Housing and Urban Development did not settle Bills amounting to Kshs 392.5 million. These are called pending bills. All of it being recurrent expenditure for the year 2013/2014.

³ Source: Report of the Auditor General on the Financial Statements for Ministries, Departments, Commissions, Funds and other Accounts of the National Government for the Year 2013/2014.

Adverse Opinion

- Kshs 1.7 million: Payments for undelivered goods
- Kshs 20 million: Failure to avail payment vouchers and other supporting documents
- Kshs 161.5 million: Unsupported AIES: Failure to provide expenditure returns supporting AIES to County directors.
- Kshs 178 Million: Acquisition of Land: Failure to avail expenditure returns
- Kshs 677.4 Million: Unexplained variation. There was a difference between figures in financial statements and supporting schedules.

Unsupported Receipts

For the year ending 30th June, 2014, proceeds from foreign and domestic grants reflected a balance of Kshs 221,233,575. These funds were grants from the government of Germany to be spent on the Kenya for Primary Education Project (KPEP). In addition to that, the statement reflects proceeds from foreign borrowing of Kshs 536,828,114. The journal entries have not been supported by receipt vouchers and other documentation. This is why it was hard to confirm the accuracy, validity, completeness and occurrence of total receipts balance of Kshs 757,651,689.

Understatement of Receipts

For the year ended June 2014, the Ministry's cash books and records shows a total of Kshs 12,593,735,295 but the statement of receipts and payment for the same period reflects transfers from National Treasury balance of Kshs 11,938,034,553. The reported net surplus and the total receipts balance have thus been understated by Kshs 655,718,742.

Other Revenue

The statement shows Kshs 2,303,877,188 as other revenue. This is receipts from the Ministry of Devolution and Planning during the financial year. On the other hand, the Ministry of Devolution and Planning has records indicating that they transferred Kshs 2,150,010,210 was transferred to the Ministry of Land, Housing and Urban Development. There was no narration for this difference of Kshs 153,866,978.

Use of Deposit Money to Pay Recurrent Expenditure

Deposit Funds are money held in trust. The Office of the Auditor General found out that for the fiscal year 2013/14, the Ministry had used deposit funds totaling Kshs 13,524,377.90 to meet recurrent expenditure. This is a risk move because it can lead to loss of depositor's money. This is illegal and it violates the PFM Act 2012.

Misallocation of Expenditure

A total of Kshs 127,059,528 was misallocated and irregularly charged against wrong account codes. This was revealed after the OAG examined the Ministry's Payment Vouchers. The Ministry failed to comply with the approved budget estimates which are contrary to Section 15.12 of Government Financial Regulations and Procedures. The Ministry did not provide evidence of these allocations by the National Treasury for audit review.

Payment for Undelivered Goods

The OAG used the available information to find out that the Ministry paid a total of Kshs 1.7 Billion for the supply of 10 Adobe CS5 at the Survey of Kenya. Audit Verification conducted indicated that these items were not supplied. The ministry did not give any explanation for making payment before goods were delivered.

Unsupported Expenditure

The Office of Auditor General (OAG) found out that the Ministry paid Kshs. 20 million through Payment Voucher No. 4 of 19 September 2013. This payment voucher and other supporting documents were not provided for review.

Acquisition of Land

The acquisition of assets balance as per the statement of receipts and payments for the FY ended June 2014 was Kshs 10,512,917,374. The figure included Kshs 178,000,000 for land acquisition. Information indicates that this amount was transferred to the Ministry of Devolution and Planning for resettlement of Internally Displaced Persons (IDPs). The problem is no expenditure returns were provided for audit review. Hence, the propriety of this expenditure could not be ascertained.

Failure to Provide Footnotes for Material Variances

The Ministry of Land, Housing and Urban Development failed to provide footnotes to the accounts for material variances between approved estimates and the actual expenditure on various items. The Ministry did not give any reason for failing to provide footnotes.

Pending Bills

Records from the Ministry indicate that bills values at Kshs 392,596,163 were not settled during the year. They were carried forward to 2014/2015. Generally, the sector has experienced an increase in the amount of pending bills from 2011/2012 to 2013/2014 financial years. According to the Sector Working Group report, the major causes of increasing pending bills are: budget cuts; lack of exchequer releases at the end of the financial year; shutdown of IMFIS system before full payment processing and length procurement processes.

Government Housing Projects at West Park

The Ministry of Land, Housing had entered into a contract with a construction to work on a government housing project at West Park Nairobi at a contract sum of Kshs. 1,369,638,652.64 for a period of 104 weeks. The contract sum was revised upwards to Kshs 1,633,664,443. This created a variation of Kshs 264,025,790.36 or approximately 19% of the contract sum. There was no evidence provided to prove that the adjustment was approved. Further, the progress reports indicated that by the end of the project duration, only 90% of the work had been completed. Finally, the Ministry paid Kshs 49,262,055.72 as interest on delayed payments. The payment of this last amount would have been avoided if the payments were made on time.

Understatement of Revenue

The rent collected from Government Buildings and Housing was reflected as Kshs 304,410,204 during the year while schedules from Housing Directorates show Kshs 442,568,031. There is no explanation given for the variance of Kshs 138,157,827 in the revenue statement for the FY ended 30th June, 2014.

Revenue Collection

The revenue statements reflect total revenue collected of Kshs 2,103,528,136 during the Fiscal Year. On the other hand, the cash book shows an amount of Kshs 2,045,082,125. There is no explanation given for the difference in revenue collected.

CHAPTER SX

6.0 Conclusions and Recommendations

6.1 Conclusions

The following conclusions can be drawn from study findings:

- In Hakijamii's 2013 land reports, the organization recommended for the streamlining of mandate of both the NLC and MOLHUD to eliminate the duplication of roles of these two institutions such as the issuance of title deeds.
- The national government has significantly reduced her expenditure on the Slum Upgrading Programme with the hope that donor funds will be spent this programme. This is dangerous considering that if the donors withdraw their support, the projects will stall or fail to materialize.
- Initially, the budget for the National Land Commission was under the MOLHUD until 2014/2015 when it became independent just like other commission created in Kenya (CIC). The budgetary allocation towards NLC increased by 29% from FY 2014/2015 to FY 2015/2016. This is a good sign that the national government is committed towards progressive realization to land rights in Kenya.
- The budget for National Titling Centre housed under the Survey Department increased from Kshs. 2.2 billion to Kshs. 5 billion for FY 2014/15 and FY 2015/16 respectively. This is a clear indicator that the government is committed towards issuance of 1 million title deeds in FY 2015/2016. The only problem is that the same commitment is not displayed in terms of budgetary allocations towards Adjudication and Settlement Services department. Ideally, these two departments go hand in hand. Before land is surveyed and mapped, Adjudication has to be done. Naturally, we expect the budget for the two departments to increase simultaneously.
- The Kenya Institute of Surveying and Mapping (KISM) are targeting to train 330 students on surveying and mapping field. This is far below the market demand. Counties have been reported to have inadequate human resources in the land and housing sector and some action need to be taken to solve this problem through training more people through KISM.
- In 2015/2016 financial year, the National Land Commission centralized Payroll services for County Land Management Boards (CLMBs) at the headquarters. This is a cost-cutting action because NLC has eliminated the need to employ payroll accountants at all the 47 counties. The problem is that these CLMBs have not been operationalised in some counties such as Turkana. This is denying those counties the services such as alternative dispute resolution, renewal of leases and management of county and national public land.
- Research revealed that there is inadequate political goodwill for the National Land Commission. This was made clear when the MOLHUD drafted new land laws such as the Land (Amendment) Bill 2015 and Community Land Bill both of which attempted to reduce the powers of NLC.
- There is lack of reliable data on land and housing sub-sector.

- One of the biggest challenges facing the Ministry of Land, Housing and Urban Development is accountability and transparency. From an analysis of the audit reports from the Controller of Budget and Office of the Auditor General, we have witnessed misappropriation of funds. For instance, in 2013/2014, the ministry could not account for over 888 million spent on various programmes.
- There are a lot of leakages. We have also discovered that millions of money allocated for resettlement of IDPs would not be accounted for in a proper manner. This is one of the largest challenges facing the lands and housing sub-sectors in Kenya. It is disheartening to believe that there are many people living in refugee camps since 2007/2008 post-election violence.
- The second major problem facing the sector is inadequate human resources to provide the technical skills required. The retention rate is low considering that the highly experienced staff is attracted by green pastures in the Commissions, private sector and Counties.
- There is no policy in place to guide slum upgrading in Kenya.
- There is no legal framework to guide public participation in Kenya and government is not committed towards providing one because, it will make the government more answerable to the citizens.

6.2 Recommendations

The study recommends the following:

1. The mandate of both the NLC and MOLHUD should be streamlined to ensure that there is no duplication of roles in the two organizations. That way, performance will be enhanced.
2. National Land Commission should work hard in promotion of Alternative Dispute Resolution (ADR) in order to fasten the process of issuing title deeds in Kenya.
3. The NLC should make sure that all the 47 CLMBs are operational to assist counties in verification of land ownership documents, handle submissions from concerned parties and renewal of land leases among other duties.
4. The MOLHUD and NLC should work hand in hand to collect, store and disseminate important data on land and housing subsector.
5. The budget for Adjudication and Settlement services should be scaled up to match with that of National Titling Centre. This is because, for the latter to issue titles, extensive adjudication must be carried out upfront.
6. The Kenya Institute of Surveying and Mapping should be adequately funded in order for the institution to increase the number of students trained from the current 330 for FY 2015/2016 to a minimum of 1,000 students per year for the Medium Term.
7. The government of Kenya should work towards creating a high quality Slum Upgrading Policy to consolidate and direct all the activities in this sub-sector.
8. The Civil Society Organizations (CSOs) should work together in ensuring that they promote a Private Member's Bill on Public Participation at the National Assembly. This is the only way that Kenya will be able to get a public participation policy.

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