



Responsible Land Governance: Towards an Evidence Based Approach

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LAND GOVERNANCE IN URBAN AREAS CASE OF NAIROBI CITY COUNTY

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ABSTRACT

Globalisation and urbanisation trends in developing countries present both opportunities for growth and development on one hand while contributing to the complex myriad challenges of managing urbanisation on the other hand. Cities and urban areas play a critical in the development of a country. They provide platforms that incorporate intense combination of economic, cultural and political factors of a country or region. Nairobi city is Kenya's economic capital and is a major economic hub in Africa. However, the problems of Nairobi manifest in huge proportions and call into question the ability and capacity of the city to manage the challenges of urbanisation sustainably.

This assessment is based on the Land Governance Assessment Framework, published by the World Bank in 2011 and seeks to examine and assess the legal and institutional framework, land use planning, and public management of land within Nairobi to identify gaps in land governance that may be addressed in order to improve land governance. The impacts of a new constitution, land policy as well as harmonised land legislations enacted in 2012 on land governance in urban areas are yet to be observed and documented and this paper assessment aims to begin and contribute to the same discourse.

Key Words: Land Governance, Urbanisation,

CHAPTER 1: LAND ADMINISTRATION, MANAGEMENT AND GOVERNANCE IN URBAN AREAS

1.1 Land Administration

Land Administration is defined as the processes of recording and disseminating information about the ownership, value and use of land and its associated resources (UNECE 1996). Land administration is concerned with four aspects of information which include ownership, value, use and development. Ownership is concerned with rights to land to which an individual or group are entitled to. Rights to land may include the following rights such as dispose, sell, control, use, transfer, exclusion, and mortgage, subdivide, grant easement, lease and develop. This information is important in the enhancement of security of tenure as well as enforcement of rights to land. Property rights in urban areas is key in development of property markets which in turn influence affects urban development. Good management of property rights facilitates affordable and transparency of land transactions in the property markets. Lack of information on property rights is a disincentive to development in the property market. Due to the insecurity of tenure rights, land transactions will tend to operate informal land markets where costs of transactions are high and more resources spent in protecting rights to property.

Information on land value entails the monetary value associated with a particular land or property. Information on value on property and land is also important in the functioning of land markets. It is one of the determining factors in the access of credit for development of land especially in urban areas. Information on land and property values is important in the monitoring and regulation of land market performance. Lastly, information on urban property values is used in tax administration systems which are used to generate revenue from land and property. The revenue collected from taxation is channelled towards the provision of public goods and services as well as financing development projects such as road construction in urban areas. Land use information is important for purposes of planning and exercising the powers of development control by the state/county authority. Land use is also important in supporting economic development and social stability through setting out objectives to be achieved.

Land administration systems provide a basic infrastructure for implementing land related policies and land management strategies to ensure social equity, economic growth and environmental protection (Enemark, 2009). Good land administration systems facilitate effective and efficient management of land and property rights and this is important in

increasing the efficiency in the use of resources. Individualisation of property rights as well as registration and titling enhances security of tenure and thus is an incentive for investments to land. This is one way of alleviating poverty as poor people can use their property to access credit and use it for land and property development. It also makes it possible for property to enter the formal land markets. (Subedi et al, 2014) sums up property rights as the rules of the game and the land administration organizations as the players of the game.

1.2 Land Management

Land management encompasses all activities associated with the management of land and natural resources that are required to achieve sustainable development (UNECE 1996). This involves the utilisation of land resources with a goal to achieve a desirable social or economic objective. It directly involves all the processes and activities that have an effect on land information on rights, value, use and development. These processes and activities include planning, taxation and environmental management among others. Land use planning is concerned with the planning and control of the use of land and natural resources. Land use planning facilitates harmonious distribution of activities/uses on land to avoid conflicts that may arise from incompatible land uses. Land use planning is also critical in the allocation of resources for future uses in a sustainable manner. Together with land and property tax, land use planning is an important tool for development control especially in urban areas. Land and property tax is an important avenue for generating revenue for financing the provision of services by local governments. Revenue generated from land and property tax may be used to finance infrastructure projects to spur economic and social development in urban areas. Land management also involves the formulation and implementation of land policies as a means of realising the goals of development needs. Land management therefore is the range of land administration functions that ensure proper management of rights, restrictions, responsibilities and risks in relation to property, land and natural resources. (Enemark, 2005).

1.3 Land Governance

Governance is the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. (Palmer et al, 2009) Land governance, by extension, concerns the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and

enforced, and the way that competing interests in land are managed (Palmer et al, 2009). Decision making processes affect how land administration systems can be leveraged to provide solutions to challenges in the land sector. For good land governance to be improved, there is need for clear rules to be laid down on matters related to land rights, management of public land, land use planning, taxation, information management and dispute resolution. Many of these challenges in urban and rural areas have a clear land dimension: unequal access to land; insecurity of tenure; unsustainable land use; and weak institutions for land administration, dispute and conflict resolution, etc. (Palmer Et al, 2009)

Recognition of property rights is important in enhancing security of tenure for people with interests in land. Absence of appropriate mechanisms to recognize land and property rights act as disincentives for investments in land and hence the full potential value of land is not realised. Rights holders are unable to exercise their rights in a conducive environment. This leads to costly land transactions outside the formal land markets where rights to land are not protected. Land markets are then characterised by distorted information and hence transactions become more costly. In urban areas where there are myriad of competing land interests, land governance is crucial in the management of such interests to avoid conflicts. Good land governance in property rights management balances between private interests and public benefit. Weak land governance is as a result of tenure related problems.

As land governance is concerned with rules on how land decisions are carried out, it is important that there are sound land policies for land management. Legislations on land administration and management should properly identify institutions concerned with land administration functions as well as clear mandates that do not overlap or conflict within the institutional framework. The responsibility for land policy formulation and the responsible institution needs to be clearly laid out as well the implementing authority. Where possible, the policies should as well aim at strengthening the capacities of the implementing institutions. Good land governance is supported by good decision making processes that involve members of the public as well as all concerned stakeholders. Decisions should be backed by social consensus as this will strengthen commitment by the public and other stakeholders. It is important that land use planning provides for proper utilisation of land resources both in the present and for future land use practises. Failure to effectively enforce land use regulations and monitoring may result in unwanted results such as environmental degradation and pollution in urban areas. As economic development continues to affect and impact land use activities it is

imperative that land use plans are efficient for such changes to benefit the society as land resources are finite.

Land governance is about the policies, processes and institutions by which land, property and natural resources are managed (FIG 2009). This includes decisions on access to land, land rights, land use, and land development. The ease of access to information on land ownership, property and value is a factor in breeding avenues for corruption and land grabbing. Making information easily accessible to the public is a tenet of good governance. It is crucial in calling land institutions into accountability as well as strengthening the integrity of land administration systems.

Land is a major asset in urban areas. Urbanisation brings with it both opportunities as well as challenges that based on how they are responded to, they may contribute to social stability as well as economic development and growth. Competing interests in land such as residential, commercial, industrial, transportation and other interests need to be handled in a manner that secures benefits both for the public and private sector of the society. Urbanisation leads to increase in the value of land and these increases may lock out the poor and vulnerable members of society. This may constrain access to the property market by sections of the society. In return people opt to transact in informal land markets which are difficult to regulate. Land Governance in urban areas is concerned with various aspects of land tenure especially in the management of property rights. Without good land governance, land as a key vehicle for investment will not be productive because land forms a huge portion of the assets of the poor. Good land governance is important in reducing opportunities for corruption because corruption thrives where there is no transparency in land administration and management functions. Public lands which are critical in provision of public goods are more likely to be lost through corruption. Good land governance is a critical precondition for sustainable development.

CHAPTER 2: NAIROBI CITY

2.1 Introduction

Nairobi City is the capital city of Kenya and the largest in Kenya. Nairobi was founded as a railway station on the Mombasa-Uganda railway line in 1899 and became a colonial settlement in 1901. According to the population Census report released in 2009, Nairobi had a population of 3,138,369 inhabitants. Nairobi is estimated to cover about 694.90 square kilometres with a population density of 4,516.29 persons/sq.km. Nairobi is one of the fastest growing cities in Africa and one of the most important and busy business hubs in Africa. Nairobi City plays host to several multinational corporations and international agencies that operate in Africa. The city is also a hotspot for wildlife and cultural tourism.

2.2 Urbanisation Challenges in Nairobi

Globalization and urbanization trends can be observed in the city at a very rapid rate. Population growth is one of the greatest factors contributing to urbanisation. Population growth in Nairobi is as a result of rural to urban migration and population growth rather than due to industrial pull. Rapid urbanisation in Nairobi has led to pressures on current public infrastructure as well as provision of basic services. The process of urbanization has historically been associated with economic and social development, including longer life expectancy and poverty reduction (Wunder & Wolff, 2015). Urban inequalities in terms of access to public goods and services continues to rise as the rich easily access such goods compared to poor households.

The rate of population growth within urban areas is a key factor that influences the rate of urbanisation in an urban area. Population growth drives economic development as the demand for goods and services expands markets for producers as well as access to labour for goods and services providers. In return, population increase has been associated with increased human and social development, better incomes and subsequently better living standards. However, the high rate of urbanisation in Nairobi has led to very high demands for serviced lands. As the demand for land becomes bigger, land as a finite resource remains in short supply. According to the Kenya Urbanization review, prices for land and property in 2013 were nearly three times those in 2000, creating fewer opportunities for low and middle-income families to access and gain rights to land (World Bank, 2016).

Land provides a place for housing and cities, and is a basic factor of economic production as well as a basis for social, cultural and religious values and practices (Palmer et al, 2009). Urbanisation has created a housing crisis in Nairobi with demand for serviced lands far outstripping supply. More than half of Nairobi's population reside in informal settlements and slums. The cost of land coupled with the cost of construction materials make it difficult for a majority of Nairobi residents to access formal housing markets. As incomes inequalities are low, a majority of the people in Nairobi can only afford to access housing in informal areas and slums. Formalisation of property rights is rather costly hence as a way of minimizing costs, developers opt not to formalize property developments. This is also true for poor land owners who are unable to meet the costs for formalisation. Failure to formalise property rights leads to eroded security of tenure and hence land transactions are carried out in informal land markets which are difficult to regulate. Informal housing has partly resulted from the lack of provision of serviced lands by the county and national governments.

Land use planning in Nairobi is not effectively implemented and monitored. This scenario has contributed enormously to issues such as pollution, congestion, and lack of access to basic services, like electricity, water, and sanitation which are still out of reach for many dwellers of informal areas. The opposite is true for dwellers in formal settlements. Access to public infrastructure such as roads is also least for informal areas dwellers compared to dwellers in formal settlements. Informal areas in Nairobi are characterised by congestion, poor housing status, low social-economic status and low income levels. Increase in land values as a result of public investments largely benefit the rich unlike the poor who are unable to capitalize on the same. During the first two decades after Kenya attained independence in 1963, the Nairobi City Council planned for housing, public utilities and amenities, schools and medical centres well in advance. However for the past three and a half decades from 1980, the city has not provided serviced lands in line with land use planning and for provision of public goods and infrastructure as well as urban services. As more urban dwellers demand rights to land, these rights can only be managed well if land use planning is carried out in an effective and efficient manner. The environmental conditions in Nairobi are getting worse with each new dawn as unplanned new dumping sites can be spotted coming up in almost every corner of the city.

The transport infrastructure in the city is also rather wanting. Mobility is currently a crucial problem for the close to 4 million inhabitants living in Nairobi today. Perennial traffic jams have led to a shift in peak hours over the last ten years and Nairobi is ranked by some as the 4th most congested city in the world. According to Kenya Institute of Public Policy Research

and Analysis (KIPPRA) (2015), the annual economic cost of traffic jams in Nairobi in 2008 stood at KShs 1.9 billion on account of cost of additional time spent on travel due to congestion.

Urban poverty is also a prominent feature of Nairobi city. A majority of residents work in informal sectors where the output in terms of value is low in turn resulting in low incomes. A majority of the urban poor live on less than USD 1 per day and therefore unable to pay for access to services such health, transport, education, and for clothing. The high rates of youth unemployment and slum populations is cause for alarm. If Kenya's rapid urbanization is left unmitigated, the country could see even higher rates of unemployment, specifically within its youth population.

2.3 Devolution

The promulgation of a new Constitution in Kenya in 2010, brought into place two systems of government, that is, the national government and the county governments. The constitution created 47 counties each with a county government to manage its own affairs. The Constitution provides for national and county governments to be distinct and interdependent.

Devolution provides an opportunity to reform urban planning and land management institutions at a decentralised level. Each county is entitled to a share of the revenue generated by the national government as well as collecting its own revenue through provision of public goods and services. As such, each county has a county assembly to formulate and approve appropriate policies for the management and administration of each county. Devolution therefore provides a unique opportunity for influencing the development of the counties.

Devolution also holds potential for the harnessing resources and champion positive transformation in urban development. County governments can leverage on their resources to establish strong institutions to that will plan and guide development activities to achieve social stability and economic growth based on the needs and priorities of each county. The country's ambitious experiment in devolution should hold great promise and comes at an important period in the economic and urban transformation (World Bank, 2016). Urbanisation can drive growth and development and should be highly prioritised in urban areas.

CHAPTER 3: ASSESSMENT OF LAND GOVERNANCE IN NAIROBI CITY

3.1 Introduction

This assessment follows the Land Governance Assessment Framework published by the World Bank in 2011, as diagnostic tool to help evaluate the legal framework, policies, and practices regarding land governance and to monitor improvement over time. The framework assesses land governance in five thematic areas namely; legal and institutional framework, land use planning, management and taxation; management of public land; public provision of information; and dispute resolution and conflict management.

The assessment carried out in this chapter is to basically highlight the provisions in law in regard to the five thematic areas in relation to urban land and thus does not involve the actual assessment in regard to the use of indicators as recommended by the framework. This is also due to the fact that the assessment would require the involvement of land experts who were not categorially involved in this assessment as per the framework guidelines.

3.2 LEGAL AND INSTITUTIONAL FRAMEWORK

The assessment of the legal and institutional framework of land administration systems is aimed at assessing the management of land property rights within a jurisdiction in which the administration system is found. In accordance with the LGAF, and for purposes of the report, it involves the following two aspects. First, the aspect on recognition of rights legally, and the enforcement of the rights in regard to documentation and secondly, the policy and institutional framework regulating the processes in recognition of rights.

3.2.1 Recognition and Enforcement of Rights

Chapter Five of the Constitution of Kenya is dedicated to the management and administration of land in Kenya and sets out principles under which land management shall be carried out. Article 60 of the Constitution of Kenya in regard to the recognition of land and property rights sets out the following principles; that access to land should be equitable for all; that land is managed in manner that guarantees security of land rights; and that gender discrimination in regard to land rights is prohibited. The Constitution classifies land in Kenya into three categories; public land, community land and private land.

Public land refers to all land by which no individual or community ownership can be established by any legal process. Public land also includes all minerals and mineral oils, government forests, government game reserves, water bodies and catchment areas, national parks, and specially protected areas. Community land is land lawfully registered in the name of group representatives under the provisions of any Act of Parliament. Private land on the other hand consists of land held and registered by any person under any freehold or leasehold tenure.

Article 40 enshrines the right of each individual to acquire and own property of any description in any part of Kenya. It also limits the state in depriving a person of any kind of property unless justified by law either specified in the constitution or any legislation in relation to land matters. The Land Act No 6 of 2012 recognizes freehold tenure, leasehold tenure and forms of partial interest defined under the Act and customary land rights. The Act also enshrines equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems. In regard to the continuum of land rights, the Land Registration Act does not provide for the registration of the range of rights as envisioned by the continuum. However, in a bid to regularize land tenure in slums and informal areas, the Ministry of Lands and Physical Planning in partnership with the Global Land Tool Network (UN-HABITAT) and with financing from the World Bank sought to regularize tenure within informal areas. As there exists a wide range of rights in informal areas, the program utilised the Social Tenure Domain Model which is a tool for recording a continuum of land rights to record rights within the informal areas.

Individuals can acquire land rights and property rights through registration as groups or companies. The most prominent form is through savings and credit cooperatives which buys land on behalf of its members and later the land is subdivided among its members based on the shares owned. The Sectional Property Act of 1987 provides for the registration and ownership of sectional plans and units within a complex, development or scheme. A person with interest in property may purchase a section or sections of an undivided share of a common property. The Land Act 2012, lays out procedures for compulsory acquisition of land. This is basically the conversion of land from private to public. Before the land is fully assumed to be owned by the government, compensation must be determined and paid first.

Enforcement of rights are largely enforced for formally registered property where documentation on property rights can be verified at the registry. However this is not always the

case as most land owners are forced to spend more resources to protect their properties and this reduces incentives for investments in land. Kenya lacks a formal property register for documentation of property development. The register at the Ministry of Lands Housing and Urban Development is limited to capturing and recording information in regard to land only and hence no property information such as property description and value can be obtained. This is one of the challenges that the City faces as there is no register for ensuring property development is done within the confines of the law.

The law is clear on the processes of formalisation of land rights as well as means of acquiring title to land. Once formalised, the rights of a proprietor acquired on first registration are not liable to defeat unless it has been properly determined that they were acquired illegally or irregularly. The costs for first-time sporadic registration for a typical urban property in Nairobi is low compared to the property value. However, the costs are still out of reach for many land owners and this has made many land owners to opt for the informal land markets in order to be able to transact in land. There exists no mechanisms for non-documentary forms of evidence to be used for the basis of obtaining full recognition of claims to property. Where other forms of evidence are not available, the proprietor of the land needs to begin the process of documentation or the reconstruction of documentation in order to build evidence of ownership.

(FIG, 2009) observes that conventional cadastral and land registration systems cannot supply security of tenure to the vast majority of the low income groups. The Social Tenure Domain Model, developed by the Global Land Tool Network and UN Habitat is a pro poor tool for recording and documentation of land rights based on non-formal means of evidence. The tool has been used in the Kenya Informal Settlements Improvement Program in the regularization of land tenure for dwellers in informal areas and slums. The tool is able to capture a wide range of rights as denoted by the continuum of land rights. The continuum of land rights simply explains that a wide range of rights exist between two extremes of formal land rights and informal land rights (UNHABITAT, 2012). Lack of mapping and boundary demarcation which is at the informal end of the continuum, makes it impossible for enforcement of property rights. As registration of land requires proper survey of boundaries, many people find the costs of survey to be unaffordable and hence unable to register land and opt to transact in the informal land markets. This makes enforcement and protection of land rights difficult.

The Land Act, makes provisions for the management of transactions of rights in private land. Part IV of the Act gives guidelines for contracts over land, transfer and transmission of rights in Private land.

3.2.2 Policy and Institutional Framework

The Ministry of Lands and Physical planning under the Land Act 2012 is responsible for the development of policies on land, and their subsequent implementation. The ministry is also responsible for the regulation of service providers and professionals in land administration and management such as physical planners, surveyors, valuers, estate agents, and other land related professionals, to ensure quality control. The ministry is also responsible for the monitoring and evaluation of the land sector performance. The Ministry represents the executive arm of the government.

The National Land Commission is a constitutional body created by Article 67 of the Constitution of Kenya and established by the National Land Commission Act, No 5 of 2012. The primary task of the commission is to manage public lands on behalf of the national and county governments. Together with the Ministry of lands, the commission plays an advisory role in the recommendation of A National Land Policy. Other tasks include advising the national government on comprehensive programmes for the registration of title in land, to conduct research in land matters, encouraging the application of traditional dispute resolution mechanisms in land conflicts and to monitor and have oversight responsibilities over land use planning throughout the country. The Land Act No 6 Of 2012 prescribes the roles of the commission in the management and administration of public land. The functions of the commission are also laid out in the National Land Commission Act, No 5 of 2012, which sets out the powers and functions of the commission.

The Sessional Paper Number 9 on Kenya's land policy together with the Constitution of Kenya 2010 and subsequent land legislations as a result of the two documents were developed through consultative means. The National Land Policy specifically offers a framework of policy and laws designed to ensure the maintenance of a system of land administration and management. While the policy was adopted in 2009, it is still difficult to gauge the monitoring of implementation of its provisions. The policy is to be reviewed every 10 years and is to be recommended by the commission. The Urban Areas and Cities Act was enacted to give effect

to Article 184 of the Constitution, to provide for the, classification, governance and management of urban areas and cities.

According to a Supreme Court ruling delivered on the December 2, 2015, the main role of the commission is to provide oversight. The ruling made a case for clear separation in the roles of policy formulation, implementation of policy through land management and administration. The National Land Commission faces considerable challenges, including being grossly underfunded.

3.3 LAND USE PLANNING AND TAXATION

3.3.1 Introduction

Physical planning is the process whereby changes to the environment can be brought about through formal procedures (UNECE 1996). Physical planning is basically concerned with the allocation and management of land and natural resources for future use. The goal of land use planning is to achieve maximum efficiency of resources in a sustainable manner.

Land and Property taxation is basically the generation of revenue by through taxing land and property to finance the operation of local and national governments. The goals of land and property taxation should be to serve social and economic objectives.

3.3.2 Land Use Planning

Land Use planning in Kenya is regulated by the Physical Planning Act Cap 286 of the laws of Kenya. The Act was enacted for the purposes of providing for the preparation and implementation of physical development plans and for connected purposes. The administration of the Act is under the Director of Physical planning housed at the Ministry of Lands and Physical Planning. The Ministry through the Director of Physical planning is responsible for the formulation of national, regional and local physical development policies as well as national, regional and local physical development plans. The Act also sets out the creation of physical planning liaison committees at the national and county levels. The National Land Commission plays an oversight role over all land use planning in the country but lacks the resources to link with other planning departments and agencies. County governments are responsible for planning of their counties while the Ministry of Lands and Physical Planning is responsible for developing land use policies.

While there are comprehensive regulations to guide the preparation of land use plans at the national and county levels, their enforcement is not effectively effected. The law stipulates that the members of the public should be involved. The law stipulates that the public is entitled to benefit from the change of uses in land. However, there is no data available from the planning institutions to support or verify the benefits from land use changes. There is also no data for monitoring change of land uses.

County governments have the power to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of their jurisdictions, control or prohibit the subdivision of land or existing plots into smaller areas; manage all development applications; ensure the proper execution and implementation of approved physical development plans; formulate by-laws to regulate zoning in respect of use and density of development; and reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plans.

Land use planning in Nairobi has not been monitored for efficiency and effectiveness. This shows a violation of the provisions of the Physical planning Act by the institutions responsible for its implementation. The last land use plan for Nairobi was prepared in late 1973 and expired in 2003. There has been no replacement that has been adopted and approved and therefore there is no urban land use plan in Nairobi to manage urban development for the city. This also provides a reason as to why urbanisation in Kenya's urban areas is hardly in conformity with existing zoning sub-division and building regulations.

Lack of common guiding principles in planning and coordination among different sector such as agriculture, livestock, industry, transport, forestry, wildlife, urban development and social services that results in competing and uncoordinated land use practices (GOK, 2016).

3.3.3 Land Taxation

Land and Property Taxation in Kenya is guided by the Valuation for Rating Act. This act gives local authorities powers to generate revenue through land and property taxation. The law also states that a valuation roll should be prepared every ten years when need be before the expiry of ten years. However the last valuation roll for land and property in Nairobi was prepared in 1980. Over the years, Nairobi has expanded spatially and increased in size as well as more property has been released into the land market. This now means that the current property values in the roll are outdated and do not reflect the actual value of the plots which have

appreciated over a period of close to four decades. It also means that the new properties that have been brought into the land market are not accounted for in the current valuation roll. As a result, the revenue collected by the county government is under collected and the county government is missing out on crucial revenue.

The Act states that a new valuation roll should be prepared at least every 10 years and this has clearly not been followed by the successive authorities. The Act also states that the roll should be accessible to the public, but this is not the case. Because if the loss of revenue occasioned by an outdated valuation roll, the county government is unable to provide public goods and services from the revenue collected

3.4 MANAGEMENT OF PUBLIC LAND

As stated earlier in this chapter, the management of public land is the primary task of the National Land Commission. The commission is required by law to prescribe guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land. The land commission is still in the process of preparing an inventory of all public lands but lacks the financial resources to effectively establish an inventory in good time. There is therefore no clear identification of public lands on the ground and on the maps. Relevant information is lacking and corruption has been rampant in regard to public lands especially within Nairobi City.

The Land Act, provides that allocation of public land should be done in a public manner through either of the following processes; auctioning, application, notice of tenders, drawing of lots, requests for proposals or exchanges of equal value. The commission has power to set aside public land for investment purposes, and ensuring that the investments on public land benefits local communities. It also has powers to vest the care, control and management of any reserved land with a statutory body, public corporation or a public agency.

Expropriation of land entails proper procedures which are defined by law. Before land is transferred to the state, full compensation is paid. Any appeals to be made are made to the expropriation committee which are easily accessible.

A majority of all public lands in Nairobi have been grabbed. Public land has been the subject of many disputes ranging from double to illegal and irregular and grabbing of public lands including development houses on road and airport reserves among others. To encourage urban

development and curb land speculation, the colonial government adopted direct grant to allocate public land to replace the then existing system based on public auction. (Keiyah, 2010). Due to the surge in informal and illegal allocation of land of the 1980s and 1990s, there is virtually no vacant government owned land in Kenyan cities, and the formal (and informal) urban land market is now almost entirely in the hands of the private sector, limiting the ability of the public sector to regulate land development and to make land available for public development purposes (World Bank, 2016). At the moment there exists threats for loss of public land through grabbing of public lands for schools and markets. Before new constitution, a majority of public land was transferred illegally and irregularly by staff of municipal councils. The Nairobi City County Government has on several occasions complained about cartels forging lease renewals on public land. These renewals are then used to develop multi-million shillings property investments.

The poor in Nairobi rely on public land and spaces for social activities such as sports and recreation. This is evident in the informal areas where there are no vacant lands and school playing fields play host to various social activities such as community meeting and sports. Unfortunately public spaces relied by the poor are usually the first to be grabbed. In Nairobi, half of the population lives in informal settlements. A majority of these informal settlements are on public land. In terms of developing housing on public land, the poor form the largest demand yet housing is developed targeting the rich. This is a sign of poor governance and management of public land.

3.5 PUBLIC PROVISION OF LAND INFORMATION

Article 35 of the constitution of Kenya states that every citizen has the right of access to information held by the State. The Nairobi land registry is incomplete in terms of coverage of land and completeness of information on the land parcels in the registry. Most informal areas are not covered by the registry and hence transactions cannot be monitored. Most developments on land and property are not captured formally due to the high costs of formalizing land rights. Nairobi and Kenya in general lacks a proper property register for registering property development within Kenya. Information on private tenure is available and can be accessed upon payment of the stipulated fees. Land information at the registry is searchable both by parcel and by names of land rights holders. Relevant private encumbrances are recorded in the registry is highly susceptible to unwarranted manipulation. A huge challenge is that the system is still largely manual and hence information can be manipulated and distorted easily. Copies

or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee.

Registry data is not regularly updated and hence insufficient to make meaningful inferences on ownership. Lack of regular, frequent and consistent updating of information on land and property contributes to the distortion of urban land markets. Unreliability of information discourages transactions in the formal markets and hence people opt for informal land markets. Land administration services may be provided in a cost-effective manner but bureaucratic hurdles make it difficult to acquire information in good time hence bribes are paid to facilitate easy access to information. There is little but not significant investment in capital in the system to record rights in land so that the system is sustainable but still accessible by the poor. System frustrates the poor. Land administration in the country faces challenges such as, outdated and missing cadastral information, lack of security of tenure amorphous land taxation process and inadequate information on land parcels (Draft national land use plan 2016).

Kenya does not have a proper information system. Each land sector agency tends to develop and establish their own information and this introduces gaps, data redundancy and different data formats that are not maintained in a uniform way. This makes it difficult for the public to access information as this involves visiting various agencies to get data. As data is captured and prepared differently by the different agencies based on their requirements, data redundancy is rife and data quality is compromised. Land Information Management System contributed to land grabbing due to the manual land records that make it easy to manipulate records, destruction of files, and the deliberate misplacement of files; and have missing files (World Bank, 2007)

3.6 DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

The National Land Commission is responsible for resolution of conflicts touching on public land. The NLC Act mandates the commission to support the adoption of Alternative Dispute Resolution Mechanisms for resolution of land courts and avoid courts.

The Environment and Land Court was established to hear and determine cases on land disputes as well as issues that border on environmental management. The court is a superior court established to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes. The court was established due to the high number of land and land

related cases that formed the backlog of pending cases over the years. However there is still a huge number for pending court cases on land that have dragged for more than 30 years and this has led up to land capital being tied up in litigation.

CHAPTER 4: RECOMMENDATIONS

Kenya has one of the most advanced and comprehensive policies for the recognition and enforcement of property rights in Arica. Formalisation of land rights for the urban poor in Nairobi needs to be given more emphasis as a way of reducing urban inequality and poverty. Recognition of the wide range of rights as captured in the continuum of land rights by UN Habitat will go a long way in enhancing security of tenure for dwellers in slums and informal areas. This will increase incentives for investments that can contribute to economic development and growth therefore generating income which is vital for reducing poverty. Regularisation of tenure by the state should be carried out to reduce the informality in Nairobi as this contributes to the operations of informal land markets. Reduction in informality will also lead to investments in both public and private infrastructure which improves access to basic services such as water, electricity and sanitation and contribute to better living standards.

Making land administration systems work for Nairobi city will require more investments to facilitate easy and effective carrying out of land administration functions. The land registry needs to be modernized as soon as possible to free it from its traditional role of documentation of land rights and instead other functions such as planning and taxation. Modernisation also leads to better access and retrieval of information for supporting land market operations. Modern systems will reduce the hurdles in the land transactions, as well as the time taken to effect transactions. This provides a platform for monitoring of land markets as well as gauging the impact of land policies. Strengthening land administration systems supports other public institutions such as environmental management agencies and private sector performance.

Land markets have a direct influence on the pattern and trends of urban growth. As newly developed properties are released to the market, there is need to ensure that they conform to the requirements stipulated by law. It is also important to regulate land markets for purposes of development control through encouraging or discouraging investment trends. Development control is crucial in providing conditions for maximising the potential for a beneficial process of urbanisation and minimising the negative impacts on the poor and vulnerable (Locke & Henley, 2016). Properly functioning land markets attract huge investments that aid in the transformation of the society through urban development. Investments are key in providing jobs and infrastructure that improve the quality of life in urban areas.

Public land management is a critical element of good land governance. Public lands are used to address the needs of the public. While very little public land remains after irregular and illegal allocation of public land as noted by the Ndung'u commission (GOK, 2004), there is need to reclaim and repossess these lands for public purposes. Failure to reclaim entrenches impunity and makes it costly for public infrastructure projects which have to compensate illegal owners during expropriation. Currently, public schools and markets are the latest targets of cartels wishing to grab public land. Public schools, markets, hospitals and playgrounds are all located on public land. There have been clashes between parents and administration police during efforts to protect public spaces. This calls for an overhaul in the management of public lands. All public land should be documented and their information made public to discourage land grabbing.

Failure of land use planning institutions to manage development of Nairobi City is one of the greatest let downs responsible for the current status of Nairobi. Approximately half of the residents in Nairobi live in informal settlements. Land use planning would facilitate the provision of serviced lands to the land market and prevent huge pockets of informal areas. Lack of planning and enforcement thereof has led to congestion and Nairobi is among of the most congested cities in the world. Land use planning has failed to plan for future land use activities which are now taking place haphazardly. Public infrastructure is under immense pressure due to the increase of the urban population. Services such as water and electricity are unable to handle the huge demands due and their capacities are overstretched. As a result, many urban dwellers experience water shortages frequently and business are unable to rely on the power distribution for running of their businesses.

Public participation in land use planning is an important aspect in ensuring land use planning is geared towards achieving the socio-economic objectives of the public in terms of development. Public participation takes into account the views of the public as well as benefiting from information critical to making land use decisions. Public participation fosters transparency in execution and monitoring of land use decisions as well as enforce accountability of land use institutions. The biggest benefit of public participation is that it wins the support of the public and this makes it easier to implement land use plans.

The County government of Nairobi needs to invest in reforming the land and property taxation administration to improve revenue generation critical for provision of services. Having in place a competent system will ensure the tax burden is well distributed to all players in the city as

well as increase the efficiency of tax collection. A good system will ensure all properties listed in the valuation roll reflect the proper values of properties in the markets as well as ensuring complete coverage of properties within Nairobi. Devolution provides an opportunity to reform urban planning and land management institutions. (World Bank, 2016) devolution can keep up with the high rates of urbanisation in terms of planning.

Land governance is important for reducing conflicts within Nairobi city, conflicts that arise from insecure rights to land use planning to taxation to development control to public lands and so forth. The strong will have their way if governance is weak. Therefore improving land governance is an urgent issue because pressures on and competing interests for land is intensifying due to rapid urbanization, growing population, economic development, food insecurity, water and energy shortage, and the effects of conflicts and disasters (Habitat III, 2015).

CHAPTER 5: REFERENCE

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