

**North-East Africa Appendix 2:
Kenya**

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**Lincoln Institute of Land Policy
Working Paper**

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Country: Kenya

Contextual Data

<i>Basic Country Information</i>			
Geographic size (km ²)	580,367 km ²	Date of independence	12 th December 1963 (from Britain)
Capital city	Nairobi	Population (est.)	38 million
Secondary cities	Mombasa, Nakuru, Kisumu, Eldoret	Urbanization	35%
System of government	Constitutional Republic Multi-party democracy	GDP(per capita)	US\$860
<i>Government Structures</i>			
Levels/Tiers of government	2 levels of government: Central government and local authorities (175 local authorities: 1 city council, 45 municipal councils 62 town councils and 67 county councils)		
<i>Land Issues and the Property Market</i>			
Land tenure system(s)	Freehold, leasehold, customary (communal) tenure		
Land titling/registration	<ul style="list-style-type: none"> • Torrens system as well as the Deeds system • Parts of the country are still with unregistered land 		
Does national government charge land/ground rent	Yes. Ground rent chargeable on government leases. Besides local authorities also charge ground rent on leases issued by them		
Property market (developed, formal/informal)	Fairly developed in urban areas. Formal and informal property markets exist side by side and influenced by land user and income levels of particular neighbourhoods		
<i>Most Important Taxes and sources of Revenue</i>			
National taxes	Income tax, VAT, Fuel Levy, Excise & Customs duties, Corporation tax		
Local authority taxes	Development approvals, Business fees, Rates on property, Central government grants, user charges		
<i>Property-related Taxes</i>			
National	<ul style="list-style-type: none"> • Stamp duty (Fixed per cent on the value of the property transferred) at 4% for urban properties and 2% for rural properties. • Annual ground rent on central government leaseholds 		
Local Authority	Rates on property, development approvals, ground rent on local authority leaseholds and allotted plots		

Annual Property Tax

<i>Property Rates</i>		
Ordinances		
Valuation for Rating Act Cap 266, Rating Act Cap 267 of the Laws of Kenya		
	Legislation	Practice
Tax Base & Taxpayer		
Tax base	<u>Ordinances:</u> <ul style="list-style-type: none"> Improved value (Annual rental value) - applicable in Mombasa and later Nairobi in 1920's Unimproved site value in the whole country <u>Valuation for Rating Act:</u> Unimproved site value Improved value	Ordinances replaced by Cap 266 and Cap 267 Due to historical factors, local authorities have and continue to utilize USV in levying rates on properties although the law allows for the use of any of the systems
Tax Coverage (extensive or poor)	<u>Ordinances</u> Applied on all properties in Mombasa and Nairobi only <u>Cap 266</u> All registered properties within urban council boundaries.	<ul style="list-style-type: none"> Coverage haphazard in both rural and urban areas Municipal boundary extensions increase capture of formerly untaxed rural lands Success does not necessarily depend on coverage but on taxpayers compliance informed by administration mechanisms in practice
Taxpayer (owner or occupier)	Only owners pay although legislation stipulates that occupiers could pay where owners are not paying	
<i>Valuation & Assessment</i>		
Value based or area based system?	Value based	
Valuation (e.g. annual/rental or capital value)	<u>Ordinances:</u> Annual rental value Unimproved site value <u>Cap 266:</u> Unimproved site value Improved value	

	<u>Cap 267:</u> Different rates influenced by land area, use and whether or not improved. Minister to approve the rates chosen.	
Responsibility for valuations (central or local government and/or private sector)?	Large local authorities (City and few municipalities) with in-house valuers are responsible for their valuations. Other local authorities either use private or central government valuers	
Valuation cycle	10 years	Many councils use old valuation rolls
Objection and appeal	Lodged by a ratable owner in writing to the Clerk of the relevant council	A valuation court is constituted by the council to hear objection A ratable owner can appeal to the High Court whose decision is final
External quality control measures	Quality control is in the hands of the various local authorities	
<i>Rate Setting & Tax Relief</i>		
Responsibility (local or central)?	<ul style="list-style-type: none"> • Rates struck set by respective councils • Minister for local government to give approval beyond 4% 	
Tax rates	Rates dependent on land use	Most local authorities use uniform tax rates irrespective of land use category
Exemptions	The following properties are however exempted: <ul style="list-style-type: none"> • Properties not commercially utilized, public utilities such as public schools, health facilities and hospitals, libraries, burial grounds, cemeteries etc 	Spelt out in Cap 266

	<ul style="list-style-type: none"> • Properties used for religious purposes e.g. churches and mosques. • National parks 	
Tax relief measures	<ul style="list-style-type: none"> • Tax discounts for early payments • Waivers – widely used 	<ul style="list-style-type: none"> • Tax discounts hardly effective as ratepayers prefer to wait for waivers • The use of waiver is counterproductive as it encourages owners to withhold their payments till such a time councils relinquish interests on the outstanding rates.
<i>Tax Administration</i>		
Billing	Done by all Local Authorities, annually	Local authorities send demand notes to rate payers using their last known addresses.
Collection	Annual or installments as arranged between a council and a property owner	
Enforcement	<ul style="list-style-type: none"> • Interest on arrears • Foreclosure • Recovery from tenants • Tenants of sanctions • Non-clearance at transfer 	Many of these have shortcomings and rates arrears have grown over the years in virtually all local authorities
Compliance	Enforcement measures largely ineffective	Widespread (high rates of) non-compliance particularly by the government.
<i>Additional Comments</i>		
Significance of property tax	A very important source of own revenue especially in city and municipalities. These have however dwindled over the years and currently stand at about 20% of council revenue. A central government grant in form of Local Authority Transfer Fund (LATF) is emerging as an important revenue source.	
What is property tax revenue used for?	Provision of local authority services (street lighting, local authority roads, schools, health facilities, waste management	

	etc)
Tax effort	Most authorities grapple with challenges associated with collection and enforcement mechanisms
Possible indirect support systems	Ministry of Lands, Ministry of Local Government
Other relevant issues	The central government is the single chief rates defaulter. Of the City Council of Nairobi's outstanding rates in late 2007, 25% was central government's contribution in lieu of rates.

Property Transfer Tax		
Relevant Legislation: Stamp Duty Act, Cap 480		
	Legislation	Practice
Tax Base & Taxpayers		
Tax base	It is payable upon transfers, leases, partitions, exchanges, charges/mortgages, gifts of land, debentures, insurance policies, transfers of stocks and bills of exchanges. It is basically on documents. Acquisition of immovable property, on the conveyancing or transfer of documents	
Coverage of tax base	Property generally refers to immovable property (i.e. transfer of ownership)	
Taxpayers (e.g. buyer, seller, or both)	The person who acquires property, i.e. buyer or purchaser	
Valuation & assessment		
Valuation	Purchase price, self declaration or market value as determined by government valuer – whichever is the higher	Market value as determined by the government valuer is applicable.
Responsibility for valuations	<ul style="list-style-type: none"> The taxpayer. The person who acquires property – must provide a declared value of KRA in a standard form(SDI) Government valuer 	

	<p>will undertake a valuation to determine the market value.</p> <ul style="list-style-type: none"> • In case the value is higher than the declared purchase price, then liable party is called upon to pay the additional stamp duty.. 	
Objection & appeal	<ul style="list-style-type: none"> • Government chief valuer deals with objections. • Objections should be in writing 	
Rate Setting and Tax Relief		
Responsibility to set rates	National government (Minister of Finance)	
Tax Rates	<p><u>Transfer duty</u></p> <ul style="list-style-type: none"> • 4% for urban properties based on market value • 2% for rural properties based on market value 	
Exemptions	<ul style="list-style-type: none"> • Various exemptions based on who acquires property, e.g. state and municipalities, some public benefit organizations, and parastatals. For example, there are statutory exemptions covering the Central Bank, charitable organizations, Kenya National Museums, the TSC, EPZ, Foreign Embassies and High Commissions, and the NSSF. 	

	<ul style="list-style-type: none"> • Ministerial exemption by the Minister of Finance. • Transfer between married couples, and there must be evidence. 	
Tax relief measures	None	
Tax Administration		
Billing	The administrator of the Stamp Duty Act is the Senior Collector of Stamp Duties. Every Land Registrar and Registrar of Titles are collectors of stamp duties.	
Collection	Kenya Revenue Authority as provided for by the Finance Bill of 1999 as amended.	
Enforcement	Penalties for documents not stamped within 30 days from the date they are drafted. No transfer of rights allowed before payment of tax.	
Compliance	No transfer ownership will be effected in the Deeds Office unless a receipt (for transfer duty or VAT) or entitlement to an exemption is proven.	Excellent in practice due to the fact that the Deeds Office polices the payment of this tax.
Additional Comments		
Importance Stamp Duty	Less than 1% of total tax revenue nationally. Target is Kshs. 6Billion	
Tax revenues (central or local)?	National revenue fund	
Other issues	<ul style="list-style-type: none"> • Adjustments of rates are undertaken regularly to assist the low-income earners to acquire residential property. • The challenges are inherent in Stamp Duty Valuation and Assessment. However, tax rates 	

	are high in comparison with the rates in many developed countries.	
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Land Rent		
Relevant Legislation: Government Lands Act, Cap 280.		
	Legislation	Practice
Tax Base & Taxpayers		
Tax base	On all holders of government owned leasehold properties	
Coverage of tax base	Property generally refers to immovable property (i.e. ownership or limited real rights), but also includes the value of shares in a company owning residential property.	
Taxpayer (e.g. buyer, seller, or both)	The person who acquires property (as defined) i.e leaseholder.	
Valuation & assessment		
Valuation	Market value in restricted market conditions e.g. if the property is to be auctioned as determined by the government valuer	
Responsibility for valuations	<ul style="list-style-type: none"> • The taxpayer (both the parties – i.e the person who alienates as well as the person who acquires property • A government valuer will undertake a valuation to determine the market value 	
Objection & appeal	None	
Rate Setting and Tax Relief		
Responsibility to set rates	National government (Minister of Lands)	
Tax rates	<u>Transfer duty:</u> <ul style="list-style-type: none"> • New allocations (grants) 20% of value (as Stand Premium). • 4% of the value as ground rent for new allocation. 	
Exemptions	<ul style="list-style-type: none"> • Various exemptions based on who acquires property, e.g. state and municipalities, some public benefit 	

	organizations, parastatals. For example, there are statutory exemption covering the Central Bank, charitable organization, Kenya National museums, the TSC, EPZ, Foreign Embassies and High Commissions, and the NSSF.	
Tax relief measures	None	
Tax Administration		
Billing	Administered by Commissioner of Lands, Annually	
Collection	Administered as part of the conveyancing practices and procedures. Collection is currently done by Kenya Revenue Authority.	
Enforcement	Penalties No transfer of rights allowed before payment of tax	
Compliance	Low level of compliance. No transfer of ownership or limited real rights will be effected in the Deeds Office unless a land rent clearance certificate is issued.	
Additional Comments		
Importance of Annual Rent	Less than 1% of total tax revenue nationally. Currently, annual rent collected is between Kshs. 900 Million and Kshs. 1 Billion.	
Tax revenue (central or local)?	National revenue fund	
Other issues	Annual land rents are usually subject to review every 10 years at a rate to be determined by Commissioner of Lands. Previous review was done in 1989 at 2% of the market value..	