Land Value Taxation:
Rating Principles and Guidelines for Kenya

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Lincoln Institute of Land Policy
Working Paper

Lincoln Institute Product Code: WP00TK1

Abstract

Kenya has in the last few years initiated reforms at the national and local levels to enhance revenue mobilization, economic efficiency and service delivery to her rapidly increasing population. At the local level, these reforms aim to strengthen local authorities to better perform their functions. Resource mobilization through land value taxation is a significant component of local government reform in Kenya. This paper reviews the institutional and statutory framework within which land taxation is administered in Kenya. It argues that the over-centralization of the land delivery and management system and that weak tax collection and payment enforcement mechanisms have prevented the land taxation system from realizing its full potential. Further research is necessary to establish new central-local government relations and appropriate decentralization mechanisms that will devolve more pro-active power to local authorities for the efficient administration of the land tax system. Such efficiency has to include some level of increased political support and enhanced administrative capability at the national and local levels respectively.

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Acknowledgements: I am most grateful to the Lincoln Institute of Land Policy for granting me a David C. Lincoln Fellowship, which enabled the preparation of this working paper. The study was financed entirely by the Institute as part of a wider research on land value taxation for Kenya.

I am also thankful to Dr. Roy Kelly, an associate at the Harvard Institute for International Development (HIID) and senior resident advisor with the Ministry of Local Authorities in Nairobi for directing me to some relevant literature which greatly enriched this work and for generously availing me a number of his own research material.

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Chapter 1: Intergovernmental Relations, Decentralization and Service Provision

1.0 Introduction

In the last two decades or so, many countries, including those in Africa have initiated, often with World Bank and donor support, some form of central government reforms. These reforms have broadly included structural adjustments, economic liberalization, privatization and civil service re-structuring.

The reforms, which have taken various shapes and have proceeded at varying speeds have, in most cases, been aimed to enhance public sector performance, socio-economic efficiency and equitable distribution of national resources and public services.

This has been done, at times, by a deliberate targeting of the balance of political, administrative and statutory power between the central government and the sub-national governments, especially the local authorities. (World Bank, 1992; Winkler, 1994).

Local governance, resource mobilization and control as well as community involvement in decision making have therefore assumed critical significance from the early 1980s in many countries (Habitat, 1996).

Such countries have at times adopted decentralization[1] as an important approach in such central—local government power balance, through devolution of power, in various measures, to mobilize local resources towards the provision of local infrastructure and services.

1.1 Centralized Versus Decentralized Systems

Many of the countries that have centralized systems of government see advantages of centralization as having the greatest potential for income redistribution both across regions within the same country, and, between individual citizens.

They perceive the provision of infrastructure and services to be more easily relatable to macro-economic policy, and higher levels of technology and information regime than if the system of governance was decentralized.

Centralization was initially thought to lead to greater national unity of purpose by avoiding vested local interests which may exert undue pressure on local officials. Further, centralization was thought to avoid the costs occasioned by disparities between various local governments in terms of infrastructure and service s provided because some local authorities do have a greater natural and managerial ability to offer these services than others. This leads to stratification across the country (Prad'homme, 1989).

However the failure of the majority of central governments to provide the much needed infrastructure and services at the local level, aggravated by economic collapse, political upheavals and ethnic tensions have persuaded donor agencies, bilateral partners and proponents of decentralization to push for a greater balance of power between central and local governments (World Bank, 1989).

It is now believed that if suitably and appropriately designed, decentralization (devolution of regulatory power to tax and to spend) holds the greatest potential for local and national development (Winkler, 1994; Wallich, 1992).

The first argument is grounded on the issue of regional variations in the requirements for infrastructure and public services. Local authorities are in better positions to identify and to gauge demand for local services to produce them, direct their use and account to the local elective constituencies. This then relates local governance to a worldwide call for increased democracy—where collective decision makers are elected through an honest, transparent, fair and periodic secret ballot in an election in which candidates campaign freely for votes and where every adult has an equal franchise (Huntingdon; 1991).

Further, it is often argued (with some reservations!) that locally financed and generated infrastructure and services can be produced more efficiently through a cost reduction since the local government can much more easily mobilize community and voluntary effort. Such communities find it easier to reach and relate to local service institutions because they can, quite often, identify with them as their own—than if the same operated at the national level.

A further presumption is that social, economic and environmental movements are sustainable only when they have their roots in local communities. Greater democratization therefore obtains as a by-product of local governance through the development of local political culture—relating social groups to economic systems through proximity which may make local leaders be more responsive to popular public opinion.

Many governments especially those in Latin America and Africa are now cognisant of the arguments for decentralization given particular relevance by the severe financial constraints in which most central governments have recently found themselves. These transitional economies are increasingly adopting decentralization as a timely and effective means of strengthening local level governance, investments, democracy, participation, development and delivery of public services.

This is guided by the popular view that matters of local significance should be handled by local authorities to ensure timely response, efficiency, transparency and accountability in public spending.

Decentralization is presumed to make local governments more visible and to provide a platform for enhanced political participation enabling local communities to demand better services.

1.2 Local Systems and Service Provision

The provision of infrastructure and public services often involves enormous costs to local authorities and the benefits, to the local residents, the quality (and quantity) of infrastructure and service provision is often dependent on the nature and buoyancy of the revenue base and the careful management of expenditure (Davey, 1993). Local authorities broadly have three sources of income to fulfill their functional responsibilities as follows:-

(a) User Charges—Where it is possible to control and quantify services going to individuals through the process of 'exclusion' and services have no negative externalities.

Where there is a choice as to what and how much of the service to consume, charging allocates resources by rationalising demand, provides incentives to eliminate or reduce waste and prompts the local authority as to what and how much to supply. Charging also helps enforce payment where it is possible to cut off a service e.g. water and electricity supply. This makes it both administratively convenient and economically efficient.

(b) Local Taxes—These are mainly business taxes and land taxes (taxes on property). They are a means by which taxpayers within a local jurisdiction express their demand for services that are consumed collectively, indiscriminatively and non-exclusively. They are local benefit taxes with broad bases and direct incidences, often geographically well defined, but, they are visible and tax the wealth owned by, at times, politically influential people.

(c) Direct Central Government expenditures, grants and compensations—These, quite often, form the largest component of local government funding. They are usually regulatory, distributive and compensatory in nature and are made when the central government seeks to induce the local authority to spend in the interest of the whole country, or, when the central government establishes a capital project with interjurisdictional ramifications (e.g. Preventive Health Care). They are used when the local government acts as an agent of the central government for income re-distribution policies which are not possible from the local government's own resources or, income bases.

Where local authorities spend money to provide services in which spill-overs exist, when benefits are realized by non-residents or beyond its defined jurisdiction, then the local authority should be compensated by the central government in direct proportion to the size of the spillover.

(d) Loans and credit arrangements—Local authorities may be able to borrow funds from the central government, other local authorities (intra-governmental transfers) and from the private and international financial institutions. The authorities borrow money to finance both capital and re-current expenditures and to finance short-term deficits in their cash flows and budgets.

Some countries do place a limit on the extent to which local authorities can borrow because of the need to control the money supply, inflation and interest rates nationally to preserve and control the productive base of the economy.

> Quite often most local authorities are not credit-worthy because they lack readily marketable collateral (many times they do not have value-updates of their assets). Credit institutions seek to lend money to financially reliable local governments working in stable and predictable management environments. In cases where potential local beneficiaries are able to determine their preferences, willingness and commitment to projects, loan financing is useful because at least it places a price on finance, improves targeting and depoliticizes the financial allocation process.
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> Capital expenditures and block grants from central to local governments may not, ordinarily, provide incentives for efficiency and accountability (Winkler, 1994).

In many developing countries, local authorities are, through Acts of Parliament, charged with the functional responsibility of providing some local infrastructure and services.

Central governments increasingly expect local authorities to mobilize additional resources from their own bases and endowments to finance theses local public services (UNCHS, 1996).

In many countries, local authorities do indeed have local resources lying idle, underutilized, or being mismanaged.

The types and quantities of these local 'own' resources are not uniform even within a country. This gives rise to some "horizontal imbalance" between the local authorities themselves (Dillinger, 1994).

In addition, few countries have given local authorities full powers to tax for local expenditure those bases that are sufficiently buoyant to meet expanding local needs.

This has left local authorities with shaky financial status forcing them to seek and to rely on transfers from the central government resulting in a 'vertical power imbalance' a situation fairly common in transitional market economies in Latin America, Africa and Asia (Winkler, 1994).

1.3 Intergovernmental Fiscal Transfers

These are often the largest source of revenue for most local authorities in developing countries. They enable the local governments to access the central government funds at lower costs of administration and are meant mainly to fill local fiscal gaps. These gaps are created by the fact that local governments are structurally unable to mobilise high yielding resources to finance local public services. Here, the central government retains a comparative advantage.

The transfers take the form of grants (block grants and specific grants). Grants-in-aid are usually discretionary payments not prescribed by statute, such as, subsidies, contributions or subventions transferred as matching grants from the central government to the local authority. These grants are often presumed to be patronising to local authorities since they encourage a ‘beggar attitude’ especially for the local authorities seeking autonomy.

Tax and revenue sharing are allocations in whole, or in part, of specific central government revenues to local authorities. They serve to enhance the image of partnership between levels of government in the delivery of public services even though, quite often, the central governments are unable to relay the remittances in time and the local authorities cannot vary the rate of the shared income (tax).

The transfers help to:

i) equalize differential fiscal capacities over and above the local authorities “own” tax bases;

ii) equalize differential needs between jurisdictions;

iii) provide minimum service standards across geographical locations;

iv) correct for benefit spillovers among jurisdictions;

v) help stabilize the economy in general.

The need for such transfers is highly dependent on the distribution of the spending functions and revenue sources between levels of government.

To be useful, intergovernmental fiscal relations should be supported by central-local institutional arrangements as follows:

- Statutory and procedural principles governing planning, execution, review and follow-up of local authority revenue and expenditures.
- Internal management capacity of local authorities.
- Reporting and accountability relations between local authorities and local electorates.
- Feedback mechanisms from local beneficiaries to central governments directly or, via the local authority.

Therefore, the constitutional and historical position of the local authority are important in establishing the type of transfer which, should be determined in advance (of local budgets) by the use of some formula rather than arbitrarily.

The criteria for transfers are basically three:

(i) Need— For basic infrastructure and services (especially health and schools) as determined by the size of the recipient population.

(ii) Equity— Subsidies for recurrent expenditures for local authorities in the same circumstances or category.

(iii) Performance—Local authority efficiency in performing a certain function according to some pre-determined criteria, determines the level of subsidy or grant.

Environmental conservation and collection of target levels of revenue are good examples of performance measures.

Primary school education, curative health services and control of pollution are good candidates for intergovernmental fiscal transfers. The amounts transferred should supplement the local government's ordinary expenditure and not replace it.

In consuming transfers, there arises a tight balance as to how much the local authority should account to the top (central government)—through regulation, or, to the bottom (its constituents)—through political participation. This balance is the objective test for decentralization—but it is also the irony, because, decentralization reduces the power of the central government, but, to succeed, it needs continuous support from it (Winkler, 1994; Wallich, 1992).

The formula for intergovernmental transfers can be accurately developed to match the transfers to differences in local spending need and taxable capacity. If their level does not correspond with the devolution of expenditure responsibility, intergovernmental transfers may encourage inefficiency in resource allocation.

However, if carefully designed, an intergovernmental fiscal system can bind various regions into a stronger national framework where it can be used to reduce political tension. Reform of governmental fiscal relations should aim to incorporate reform of fiscal policy and tax administration in an integrated manner.

1.4 Infrastructure and Service Assignment

Development planners have often debated whether or not the much needed infrastructure and local services should be provided by the public or, by the private sector.

It is often argued that the private sector is the more efficient in the interpretation of demand and supply and resource allocation under competitive market conditions.

This is however possible only when the price mechanism can be used as the arbiter in the market and where consumption of a good can be refused those who do not pay for it. Where the service is important but it is not possible to price it and determine the profit level, then the private sector will not be keen to produce it.

Literature on economics and public finance (Musgrave, et al, 1984) suggests that the government's (national or local) involvement in infrastructure and service provision is warranted in circumstances where production creates 'natural monopolies' as in the case of piped water, electricity distribution, sewage or storm drainage system. If these are developed by, or taken over by a private company, competitors are largely locked out even if the quality of service is poor and the price, high. Such services involve high sunk costs and if managed properly, may give rise to large economies scale.

In addition, the production of some services generates benefits (or costs) to the society at large. These benefits or costs are referred to as positive or negative externalities respectively.

The private sector may find it difficult to price or sanction consumption of such goods and services and to this extent, the public authorities are best placed to produce them.

There is also the difficulty of ensuring that the low-income groups and disadvantaged communities receive basic infrastructure and services. Such infrastructure and services must be produced by a public body on the grounds of equity. The reason is that where the price is the signal of what should be produced, the disadvantaged communities will return nil price to the private sector simply because they cannot afford the costs even on a cost-recovery basis even though in practical terms such infrastructure and services serve to increase their welfare because they serve basic human needs.

The basic maxim that 'finance follows function' is applicable in the funding and provision of infrastructure and local services. Whether to apply user changes, local taxes, transfers and loan capitations, as appropriate, in a given situation will, in the first instance, depend on the functions and responsibilities that the local authority is assigned.

The legislative and regulatory frameworks and policy that devolves such power to the local authority, should take into account the different impacts on behaviour and expenditure incidence on the local communities. User charges ration consumption through the price mechanism because they impose costs to the service beneficiaries; local benefit taxes are both compensatory and redistributive—they are a means of expressing preference for collectively consumed services. Transfers in part make the local authorities act as agents of the central government, financing interjurisdictional service spillovers whereas loan capitations place a premium on finance and help depoliticize finance allocation process with particular consequences to infrastructure and local service delivery systems (Dillinger, 1994).

The nature of the functions and the services provided by local governments varies among countries and even between the local authorities themselves within particular countries.

In varying degrees the services usually assigned to local authorities include:

(a) Road and public transport—These tie up productive centres with the use of automobiles but there are a full range of social and environmental costs that they directly or indirectly generate—including the spatial distribution of people and economic activities within local authority jurisdictions.

(b) Water supply and sewage—This involves treated, safe and potable piped water households from public stand pipes, wells and boreholes. The latest world estimates (UNICEF, 1994) indicates that approximately 280 Million urban dwellers and 835 Million rural dwellers globally do not have suitable domestic water services in both quality and quantity—both of which have important influences on the family health status.

    In situations where adequate supplies of water is available, there is often the problem of channelling used water to safe disposal units such as well maintained sewer lines in order to guarantee sanitation and a healthy environment. The period 1981-1990 denoted the International Drinking Water Supply and Sanitation passed largely devoid of ceremony.

In Africa, well above 300 million people are not served at all by a functioning safe water supply. Most of the households still rely on open sources of water, rivers, lakes, ponds, unprotected wells and boreholes in the rural areas. The water situation is slightly worse for rural than urban households.

(c) Sanitation and solid waste disposal—A good number of people in Africa, Latin America and South Asia in both urban and rural settlements do not have hygienic and safe means of disposing solid human and liquid waste (UNICEF, 1993). Households need convenient, accessible and maintainable sanitation facilities. The provisions e.g. pit latrines that can work in rural settlements are unsuitable for urban areas.

Urban households and businesses generate huge heaps of solid waste that soon become a health hazard if not promptly and regularly collected and disposed of in an approved manner. If uncollected, such wastes accumulate on open spaces, wasteland and streets posing serious health and environmental hazards.

(d) Education and health—These are considered as social services in which public authorities sink in large sums of money. Primary education and public health services have benefits which are both distributional and interjurisdictional. The aim is to help the citizens especially the low income groups achieve a certain measure of literacy and health status.

(e) Housing—Some local authorities provide shelter of some minimum standard of accommodation to particular income groups to ensure that their citizens have a healthy and suitable housing of some acceptable standard. Most countries are however now moving away from publicly supplied housing and the private sector is already taking over. However, over the years, local and public authorities have had legislations and by-laws that regulate housing provision and housing conditions within their jurisdictions stressing always on the need for secure, safe and adequately serviced housing.

(f) Markets, Bus parks, open parks & slaughter houses—In some developing and even developed countries, it is the duty of local municipal authorities to plan for, develop and maintain public places of sale of goods, foods and recreation. These spaces must be policed to limit or avoid the prevalence of crime and funds must be set aside to keep them clean and usable at all times to serve the municipal residents and to maintain a healthy environment.

Chapter 2: Local Government, Land Management and Public Policy in Kenya

2.0 Introduction: History and Development of Local Authorities in Kenya

In Kenya, the local government system is established under the Local Government Act, chapter 265 of the laws of Kenya.

This Act of Parliament covers the establishment and functions of both rural-based local authorities (county councils) and urban based local authorities (city, town, municipal and urban councils), thus its operations cover the entire country and it has 235 operative clauses.

Numerous investigations and studies[2] have been done on the nature and ambit of local authorities since the promulgation of the Act recommending various reforms and particular approaches. The Local Government Act is fairly comprehensive in its declaration of the powers of local authorities in Kenya. These powers however, have hardly been exercised by these authorities because the ruling party (KANU) has since its inception in 1960 favoured a centralized form of government. The regional assemblies, hitherto in charge of local authorities were abolished in 1964 and the Graduated Personal Tax (replacing African District Poll Tax), the main source of funding for local authorities was also abolished in 1973 together with its affiliate, the general grant revenue and so only licenses fees and user charges remained the main sources of funds for local authorities which then started experiencing serious financial and operational problems. The transfer of Functions (1969) Act was passed as a temporary measure pending further strengthening of all the local authorities in the country. As far back as 1974, the Nyaga Report had recommended a detailed review of the structures, functions and powers of local authorities vis-à-vis the central government and a widening of the sources of local revenue.

The 1975 IMF team led by Professor Roy Bahl supported most of the views of the Nyaga Committee and further suggested the strengthening of accounting, financial management and the Local Government Loans Authority (World Bank, 1992).

However, over the last two decades or so, the worldwide movement for structural reforms, economic liberalisation, privatisation and accountability in public control and distribution of resources, the Kenya government is now convinced that it must initiate real and tangible reforms in local government as a major component of its decentralization and macro-economic planning.

2.1 Local Authorities and the Public Policy Framework

The government of Kenya appreciates the need for a balanced growth strategy for both the urban and rural areas. If disproportionate quantities of resources are channelled to the urban areas only there results economic differentiation across the country which encourages rural-urban migration thus swallowing up any gains made in the urban development process.

The 1986 Sessional Paper No.1 (Economic Management for Renewed Growth) states that the foundation for rural-urban balance is the 'dynamic and competent District-Development Committees and Local Government Authorities.' Since then, virtually all the National Development plans have echoed the need to have strong local authorities (rural and urban) across the country to bear responsibilities for the provision of a wide range of infrastructure and social services and to enhance equitable distribution of resources.

Kenya's national population currently grows at a rate of 3.4 percent and the population of the urban areas increases by 7.5 percent annually. (Development Plan, 1997-2001). Half of this urban growth rate is due to rural-urban migration. This viewed against a GDP growth rate of, at best, 0.5 percent annually and a per capita growth rate of negative 0.3 percent points a fairly grim picture. It is the policy of the Kenya government to balance development throughout the country, foster productive interaction between rural and urban areas and avoid over-concentration of population in large urban centers by encouraging the growth smaller townships, agriculture and related industries outside the main towns.

This is meant to "urbanize" the rural areas in Kenya by supporting the development of infrastructure and services in those areas. The United Nations Center for Human Settlements (Habitat) has recently embarked on a policy to encourage rural-urban linkages through population redistribution, growth center development, decentralization of governance to local and sub-national entities (UNCHS, 1999 vol.5 No. 1). The Habitat Agenda recently circulated to all governments recognizes the inevitability of urban growth (urban areas are seen as engines of innovation, growth and capital accumulation) but also seeks to encourage countries to develop their rural areas to integrate them ("through integrated area development planning") into national and global economies.

This requires strong local governments both in terms of resource base but also in terms of legislative support, personnel and innovation to develop their regions.

Paragraph 163 of the Habitat Agenda (1996) states that:

> "Urban and rural areas are interdependent economically, socially and environmentally…a substantial proportion of the world's population will continue to live in rural settlements, particularly in developing countries. In order to achieve a more sustainable future for the earth, these rural settlements need to be valued and supported. Insufficient infrastructure and services, lack of environmentally sound technology, and pollution resulting from the adverse impacts of unsustainable industrialization and urbanization contribute significantly to the degradation of the rural environment. Additionally, the lack of employment opportunities in rural areas increases rural-urban migration and results in a loss of human capacity in rural communities.
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> Policies and programs for the sustainable development of rural areas that integrate rural regions into the national economy require strong local and national institutions for the planning and management of human settlements that place emphasis on rural urban linkages and treat villages and cities as two ends of a human settlement continuum."

2.2 Kenya's Local Government System: Structure and Function Assessment

The number of local authorities in Kenya has grown steadily over the years. In 1990, there were 110 local authorities comprising 40 county (rural) and 70 municipal (urban).

Five years later, the number had risen to 144 local authorities (50 county and 94 municipal councils).

Currently there are a total of 174 local authorities made up of 67 county (rural) councils and 107 municipal (urban) councils. County councils have a jurisdiction over 80 per cent of the national population whereas municipal councils cover the remaining 20 per cent although in terms of numbers they are almost twice the number of county councils at any given time.

Within one decade the number of local authorities in Kenya has risen by 58 per cent. These authorities have been created administratively under section 5 of the local Government Act, Cap 265.

The reason for creating them has often been cited as the need to serve or match new administrative districts (central government units) and the rapid pace of urbanization in Kenya.

All parts of the country are covered by the local government system. The local Government (1963, revised 1986) Act gives power and responsibility to each of the 174 local authorities to provide prescribed infrastructure and public services and to coordinate service affairs of particular localities within their jurisdiction under the guidance and supervision of the minister for local authorities.

There are 186 clauses (out of 235) in the Act that vest the minister with some powers in relation to local authorities.

Section 5 of the Act gives the minister powers to establish any area to be (or to cease to be) a local authority area, to assign a name on such declared area, define its boundaries, alter the name or size of such boundaries, amalgamate or transfer local authorities to another region within the same province.

In addition, by-laws, financial estimates and annual budgets as well as increase in fees and charges must get the approval of the minister before they are adopted by a local authority. Further, any local authority that seeks to impose a land tax rate exceeding 4 per cent of the unimproved site value must get approval from the minister. Section 252 of the Act gives the minister power to remove a council from office if it is failing to exercise its functions in the best interest of its local residents (or as per the provisions of the Act). The minister is empowered by the Act to appoint a commission to exercise such powers when a local council has been dissolved.

In Kenya, the principal behind the establishment of local government seems to be fairly well documented. Successive national Development plans reiterate the importance of local authorities as being vehicles for social, economic and political benefits to the largest number of people.

Recent policy framework papers[3] have echoed the same sentiments recommending immediate attention to the majority (poor) of the people in Kenya in terms of the much need infrastructure and public services and also the need to provide for them suitable forums for discussion and for the generation of development agenda involving local communities through their elected representatives, the councillors, in planning, prioritizing, execution and review of programs and projects that affect their lives.

A recent report[4] defined local government as a system of “government” operational at the level of local “units” with powers and authority to develop “local resources” for the benefit of local people.

In effect, local government comprises local councils formed by locally elected councillors to act as “local parliaments” whose primary duty under the Act is to develop policies and priorities on matters that help the local communities to undertake and guide socio-economic and political development of their areas. These powers, duties and authority of the local councils are “devolved” not “delegated” from the central government. The by-laws made by local authorities/councils are enforceable in courts of law just like the laws made by the national parliament. Power is contested in an election every five years in order to be a local councilor—thus making local authorities answerable and accountable to the local electorates as political institutions.

The seventh National Development Plan (1994—1996) states that the objectives of local government in Kenya is to establish local representative government institutions through which appropriate services and development activities can be made more responsive to local wishes and initiatives of the local communities—who in turn are able to express and exercise their right to self determination by periodically electing their leaders and choosing their development agenda—including the mobilisation of local human and material resources to initiate local development in line with local and national development goals. The functions of local government in Kenya are contained in sections 168 to 182 of the Local Government Act, chapter 265 of the Laws of Kenya.

The power of every municipal council, town council and urban council to establish and maintain sewerage and drainage works in an approved location is contained in section 168 of the Act. Sewerage and drainage works involve significant externalities and social welfare and health concerns. These functions do not concern rural councils as waste removal is not considered a major problem in the rural areas.

Housing is another major issue to urban local authorities in Kenya. Section 177 of the Act gives the local authorities power to develop suitable housing schemes for their inhabitants and to maintain, let or sell such developments as appropriate. Housing is a social good and intervention can only be rationalised in terms of an attempt to meet minimum standards for the urban poor. Most of the urban housing schemes in Kenya as discussed already, are presently being developed by the private sector.

Water supply is yet another function of the local authorities in Kenya, both urban and rural. Section 178 of the Act gives such authorities power to undertake the supply of, and to establish, acquire and maintain works for the supply of water within its area and to make by-laws to regulate and control such supply. However broad policy and strategy on water is developed by the Ministry of Environment and Natural Resources, department of water development. Water provision has significant public health ramifications and its sourcing and bulk distribution involves considerable initial sunk costs thus warranting public distribution involvement in its provision.

Although there are also social welfare aspects of water supply, most local authorities have found it a good candidate for (subsidized) user charging. Local authorities are further allowed by law to undertake the supply of electricity and to establish, acquire and maintain works for the supply of electricity, light, heat or power within its jurisdiction and to sell such electricity and fittings, appliances or electric lines to private consumers (section 181 of the Act).

None of the 174 local authorities in Kenya currently generates or sells electricity. This function is being performed by a government parastatal[5] in a monopolistic capacity.

There is also the power of general control and care of all public streets which are located within an area of local authority (s. 182 of the Act) for the upkeep, maintenance and care for use by the public. The Ministry of Public Works is responsible for drawing up the road sector policy and planning, and, currently, develops classified roads (classes A to E). Local authorities are responsible for the maintenance of unclassified and distributor roads and streets within their jurisdictions.

Even though the future role of the private sector is being contemplated in the provision of roads, there are social welfare concerns in addition to high sunk costs in production, significant externalities (in terms of air pollution, traffic safety and settlement patterns) which warrant their public provision. The major inter-city roads and highways have high interjurisdictional spillovers and are therefore developed by the central government via the line ministries.

The functions relating to lower-order trunk roads may be delegated to a municipal council in part or in whole as per section 193 of the local government Act. Local authorities may in future be assigned the development and construction of roads in the tea and coffee growing areas instead of the District Tea/coffee Roads committee.

Local authorities also have powers under the Act to control shops in rural areas, establish and maintain markets, bus parks, slaughter houses, sanitary services, cold storage works, vermin control units, aerodromes, fire brigades, health, birth, marriage and death registers open spaces, buildings for public purposes, tree planting, street lighting, vehicle and property (abandoned) impounding units, cemeteries and crematoria, clothes washing lines, lodging houses, restaurants, footways, animal, schools rodent and insect control, regulate land sub-divisions, advertisements, trades, licences and occupations, second-hand dealings, hawking, barbers and burials. These are contained in sections 151-167 of the Local Government Act, Cap 265 of the Laws of Kenya.

The operation of these facilities in so far as charges are made for the services rendered yield significant (and quick) incomes. Local authorities have often judiciously stuck to the provision of these services for this reason. In its 1994-1996 National Development Plan, the Government of Kenya has expressed the need to develop local authorities by:

(a) providing explicit and rational criteria to guide the formation of new local authorities and upgrading existing ones. There will be a reduction in controls on local authorities and a review of the organisation and structure of the ministry of local Government;

(b) developing and issuing rational guidelines for local authorities to use in setting and approving rates charged on revenue bases;

(c) improving local revenue collection through procedural innovation and incentives to enhance collection;

(d) drafting standard by-laws with adequate penalty clauses for adoption by local authorities to legitimize revenue collection;

(e) evaluating needs and options for additional sources of revenue based on the principle that all local authorities should be encouraged to tap their own economic bases;

(f) improving services delivery to local residents through various guidelines and by determining standard costs of such services;

(g) reforming the Local Government Loans Authority (LGLA) in order to prevent the recurrence of mutual debt problems; and

(h) institutionalizing the planning process in local authorities through local authority development program.

This policy statement in the development plan shows the national government's commitment to the development of effective and sustainable local government institutions through devolution of political and administrative power, well defined functions and clear responsibility to local residents that is supported by adequate funds.

The aim is to encourage decentralization at two levels:

i) Central-local government relations; and

ii) Local authority—local community relationships.

It is expected that the Constitution (currently under review), the Local Government Act (Cap 265) and the various policy documents will be amended to clearly spell out the relationships indicated above, sources of power, regulatory frameworks and economic bases of the local authorities in Kenya.

2.3 Land Management

Kenya does not have a single, codified land policy.[6] Various issues on land are scattered in a number of statutes and government publications.

The country has a total land area of approximately 587,900 square kilometres out of which 576,700 square kilometres (98 per cent) is land surface and 11200 (2 per cent) comprises inland water. A total of 461,400 square kilometres (80 per cent of dry land surface) is categorized as arid and semi arid ecological zones. Only some 104,100 square kilometres (18 per cent of dry land surface) is medium to high potential, supporting a population of close to 30 million with an annual growth rate of 3.4 per cent per year. The overall land use strategy stipulates optimal utilisation, equitable distribution and sustainable conservation and to ensure security of tenure for investment through land planning, survey, adjudication and registration of title. In addition, the government has undertaken, since independence, a massive settlement program involving over 109,000 families on approximately 1 million acres in 314 settlement schemes (Dev. Plan, 1994—1996). This program started in 1961 (by the Government's Settlement Funds Trustees) involved settling landless people on state, trust and purchased private land. Where economies of large scale production (wheat & barley farms) would not be compromised, large farms have been sub-divided into small holdings for equitable re-distribution to landless, unemployed, displaced and squatter families on easy terms, usually with purchase and development loans.

2.4 Land as an Instrument of Socio-economic Change

Land resource forms the basis upon which all industrial, agricultural, forestry, wildlife, environmental, bio-diversity, infrastructural and other socio-economic activity are established.

In addition to it forming the urban and agricultural base, the Government earns substantial revenue—US$ 13,000 in 1991/92 as stamp duty, US$ 787,000 as Appropriations in Aid and in 1993/94, the Government earned US$ 169,690,000 as land revenue. The potential for greater revenue will be realized through greater investment, management and administration of the land-based resources.

In calling for an appropriate land policy framework, various organisations and stakeholders have taken on board the international concern for suitable land policies to guide the development of the country.

Particularly relevant has been the recommendations for National Action Plan endorsed at the first United Nations Conference on Human Settlement (Habitat) in 1976. It recognised the cardinal significance of land policies recommending especially for the improved management of urban land and noting that "land, because of its unique nature and the crucial role it plays in human settlements, cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the market.

Private land ownership is also a principal instrument of accumulation and concentration of wealth and therefore contributes to social injustice; if unchecked, it may become a major obstacle in the planning and implementation of development schemes. Social justice, urban renewal and development, the provision of decent dwellings and health conditions for the people can only be achieved if land is used in the interest of the society as a whole (UNCHS, 1976 P.61).

These recommendations did not, however, seem to appreciate that properly guided private land ownership and activated land market could contribute to economic development if appropriate legal framework and efficient administrative procedures are put into place for managing land use and land development and for implementing land policies including allocation, transfer, subdivision, sale, exchange and planning.

Land has both forward and backward linkages in resource generation and direct investment. Titles have been issued for various categories of land which have been used as collateral for loans from financial institutions.

By the end of 1992, over two million titles had been issued under the Registered Land Act (cap 300) and Land Titles Act (Cap 301) throughout Kenya (mostly in medium and high potential areas).

2.5 Management of Urban Land

In Kenya, land in the urban area is mostly leasehold government land with a few parcels being freehold. The government allocates the land to individuals and to companies under the

Government Lands Act[7] (cap 280 of the Laws of Kenya). This Act of Parliament is administered by the Commissioner of Lands on behalf of the President. The lands under this Act can be reserved for future use, both private and public, or, for allocation as, mostly, urban leaseholds. A freehold title gives the owner absolute proprietorship subject to statutory and private limitations/interests. Most of the freehold lands in urban areas are being converted to long leaseholds.

The process leading to land ownership in urban areas involves an initial declaration of a planning area, land use planning,[8] survey, land allocation or allotment, infrastructure provision and registration.

The objective is to provide serviced land for coordinated urban development. Rapid increase in population is exerting undue pressure on land provision for settlement, infrastructure, industry, commerce and for public utilities. The issue of how to ensure that urban land markets and land management serve the economic and social needs of the urban residents & business remains perhaps the most complex task for urban management agencies.

Innovative programs of land management in urban areas have a number of benefits in terms of promotion of economic development:

- through enhancing maintenance-friendly infrastructural and service management;
- by strengthening the municipal-wide policy and regulatory framework to increase land market efficiency;
- by developing and buttressing the fiscal and technical capacity of the appropriate local authorities; and
- through improving financial services for town development.

2.6 Local Authorities and Urban Land Management

Urban local authorities are empowered by various statutes to participate in the management of land within their areas.

Section 144 of the Local Government Act (cap 265) empowers local authorities to apply to the government to effect compulsory acquisition of land (under Land Acquisition Act, cap 295) for any of its public purposes.

Section 166 of cap 265 empowers every urban local authority to prohibit, regulate, inspect, licence or supervise the development and use of land and buildings in the interest of the proper and orderly development of its area.

In addition, the Physical Planning Act, 1996 requires that a development permission be sought from a relevant local authority by any person intending to put up a development in a local authority area. Such application has to show the nature of the intended development, user, density and means of waste disposal, 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 to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plans.

Section 30 of the same Act prohibits any person from carrying out development within a local authority area without permission granted by the relevant local authority in an approved manner, upon consultation with the Director of Physical Planning in the Ministry of Lands and Settlement.

Further, a local authority may require an environmental impact assessment to be done for the proposed industrial land use if in its opinion, the proposal for industrial land use, dumping sites, sewage treatment, quarries or any other development activity will have an injurious impact on the environment.

The registrar of land will not register documents to such land unless permission of the local authority, if required, has been granted to the proposed developer.

To maintain or enhance land value, local authorities use mainly planning regulations[9] (zoning, changing of user, subdivision control, lease extensions and building plan controls). These regulations, including the public health directives, influence the land market in particular ways.

The Physical Planning Act of 1996 updates and consolidates all the physical planning legislations hitherto existing in Kenya. Development control of land seeks to harmonize its different uses according to the approved plan of an area (structure plan, physical development plan or part development/action plan) and to ensure that buildings are constructed to standards specified in the by-laws and planning regulations in order to avoid haphazard and undesirable developments. The intended beneficiaries are mandated by law to scrutinize the plans before they are approved.

Development applications for subdivisions are made with the aim of ensuring that:

(i) the resulting subplots are accessible and are adequately served with open spaces and physical infrastructure and services;

(ii) the population density is in accordance with the available services (water, sewer, roads and drainage);

(iii) resultant plot uses are co-ordinated according to part development plan(PDP) of the area;

(iv) the government or local authorities are able to tap the enhanced value that normally arises from schemes of subdivision.

The power to allocate land plots in urban areas was, until 1972, vested in the local authorities entirely, but this was later abolished by an administrative circular from the Ministry of Lands and Housing.

Presently, the State Land Allocation Committee at the Ministry of Lands and Settlement headquarters has the following members:

1.	Permanent secretary (Ministry of Lands & Settlement)	-	Chairman
2.	Commissioner of lands (Ministry of Lands & Settlement)	-	Vice chairman
3.	Chief Valuer (Ministry of Lands & Settlement)	-	Member
4.	Director of Physical Planning (Ministry of Lands & Settlement)	-	Member
5.	Director of surveys (Ministry of Lands & Settlement)	-	Member
6.	Chief land registrar (Ministry of Lands & Settlement)	-	Member
7.	Deputy Commissioner of lands (Ministry of Lands & Settlement)	-	Secretary

Their duties and functions are to consider recommendations for allocations of plots from the districts, deal with cases of disputes, enhance accountability and transparency and equitable distribution of plots in urban areas.

For small towns, the District Land Allocation Committee comprises:

1.	District Commissioner (Central Government)	-	Chairman
2.	Commissioner of Lands (or Representative) (Central Government)	-	Member
3.	Physical Planner (Central Government)	-	Member
4.	KANU Local Branch (Politician/ruling party)	-	Member
5.	Provincial Local Govt. Officer (Central Government)	-	Member
6.	One Councillor or representative (locally elected /local authority)	-	Member
7.	Mayor or Chairman-Local Authority (Local authority)	-	Member
8.	Clerk to Council/Local Authority (Central Government)	-	Secretary (non voting)

For the provincial headquarters/towns, the Provincial Plot Allocation Committee comprises:

1.	Provincial Commissioner (Central Government)	-	Chairman
2.	Commissioner of Lands/representative (Central Government)	-	Vice-Chairman
3.	KANU Local branch (Politician/ruling party)	-	Member
4.	Clerk to Municipal Council (Central Government)	-	Member
5.	Provincial Local Govt. Officer (Central Government)	-	Member
6.	One Councillor (elected local leader)	-	Member
7.	Physical Planner (Central Government)	-	Member
8.	Co-opted members (usually politicians from the ruling party)	-	Member

The effect of the composition of the committee is that there is a heavy presence of the central government representatives in the allocation process at the expense of local authorities and community leaders/representatives. Other interest groups that are hardly ever represented are women, youth, disabled, religious, chamber of commerce and industrialists.

The disposal of land within townships (urban areas generally is covered in part III of the Government Lands Act (cap. 280), Laws of Kenya. Section 9-18 detail the procedures for such allocations. Land that is intended for development is divided into plots under the directions of the Commissioner of Lands and these plots/leases are sold by public auction after a notice of sale and conditions of such a sale have been published in the Kenya Gazette. Farvaque and Mc Auslan (1991) have noted that the end product of a good land management program is the creation of a link between the formal and the informal land tenure in settlement development. Such a system must avoid bias against the urban poor, the largest group in any urban society and use simple non-bureaucratic and cheap delivery systems but which also accommodate change and growth. In addition such a management system should involve as many stakeholders as possible in the formulation of policy and rules, decisions and actions (participation). Transactions in land should be cheap and document processing should not be monopolised as this encourages corruption. The staff implementing the rules and processing the documents should be well motivated and a review system should be in place to assess from time to time the costs and benefits of regulation.

Mabogunje, (1992) notes that where there is centralization of urban land allocation and delivery systems, land with secure titles will only be available at a premium, thus impending the growth of urban land markets, orderly development of urban settlements, infrastructure and services and the collection of local land taxes. He further explains that international research agencies are developing innovative schemes to combine social, economic and environmental goals that are aimed to work with, rather than against, emerging land markets, encouraging public-private sector partnerships. This necessitates that local authorities be strengthened to assume their rightful place in urban management to deliver infrastructural and social services equitably, efficiently, transparently, flexibly and in a manner that relies on policy, legislation and competent institutions for auditing and implementing the land delivery system.

Dowall and Clark (1991) have observed that land processing systems cannot be wholly left in the hands of the private sector because parks, open spaces and public utilities which cannot be exclusively priced will then not be produced and yet government (especially central government) intervention in land matters is often slow, costly, incomprehensible, inflexible and non-participatory. These problems are compounded for the urban poor who require only small-scale shelter provision. The cost of urban land is often high because of fixed and high transaction costs—search fees, legal fees, registration fees, stamp duty and bureaucracy (Walters, 1983). This requires improved financial resource mobilization for local authorities and enhanced intergovernmental fiscal relations. Schemes that facilitate the efficient operation of the land markets must place emphasis on the facilitation of land planning, survey, cadastral mapping, registration, transaction and ownership records.

Existing systems have failed to keep pace with the rate of settlement, land sub-divisions and land transfers. Where land conveyancing formally takes place, the process is often protracted, costly and incomprehensible to the majority of the urban residents. This has led to imperfections in the land market making and taxation to be extremely inefficient.

2.7 Management of Rural Land

The 1994-1996 National Development Plan categorises land in the rural areas in Kenya as follows:

a) Government Land

This comprises of forests, national parks, game reserves, sanctuaries, unalienated and reserve land. National parks and game reserves occupy 7.5% of Kenya's land area. They are managed under the Wildlife Conservation and Management 1985 Act (Cap. 376) and the Government Lands (1984) Act, (Cap 280). Local communities living near national parks and game reserves are increasingly being involved in community land and resource management in these areas. Title to the land is vested in the Government of the Republic of Kenya.

b) Trust Land

These are lands that are still unadjudicated and unregistered. They are held under customary practices applicable to the ethnic area in which the land is situated (i.e. ethnic community occupying the land). Trust land is defined and governed by the Trust Land Act Chapter 288 of the Laws of Kenya and the Constitution of Kenya under sections 114-120.

The management of Trust Land (which constitutes 80 % of the total land area in Kenya is supposed to be effected by the local authority (County Council) of the respective area in trust for the local inhabitants. Individuals may obtain freehold or leasehold interest in Trust Lands after the adjudication and registration process (Caps 284 and 300 of the Laws of Kenya). In practice, however, the Commissioner of Lands uses section 53 of Cap 288 to administer Trust Lands on behalf of the local authorities without their consent.

c) Private Land (Individual Proprietorship)

These lands are obtained from alienated government land (freehold or leasehold), adjudicated and registered trust land (mostly freeholds), alienated Trust Lands and land in settlement schemes.

The process of obtaining freehold title to land requires, first of all, the adjudication of Trust Land (Adjudication Act, Cap 284 Section 3(1) which involves identification of traditional interests in land and converting them into legal interest through a progressive system (involving local elders and government officials) of appeals and objections, recording, ascertainment of claims and demarcation on the adjudication map and on the ground. A Preliminary Index Diagram (PID) is prepared showing the identification index of each parcel corresponding to the owner's name in the adjudication record book. This is then used as a base data for the cadastral survey in order to prepare a Registry Index Map (RIM) to include the size configuration of each parcel of land to be included in the Chief Land Registrar's deeds register from which land titles are issued.

As of 31st December, 1992, a total of 2,127,968 titles had been issued under the Registered Land Act (Cap. 300) and Registration of Titles Act (Cap. 281) all over the country.

Upon registration and issuance of a title deed by the Land Registrar, all customary rights to Trust land are extinguished in law and private rights are supposed to take over as defined under the Registered Land Act (Cap 300).

However, data available shows that progress in the adjudication and registration of Trust Land is slow and not substantial as shown in the following table:

Table 1: Registration of Status of Trust Land in Kenya

Status	Area sq.km.	Per Cent
Government Holdings	59,625	13.1
Registered Individual Holdings	27,729	6.0*
Unregistered Holdings	370,087	80.9
TOTAL	457,441	100.0

Source: Compiled from National Statistical Abstract, 1998.

The table above shows that 64% (370,087) out of 576,700 square kilometers) of the total dry land area in Kenya has not been registered under individual titles.

The 1994-96 National Development Plan indicates that by 1994, the subdivision, adjudication and registration procedure had covered 9,719,621 hectares out of which 63,189 hectares had been registered.

Only 6% of Trust Land (Trust Land comprises 80% of the entire country) has been registered. This is quite a minimal achievement. The adjudication and registration are done entirely by the Central Government (Ministry of Lands & Settlement). The integrity of individual or private ownership of land in Kenya is guaranteed under section 75 of the Constitution which states that no individual owner can be arbitrarily dispossessed of his interest in the land except under compulsory acquisition (Land Acquisition Act Cap 295, Laws of Kenya) for a public purpose whence adequate and prompt compensation must be paid to the person in respect of the acquisition.

However, to avoid dispossession of dependants by arbitrary transfer of registered lands, dealings in all agricultural land in Kenya are controlled under the Land Control Act (Cap 302) of the Laws of Kenya.

The following transactions in agricultural land are void for all intents and purposes unless the Land Control Board[10] for the land control area has given its consent in respect of that transaction in accordance with the Land Control Act (Cap 302, revised 1981).

a) Section 6(1)

- (a) sale, transfer, lease, mortgage, exchange or partition;
- (b) division of agricultural land into two or more parcels to be held under separate titles;
- (c) issue, sale, transfer, mortgage or any other disposal of or dealing with any co-operative or company share—owning agricultural land in a land control area.

6(2) declaration of a trust in a land control area;

6 (3) except

- (a) transmission of land (which will not involve the subdivision of its title) by will or intestacy of a deceased person;
- (b) transaction to which the government or the Settlement Fund Trustee (or in respect of Trust Land) a County Council is a party.

The maintenance or possibility of good agricultural practices, nature of land and intended use, amount of land the buyer already has, fairness of the transaction and citizenship are considerations in the decision of the board whether or not to grant consent to a controlled dealing in land.

Section 23 and 24 of the Land Control (Cap 302) Act give the President power to exempt or prohibit any controlled transaction or any class of land or share or persons from any of the provisions of the Act.

Other than the large farms (for growing wheat and barley) where economies of scale are applicable for profitable production, the government has all along encouraged smallholdings in registered and settlement schemes to enable equitable distribution of land resources and to intensify labour utilization in this agricultural economy.

The management of agricultural land in Kenya is guided by the Agricultural Act (Cap 318 Laws of Kenya)[11], Sessional papers (formerly White Papers) and Development Plans.

The policy guidelines that affect agricultural land generally address three broad issues:

(a) land ownership and tenure structures;

(b) food security and self-sufficiency

(c) industrialization (from agri-based resources);

The government of Kenya has since independence in 1963 advocated the principles of private interests in land perceiving the benefits of land registration and privatization to include:

(i) certainty of ownership and security of tenure;

(ii) reduction in land disputes;

(iii) improved conveyancing procedures;

(iv) stimulation of the land market (to simplify, cheapen and expedite transfer of land);

(v) improved physical planning;

(vi) ease of control and investment (through improvement of credit flow for land development);

(vii) facilitation of rating and land taxation;

(viii) improved property identification and land formation system.

Indeed, in documenting the global shelter strategy for the year 2000, the eleventh session of the Commission on Human Settlements emphasized the need for a speedy improvement of land management systems through the introduction of affordable land registration procedures and programs for regularizing land tenure. (UNCHS/Habitat, 1990 paras 97 and 98).

As indicated above, the Agriculture Act (Cap 318) administered by the Minister of Agriculture aims to promote good cultivation and husbandry systems to enable Kenya attain a position of food self-sufficiency. This is an important national objective for which at least two Sessional papers have been prepared, that is, Sessional paper No.4 of 1981 (revised in 1993) on national food policy, and Sessional paper No.2 of 1994 on the same theme.

The current Development Plan (1997-2001), the Sessional Papers No.1 of 1994[12]and No.2 of 1996[13] all view the exploitation of domestic raw materials as being the base to Kenya's industrialization by the year 2020. The development of agriculture is viewed as the momentous push that will drive the economy to the appropriate level of Industrialization.

This requires proper utilization and husbandry of the land. Good husbandry is defined in the Agriculture Act (Cap 318) to mean such farming as will take into account the character and location of the land, standards of management by the owner, efficient standards of production in terms of type, quality and quantity of agricultural produce and the appropriate conservation of the land.

The Act (Cap 318) therefore empowers the Minister for Agriculture to make certain rules and to give directives (for the enforcement of those rules) and compliance by the landowners.

Landowners are defined in section 2(4) of the Act (Cap 318) to include:

- Freeholder under the Government Lands Act (Cap 280) and Registration of Titles Act (Cap 281);
- Leaseholder under the Government Lands Act (Cap 280);
- Freeholder under the Land Titles Act (Cap 282);
- Freeholder under the Registered Land Act (Cap 300);
- Unregistered claimant (or owner) under the Land Titles Act (Cap 282).

The Act does not therefore cover customary land ownership under the Trust Land Act (Cap 288). Where demarcation has not been done, it would not be easy for the Minister to determine current “ownership” of the land to enforce the rules under the Agriculture Act (Cap 318).

The Act (Cap 318) creates the District Agricultural Committees whose functions are advisory to both the Minister and to the Agricultural Finance Corporation. It comprises at least five Central Government appointees (Section 22 (2) (B)-(G) and two local authority (county council) representatives. The Minister may:

(i) make and enforce rules on soil conservation or prevention of adverse effects of soil erosion on any land (sections 48 and 75);

(ii) make and enforce land development orders requiring the owners or occupiers to carry out an agricultural development program on their land (section 64 and 75);

(iii) order and enforce the production of crops essential for the national needs or for good land management (section 100);and

(iv) order and enforce production of a special crop (section 190).

In addition, section 192A of the Act empowers a local authority within whose juridisction a particular agricultural land falls, to levy cesses on any kind of agricultural produce. Cess is a levy on agricultural produce supplied to markets and is a major source of revenue for rural authorities (County Councils). The Trust Land Act (Cap 288) vests powers on the local county council to hold and manage land on behalf of the local inhabitants. Under section 37 of the Act, the council is empowered to issue licences for the grazing of livestock, the removal of timber or other forest products in non-gazetted areas, the taking away of common minerals, wayleaves (for canals, pipes, aqueducts, dams etc) and the establishment of temporary labour camps. The officer mandated to carry out these functions is the District Commissioner,[14] a central government agent appointed under a subsidiary legislation to the same Act. The local council is therefore divested of this power.

Section 53 of Cap 288 gives the Commissioner of Lands the power to administer Trust Land of each Council as an agent for the council and may execute all land management functions of the council over Trust Land except those that concern the setting apart of the land for public purposes determined by the council as is provided for under section 117 of the Constitution. In acting as its agent, the commissioner of lands does not have to seek the authority of the particular council. Section 117(2) of the Constitution stipulates that where a county council has set apart an area of land for a public benefit, any rights, interests or other benefits in respect of that land that were previously vested in a tribe, group, family or individual under African Customary law (as per section 69, Cap 288) shall be extinguished. Any person who has a valid right under the African Customary law prior to the setting apart must receive prompt payment of full compensation as is provided for in section 75 of the Constitution and the Land Acquisition Act, Cap 295 Laws of Kenya.

Trust Land can also be set apart for use by the Government upon written notice to the Council by the President. Such purposes may include "profit a prendre" and mineral prospecting. The Trust Land Act, Cap 288 Section 65 gives the Minister in Charge of Lands specific powers, subject to the approval of the Council, to make rules that govern the utilization of Trust Land by:

(i) controlling the occupation and use of such land for grazing and pasturing stock, flocks and herds;

(ii) compulsorily reducing the numbers of stock, flocks and herds;

(iii) regulating the reconditioning of land, and for prohibiting and regulating the occupation of any areas therein;

(iv) regulating generally the use and conservation of any areas;

(v) regulating any matters relating to the tenure of land;

(vi) regulating the issuance of licences as is provided for in section 37; and,

(vii) protecting trees and forest produce on land that is not within a forest area.

From the foregoing, it is apparent that the central government and not, the local government, is the main land management and local administrative agency in Kenya.

The District Agricultural Committee (Agriculture Act, Cap 318), the Land Control Board (Land Control Act, Cap 302), District Planning Liaison Committee (Planning (1996) Act) and the Commissioner of Lands (Government Lands Act Cap 280; Registration of Titles Act, Cap 281; Land Titles Act, Cap 282; Trust Land Act Cap 288 and Registered Land Act Cap 300 of the Laws of Kenya) all have important management responsibilities on rural, agricultural land under their line ministries.

In effect, the management of rural land is almost entirely executed by the Central Government not the respective local authorities.

Various parastatal bodies (e.g. Coffee Board of Kenya, Kenya Tea Development Authority, Kenya Sugar Authority, National Irrigation Board etc) and Regional Development agencies (e.g. Tana and Athi Rivers Development Authority, Coast Development Authority, Lake Victoria Basin Development Authority, Kerio Valley Development Authority, Ewaso Nyiro River Development Authority, inter alia) have been formed under particular Acts of Parliament for better management of agricultural produce and indirectly, agricultural land.

The government has used the provision of medium term credit as another indirect tool for good land management. Credit institutions such as Agricultural Finance Corporation and Settlement Trust Fund have been created to advance loans to farmers to buy land or farm inputs. Other organizations such as Kenya Agricultural Research Institute (KARI), Coffee Research Foundation (CRF), Tea Research Foundation (TRF), Kenya Plant Health Institute (KPHI) and Sugar Research Centre (SRC) have a long history of government research on soils, crops, yields, plant disease, marketing, crop varieties, irrigation possibilities and crop water intakes. They help the Central Government meet her crop and land husbandry objectives.

2.8 Opportunities for Land Taxation

The twin principles for taxing land, that is, the principle of "benefits received" and the principle of "ability to pay" have endured the passage of time.

Under the principle of benefits received, a tax levied on the owners of land is justified because of the benefits which accrue to properties due to the actions of local governments or the public at large whose capital investments and service provision (roads, sewers, housing, water, garbage collection, fire fighting etc) automatically increase the value of land without, necessarily, any exertion by the owners. These services directly benefit property owners and so they should be the persons to pay for them.

However, at times, land tax income is used to finance people-related services (as opposed to property-related ones). These are services that are also enjoyed by non-property owners (e.g local schools, community health centres, parks, recreation, subsidized housing etc). The import of the land tax in such a case is redistributive.

The second principle holds that taxpayers should pay taxes according to their financial ability. Under a land value taxation system (ad valorem property taxation), the value of a person's land is used as a proxy for his/her ability to pay. Land tax therefore becomes a tax on wealth, where wealth is determined by the value and amount of land that a person owns. Those who own large or higher value properties are required to pay higher taxes on the value (or size) of such property.

The taxation of urban land in Kenya seems to be based on the principle of "benefits received" since the urban local authorities mobilize financial resources to provide various services and infrastructural facilities as discussed earlier.

Responsibility for paying urban land taxes (rates) does not absolve the rate payer from the payment of other taxes[15].

Rural agricultural land is not taxed in Kenya (except where such land, although still being agricultural, falls within the expanded boundary of an urban area) despite the existence of enabling legislations[16] for more than three decades.

The Acts of Parliament, The Valuation for Rating Act (1956 rev. 1984) Cap 266 and The Rating Act (1963 rev. 1986) Cap 267 Laws of Kenya give the broad policy and legal framework for taxing both urban and rural (agricultural) land in Kenya.

The former is an Act of Parliament to empower local government authorities to value land for the purposes of rates (land taxes) whereas the latter (Cap 267)) provides for the imposition of rates on land and buildings in Kenya, to amend the law relating to valuation and rating in Kenya and for incidental purposes.

The rateable (taxable) owner is defined in section 7(1) of Cap 266 as the freeholder, registered lessee for 25 years or for life, or in the case of land let by local authority a registered lessee of at least 10 years. The basis of valuation is defined in section 8(1) to be the probable sale value of an unencumbered freehold due regard being had to comparative factors bearing on the land and to restrictions imposed by law (and by by-laws) whose effect is decrease or to increase the value of the land.

Section 2 of the Rating Act Cap 267 empowers the County Councils (rural local authorities) to be rating authorities which may, for the purpose of levying rates adopt an area rate, an agricultural rental value rate, a site value rate or a site value rate plus an improvement rate upon obtaining approval from the Minster for Lands and Settlements. In the case of agricultural land, agricultural rental value rate, a flat rate or graduated rate upon the area of land or differential rates depending on the use or possible use of land may be adopted by the local authority as a method of rating.

We have noted the government policy on agriculture that includes the optimal use of the available agricultural land to ensure for self sufficiency. Only **18%** of the **576,700 square kilometres,** that is, **103,806sq km** can be categorised as medium to high potential agricultural land. This gives a per capita[17] land area of 0.003 sq. km. The arid and semi arid areas, according to the current national Development Plan (1997-20012), make up **461,360sq.km** of Kenya's total land surface supporting over 25% of the national population and 50% of the total livestock production. These areas have pockets of high productivity land but the majority of the inhabitants are pastoralists, although semi-pastoral and farming communities have increasingly inhabited them by migrating there and sub-dividing the land.

The government encourages proper management and conservation of these lands through the use of appropriate technology and irrigation, dam water and construction of rural roads in addition to replicable low cost dry land farming techniques. The cultivation of drought resistant crops such as sorghum, cotton, cassava, millet, oilseed, pigeon peas, green grams and beans is being encouraged.

However, the government continues to acknowledge the fact that a lot of land countrywide still lies idle and the parcels that have been put to use are not optimally utilized. The latest indications form the Central Bureau of Statistics on idle land have shown that in 1993, two thirds of good agricultural land in Kenya was either grossly under-utilised or completely idle especially in the large farm areas (Statistical Abstract, 1996).

Indeed, in a recent Gazette notice (No. 6594 of November, 17th 1999) the government has formed a Commission of Inquiry to analyse the land law and tenure system in Kenya with a view to recommending an appropriate land policy framework for the country that would ensure efficiency, equatability and environmental protection of land. Among the main objectives of this commission is to review the existing land taxes in terms of incentives and sanctions to encourage a more productive utilization of land and to examine legislations and policies that will encourage and protect owners of land who lease their land to those able to invest and put the land to more productive uses.

In almost all development plans, the government has repeated the call for an accelerated registration of titles to land in order to enable the taxation of agricultural land to increase the cost of holding the land idle (and not selling it or leasing it to invigorate the land market) in order to increase agricultural productivity and lead Kenya into a possible situation of food self-sufficiency and security.

The agricultural sector is currently taxed but the tax falls (not on the land itself but) on farm in-puts, outputs and the farmer's income. These are mainly Presumptive Income Tax (P.I.T), Import duty, Value Added Tax and Crop Cesses. Only the latter is levied by the rural local authority (County Councils) from powers of council by-laws under both the Local Government Act (Cap 265) and the Agricultural Act (Cap 318) of the Laws of Kenya.

2.9 Conclusion

The management of land in Kenya poses a number of real challenges. In the urban and the rural areas, the central government still plays a major role in land delivery and administration even though virtually all the land in the country is under the ambit of some local authority, whether municipal or county council. These local authorities have very little practical controlling influence on land management. There is however a real opportunity for introducing land tax for the agricultural areas in line with those that already exist for the urban municipalities to enable every geographical locality to bear its share of the tax burden. The enabling legislations are already in place. But, as we shall discuss subsequently, it must be possible to accurately identify the taxable owners of these agricultural hereditaments. This will be possible if the adjudication and lad registration processes are speeded up.

Chapter 3: Land Value Taxation for Kenya

3.0 Introduction

The land tax is one the most important taxes affecting landed property. Even though some 130 countries worldwide have some form of land based taxes, the debate as to whether or not governments should rely (partly of wholly) on land taxes to finance the much needed infrastructure and public service continues. Whenever there is some sort of agreement that part of the government's expenditure should come from taxing land, there has always been the further question of the importance of this tax vis-à-vis other taxes that the land holders are subjected to, the determination of the tax base (the object to be taxed—land alone, land as improved or improvements only or some combination(s)). Should the tax be value-based or size (area) based?

Being a direct tax and a confiscation of wealth, what policy, administrative and political mechanisms are necessary to implement it?

These are some of the questions that countries, both developed and developing are attempting to find answers to in their quest for land tax review and general fiscal reforms.

3.1 Justification for the Land Tax

The current thinking on land value taxation mainly has its origins in the 19th century works of David Ricardo, Johan Von Thünen, Adam Smith, and, importantly for Kenya, Henry George (Progress and Poverty, 1879). Ricardo and Von Thünen concentrated their efforts more on the theory of rent and showed that rent paid for a parcel of land could be taxed without any adverse impact on the short-term supply of land and consequently, the production of land-based goods and services. The debate, then as now, concerns the unearned economic rent to land owners in a capitalist market economy.

The argument supporting site value taxation ("site value," "land value," "unimproved value" here used interchangeably) focused on the land-owning class whose land increased in their "surplus" value from the exertions of society as a whole. Thus, the scarcity value of their parcels of land increased because of the increased population ever requiring more land to cultivate and to live on.

Henry George, analyzing at the time, issues of poverty and societal justice was dismayed by the waste caused by huge land grants and the resulting land use patterns in the United States of America, especially the California gold boom of 1870. He thought that it was wise "to tax values created collectively by society through the hard labour and industry of the workers—rather than by individual effort." Taxing land, no matter the level of tax would not have a distorting economic consequence since, it was thought, that the same amount of land would be available for the community and for the same uses (Sullivan, 1990).

Where land was not being used optimally, a land tax was thought to provoke the "sleepy" land owners into useful activity. Under Henry George's predictions, one land tax was sufficient to finance all expenditures made by the American government of the time, thus the proposal for a "single tax." Henry George's writings and preaching of the 1880s and 1890s had followed the analyses of David Ricardo (1817) who had noted that the taxation of land could have no adverse effects on production because the rent or surplus owing to the more fertile land was due to its inherent quality ("the original and indestructible powers of the soil") over and above the labour of the farmer (Blackwell, 1993).

Thomas Malthus and John Stuart Mill applied the Ricardian analysis to India (British India) especially in Bombay to tap land revenue. The Millses (father and son) believed that the land tax was unshiftable (Holland, 1970). However Hicks, (1970) has noted that the unshiftability of the tax does not hold in all circumstances and that Richardian "original and indestructible powers of the soil" while it may have been useful in Victorian England does not infact endure as land use and management have something to do with its condition at any one time (Bird, 1974). The objective of the Land Tax was both to raise revenue for the operations of government (fiscal), to brake the power of the land (barons) speculators and to promote development through freedom (socio-economic equity). In 1890, Henry George visited South Africa, Australia and New Zealand where he advocated for the site value, single tax system. From South Africa, George's advocacy spread to Zimbabwe and Zambia (formerly Rhodesia), Kenya, Uganda and Tanganyika (now Tanzania). Each of these countries uses one form of value based tax or the other.

In most developing countries, land is still held as the basic and visible form of wealth, denoting the ability to pay-where property ownership is much more concentrated than salary or business income (Bird, 1974; Olivier, 1995). If incomes from salary and businesses are taxable then equity in the national tax system can only be achieved if the land wealth is also taxed.

For Kenya, the ownership of agricultural land is not taxed at the moment whereas the ownership of urban land is taxed. There is a case for introducing land tax in agricultural areas across the country in conformity with those in the urban areas. The rural local authorities (County Councils) are willing to implement such a tax if their personnel and administrative capacity can be strengthened.

In many localities the actions of individuals, communities and government quite apart from the exertions of the land owners themselves will lead to increases in land values (e.g. rural access roads, community centres, agricultural schemes etc). These values should be appropriated for the benefit of the community. Whether such tax is land size based or ad valorem, there is always a real redistributive effect and progression in incidence (Bird, 1974).

The levying of tax on the "unimproved value of land," where land value is defined as "the value the land would have had at the current time if it were returned to its original state, except for those alterations, such as the provision of public utilities and services, that are provided by the community or by independent agencies rather than by the individual landowner" (Vickrey, 1970 p.20) is perceived to capture betterment (where the effective rates are reasonable to make this an important source of revenue) such that an increase in land value is automatically translated into an increase in the annual tax liability irrespective of the cause and when or whether the land is sold or transferred.

Most land taxes have the revenue-criteria as their main objective although (Shoup, 1983) has noted that vacant land can be taxed to stimulate development as has happened in Taiwan and Chile. Other countries levy higher taxes on land not used in accordance with local authority planning regulations, as happens in Jakarta whereas speculative gains in land value are taxed in South Korea. Site value taxation was introduced in Jamaica to redress the unequal distribution of land.

There is also the perception that a people similarly placed should face the same tax burdens. Tax system should not be discriminative. Therefore all land owners across the country should be taxed in order to achieve some level of horizontal equity. This increases public confidence in the overall tax program. Compared to other tax payers in the same financial position across the country, large land parcel owners in the country-side currently make very little contribution to the national tax kitty. Where tax is levied on all agricultural land (beyond a certain threshold) land tax will be neutral in terms of factor input allocation and will widen the tax base.

In Kenya, the 1996-98 Policy Framework Paper (PFP) following the Sessional paper No. 1 of 1986: Economic Management for Renewed Growth has stated the government's aim of removing constraints on the promotion of rural development and agricultural expansion and a focus only on its core functions, that is, broad based basic education, health services and infrastructure. These activities are better provided by well financed local authorities. Popular participation can be achieved through the development of land since the majority of Kenyans rely on farming directly or indirectly for their livelihood.

Once the land titles are registered or if some uniform identification system is in place and records of transferees are kept, enforcement in principle can be achieved if it is well understood that land may not be sold or transferred in any way unless all the land tax liabilities have been offset. If local or national authority can seize and sell all the land with outstanding tax debt, the cost of not paying the tax will usually be higher than the land tax obligations so that payment compliance will be enhanced.

In agricultural areas, business and income tax are difficult to implement because, perhaps, of the low literacy levels and the problem of not keeping up to date relevant records and so any increases of tax obligations may not be easy to achieve. However, it is impossible to conceal land as a tax object making avoidance or evasion all the more difficult. Furthermore it is not possible to transfer land between tax and non-tax jurisdictions (Olivier, 1995).

A land tax is direct and visible—and if launched will put the operations of the (rural) local authorities into greater public scrutiny—which will be duty bound to provide infrastructure and public services that take into account community participation and their priorities.

3.2 Nature and Context of the Land Tax

Kenya is highly dependent on her natural resource base viz. agriculture, fishing and wildlife—based tourism. Because these valuable natural resources are scarce, there is an economic return to each one of them that is over and above the return to cover the immediate input costs, labour costs and the opportunity cost of capital invested in tapping the benefits from the particular resource.

This pure return to the indestructible characteristics of the natural resource is referred to as economic/resource rent. The Government being the final guarantor of "title" to any natural resource is entitled to full recovery of resource rent for investment and equitable distribution otherwise the resource rent accumulates into windfall gains for particular sectors (or to particular people) in society forever.

Currently the fishing, the tourist and the export sectors are reasonably well taxed. It is anticipated that full (or partial) rent recovery would lessen (or eliminate) windfall profits to the farming sector and generate revenue that will be used to prop up the development of other sectors of the Kenyan economy. Greater investment in renewable and (from incomes) non-renewable resources is aimed at sustaining natural resources and protecting the environment as is provided for in the Agriculture Act (Cap 318) and other policy documents.

3.3 Options for Basis of the Land Tax

This section builds on the works of Barlowe (1958), Bryant (1972), Bird (1974), O'Regan (1975) Shoup (1983), McCluskey (1993) and Lee (1993). Tax may be levied at a certain predetermined rate on the assessed value of land. There are a number of options for the assessment of this value which ultimately forms the basis of the tax. In every case an assessment option should enable a tax system to abide by four fundamental principles: equality, certainty, convenience and economy.

Equality means that the tax incidence should relate as closely as possible to "the ability to pay" under the protection of the law.

Certainty means that the tax should not be arbitrary especially with regard to the time of payment, manner of payment, sum of money to be paid and that these should be clear and plain to the payer and to those who administer it. The tax should be a subject of legislation and should be publicised. The system of enforcement should be adequate to prevent evasion.

Convenience: means that the time, mode and manner of payment should not put the payer through undue and unnecessary strain. The payment system should be simple and straight forward. The taxpayer's routine should be disturbed as little as possible and the tax should encourage production not stifle it.

The term **economy** with reference to taxation means that the net yield or productiveness should exceed the costs of collecting and administering the tax. The generation of this net yield should avoid consequences that are injurious to the efficiency of land, labour, capital, entrepreneurship and environmental conservation. It should be noted that however equitable and well planned a tax may be, if it is so administered that some of the target group who ought to pay it can evade payment, the tax ceases both to be equitable and productive. If evasion is possible, and, is being practised, then even some honestly disposed taxpayers will follow the example of their less scrupulous neighbours rather than support the increased burden arising from the delinquencies of the non-payers.

Good tax administration also means setting and keeping of small and efficient collection staff that is motivated to avoid unnecessary loss of time and that doesn't use over-restrictive collection methods.

There are four principal options for basing the land tax.

These are:

(a) Taxation pegged on land size and geographical location only:
Such a tax is simply based on the physical size of the land owned by the taxpayer and is charged at varying amounts per unit at a flat rate e.g. Kshs 650 per hectare per annum or at a progressive (graduated) rate, the rate increasing with the increase in size of land, or at a differentiated flat rate/graduated rate upon the size of land according to the use to which the land is put, or capable of being put, or, for which it is reserved or according to the agro-climatic zone in which the subject land is located.

The procedure for assessment for this size/area based tax involves the identification and confirmation of legal ownership/proprietorship and sizes of the registered holdings throughout the region, the selection/description of the land unit upon which the tax rate will fall, the determination of the total number of such units comprising the registered holding and the application of the tax rate to each and to every prescribed land unit as is statutorily provided for in the enabling legislation. The resulting figure per annum is notified to the taxpayer as his/her tax liability.

a) [i] Advantages

This assessment option finds its major strength in the fact that it is simple to understand and to execute. It does not require complicated methods of calculations and assessments. Further, the collection and assessment costs are usually low and the tax rates can be varied across regions to take account of the holding's location.

[ii] Shortcomings

- The simplicity of this assessment option makes it subject to generalization over broad geographical areas. This makes the tax regressive.
- The tax burden often does not reflect the actual value of a particular holding, or its actual productive capacity and may punish the registered owners of the marginal lands.
- It does not encourage optimal utilization of land.
- The tax is not related to ability to pay as the same burden falls on the same sized land in the same or prescribed geographical location.

[b] Taxation based on the Rental Value of Land

In this case the tax is levied on the annual rental income of the land. The broad procedure for assessment involves the ascertainment of the Ownership/ proprietorship of each of the farming/land units and then the determination of the (net) rental income for the individual holding/land. For the lands that are not rented the procedure involves the imputation of market rental for such land holdings and the application of the rate of tax to the resulting annual rental value of the land, gross or net.

b) [i] Advantages

- Rental income or rental value is quite often related to the productive potential of the land when this forms the basis of the rent paying ability. The land taxed on this basis is likely to realize improvement in utilisation and investment to generate increased income to pay the tax.
- After the initial set up, the assessment procedures are fairly simple and do not require highly trained personnel. The availability of well trained personnel is a tax impediment in developing countries.
- The level of taxes increase with increases in rents and so increases in productivity and general community development are automatically captured in the tax.

[ii] Shortcomings

- The initial data collection may present problems of achieving acceptable levels of accuracy since rental details may not be accurately recorded.
- There is always the problem about whether to base the tax on the gross or the net annual rental passing. The former may impact heavily on costs whereas the latter may unwittingly be avoided when net income returns read nil or even negative.
- Market land rentals are not always consistent with economic potential of the land. They may reflect supply and demand factors that arise from land speculation. This would probably tax some land at a higher rate than land located further inland even if they are subjected to the same current use.
- The assessment option lends itself to local application and experience only, and yet, there may be some advantage in having a uniform national system of assessment of property under one law, one policy and one set of accepted principles by a cadre of personnel trained in one tradition which helps maintain the high ethical standards necessary to keep public confidence in the land taxation regime. However, where a policy of decentralization has been universally adopted this argument may no longer apply.
- The assessment option cannot be used in a system where land is (owner-operated) not leased in the market. Imputing rents for such land would introduce inaccurate measures of value which could result in expensive litigation and appeals.

- If rents are pegged on the productivity of land, then it will vary according to that productivity, and, the tax with it. Assessments done every year will reflect this fluctuation in rental incomes which may have resulted from drought, changes in pricing policies, marketing regimes, political uncertainties or even labour unrest. This affects planning and budgeting by the tax authority.

c) Taxation based on Capital Value of Land

In this system the tax is levied on the capital value of improved land. The capital value is calculated by capitalizing the stream of income or rentals that accrue from the land and the improvements on such land.

The broad procedure is to identify the legal ownership of the land to be taxed and to define it. Then follows the identification of the user and determination of optimal or actual rental going for this user. Costs and outgoing are deducted from this gross rental/income to arrive at the net income which is then capitalised by an appropriate factor to arrive at the capital value on which the percentage rate of the tax is levied.

c) [i] Advantages

- This option of tax base stands to generate high revenue levels for the taxing authority if properly launched and administered.
- The tax can be levied progressively to capture the marginal revenue from properties that have high capital values linking the tax with "ability to pay" cardinal principle of taxation.
- Tax equity can be achieved at various levels. Vertical equity can be achieved when the incidence of the tax falls equitably between capital values. Further, land tax incidence should be equitable between different land value determinants. Equity issues are more important where land taxes are levied for reasons other than the direct provision of services.

[ii] Shortcomings

- In so far as the capital value of land derives from its annual rental value, the deficiencies of the rental value system get "inherited" and entrenched in the capital value of the land. If it is not possible to accurately assess the rental value of a particular holding, it will not be possible to arrive at an accurate level of capital value.
- The determination of the capitalisation factor (<u>or Year's Purchase</u>) is often fraught with difficulties where the market transaction system is not active. Assumptions made about rates of retum, and, its variation over time, because of investment uncertainties, may give rise to false conclusions. These may lead to objections to the Valuation Court when the valuation list is publicised.
- Small errors in judgement, assumptions or calculations of the basic parameters may often lead to highly magnified capital value figures. The inequitability in

incidence of a tax is affected by its coverage, by its rate structure and by its method of assessment. Injustice arising from imperfections in assessment methods will be most unfortunate especially where the tax rate is high. This could lead to many complaints and, finally, to litigation—so that deficiencies in the system of assessment are a serious constraint to the equitable incidence of a land tax.

- Taxing land plus improvements (imputed in the rent) may discourage investment in long term capital resources/improvements.
- This option requires qualified staff to put it into place. This is often costly initially since capacity building takes time and involves money. Such capacity building must take place as a prerequisite to the launch of the land tax if it is to be effective.

d) Taxation based on unimproved land (site) value

This system places the tax burden on the value of bare land only, without consideration of the improvements, on it—although the effect of the improvement on the land is usually recognised in the valuation process.

The procedure in such an assessment system broadly involves:

- Researching the market to obtain information about transactions, listings and land offerings.
- Verification of the information by considering whether data obtained are factually accurate and whether transactions reflect arm's-length market considerations.
- Deducting the depreciated cost of improvements from the sales price in so far as the improvements contributed to the overall value figure in the market.
- Adjusting the resulting figure to the valuation date.
- Determining relevant units of comparison [e.g shillings per hectare] and developing a comparative analysis for each unit—devising a pattern of unimproved site/land values relating to particular defined locations.
- Comparing the subject and comparable sales according to the elements of comparison and adjusting the sale price of each comparable as appropriate (or eliminating the property as a comparable).
- Reconciling the multiple value indications that result from the comparable into a single value indication.

This unit value indication is applied to the defined land holding to arrive at the tax base on which that tax is finally levied.

It is important to emphasize that the productivity of the land as may be depicted in an Agro ecological zonation (AEZ) map for the particular geographical location will be reflected in the final value figure that will be analysed and used as a comparable.

Agro-ecological zonation maps may indicate productivity potential. This potential may however not be realized in a practical situation on the ground. The maps indicate only physical factors. If they are accurate and not too generalized they may form a basis of comparison between different land parcels and may therefore contribute to the physical considerations for value estimate. Other parameters of value are economic, legal and environmental factors. Relying on AEZ maps exclusively to indicate value patterns will turn faulty if the land changes hands for speculative purposes. Valuation approaches in this option seek to analyze the market (supply and demand) about which AEZ maps contribute only a small percentage in so far as the maps contain only (generalized) physical factors.

d) [i] Advantages

- The greatest advantage of tax based on the unimproved site value (U.S.V) of land is that it falls on the resource rent, that is, the tax is levied on the unaltered position and natural characteristics and resources of the land. Taxing the unimproved land means taxing its natural advantages ,those that (theoretically, at least) cost nothing to create.

  The registered owner of the land pays the tax and such a tax is not shiftable (unlike the case of General Sales Tax or even Value Added Tax which are easily shifted onto the consumer).
- Land is valued for taxation whether or not it has been put to use, at the highest price that it could fetch in the open market. Tax based on Unimproved Site Value (U.S.V.) places a salutary pressure on the land owner to devote his land to the most profitable use.
- Land tax falling on the resource rent does not distort factor allocation within the economy.
- Land taxes have the effect of lowering land prices. This is advantageous for a redistributive reform programme because the Government may acquire land for resettlement more cheaply which, can in turn, be sold cheaply to the incoming settlers.

  Taxation is a way of putting a price to the scarce natural resource, agricultural land, it reminds farmers that the resource is worth conserving and investing in, to be used sustainably to provide both employment and increasing incomes.
- Because land value is taxed whether or not the land is occupied, this option ensures certainty of revenue to the taxing authority unlike the annual rental value system which fluctuates with the occupancy (rental) levels.
- This system of land taxation is said to discourage land speculation since the costs of holding land increases at each taxation year. It is possible to tax land that is not being put to use at a relatively higher rate (or at double the rate of land under some beneficial use).

[ii] Some possible shortcomings

- where this option is used solely to encourage development, it may not achieve its desired objective because land tax liability is only one, and rarely, the most important of the factors which influence the investment decision of a landowner.
- The valuation of unimproved site which relies on evidence of the "best potential development" of a particular piece of land may be fraught with difficulty because the "most economic farming unit" or "optimal size of a farm" may depend on climatic, credit and marketing conditions which could easily and suddenly change. These parameters are hardly ever accurately defined because they depend on ever changing factors.
- Market forces which arise from differences in location rather than land/farm efficiency or entrepreneurship may be a practical source of inequity in land taxation.
- There is the practical difficulty of isolating intrinsic site element from improvements and entrepreneurship of the farm owner for highly developed properties.

3.4 Land Tax—An Evaluation for Kenya

Taxation as an incentive for agricultural land development can only work on the assumption that an owner either develops his land or vacates it. If s/he sells and vacates, the Government's power of purchase can be exercised and to this extent, land taxation will meet the overall objective of land reform [resettlement and redistribution] if this is the Government policy. The remaining farmers must use efficient methods of farming and those acquiring new titles should be trained to farm optimally.

Those who occupy and own highly valued lands will bear the tax incidence in proportion to those values. The progressive nature of the tax will derive from the progressivity of land values in the given localities. The cost of collecting and administering the land tax must be less than the revenue derived from it. This needs training, skills, integrity, motivation and real determination on the part of the tax assessors, collectors and administrators. For the land tax, liability is obvious since the physical land (and at times, the land records) cannot be concealed. This is its strongest point.

However cadastral survey, deeds documents and the tax list must be kept up to date. Where these land details are kept up to date and are comprehensive, the work to effect land taxation is made much easier. Since land tax is often viewed as an appropriation of wealth, it may (depending on the percentage rate) be politically unpopular. Therefore once the broad aims of the tax have been defined, political will is necessary to impose the taxes, decide on liability and assessment, collect and enforce sanctions against defaulters.

3.5 Conclusion

The case for taxing land in both urban and rural areas in Kenya is strong and compelling. Different options for basing the land tax have been identified and examined. These options could be reviewed by the existing urban and rural local authorities in terms of their merits and demerits for particular situations and localities. If the reasons for improving land tax administration (ratings in urban areas) or launching it (in rural agricultural areas) is revenue generation for provision of the much needed public services and infrastructure, the land tax system may be judged according to some criteria as follows:

(i) tax yield predictability and buoyancy to enable revenue stability;

(ii) ease and cost of collection-maximal revenue at minimal costs;

(iii) statutory and administrative enforceability to prevent avoidance and evasion and thus ensure efficiency;

(iv) local and political acceptability and support;

(v) fairness (through uniform legislative provisions within particular tax jurisdictions) and equity (through uniform administrative procedure within the same tax locality).

Chapter 4: Implementing the Land Value Tax in Kenya

4.0 Introduction

The history of land based taxes in most Commonwealth countries goes back to feudal England at the time of the Poor Law Relief Act of 1601, which empowered jurisdictions to raise local taxes to alleviate the plight of the poor. At the time, land was the main form of wealth and reflected to a large extent, a citizens' income and ability-to-pay. The first recorded land tax in England was, however, the Danegeld of the 10th and 11th centuries, a payment into the King's kitty for the protection from Danish and other invaders. The Danegeld was at first based on the total land area of a person but later changed to a tax on ploughed land only (O'Regan, 1975). However, researchers have traced the land tax system to the Chinese dynasties of Huang Ti and Hsai in the years 2700 BC—2200BC when property tax was levied to finance some costs of Government. The great Roman empire and the ancient Egyptian kingdom relied heavily on land taxes for Governmental revenue (Blackwell, 1993). Many developing countries however cite the Poor Law Relief Act of the Elizabethan era as the precursor to their land tax systems as influenced be the writings of Henry George (*Progress and Poverty*, 1879) and that of David Ricardo of 1817.

The introduction of land taxation in East Africa is closely linked to the beginning of the European settler economy of the early 20th century. The 1915 Crown Lands Ordinance provided for the granting of land leases of 99 years and a 2% levy on the unimproved site values of land in European occupied areas in Kenya.

The property taxation law in Kenya[18] traces its origin to the 1916 Rating Ordinance of the Transvaal province of South Africa. The annual rental value system of property tax (rating) was first tried in Mombasa (a coastal town and port in Kenya) for occupied premises but was later abandoned (1928) because the occupancy rate was low (Syagga, 1994). The Unimproved Site Value (U.S.V) system was introduced in Nairobi, after a long debate (leading councillors were advocating a similar system of property tax as that subsisting for Australia, New Zealand, Rhodesia, West Canada and South Africa) under the 1921 Unimproved Site Value ordinance that enabled the preparation of the first five year valuation roll. A single tax (rating) legislation was introduced in Kenya only in 1956.

There are, at the moment as already discussed in earlier chapters, two separate but complementary Acts of Parliament that allow for the valuation of property and for the imposition of property tax / rates (Valuation for Rating (1956 revised 1986) Act, chapter 266 Laws of Kenya and the Rating Act (revised 1986) chapter 267 that guides the imposition of rates (property taxes) on land and buildings in Kenya.

The two Acts of Parliament give the various local authorities and the Minister of Local authorities defined powers for valuation and the general administration of property taxes in Kenya.

Local authorities in the country derive their power from the Local Government Act (rev. 1986) chapter 265 of the Laws of Kenya. Section 216 of this Act establishes a general rate fund for each and every urban and rural local authority. Receipts from the property tax are, supposed to be deposited in this general rate fund in the respective local authorities.

Property taxes as has already been indicated form an important revenue instrument for the urban local authorities in Kenya but they have by no means reached their full potential.

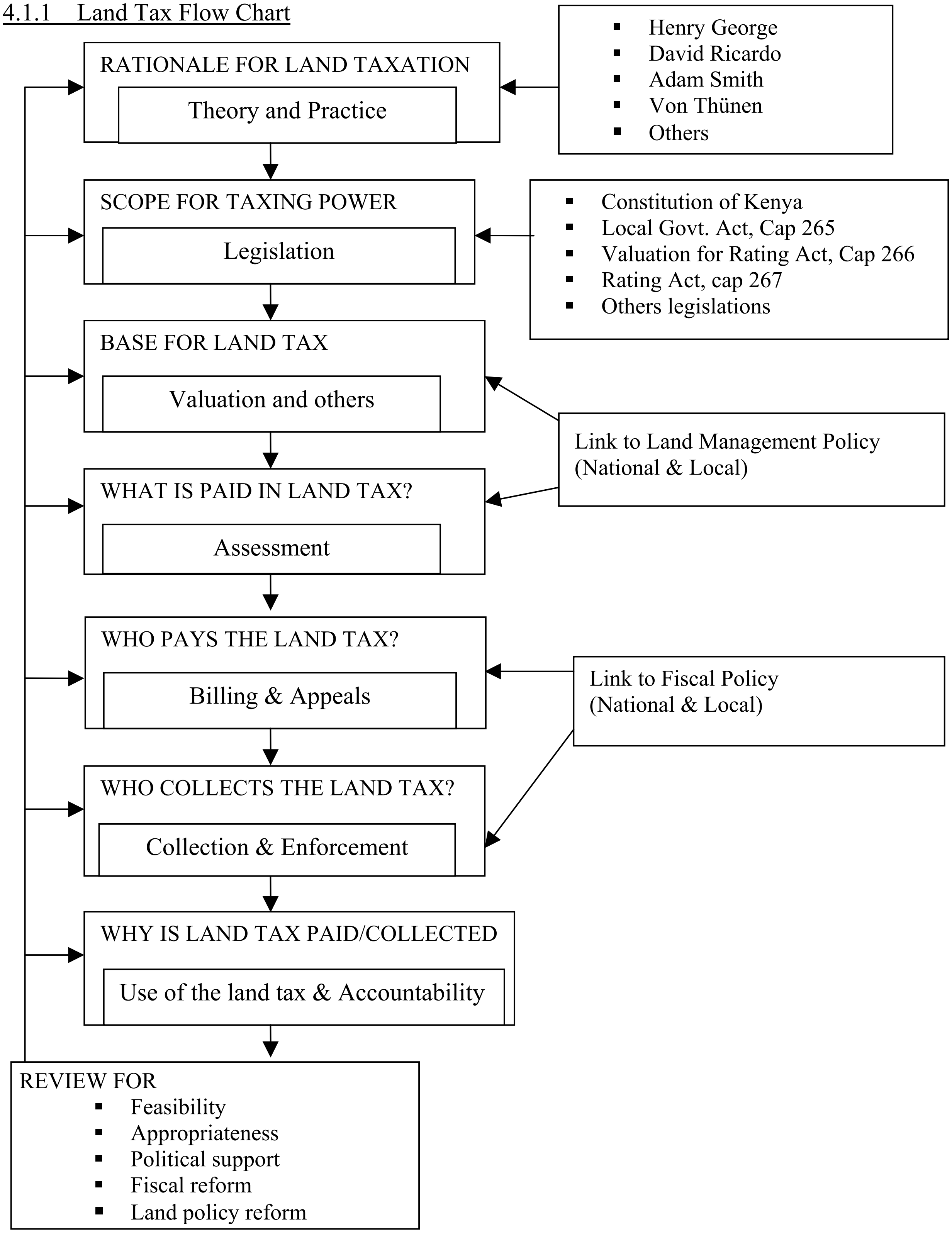
4.1 Current Experiences of Land Tax (Rates) Implementation in Kenya

The implementation of land taxation system in any country can be broadly captured in a land tax flow chart. The flow chart indicates a chain of policy and administrative procedures (encapsulating legal, technical, economic, social and political considerations) which have to be understood and followed efficiently for a feasible implementation of a land (property rates) tax system.

As is often the case, a chain is as good / strong as its weakest link so that any policy or administrative links that are found to be weak will go along way in weakening the whole network of land (property) tax implementation in a given set-up.

The chain forming the flow-chart links 8 mutually supportive components. These components and their relationship to each other will now be examined in the context property (rates) taxation in Kenya.

4.1.1 Land Tax Flow Chart



4.1.2 Rationale for Land Taxation

The general theory and principles for taxing land as enunciated by the thinkers of the 19th century seem well accepted in Kenya. The policy documents, sectoral papers, development reports that recommend the land tax in various forms do not appear to question the need for imposing a tax on land to generate revenue for the operation of government.

On a global scale, the fact that at least 130 countries impose some type of land-based taxes in particular jurisdictions is sufficient testimony to this observation.

In Kenya, the theory and principles underpinning land taxation as a local, national or global phenomenon is not being debated even in academic circles—only the governmental policy and administration procedures come under scrutiny from time to time.

4.1.3 Scope of the Taxing Power

Once a decision has been made to levy any tax, the assumption is that the theory and principles of such a tax have been accepted and the next logical step is to define the scope of the taxing powers. These powers deal with tax policy and administration and are divided amongst levels of government based on the statutes of that country.

In Kenya, as has already been indicated, the power to tax land derives indirectly from the Constitution and the Local Government Act (Cap 265) and directly from the Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267). Governmental policy documents and council by-laws direct the implementation of the tax from time to time in local authority areas.

Kenya is being a unitary government, all the local authorities derive their powers from the central government.

Section 75 of the current Constitution protects private property from being arbitrarily acquired. Property can only be compulsorily acquired (subject to adequate and prompt compensation under Land Acquisition Act (Cap 295) for a declared public purpose. However, it is justifiable under section 75 (6) (a) (i) for acquisition or taking of possession to take place in satisfaction of any land tax (rate) outstanding under any other law in Kenya. Further, section 76 (2) (c) permits an authorized officer or agent of government to enter into and inspect private property for the purpose of assessing or levying a property tax (rate). The Local Government Act (Cap 265) defines both the specific powers, functions and the scope of the discretionary powers which the local authorities in Kenya are allowed to exercise.

4.1.4 Base for the Land Tax

The tax base—the object being taxed—can vary. Some countries have several different taxes on land each with a different base. In some countries land plus improvements are taxed together or at different rates, in others, the tax falls on land or improvements only.

The tax may be assessed on the size of land / improvements or on the value of land plus improvements (composite value), rental value or on the unimproved value of the site—a site ready for development. In most tax jurisdictions, the statutes define the tax base to specify what is to be **included** in the tax roll and what is to be **exempted**.

The Rating Act (Cap 267 section 4) permits the local authorities (both rural and urban) to adopt any of the following forms of rating (bases for land tax) as follows:

(a) an area rate which may be flat rate upon the area of land, or graduated rate or differential flat rate or graduated rate upon the area and use of land whether present or potential;

(aa) an agricultural rental value rate;

(b) a site value rate **or** a site value rate in combination with an improvement rate provided that the site value rate does not exceed 4 per cent of the unimproved value of land (unless the Minister for Local Authorities approves a higher rate) provided that only one form of rating is adopted in any rating areas at any one time. Section 9 (1) of Cap 267 allows local authorities to levy special (betterment levies) rates in respect of any special expenses declared by the Minister to be so.

For the value-based property taxes, the basis of valuation is defined in the valuation for Rating Act (Cap 266) Section 8(1) to be the freehold in possession free from any encumbrances under comparable, arms-length conditions of sale in the open market. The Act (Cap 266) in section 8(3) gives the valuer the leeway to use any suitable valuation method to obtain the value of land.

The exemptions are covered in section 27 of Cap 266 to include property used or to be used in the foreseeable future for:

- public religious worship, burial purposes, public hospitals, public educational undertakings, charitable purposes (other than residences), outdoor sports, national parks and reserves but the Minister in charge of local authorities has the power to determine whether or not some use of land is deemed public or not.

We noted earlier that land in Kenya comprises

(a) Government (public) land (b) private registered land (freeholds & leaseholds) and (c) trust (customary) land.

Government land therefore forms a significant part of the tax base in Kenya. It is valued on the same principles as that of private land and the details are recorded in the public land valuation roll.

Section 23 (1) of the Rating Act (Cap 267), imposes an obligation on the Central Government to pay to the respective local authority an annual contribution-in-lieu of rates in respect of Government land within the jurisdiction of the particular local authority. In most local authorities in Kenya, Government land comprises up to 50 per cent of the total land area, usually located in high value zones.

Kelly (1999) categorises the basis for tax into two in Kenya viz unimproved sites within urban local authorities (mostly leaseholds) and area / size based taxes for agricultural fringes within urban/municipal boundaries and Government forest / reserves land within the jurisdictions of county (rural) councils.

Table 4.1 below shows the numbers of local authorities that use particular forms of taxation (rating) in Kenya, 1995.

Table 4.1

Type Of Local Authority	Rating Authorities (By Number)	Local Authorities Using Valuation Rating (VR)	Local Authorities Using Area Rating (AR)	Local Authorities Using Both VR And AR: (VR+AR)
Municipalities (including cities)	45	37	4	4
Towns	48	14	6	4
Counties (rural)	38	22	28	12
TOTAL	131 (100%)	73 (56%)	38 (29%)	20 (15%)

Source: Kelly (1999) c.f. records of Central Government's Ministries of Lands and Settlement and Ministry of Local Government, 1997. Column 2 updated

The table shows that even though the two property taxation (rating) acts of Parliament allow sufficient flexibility in the forms of rating that the local authorities can adopt, in practice only two forms of rating are used in Kenya, namely, unimproved site and area/size rating for Government forest—rural lands.

One hundred and thirty one local authorities are designated already as "rating authorities" (under section 2 of Cap. 267) out of a total number of 165 local authorities in Kenya. Among the local authorities that have property based taxes, 56 per cent use value based rating 29 percent use area/land size based rating, and 15 percent use both.

The identification of the tax base is a major component of the land tax administration. In Kenya it involves legislation, planning, survey and registration of records into a fiscal or land tax cadaster. The law (and the policy) specifies what is to be included in this cadastre to ensure adequate coverage of the tax base. This should take into account the national (and local) land management policy. Well defined and progressive land administration systems often lead to well defined fiscal cadastres that support accurate bases for land taxation.

The law permits a local authority (with ministerial approval) to appoint one or more persons[19] to value land for purposes of preparing a draft main valuation roll/ list or draft supplementary roll/list.

The valuation for rating Act (Cap 266) defines a rateable owner (person liable for property tax) as the owner of the registered freehold or tenant for life of a registered lessee for at least 25 years or a lessee of public land under a registered lease.

The draft valuation roll or supplementary valuation roll prepared by the valuer contains, for every rateable property:

a) the description, location and size of the property valued;
b) the name and address of the taxable (rateable) owner;
c) the value of the land (as improved) unless the minister upon request by a local authority declares that this is not necessary;
d) the value of the improvements on, in or under the land- unless the Minister upon request by a local authority, declares that it is not necessary to determine such a value.

The value generated above (site value) for each taxable property enables the local authority to establish how the tax burden is to be apportioned among the tax payers within its jurisdiction and how the burden is allocated between the different land user zones (residential, industrial, commercial, etc) within the local authority area.

This is the valuation ratio (Kelly, 1999) and is an important component of the property tax administration system.

4.1.5 Assessment for the Land Tax

This is usually a budgetary process and is done in Kenya by apportioning the shortfall in the budget (after summing up revenue from other sources) to local property tax payers.

Percentage rate of up to 4% of the unimproved site value does not require the Minister's approval and can be implemented at the discretion of the local authority (cap267 section 6 (1).

If the local authorities can successfully determine the percentage rate and implement it then this may indicate some level of decentralized authority but, to achieve fiscal equity and consistency across the taxing jurisdiction land tax must be linked to fiscal policy (local and national) and this is probably the reason why the Government finds it necessary to exercise some ministerial control if the percentage rate is set at high levels. The tax ratio determines the proportion of the land tax to the overall taxable value(s).

4.1.6 Billing, Collection, Enforcement and Appeals

Perhaps it is in this function that the local authorities have almost complete autonomy to operate as they wish. The Act (Cap 266) authorizes rating authorities to levy rates which become due and payable on the first day of January in the financial year for which it is levied. The rating authority is further authorized by the same Act to fix (upon giving thirty days' notice) the amount, time and place of payment of such rates and to allow a discount of up to five percent on any rate that is paid before the date when it becomes due and to charge an interest at the rate of 1 per cent per month on any rate remaining unpaid after the day on which it is due and payable.

The table 4.2 below shows the place of property taxes (rates) as a source of local authority revenue in Kenya in the period 1994/95. The table indicates the amount of money collected by all rating authorities in 1994 in Kenya shillings.

Table 4.2: Property Tax (Rates) Vis-à-vis Other Local Revenue Sources, 1994/95

Revenue Source	Amount in Kenya Shillings (1994)	% Contribution to Local Revenue
Property taxes (Direct taxes)	65,360,000	21.6
Licenses & Cesses (Indirect taxes)	22,670,000	7.5
Property Rental/ incomes	25,300,000	8.3
Transfers (current)	210,000	0.1
Income from goods and services (water and other charges)	189,640,000	62.6
TOTAL	**303,180,000**	**100.0**

Source: Kelly (1999) and 1996, Economic Survey (Central Bureau of Statistics, Nairobi).
1 US dollar = 75 Kenya shillings.

These are statistics for all local authorities in Kenya. There are great variations between local authorities. Land taxes (rates) however comprise an average of 22 per cent of local authority income rising at times to a high level of 50 per cent (Kelly, 1999).

The collection of tax and enforcement against tax delinquency form a significant and strategic component of the whole tax administration chain. Although other components of the administration of the property tax are also important, quite often the success or otherwise of any tax system is judged mainly against the success in collection.

Kelly (1999) has appositely noted that the explicit and implicit land tax objectives of raising adequate local revenue, achieving efficient use of landed resources and improving equity across the tax paying public and jurisdictions can only be achieved if the revenue is fully collected and enforcement effected quickly against non-compliance.

The Rating Act (Cap 267 sections 17-20) stipulate the various machineries for enforcement available to the local authorities. These include sanctions and interest charges, legal action in court to press for rates payment as a civil debt under the Civil Procedure Act (Cap 21, Laws of Kenya). Such a suit may be commenced within twelve years of the day upon which the rate became due and payable.

Any property tax due, plus outstanding interest thereon is a charge (lien) against title to the land on which the rate was levied upon registration notification from the local rating authority. Jointly registered rateable owners and tenants in common are jointly and severally liable for the payment of property rates. In addition, persons receiving the rent or who are in charge or control of some rateable property are liable to pay the rates if the legally recognised rateable owner is out of Kenya. Property within a taxation jurisdiction cannot be transferred without a rates clearance certificate from the respective local authority. Other services in respect of the property (e.g. water supply, electricity, garbage collection, insurance etc) do not need the property tax (rates) clearance certificate.

4.1.7 Land Tax (Rates) Destination (Allocation and Use)

Section 216 of Local Government Act (cap 265) as already discussed above, permits all local authorities (rural and urban) to establish a fund known as general rate fund into which receipts from land resources (including rents and profits) are deposited and out of which the land-based liabilities are discharged. In practice, the property tax revenue is allocated in full to the budget of the local authority taxing the land. The collection is credited into the general account for use by the local authority to fund any aspect of its budget. Local authorities do not remit any of these funds to the central government and they see no practical need to keep particular account for land based revenues as is stipulated/allowed by the parent legislation—the Local Government Act (cap 265).

4.2 The Need to Tax Rural Agricultural[20] Land

All agricultural land lies within the jurisdiction of rural local authorities (County Councils) except those in peri-urban zones that may have been taken up during urban boundary extensions. These peri-urban areas pay area rates to the respective urban local authorities on the basis of the size of the land or the use to which the land is reserved.

The Rating Act (Cap 26 section 2) authorises local authorities to tax agricultural land on the basis of agricultural rental value, area/size rating or on some other approved criteria.

A number of rural local authorities tax gazzetted forests game reserves and other government land within their jurisdictions on a per/size basis.

The reasons for taxing agricultural land in private hands (freeholds and leaseholds) go beyond the need for the revenue for the cash strapped county councils (rural local authorities). The difficulties of assessing income tax in the agricultural sector makes it all the more important to tax agricultural land in order to spread the tax net across all the economic sectors of the country because agricultural land is the major form of wealth in the rural areas and land tax is a wealth tax. Land tax might also encourage farmers (or landowners) to put their land into productive uses. This is applicable also to the government as a landowner.

The imposition of a land tax in agricultural areas may enable the local authorities to lower the rates of other revenue sources which might have distorting influences on economic decisions.

Müller (1995) and Olivier (1995) present the advantages of the introduction of agricultural land tax in transitional economies as follows:

a) a tax on the possession of agricultural land (freehold or leasehold) taxes a visible form of wealth (natural resource) contributing to an overall equity of the taxation system in a country;

b) if a farmer has good farming skills, he will not incur extra taxes and so a land tax is neutral in terms of economic decision making. In addition a land tax supports distributional land reform because it reduces the value of land by the capitalised amount of the tax;

c) land values are the result (to an extent) of the "inexhaustible gift of nature" and public spending, and therefore should be the subject of a natural resource tax;

d) land forms the greatest resource under the jurisdiction of the rural (county) local authorities and should naturally form the main basis of their income and administration. This supports the idea for a local tax to finance local services.

The main argument presented against the introduction of land taxes in agricultural areas are lack of local services, complex tenure regimes and general poverty in the rural areas (Franzsen, 1999). Other arguments have indicated that the costs of introducing and administering such a tax may outweigh its usefulness as a source of local revenue. Although such a tax is a wealth tax, it has to be paid out of disposable income and where farm incomes fluctuate because of various factors (rainfall, credit, marketing etc) a land tax may increase the costs and uncertainties of farming.

In Kenya, the problems of taxing agricultural land are also structural. The 1998 Statistical Abstract (p.7) indicates that registered holdings comprise only 6% of the total agricultural land area (i.e. 27,729 square km) and unregistered holdings, that is, trust land comprises 80.9 per cent (i.e. 370,087 sq. km) with the rest, 13.1 per cent (59,625 sq. km) being government land.

This means that a large area of agricultural land in Kenya is still held under customary tenure comprising 64 percent of all the physical land area in Kenya. Where it is not possible to determine the exact size and owner of a parcel of land, it is not possible to determine both the taxable (rateable) owner and the tax base.

And yet, if land tax was to be used in Kenya as an efficiency tool to encourage greater utilization of idle land there is a compelling need to tax agricultural land beyond, say, a certain subsistence threshold. This is due to the fact that the latest statistics from the government's Central Bureau of Statistics(CBS,1996) indicate that in 1993, some two-thirds of the available prime agricultural land was either completely idle or grossly under-utilised (K'Akumu, 1999).

Taxing such land to encourage its utilization would be consonant with the government's declared policy of ensuring food security by increasing food self-sufficiency (Sessional paper No 2, 1994). There is therefore a real opportunity for County (rural) Councils to increase their revenue base by taxing rural agricultural land. This can only happen if the land adjudication and registration process is speeded up. At the moment this land delivery program is wholly controlled by the central government which does not seem to have the incentive to speed it up in rural areas since it doesn't derive revenue from it.

Perhaps the land delivery system is a good case for decentralization in order to give the rural local authorities the substantive and legal authority to adjudicate and register the trust lands within their jurisdictions. The land tax should then be introduced at the time of registration and establishment of the physical cadastre. The local authorities will then still have to examine other aspects of agricultural productivity very carefully before fully launching the tax so that its incidence is positive for the economy.

4.3 Conclusion

In this chapter, we have briefly revisited the history of land value taxation and examined, by the use of a flow-chart, the processes of its implementation.

Whereas the rationale for taxing land has been accepted in Kenya as in approximately 130 other countries worldwide, the legislation, valuation, assessment, billing, appeals, collection, enforcement, accountability and review of land tax are subjects of varied experiences in Kenya.

The need for accountability by local authorities to their constituents for the use of the proceeds from land tax and the need for periodic review of the policy and administrative procedures for the implementation of the tax (rates) are not specifically legislated for in the enabling Acts of Parliament but the Minister for Local Government is empowered to make rules and regulations for the better carrying out or effective execution of the intents and purposes of the enabling land taxation legislations (Cap 265 sec. 271, Cap 266 sec.31, Cap 267 sec. 27). This not only ensures that the Minister (read Central Government) has the lasting supervisory role on the local authorities but he can also initiate action, any action, at any time on any aspect of local authority operations.

The valuation, assessment, billing, appeals, collection and enforcement are specifically legislated for, and, although the Minister for Local Government has residual powers in these administrative processes in Kenya, the legislations give the local authorities fairly flexible powers to implement them.

In the next chapter we analyze the problems that local authorities in Kenya experience in implementing land / property taxes and make recommendations as to possible approaches to solve those problems.

Chapter 5: Taxation of Land by Decentralized Local Authorities in Kenya

5.0 Introduction

In the first chapter it was indicated that decentralization of the tax and expenditure responsibilities to local authorities is an important aspect of intergovernmental fiscal relations which may enable local authorities to render more efficient local services and be accountable to their local constituents. In this concluding chapter, we re-examine the current statutory powers of local authorities in Kenya for property tax administration with a view to suggesting possible areas that need improvement in line with land management and fiscal reform for a better and more efficient administration of land value taxation in Kenya.

5.1 Reforming Land Management to Improve Tax Coverage and Valuation Accuracy

At least two important functions in the land tax system are served by an efficient land management program. The first is tax base identification and the other is tax base valuation. The other components of the land taxation system rely very closely on these two functions.

At the heart of a good land management system is the development of land markets which in turn depends on the land delivery system comprising planning, survey, registration, approvals and allocation (including sub-divisions and renewal of leases).

The power to initiate the preparation of the physical development plans in Kenya lies with the Director of Physical Planning under sections 16(1), 23(1) and 24(1) of the Physical Planning Act of 1996.[21] Section 5(1) (e) stipulates that the Director of Physical Planning shall advise the Commissioner of Lands and local authorities on the most appropriate use of land (including land management) such as change of user, extension of user, extension of leases, sub-division of land and amalgamation.[22] In addition, the Director shall require local authorities to ensure the proper execution of physical development control and preservation orders.

The Physical Planning (1996) Act gives wide powers to the local authorities to control development of land in their areas and to make by-laws for efficient and healthy utilization of the same but the ultimate power of supervision and regulation for the better carrying out of the stipulations of the Act lies with the Central Government Minister in charge of local authorities upon advise from the Director of Physical Planning.

The level of centralization of physical planning in Kenya is therefore still very high.

The valuation for Rating Act (cap 266) stipulates in section 6 that a draft valuation and supplementary valuation roll shall contain:

(i) the description, situation (location) and area (size) of the land;

(ii) the name and address of the rateable owner;

(iii) the value of unimproved land.

Other details such as the value of the property as improved and the value of improvements may be excluded from the roll with the approval of the Minister of Local Authorities. The details (i)—(iii) above form the fiscal cadastre and establish the taxable base (coverage) of the land tax list (roll).

The size of the taxable land is determined by a licensed surveyor [23] who does the actual field measurements, office computations and draws the survey plans. The licensed surveyor may be in public or private practice.

In cases of sub-divisions and surveys involving agricultural land, the owner of the land must get consent from the appropriate Land Control Board under the Land Control Act, (Cap 302) upon which the surveyor draws mutation forms before the physical survey is done to provide new parcel numbers for an amendment of registry index maps by the provincial surveyor.

The Survey Act does not include any input requirements from the local authorities or stipulation for local authority participation. The technical specification for precision survey for land discourages ordinary developers, delays the development processes and activates informal sub-divisions of land. Private surveyors charge high fees whereas the Director of Survey lacks sufficient numbers of personnel to carry out survey work speedily. Coupled with poor record keeping at the District level, the survey work which establishes a base for land registration is often a slow and an inefficient process.

The rapid extension of local authority boundaries because of rapid increases in (urban) population quite often precedes planning and survey leading to the growth of unplanned structures, slums and uncoordinated development. The high demand for housing (which puts a strain on urban infrastructure) leads to land allocations of unplanned and unsurveyed parcels which cannot therefore be accurately captured in the fiscal cadastre.

This undermines the accurate identification of the tax base thus leading to the tax coverage dilemma.

To improve the tax coverage, there is therefore the need to decentralize land planning, land survey and land registration. The Central government could, for instance, second staff to each local authority in the positions of deputy Directors of surveys, planning and registration respectively to initiate and coordinate these functions for the local authorities. In the initial stages some precision for land surveys may be sacrificed for speed of the work. University of Nairobi students may be used on periodic attachment to carry out the work. The costs could finally be loaded on the rating liability of each property rate/tax payer since the effect of survey, planning and registration of land is to increase the land value. Further, land registration details should be accurately replicated in the registers of the local authorities to ease the compilation of the fiscal cadastre.

At present, the registration process is over-centralized in District headquarters where the records are hardly ever up to date and where land transactions prices are under-stated to avoid the payment of full conveyance fees (Stamp Duty). Indeed, in some districts, the transfer records indicate all the transactions as “gifts.”

There should be a statutory stipulation / requirement that copies of records of even newly registered land parcels be deposited with an appropriate local authority for it to update its land records to have up to date names and addresses of taxable owners.

In the preparation of the valuation roll, the third requirement is the indication of the unimproved value of land. This introduces the valuation dilemma. The valuation process establishes the distribution of the weight of the land tax amongst tax payers and tax jurisdictions (Kelly, 1999). The valuation for Rating Act (Cap 266) in section 8(2) defines the value of unimproved land, for the purposes of a valuation roll or supplementary valuation roll as “the sum which the freehold in possession, free from any encumbrances therein might be expected to realize, at the time of valuation, if offered for sale on such reasonable terms, and conditions as a bona fide seller might be expected to impose, and if the improvements, if any, thereon, or thereunder had not been made, due regard being had, not only to that particular land, but also to other land of similar class, character or position and to other **comparative factors**, and to any restrictions imposed on the land, and on the use of the land, by the local authority or a town planning authority by or under any by-laws or town planning powers, being restrictions which either increase or decrease the value of the land."

The Act (Cap 266) further states that in arriving at the value of land, the valuer may adopt any suitable method of valuation. Valuers in Kenya mostly use the market-comparison / comparable method of valuation to value unimproved parcels of land for purposes of land taxation. Indeed, the Act implies the need to use this method. The market-comparison, comparable-sales or market data approach enables the determination of values of some taxable land by reference to actual sales of a subject property or of a comparable land and is applicable to property types for which a reasonably large number of recent, reliable transactions exist to create market value patterns.

The method works under the assumption that the market will determine a price for the land being valued in the same manner that it determines the prices of comparable, competitive land within a defined geographical location for a defined purpose.

The methodology goes broadly as follows:

(a) investigate the market to get information about recent transactions, listings and offers of land similar to the parcel being valued;

(b) scrutinize the information so obtained for factual accuracy, degree of similarity, objectiveness of transaction, limitations, caveat, encumbrances etc.;

(c) establish the appropriate units of comparison (acre, square metre, slope etc.) to develop the basis of comparison;

(d) adjust the comparable in terms of value unit indications to value the subject land.

The efficiency with which the land markets will determine similar values for properties with the same, similar or comparable location, amenities, risks and demand tendencies is dependent upon the time and class of land under scrutiny, its market structure and the efficiency of the mode of communicating the land market information.

The fact that land being valued as bare is in fact fully improved,[24] that the market may contain an insufficient number of transactions to create reliable value patterns and the basic locational non homogeneity of land, and, the wide variations in the degree of its market organization underlie many of the difficulties in the use of the market comparison method.

In particular, three types of problems have their roots in the characteristics of land and its markets. These difficulties are to do with <u>defining the market value</u> in the wake of real and practical imperfections in the land market, sometimes resulting in wide variations in the market prices over short periods of time for even reasonably identical parcels—necessitating the setting of some remote criteria for determining when a market sale will be acceptable evidence of market value.

The second difficulty arises in the establishment of the exact terms and conditions of comparable sales. Records in the lands offices hardly show the terms and conditions under which the sales are effected, or, transactions concluded, as the selling price of a parcel of land will almost certainly vary according to the time allowed for concluding the sale, the relative knowledge of purchasers and vendors in the market, and, since the land purchase involves large sums of money (capital outlay), with the terms of financing or the cost of effecting the transaction.

In circumstances where markets are characterised by a high degree of professional participation (industrial and commercial land) the state of knowledge and velocity of market information may be high.

If land is sold to get some working capital for a business or where the shilling allowance has to be made for lack of knowledge in a sub-division or sale transaction, the valuer may be forced to use some subjective judgement.

If the valuer cannot obtain suitably recent transactions s/he may research sales of the more distant past to establish comparability. However, a decision then has to be taken as to the relative significance of recent sales as compared with sales more distant in time and as to the means of making adjustments in sales for the differences in the timing of transactions.

Land zoned for different uses may have varying frequency of sale because the amount and quality of market information concerning the various planning zones may vary considerably.

Market sales data could however, be adjusted for differences in the time of sale by the use of computer analysis of multiple-listing information using appropriate software.

The third major difficulty in the use of market-comparison method of valuing taxable land is to do with the determination of comparability of individual sales or listings.

The distinct nature of each parcel of land in terms of its location, physical and neighbourhood characteristics increases the burden of comparability because the valuer must take cognizance of all these factors in using market sales of different parcels of land to establish the value of a subject land. The assignment of the shilling importance of the differences observed is a real cause of worry for valuers in Kenya. The grid technique, wherein different attributes of the land are given percentage ratings in comparison with the subject being valued comes to mind but this is perhaps easier to implement on residential buildings than on bare land.

In cases where the residual method has been tried for arriving at the value of unimproved (bare) land from a state where land is fully improved or developed with, say commercial property, the great number of variable estimates (future yields, income, rentals, costs etc.) have often made the resulting value to be unjustifiable and therefore suspect.

There is therefore the need to establish a monitoring body nationally or paid by local authorities that will be charged with the responsibility for valuation quality control (as exists in Australia, New Zealand and Canada). This body will set basic definitions and standards to be made for valuers preparing valuation rolls and will subject the work outcome to formal quality assurance measures.

The functions of such a body, working on a strict time schedule, would be along the lines suggested by Franzsen (1999) as:

(i) setting up minimum quality and standards to be met by valuers preparing valuation rolls for local authorities;

(ii) monitoring and auditing the valuations submitted in the valuation rolls against established but flexible minimum standards;

(iii) advising the government, local authorities, rate payers, valuation courts on technical aspects of valuation;

(iv) providing certification to the stakeholders of the standards met by the valuation rolls and especially that the values reported are accurate, fair and just between the parties and, across tax paying jurisdictions.

For the stakeholders to have faith in the system of valuation, it must ensure that the relative values are accurately calculated so that in an ad valorem tax regime, equal value properties pay an equal level of tax and that lower value properties pay a lower level of tax than higher value properties and that inter-jurisdictional variations in land values are captured by the actual variations in values reported to reflect shifts in market value of land between land user categories and locations (Kelly, 1996) to maintain equity in land tax liability. This may go along way in addressing the valuation dilemma in the tax base equation of the fiscal cadastre.

5.2 Fiscal Reform to Enhance Land Tax Administration

The 1994-1996 National Development Plan underscored the importance of strengthening the resource capacity of local authorities, reducing controls on them and reviewing their organizational structures to enhance their efficiency for infrastructure and service delivery.

In 1996, the Kenya Local Government Reform Program was launched to perform this function and specifically to (1) enhance revenue mobilization and financial management (2) improve the central—local (financial) relations and (3) to increase beneficiary participation in resource allocation and fiscal planning.

A major component of this fiscal reform is the reform of the local land tax administration whose central tenets, as already discussed, are tax rate performance, billing, collection & enforcement. There are also the appeals, tax payer services and policy review to link the land tax with the general real estate sector and the wider intergovernmental fiscal relations.

The valuation function of the land tax system links the physical land base within the jurisdiction of the local authority and the revenue base. The actual revenue level is derived by applying a rate struck (tax ratio) to the taxable value of each property in the valuation roll in a process known as tax assessment—this process establishes the tax burden for each rate payer and if not properly executed may lead to <u>an assessment dilemma</u>.

The land tax revenue, in Kenya as already noted is a residual income obtained in a budgetary process to meet the shortfall in the budget after all the incomes from other sources have been added together.

Local authorities are empowered by statute (s.6 cap 267) to levy up to 4 per cent of the unimproved site value on each rateable property without reference to the Minister. They vary the tax rate from year to year to maintain the buoyancy of the land tax (rates) and it is perhaps proper for the Minister to exercise some supervising role in this matter to maintain the overall macro-fiscal balance and to ensure that local authorities do not exploit their constituents because this could be politically explosive.

However, the powers of the minister in this respect should be delegated fully to the provincial local authority officers and a time limit statutorily set within which the officials have to respond to the local government request to exceed the four per centum. If this deadline is not met, the local authorities should have the power to set the percentage rate at an appropriate level but to furnish the Minister with the requisite details. This ensures a timely fiscal performance and acts as a check on the performance of the provincial local government officials.

If a local authority incurs special expenses in respect of a given location or project it can levy betterment charges (special rate), cap 267 s.9(1)) to recover those expenses. Further, the local authorities are empowered (section 16 cap 267) to grant a discount of up to 0.05 in the shilling for timely payment of rates. Nairobi has advertised this option each year for the last four years giving up to 5 per cent discount for those paying all the rates liability in January and 4%, 3%, 2% and 1% discounts for those clearing their bills in February, March, April and May respectively. This is a decentralized incentive structure that should be encouraged for all local authorities in Kenya but also, particularly, the rate payers through a periodical rate payer information services.

It is perhaps in the collection and enforcement of land tax revenue that there is the biggest challenge to fiscal management. The greatest land tax revenue collection dilemma in Kenya is precipitated by lack of properly trained, motivated and reliable tax collectors, tax collection procedures that allow dishonesty to thrive, problems of enforcing penalties for non-payment, that is, lack of local legal enforcement authority, conflict of interest and fear of political repercussions and, non-payment of contributions in lieu of rates by the central government and parastatal bodies. The rates collection in Kenya has never been anywhere near optimal level and yet it is in rates collection that the local authorities enjoy a near total decentralized authority. The world Bank (1992) estimates some 20-70 percent collection. Rates outstanding are a civil debt under the Civil Procedure Act (cap21) and any rate due together with interest thereon are a lien (charge) against the land registered at registries. The Act (Cap267, section 17(8)) gives the local authorities upto 12 years to launch a suit or proceedings to recover money due in respect of any default in rates payment.

Some level of tax payment compliance is usually achieved by a combination of incentives, sanctions and penalties but these, however well executed mean little if the officers collecting the tax revenue are not efficient and well motivated.

Local authorities should therefore set aside a fund for training and capacity building for their local personnel and also investigate ways and means of motivating the staff. Perhaps collection levels could be linked to some form of bonus payment. In addition, the use of banks as pay-points has worked in the past for some income receiving agencies. Many people find it convenient to pay their bills as they receive their salaries or deposit money in banks in one journey rather than set aside some time to make payments at the local authority offices.

There is the need to establish a Local Authority Revenue Monitoring Unit that is linked to capacity building for the authorities to monitor land tax revenue collection performance for each local authority in the country. This unit will make revenue assessment reports to the finance committee for the appropriate local authority with a copy to the minister for local Government. The monitoring unit will be an agent of necessity totally created and controlled by the local authorities themselves to ensure that it does not add another layer of centralized supervision of the local authorities. Its work has to be purely professional, objective and advisory.

The local authorities have full decentralized powers to identify the current and perennial defaulters, research on and introduce effective billing systems, review the by-law obstacles to speedy collection. In addition, the penalties for the late payment (or non-payment) of land tax should not fall below the interest rate or inflation levels at any one time to increase the cost of non-payment.

At present, local authorities rely on the central government's judicial process to institute legal action against persistent land tax payment defaulters.

Land tax payment default could remain a civil debt for only one year after which non-payment should be a criminal act enforceable as such by the involvement of other state organs such as the police and provincial administration.

Recently, Kenya has successfully introduced a commercial court to deal specifically with business cases. Likewise a revolving court known as Municipal Court could be formed to hear cases involving default in the payment of local tax. This court could move from one provincial headquarter to another on a circulated time table to hear and determine cases of all the local authorities in that region. The expenses of this court could be met by the local authorities themselves on approved budgets. This will give local authorities stronger enforcement powers.

There is also the problem of contributions in-lieu-of rates by the central government. Few local authorities can remember ever receiving this payment in the recent or distant past. The central government has, late last year, introduced Local Authority Transfer Fund (LATF[25]) whose initial capital derives from five per cent of all tax collected under the Income Tax Act (cap 470) during the 1998/1999 financial year.

The purpose of the fund (managed by the central government treasury) is to supplement the revenue base of local authorities to enable then finance the services and infrastructure as provided for under the Local Government Act (Cap 265). This is a vertical fiscal transfer and the government could easily set it off against their obligations for payment of contributions-in-lieu of rates.

Section 23 (1)—(2) of the Rating Act should therefore be amended to stipulate that contributions-in-lieu-of-rates shall not include (or be set off against) any grants or fiscal transfers payable from time to time to local authorities by the central government.

Ordinarily, the number of agencies involved in the payment to the local authorities of the contribution-in-lieu of rates should be reduced.

The valuation and rates assessment of government land is done by the valuers appointed by the local authority but the liability for payment lies with the Ministry of Lands and Settlement at the Commissioner of Lands office[26] whereas the amounts of money to be disbursed is decided by the Treasury while the actual disbursement is done by the Ministry in charge of local authorities. There is a floating suggestion for the merging of the two ministries of Lands & Settlement and that of Local Government in order to harmonize their functions and to increase the departmental contact for better land and urban management in Kenya.

Timely disbursements can also be made if the Treasury is statutorily committed to payment of contributions-in-lieu-of rates by a given date.

Further, the policy of exemptions should be reviewed. The law permits exemptions for land used for public non profit making purposes as determined by the Minister. The power to establish whether or not some land use falls within the public domain should be decentralized to the local authorities to monitor such use and review it from time to time to determine the size of land appropriate for such a use—any excess land should be charged on the government for the payment of contribution-in-lieu-of rates, failing which the local authorities should be statutorily empowered to levy user charges. It is important for local authorities to value the land that are under exemption so that the valuation rolls can also serve as their land registers to enable them determine accurately the extent of the tax base sacrificed through exemptions.

In Kenya, as indicated earlier, property tax is not allowed as a deduction from the income tax nor is it set-off against any other tax. This makes it particularly visible and politically sensitive. The collection and enforcement system should therefore be sustained by efficiency and political support.

This can be done if local authority incomes and expenditures are known to, and supported by, local and national politicians as well as the tax payers themselves. Therefore, local authorities should set aside some day in the year, advertised in the press, to be known as "stakeholder day" in which they take upon themselves to explain to the tax payers, local residents and political leaders their service performance record and planning (physical & economic) projections for the next few years.

5.3 Local Government and Land Value Taxation in Kenya—Conclusion and Recommendations

The main concern of this paper has been to examine the administrative and statutory frameworks within which local authorities in Kenya levy land taxes.

There is little disagreement that the land tax could yield much more revenue for local authorities in Kenya than it is at the moment. Policy rhetoric has in the past blamed the low performance of the land tax to weak internal mechanisms within local authorities themselves, however, this study shows that local authorities are largely handicapped in this task by their skewed relationship with the Central government which controls almost all the functions that identify, organize, manage and deliver land to the point at which it can be subjected to tax by the local authorities. These processes include land identification, survey, planning and registration in urban areas and in Trust land (Customary land), management, adjudication, registration and alienation in rural / agricultural areas, allocations, allotments and lease renewals of land in the urban areas and, compulsory acquisitions in both urban and rural areas are effected only by the Central government. In addition, after the local authorities have levied the land tax (rates), enforcement for payment can only be done by the central government's legislative machinery which, for civil debts, is often bureaucratic and slow. Further, the budget proposals and policy reviews by local authorities must receive approval by the Minister for local government / authorities. Quite often, the valuers also come from the central government because only four of the local authorities (Nairobi, Mombasa, Kisumu and Nakuru) have employed their own (land tax) valuers. The central government has never had the incentive to speed up the land delivery process to enable local authorities capture a wider coverage.

Default in land tax payment is also a civil debt as opposed to a criminal act as for other taxes in the country. The local authorities have been unable to resort to other measures (such as foreclosure & lien) against the land title for fear of political repercussions given their weak central-local relations and given the Minister's wide supervisory powers over them through the mechanisms of the Local Government Act (Cap 265) of the Laws of Kenya.

In an attempt to make the land tax system realize its potential, there is the need to review the central-local government relations and to examine the various sections of the Constitution, the Local Government Act (Cap 265), the Surveyors Act (Cap 299), the Planning (1996) Act, the Valuation for Rating Act (266) and the Rating Ac (Cap 267) with a view to amending them to give the Local Authorities more power for urban land management. In addition, in the rural areas, land adjudication and registration should now be done by the respective local authorities (or in partnership between the Central and the Local government) to speed up the process of title identification to allow the various local authorities to levy taxes on agricultural land. Some sort of mass appraisal systems will have to be devised. Such a tax which requires substantial political support would probably have to be earmarked and spent on tangible and visible projects like health, education and roads that have the support of local taxpayers.

In order to harmonize the various definitions and technical issues, there is the need to form a Valuation Standards Monitoring Board to determine minimum standards of valuation of land for purposes of land tax. Such a body would be answerable to, say the Association of Local

Government Workers in Kenya (ALGAK) or some other similar union of local authorities. Its main function will be to define, set and monitor valuation standards countrywide to ensure continued confidence in the technical valuation processes for the land tax system.

There is also the need to establish by the local authorities themselves, again answerable to their own association or union, a Local Authorities Monitoring Unit to research on the best land tax collection practices and promising options, to remove bottlenecks in the collection procedures for local authorities and to encourage them to learn from one another and share experiences. A revolving Municipal Court should be introduced to sit alternately in provincial headquarters to deal specifically with land tax payment default. Such default should attract criminal rather than civil proceedings in court. Local authorities must take responsibility for explaining publicly, their functions, work progress, proposals at least twice a year during "stakeholders" days. This increases their legitimacy and subjects them to local scrutiny. However, the form that the new intergovernmental relations should take, the mechanisms and structures for decentralization as well as amendments to be made to the Acts of parliament need some further research.

Endnotes

[1] Rondinelli (1990) identifies four types of decentralization viz (i) Devolution—transfer of political and administrative power from national to local governments; (ii) Delegation—transfer of certain administrative powers to agencies of the central government e.g. parastatals; (iii) Deconcentration—transfer of functions but not power from national to locally appointed administrative units, and, (iv) Privatization—transfer of power and state responsibilities by some approved mechanisms to private sector actors (groups or companies).

[2] For instance

(i) 1966, W.S. Hardacre, Local Government Commission Report;
(ii) 1970-71, Report of the public service structure and Remuneration Commission;
(iii) 1973, Nyaga Committee Report (working party);
(iv) 1976, Bahl & Mant Report analysing local government finance in Kenya with proposals for reform (IMF Report);
(v) 1979-80, Report of the Civil Service Review Committee;
(vi) 1982, Report and Recommendations of the working party on Government Expenditure
(vii) 1986, Sessional Paper No.1 on Economic Management for Renewed Growth
(viii) 1992, World Bank's Kenya Local Government Finance Study (No. 8997-KE);
(ix) 1995, Report of the Commission of Inquiries on Local Authorities in Kenya;
(x) 1997, Kenya Local Government Reform Program (HIID, December, 1997).

[3] See (i) Kenya (1996): Economic Reforms for 1996-1998—the Policy Framework Paper
(ii) National Poverty Eradication Plan, 1995-2015
(iii) National Development Plans, 1994-1996 and 1997-2001

[4] See the Report of the Commission of Inquiry on Local Authorities in Kenya, the Omamo Report of 1995.

[5] Kenya Power & Lighting Company (KPLC) Ltd generating and selling electricity under the Electric Power Act, Cap 314, Laws of Kenya.

[6] The President of Kenya has recently appointed a Commission of Inquiry under section 3 of the Commission of Inquiry Act (cap 102) to examine and analyse the land law system in Kenya (Govt. Gazette Notice No. 6594 of 17th November, 1999) and to recommend the main principles of a land policy framework to foster an economically efficient, socially equitable and environmentally sustainable land tenure and land use system.

[7] In its preamble it is stated that it is "An Act of Parliament to make further and better provision for regulating the leasing and other disposal of Government lands, and for other purposes." Other Acts of Parliament dealing with Registration and transfer of urban land in Kenya are Registration of Titles Act (chapter 281) and Land Titles Act (chapter 282) of the Laws of Kenya.

[8] This is done under the Physical Planning Act, 1996—an act of parliament to provide for the preparation and implementation of the physical development plans and for connected purposes—applicable to all parts of the country except on leave of the minister incharge of physical planning.

[9] For urban areas some of the statutes governing subdivisions of land are the Town planning Act (cap 134)—provides for subdivisions of Freeholds within urban areas; Government Lands Act (cap 280)—provides for sub-division of alienated and unalienated Government Land.

[10] The composition of a Land Control Board is minimum (8) and maximum (12) people chaired by the District Commissioner, two public officers, two nominees of the local authority (county Council) and between three to seven residents of the locality or land control area. All must be appointed by the Central Government's Minster for Lands and Settlement. More than 50% of the membership of the board to be owners or occupiers of agricultural land in the area.

[11] The preamble to this Act states that it is "An act of Parliament to promote and maintain a stable agriculture, to provide for the conservation of the soil and its fertility and to stimulate the development of agricultural land in accordance with the accepted practices of good land management and good husbandry."

Agriculture includes cultivation and grazing uses as well as the use of land as woodland and meadow.

[12] Sessional Paper No.1 of 1994 deals with Economic Recovery and Sustainable Development

[13] Sessional Paper No.2 of 1996 covers Industrial Transformation to the year 2000.

[14] In the subsidiary legislation to the Trust Land (rev. 1970 Cap 288) Act p.19, all District Commissioners are appointed licensing officers (S. 37(2)) within their respective districts for the purpose of granting licenses for the grazing of livestock in Trust Land, and for the removal of timer or other forest produce from Trust Land. In his absence any other officer appointed by the county council may act in the capacity of a licensing officer.

[15] These are income tax, value added tax, customs & Excise duty, stamp duty etc. These are not discussed in this paper because their incidence on household incomes and relationship with land related taxes is yet to be investigated.

[16] Constitution of Kenya, Local Government Act (Cap 265), Valuation for Rating Act (Cap 266) and the Rating Act (Cap 267) Laws of Kenya.

[17] The current total national population of Kenya is estimated at about 30 million.

[18] Recent analysis of property tax in Kenya can be found in Kelly (1999), Ahene (1999), Kakumu (1999), Konyimbih (1998), HIID/IGFR Report (1997), Konyimbih (1996), Olima & Syagga (1996) and Syagga (1994). Other analyses of particular relevance to this chapter are Franzsen (1999), Kelly & Musunu (1999), Muller (1998), Olivier (1995), Keith (1993), Dillinger (1992) and Bird (1974).

[19] In Kenya the law (Valuers Act, Cap 532, Laws of Kenya) stipulates the qualifications and professional indemnity status of persons who can practice as valuers (appraisers). Such persons should hold a Bachelors (1st) degree in Land Economics/ Real Estate and must be registered and licensed with the Valuers Registration Board. There are approximately 300 qualified valuers in Kenya.

[20] Agricultural land is defined in the Agriculture Act (Cap 318) as all land which is used for cultivation, crop and livestock husbandry, orchards, woodlands, not being land which, under any law relating to town and country planning, is proposed for use for purposes other than agriculture.

[21] See Kenya Gazette Supplement No. 61 (Act No. 6).

[22] See sections 29-35 of the Physical Planning Act, 1996.

[23] Section 22 of the Survey Act (Cap 299) provides that surveys of land (other than adjudication of Trust / Customary land for the first registration) are to be conducted under the direction of

the director of surveys and all survey plans (with boundary marks) and records should be deposited with the Director of Surveys to be Government property (Section 3, Cap 299). Accurate surveys are needed before land can be registered in Kenya under the various statues (e.g Caps 280, 281, 285 and 300 of the Laws of Kenya). Aerial surveys are permitted on notice to the Director of Surveys under section 42 of Cap 299.

[24] The valuer has often had difficulty in interpreting the meaning of unimproved land. For instance, is a piece of land to be considered unimproved if it has offsite facilities like water pipes, trunk sewer and roads within reach? How about if the services and utilities (water, pipes, telephone cables, electricity lines, sewer lines) run under the land?

What method of valuation (market comparison or residual) is to be used when the economy is at the start, in the middle or at the end of a recession?

How possible is it to isolate the value of land from that of improvements both onsite and offsite?

Don't land + buildings become a "joint product" in which "the chemical no longer exists in the pure state?"

How useful is urban (non-recreational land) without structures on it?

[25] See Local Authorities Transfer Fund Act, 1998 (No. 8 of 1998)—an Act of Parliament to provide for the establishment of Local Authorities Transfer Fund, to provide for the sources, purposes and the administration of the Fund and for matters incidental thereto.

[26] The Deputy Chief Valuer, Rating section has to certify that government lands valuation roll has been prepared in respect of the claiming local authority.

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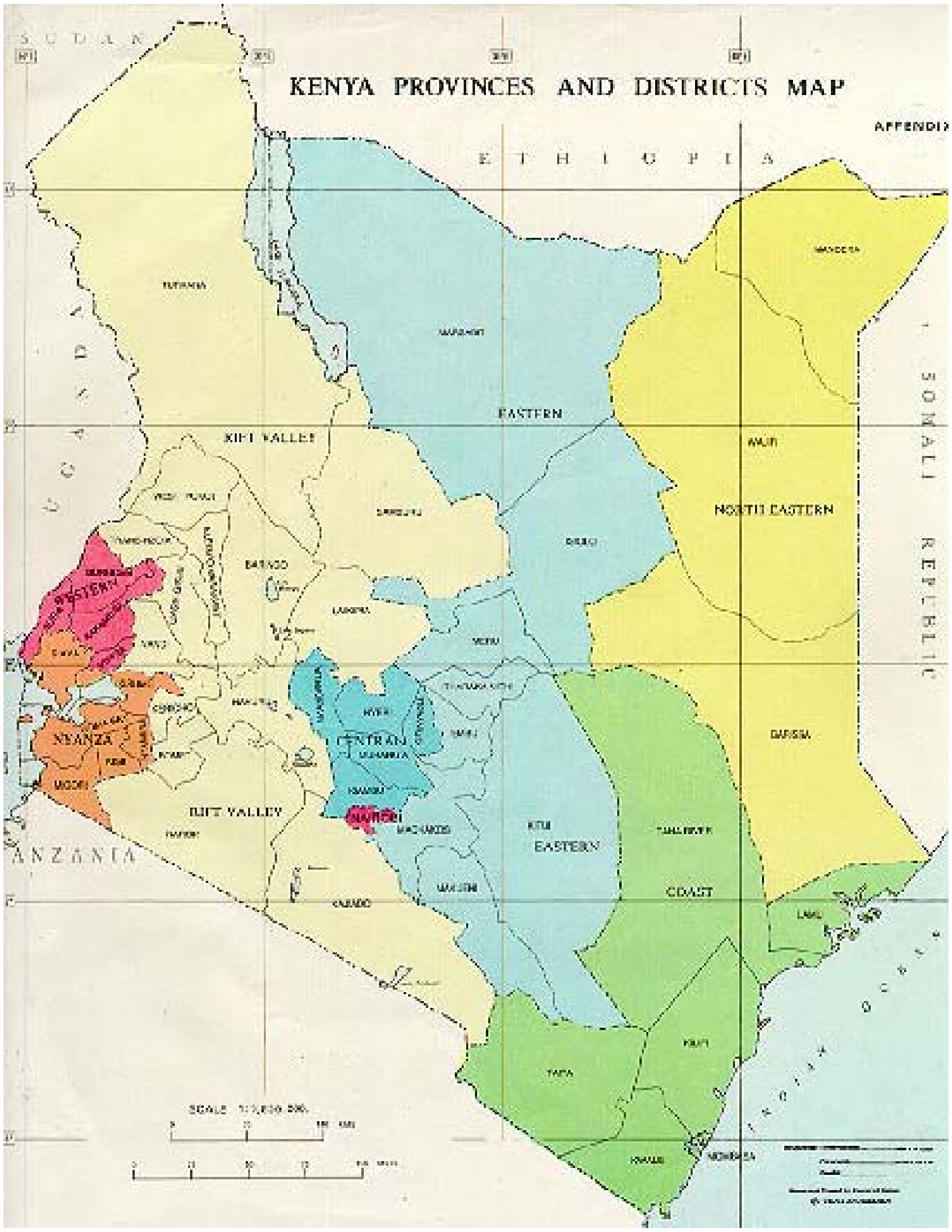
Appendix 1: Kenya Provinces and Districts Map



Appendix II: Kenya Land Classification Map