Application of Fiscal Instruments
In Land Management:
A Case Study of Kajiado County

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Abstract

Fiscal instruments are tools that governments use to manage revenue and expenditure and therefore influence the growth (or stability) of the various sectors of the economy. Government revenue is derived primarily through taxation. In Kenya, land taxation has contributed less than 1% of government revenue for the past three years. The Sessional Paper No. 3 on the National Land Policy provides for the establishment of clear fiscal framework for land management will generate public revenue; provide a stable fund for acquisition of land for banking, servicing land, facilitating the efficient utilization of land, providing incentives for appropriate land uses and discouraging speculation.

This research assessed the land taxation, land use and land administration practices within Kajiado County with a view of making recommendations towards improvement of the land based taxation in order to improve its contribution to government revenue.

The main land uses in Kajiado County are pastoralism; commercial, industrial and residential development; mining and quarrying; agriculture and wildlife conservation. The study found that land use has changed over the past 10 years with 13.24% increase in agricultural land cover recorded due to increased cultivation; 42.5% increase in mining activity and a 30.9% increase in urban development. These land use changes need to be tapped to contribute to government revenue.

The study found that the administration of Land Tax is done through the Local Authority, the District Land Registries while environmental levies are charged by NEMA, various Water Resources Boards, Local Authorities and the Judiciary and the District Environment Offices for environmental levies. The study further found that the community did not feel the impact of revenue collected primarily due to limitations in collection of Land Taxes, governance issues in Land Tax administration and the lack of up to date computerized information on fiscal cadastre. 75% of the study respondents were of the opinion that the Tax Level was adequate to meet Revenue requirements and provide Land Management Services.

The study recommended various measures to increase the Land Tax Base and improve Land Tax administration and its application for public benefit.
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Abbreviations

AWF        African Wildlife Foundation
GOK        Government of Kenya
KFS        Kenya Forest Service
KRA        Kenya Revenue Authority
KWS        Kenya Wildlife Service
NEMA       National Environmental Management Authority
NLP        National Land Policy
Chapter I

Introduction

1.1 Research context

Fiscal instruments are tools that governments use to manage revenue and expenditure and therefore influence the growth (or stability) of the various sectors of the economy. The two main instruments of fiscal policy are government expenditure (government budget) and revenue (taxation). In Kenya, various legislation provides for taxation of land-based resources in order to optimize extraction of these resources or to make the resources contribute to government revenue. Changes in the level and composition of taxation and government spending impact on the level of economic activity, the pattern of resource allocation and the distribution of income within a country.


The 2010 Constitution of Kenya mandates the national government to impose income tax, value-added tax, custom duties and other duties on import and export goods and, excise tax. County governments may impose property rates, entertainment tax and any other tax that it is authorized to impose by an Act of Parliament. The Constitution also provides that national and county governments may impose charges for services (Article 209).

The key fiscal instruments applied to land at present are governed by: the Stamp Duty Act Cap 480; the Income Tax Act Cap 470; the Estate Duty Act Cap 483; the Rating Act Cap 267 and the Valuation for Rating Act Cap 266.
1.2 Fiscal Instruments as agents for land reform


A clear fiscal framework for land management will generate public revenue; provide a stable fund for acquisition of land for banking, servicing land, facilitating the efficient utilization of land, providing incentives for appropriate land uses and discouraging speculation (GOK, 2009).

Article 60 of the Constitution of Kenya provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with certain principles which include equitable access; sustainable and productive management of resources; and sound conservation and protection of ecologically sensitive areas. These principles reflect the desire of the people of Kenya collectively to have land used productively, equitably and sustainably.

Article 66 (1) gives authority to the government to regulate the use of land or any interest in or right over land, in the interest of defense, public safety, public order, public morality, public health or land use planning. Article 67(g) of the Constitution provides one of the functions of the National Land Commission to be to assess tax on land and premiums on immovable property in any area designated by law.

Article 119 of the National Land Policy provides that “the government shall ensure that all land is put into productive use on a sustainable basis by facilitating the implementation of key land policy principles on conservation of land quality, environmental audit and assessment, productivity targets and guidelines, land sizes and land use planning”. Article 168 of the National Land Policy provides that to facilitate efficient utilization of land and land-based resources, the government shall establish a land taxation regime that facilitates efficiency in revenue collection, utilization and servicing of land, provides incentives for appropriate land uses, discourages land speculation and improves the capacity of public institutions including local authorities to assess and collect taxes.
This research posits that the laws relating to land taxation and land management have failed to contribute adequately to public revenue and influence achievement of productive, equitable and sustainable use. The lack of a clear fiscal management framework has hindered the achievement of these principles.

1.3 Statement of the problem

The land taxation, assessment and collection procedures under the existing laws do not provide effective fiscal management frameworks. The fiscal measures do not generate adequate revenue for land management activities undertaken by the state. The current fiscal measures have failed to discourage land speculation, inefficient utilization of land and give incentives for sustainable land use.

The National Land Policy (Sessional Paper No. 3 of 2009) was adopted by Parliament in December 2009. The same policy principles are reflected in the 2010 Constitution of Kenya promulgated in August 2010. The provisions of these two documents on aspects relating to fiscal instruments and land use are yet to be initiated.

This research aims to explore the various fiscal instruments currently used in land management and their effectiveness. The research will aim to provide policy recommendations for use in the revision of legislation and formulation of appropriate sectoral policies.

1.4 Research objectives

The main objective of this research was to assess the application of fiscal instruments in land management in Kenya. The study focused on the fiscal instruments used in land management in Kajiado County. The specific objectives were:

1. To review the current fiscal instruments that relate to land in Kenya.
2. To review the effectiveness of these instruments and identify gaps requiring to be addressed.
3. To provide policy recommendations for use in the revision of legislation and formulation of appropriate policies.
1.5 Justification for the research

Section 168 of Sessional Paper No. 3 of 2009 on the National Land Policy provides that the Government shall establish a land taxation regime that facilitates efficiency in revenue collection, utilization and servicing of land, provides incentives for appropriate land uses and discourages land speculation. The taxation regime should also improve the capacity of public institutions including local authorities to assess and collect taxes.

The regulation of land use is one of the provisions in both the Constitution and the National Land Policy. The effect of lack of regulation of land use is demonstrated throughout the country in form of environmental degradation, lack of land for development, incompatible land uses, human-wildlife conflict, inequitable ownership of land, multiple policies relating to land use and non-cohesive implementation of policies by the multiple actors.

The Ministry of Land through the Land Reform Transformation Unit (LRTU) is in the process of formulating a National Land Use Policy and a National Spatial Plan. It is critical that this Policy is informed by credible research-based information.

1.6 Scope and limitations

The scope of this research will be limited to Kajiado County due to the limited research period and cost restrictions. This research will be limited to matters relating to fiscal measures and their influence of land management and use in Kajiado County.

1.7 Justification for selection of the study area

The study area is Kajiado County. This study area was selected due to its proximity to the Capital City Nairobi and the influence that this proximity has to the manner in which land in Kajiado is used. The County is also rich in biodiversity resources that are of national interest such as wildlife and mineral resources.

Kajiado County has in the past decade experienced an influx of people from other counties who have purchased land primarily for residential, commercial and industrial development. The main towns in the County have experienced rapid growth in the recent past.
Reports from the Revenue Allocation Committee indicate that Kajiado is the richest County in Kenya primarily due to its mineral and other natural resources. The vastness of the land renders it a good case study for the effect of current fiscal measures on land use and management in this area and how policy changes in land taxation may influence future patterns of land use and management and hence land reforms.

1.8 Study methodology

To successfully conduct this research, data and information was required on the current status of land management and land use in Kajiado County; the fiscal instruments applied to land and land based resources in the County; changes in land use experienced in the County in the last decade and the institutional framework for administration of land taxes in the County. This information was extracted from land administrators, tax administrators, land owners and other stakeholders through literature review, administration of questionnaires and through interviews.

A combination of the case study and survey research designs was selected as the study involved an indepth assessment of land resource taxation, with the study results being generalised to the whole country. The study also required a context that could be generalised to other areas. The researchers selected this context to be a County which is the new governance unit in Kenya. The researchers were of the opinion that by assessing one County as a case study, the results of the research could be generalized to other Counties as land use is governed by the same legislation nationally.

The Survey methodology was also selected because it allows the use of a variety of data collection methods such as questionnaires, interviews, review of documents and observation. The strategy enables a researcher to conduct a wide and inclusive study whose results can be generalized (Denscombe, 2007: 31). In addition, the strategy provides a broad view rather than an in-depth understanding of the occurrence under research (College of Estate Management, 2007b).

A representative sample of land owners and land users were randomly selected and interviewed at the two Land Registries in the County, Ngong and Kajiado land registries.
Primary data was collected by observation, administration of questionnaires and through interviews. Reconnaissance visits were conducted to the major towns in Kajiado County: Kitengela, Kajiado, Ongata Rongai, Ngong, Magadi, and Namanga. These visits enabled the researchers and their assistants to scope the study area, review the land uses by observation. Other social, economic and political factors influencing land use and management were also observed and documented.

Secondary data was obtained through library research from books, journals, review of relevant government legislation, review of government publications and past studies conducted locally and worldwide. Secondary data was also obtained relevant materials from internet literature sources such as Emerald Insight, Athens and Google Scholar.

Oral interviews were conducted with the residents in the area of study and key land administrators. Interviews were held with the following purposively selected officers:

Revenue Officer, Olkejuado County Council
Revenue Officer, Kitengela Revenue Collection Centre
Revenue Officer, Kajiado Revenue Collection Centre
Revenue Officer, Ngong Revenue Collection Centre
Revenue Officer, Namanga Revenue Collection Centre
Revenue Officer, Ongata Rongai Revenue Collection Centre
Revenue Officer, Loitoktok Revenue Collection Centre
Economist, Kenya Revenue Authority
Chief Economist, National Environmental Management Authority
Chief Executive Officer, Kenya Livestock Producers Association
Senior Warden, Kenya Wildlife Service Amboseli National Park
Collector of Stamp Duty, Ministry of Lands

The interviews elicited information on the adequacy and administration of land taxation; its contribution to public revenue; challenges in tax administration and proposals for improvement of land taxation to improve its contribution to government revenue.
A set of questionnaires were administered to a randomly selected sample of landowners and users study area so as to gather information on the various land and property taxes paid; the impact of tax on land use and land management practices and proposals for improvements in land taxation.

The questionnaires were distributed by hand (face to face) to maximise the chances of obtaining responses from the selected respondents. The use of a web-based questionnaire distributed by email was considered but rejected due to the low level of computerisation and computer skills.

Pre-survey questionnaires with a view of testing their applicability and relevance in the field. After this exercise, necessary amendments were made so as to come up with workable questionnaires for the study.

In collecting data, the researchers were faced with the following limitations:

1. Vastness of the County made it difficult to administer questionnaires to the public in the southern towns such as Namanga, Rombo, and Loitoktok.

2. The limited perception of land users on the benefits of taxation made it difficult to make them understand the application of revenue for taxation beyond provision of infrastructure services.

3. Limitation in time.

Data checks were conducted to ascertain the accuracy of the data and possible omissions and errors detected were corrected. Qualitative and quantitative analysis was used to describe the information derived as described in Chapter 4.
Chapter Two

Literature Review

2.1. Introduction

This Chapter reviews the theoretical basis of land taxation; land taxation as applied in Kenya and land taxation in other countries. The Chapter reviews the nature of the land tax, its operation and administration. The Chapter also compares the application of land tax in Kenya and in a sample of other countries. The Chapter aims to place taxation of land and land based resources in context.

2.2. Fiscal instruments

Fiscal instruments are policies and legislation that governments use to manage revenue and expenditure and therefore influence the growth (or stability) of the various sectors of the economy. A tax is a form of fiscal policy and it can be defined as a compulsory payment, usually of monetary form, made by the general body of subjects or citizens to a sovereign or government authority.

The two main instruments of fiscal policy are government expenditure (government budget) and revenue (taxation). In Kenya, various legislation provides for taxation of land-based resources in order to optimize extraction of these resources or to make the resources contribute to government revenue. The Key fiscal instruments that influence how land is used at present include: the Stamp Duty Act Cap 480; the Income Tax Act Cap 470; the Estate Duty Act Cap 483; the Rating Act Cap 267 and the Valuation for Rating Act Cap 266.

2.3. Justification for land taxation

Economic theory argues that under the assumption of perfect markets, a tax on any good with perfectly inelastic supply and non-zero elasticity of demand will be borne entirely by the supplier of the good. The tax cannot be shifted to its user because any increase in the price would lead to an excess supply of the product, because in a competitive market the demand for units that are offered at a price above market price will drop to zero. Therefore, a tax on land has to be paid by the owner of the
land (Skaburskis, 1995). Given that the supply of land is fixed, the tax does not have any substitution effect which makes it an ideal tax from an efficiency point of view.

Since the publication of Henry George’s *Progress and Poverty* in 1879, the possibility of using land value taxation as a source of government revenue has intrigued economists and other tax specialists. The impact of George’s ideas did influence the politicians of the day in New Zealand, Australia, South Africa, Jamaica and Kenya resulting in the introduction of such a tax.

Land taxation is based on the premise that it is the actions of individuals, communities and government quite apart from the exertions of the land owners themselves that will lead to increases in land values. The development of rural access roads, community centre’s and agricultural schemes increases land value without any effort of the land owner. Taxation ensures that the increase in value is 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 incidence (Bird, 1974).

The raising of the revenue is not the only purpose for which taxes are levied. The taxes are also levied for economic stability, fair distribution of income, equitable allocation of resources and to create employment.

**Raising revenue:** Rating is an important source of revenue for Local Authorities in Kenya. It constitutes about 22 percent of County revenues and about 1.3 percent of total Government Revenue (Ministry of Local Government 1999). Over the years, however, studies on Rating in Kenya indicated that rates revenue has remained stagnant or declined over the years.

Local Authorities in Kenya are responsible for provision and maintenance of urban services and infrastructure within their areas of jurisdiction. The capacity to accomplish these tasks in the face of inflationary forces, and continued rapid urban growth, is severely constrained by a shortage of revenue. The continued devolution of responsibilities by the Central Government to the County Government with measured supporting resources has worsened the situation.
**Economic stability**: During inflation, the government imposes more taxes in order to discourage unnecessary expenditure of individuals. On the other hand, during deflation, the taxes are reduced in order to encourage individuals to spend more money on goods and services. The increase and decrease in taxes helps to check the high fluctuations in the prices of goods and services and thus maintain economic stability.

**Fair distribution of income**: Taxes can be imposed which aim to achieve equality in the distribution of national income. The rich are taxed at a higher rate and the amounts obtained used to improve the welfare of the poor in order to achieve a fair distribution of income.

**Allocation of resources**: Taxes can be used to achieve reasonable allocation of resources in a country for optimum utilization of those resources. The amounts collected from taxes are used to subsidize or finance projects of national benefit shunned by private investors. The government may also remove taxes on some industries or impose low rates of taxes to encourage allocation of resources in that direction.

**Increase in employment**: Funds collected from taxes can be used on public works projects for instance, public infrastructure and buildings. Employment opportunities are created by use of manual labour in these programmes (Strathmore Press, 2007)

2.4. **Characteristics of a good fiscal framework**

According to George (1895), a good physical framework is paid without *quid pro quo*; is enforceable in law; may be levied against all persons (natural or corporate) and may also be levied against property.

Adam Smith (1976) in his famous book *The Wealth of Nations* suggested five Cannons of taxation which have formed the basis of tax design and tax reform in many countries. These principles are:

1. **Equality**: The distribution of the tax should be equitable. Every taxpayer should be expected to pay a fair share of the tax depending on his level of income.
2. Fairness: This principle embodies the concept of justice under the notion of ability to pay which states that the subjects of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities in terms of the revenue which they respectively earn or enjoy under the protection of the state.

3. Economy: When compared to the revenue collected, the administration and compliance cost of a tax should be as low as possible – in other words it must be economical to collect the tax.

4. Certainty: The tax which each individual is bound to pay should be certain and not arbitrary. The time of payment, the manner of payment and the quantity to be paid should all be clear to the taxpayer and to every other person.

5. Convenience: Every tax should be levied at the time and in the manner which is most likely to be convenient for the person liable to pay it.

The above principles are also applicable to taxes on land and land based resources.

2.5. Property taxation theory

A property tax is an *ad valorem* tax levied on the value of property that the owner of the property is required to pay to a government in which the property is situated. Property Tax is the most common revenue source for local governments throughout the world. (Dillinger, 1991)

The history and economic foundations of land taxation are rooted in the early 18th and 19th centuries. Taxation of land was justified because of the productivity of land. Ricardo’s (1817) theory of land taxation was based on the premise that a tax on land rents would not have harmful effects of the economy as such a tax would not inhibit production if the rents were the residual after payments for costs of variable factors of production. The rental income gave land its value and as such could be collected in taxes without decreasing the incentives for efficient production (Lindholm, 1965).

However, it was the American social reformer, Henry George (1879) who rigorously advocated for the Single Tax System in his book “Progress and Poverty”. The debate at the time was whether land should be taxed in its raw, unimproved form or whether land together with improvements in it should be the subject of taxation. This debate continues to present times.
Henry George’s primary concern was the elimination of poverty and injustice. He was unhappy about land use systems that he witnessed in the United States and the fact that large tracts of land lay idle or underutilised and land value appreciated automatically as cities developed and as population increased through societal and governmental investments, quite apart from the labour of the land owners. These increased values accumulated into windfall gains for the landlord forever creating inequalities and differentiation in society.

Henry George argued that such gains arising from societal efforts had to be a subject of taxation to provide revenue for servicing the same society. He argued that taxing only land would lead to its development and its re-development towards the highest and best use. Further, he noted that the tax would be borne entirely by the landowners and this would discourage the hoarding of parcels of land for purely speculative purposes.

George was influenced by the state of the economy of the time and in particular, how development and progress in society was accompanied by high levels of poverty. He argued that the disparity in incomes was a result of scarcity of land caused by speculation in land. The solution proffered by George was to replace all taxes with a single tax on land. This would have the desired result of making land more accessible to a greater number of people, raise wages, lower prices and consequently raise the living standards of workers.

2.6. Application of Land Taxation in Kenya

Kenya’s land and property tax system is based on legislation that gives powers to the State and Local Authorities to assess and collect a variety of taxes including; stamp duty, estate duty, property rates, and income tax on property rent. Land taxation is applied through the Stamp Duty Act Cap 480; the Estate Duty Act Cap 483; the Rating Act Cap 267 and the Valuation for Rating Act Cap 266. Land taxation is only applied in the urban areas and agricultural land is not taxed.

2.6.1 Land Taxation under the Rating Act (Cap 266) and Valuation for Rating Act (Cap 267)

Rates are the most important form of land tax collected by local authorities in Kenya.
The Valuation Rating Act Cap 266 and Rating Act Cap 267 provide the basis of rating and are administered by local authorities. Three rating systems could by law be used: unimproved site value, improved site value and area rating.

Vickrey (1970), defines Unimproved Site Value 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”. Improved site value rating allows for consideration of the investments while area rating, has the land area owned as the basis of tax. Unimproved site value rating is the most common basis for taxation in urban areas. Some rural local authorities, however, do use area rating as the basis of their taxes.

Other property taxes levied by local authorities in Kenya include a levy on transfer of property (although Stamp duty, which rakes the highest amounts of land tax, is payable to the Central Government, through the Ministry of Lands) and some betterment taxes. Betterment taxes are charged when infrastructure, such as roads and water, are extended to a newly opened up area as in site and service schemes (Vickrey, 1970).

Land rates in Kenya are payable by individual property owners, businesses and the government. Rates are payable to the local authority in which the property is located and are due on the first of January each year. Remissions are given for timely payments, while rate payers are penalized for payments outstanding after the year they fall due. Rates are collected on the basis of Valuation Rolls prepared, or revised, after every ten years upon assessment of the Market Values of the rateable properties. The law provides for a Valuation Court to determine objections to the level of rates or to any change introduced either to the existing valuation roll or supplementary rolls (Valuation for Rating Act Cap 267).

There are institutions which are by law exempted from payment of rates these include; cemeteries, hospitals, public religious worship places, museums and national parks. These institutions are specified in the Rating Act, or may be gazetted on approval by the Minister. The Rating Act allows local authorities to tax either land or land and improvements.
Although the first application of “Rating” in Mombasa in 1921 was based on land and improvements (that is, the annual rental value of occupied premises), all property Rates in Kenya is currently levied only on land. Improvements are not taxed. In addition, most local authorities do not tax land held under freehold tenure, agricultural land of less than 12 acres, and indeed most private land in the area rating rolls (Roy Kelly, 1999).

Public and Community Land is also excluded from the private valuation roll (Valuation for Rating Act, Section 7 (2))—although technically this land should be listed on the public valuation roll and be liable for Contributions in Lieu of Rates (CILOR). In addition, already allocated Community land under County Councils that is not yet registered is not liable for either rates or Contributions in Lieu of Rates due to the absence of cadastre records, (Roy Kelly, 1999).

Although variation in rating is allowed under the law, in practice, all local authorities limit their assessment to area rating and valuation rating. Out of the 174 local authorities in Kenya, there are 102 that use some form of property taxation. Of these 102 rating authorities, 75 use valuation rating, 55 use area rating, while 29 use a combination of both area and valuation rating (Roy Kelly, 2001).

Unimproved land value tax or unimproved site value tax (USV) is levied on the capital value of the land assuming it is vacant. Any improvement on site is disregarded in the assessment of capital value. USV tax has several advantages: it encourages physical development in urban centres; it discourages ownership of land for speculative purposes; it is a simple tax to levy without many technical and administrative challenges; and the amounts to be raised can be determined in advance and therefore used for purposes of certainty in budgeting.

However, USV has been subject to certain criticisms especially regarding its regressive nature.

This is because it is difficult to determine how much of the land value is derived from the site or location value and how much from the reproducible assets and entrepreneurial expertise. Further, when applied to residential development, research indicates that taxpayers with a lower income spend a higher percentage of
their income on housing than do those on higher incomes. Subjecting them both to *ad valorem* tax therefore does not conform to the principle of equity.

This method of assessment also tends to favour the rich against the poor; lower priced properties are many and change hands more frequently; assessors therefore may be inclined to assess high-priced properties more conservatively than low-priced properties because sales comparables are scarce for high-priced properties that are owned by high-income earners. In addition, USV rating large-scale development against small-scale development (Such as owner occupier home developers), who receive no income from the subject properties that they can in turn use to pay the tax.

**The Tax Rate (Rate Struck)**

The Rating Act gives local authorities power to set the tax rate. The tax rate can be set either as a per unit rate in the case of area rating or as a per value rate in the case of valuation rating. The unit area or the value rate can be either uniform or differential. The differential rates can either be proportional or graduated based on land use, value, or size. Local authorities are allowed to choose a valuation rate of up to four per cent (4%) without Central Government’s approval. The Minister of Local Government must approve all tax rates higher than 4% as a precautionary measure to protect the interests of the taxpayers. In general, local authorities in Kenya tend to use a uniform area rate or a uniform tax rate structure.

**Properties to which rating is applied**

Much of the peri-urban land is not included in the tax base because the Agricultural Act which exempts farms less than 12 acres from rating. The only exception is when an agricultural plot is subdivided and change of use approved for residential use, at which time; the local authority will include the property on the valuation roll. The Rating Act (Section 23) stipulates that the Government must pay an annual “contributions in lieu of rates” (CILOR) to the local authority. This CILOR is, in essence, the property rates owed by the government for its property.

Most local authorities do not tax freehold land. This is especially true for agricultural freehold land. The arguments given are: these properties are already taxed through the agricultural cess; these properties do not receive local authority services and that these properties are not legally obligated to pay property taxes.
Fiscal Cadastre

Fiscal cadastre information can be broken into two components: the valuation roll and property tax information. A valuation roll that contains land information and values for properties taxed under an *ad valorem* rate. This valuation roll is broken into the private valuation roll and the public valuation roll and typically covers only land located in the established, gazetted area of local councils.

Property tax information that is used for area rating purposes for land outside the gazetted area of town and municipal/town councils. This information covers the peri-urban areas that are taxed under a system of area rating. Although this area rating roll can contain both private and public land, it is used primarily for government forests and large farms. Rural agricultural land (if included in the tax roll) is typically taxed on an area basis while urban land (or built up areas) is typically taxed on an *ad valorem* basis.

Property tax assessment is the responsibility of the local authority, which must have a Valuer to prepare the valuation rolls. The valuer can either be a council employee, from the Ministry of Lands or from the private sector. The Valuer, as an individual, is responsible for gathering the necessary land information, ascertaining a value, and producing the Valuation roll for the local council. The council then tables the valuation roll, informs the public, and handles the objections. The valuation is then certified by the Council and used for taxation purposes.

Local authorities do not have the capacity to systematically maintain and coordinate their fiscal cadastre information. With the exception of Nairobi, Mombasa, Nakuru and Kisumu, local authorities depend on the Rating Department under the Ministry of Lands to create and update their valuation rolls.

All fiscal cadastre information is maintained on a manual basis and computers are not used at all for fiscal cadastre maintenance. Initially, valuation rolls were to be prepared every five years which was changed to every 10 years in 1991. The law does provide for the production of supplementary tax rolls on an annual basis as required.
Many of the current valuation rolls date back to the early 1980s, with sporadic and *ad hoc* issuance of incomplete supplementary valuation rolls. Nairobi Municipal Council, for example, uses a Valuation Roll prepared in 1982, accompanied by sporadically issued annual supplemental rolls. There are at least 18 local authorities using valuation rolls over ten years old.

2.6.2 Land Taxation under the Stamp Duty Act

Capital transfer taxes on land are administered under the Stamp Duty Act. Section 5 of the Stamp Duty Act provides that any transaction relating to land shall be chargeable with stamp duty. The duty is applied both to freehold and leasehold land transactions.

Capital transfer taxes are unique in that they are only levied upon transfer of the land; unlike most of the land based taxes that are levied periodically. The tax will not be levied as long as land does not change hands, irrespective how long it may take. On the other hand, it would apply as many times as land changes hands.

In accordance with provisions of Sec 5 of the Stamp Duty Act, Cap. 480 of the Laws of Kenya, every instrument specified in the Schedule to the said Act, wheresoever executed, which relates to property situated or to any matter or thing done or to done, in Kenya, shall be chargeable with the stamp Duty specified in that Schedule.

From the Schedule to the Stamp Duty Act, the following are some of the documents on which Stamp Duty must be paid by affixing Adhesive Revenue Stamp: Letters of Guarantees; Letters of Indemnity; Receipts for any business transaction of Ksh.100 and above; Bonds; Instruments of cancellation; Application for registration of documents; Liquor Licences; Policies of insurance e.g. Life Insurance, Marine Insurance etc; Lease for terms not exceeding one year; Trust Land Act; Instruments registered under the Chattels Act Cap. 28
2.6.3 Land Taxation under the Income Tax Act

2.6.3.1 Capital Gains Tax

Income tax is a tax on capital gains. A capital gains tax is applied on the profit realized on the sale of a non-inventory asset that was purchased at a lower price. The most common capital gains are realized from the sale of stocks, bonds, precious metals and property. In this case, if land forms part of the subject capital, land value will form the basis of the tax.

Capital gains taxes include taxation of inheritance, which is a softer form of wealth tax because it is to be paid, not by the person who has worked to generate the wealth, but instead, by a person who simply stands to benefit from it. What is more, the payer does not have to find money to pay as it can be paid using part of the wealth (Olima, 1996).

The table below illustrates the level of Capital Gains tax applied by various African countries by percentage of Capital Value.

Table 2.1: Capital Gains Tax in African Countries by Percentage of Capital Value

<table>
<thead>
<tr>
<th>Country</th>
<th>Tax %</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>40%</td>
</tr>
<tr>
<td>Reunion Is.</td>
<td>33%</td>
</tr>
<tr>
<td>Uganda</td>
<td>30%</td>
</tr>
<tr>
<td>Botswana</td>
<td>25%</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>20%</td>
</tr>
<tr>
<td>Tanzania</td>
<td>20%</td>
</tr>
<tr>
<td>Gabon</td>
<td>15%</td>
</tr>
<tr>
<td>Senegal</td>
<td>15%</td>
</tr>
<tr>
<td>Ginna</td>
<td>10%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>10%</td>
</tr>
<tr>
<td>Kenya</td>
<td>0%</td>
</tr>
<tr>
<td>Mauritius</td>
<td>0%</td>
</tr>
<tr>
<td>Namibia</td>
<td>0%</td>
</tr>
<tr>
<td>Seychelles</td>
<td>0%</td>
</tr>
</tbody>
</table>

Source: Global Property Guide (2012)
2.6.3.2 Value Added Tax (VAT)

VAT is imposed on the process of production or consumption of goods and services. In some cases the tax base could be wide enough to capture taxable transactions related to landed property. Depending on the circumstances, the rental or capital value of land could be used to determine the tax payable.

Rental Income attracts Value Added Tax (VAT) under the Income Tax Act. Value Added Tax was introduced in Kenya in 1990 to make indirect taxation more effective, buoyant, equitable and less distortionary (Moyi & Ronge, 2006). The tax is charged on the sale of goods and services at all stages of production. As a result it allows taxation authorities to have higher revenue potential, higher efficiency, lower collection and administrative costs. In Kenya, rental properties attract VAT.

2.7. Land Taxation in the Constitution, the National Land Policy and Vision 2030

2.7.1 Land Taxation provisions under the Constitution of Kenya 2010

The Constitution of Kenya 2010 provides that the National Land Commission shall have powers to assess tax. The taxes imposed are legally enforceable and must be paid by all those individuals and organisations that come within the jurisdiction of the taxing authority. There are fines and penalties for failure to pay taxes.

The parliament and local councils have the power to pass laws and by-laws, respectively, that govern taxes. In Kenya, the Central Government and the Local Authorities (municipal, town, urban, and county councils) are authorised to impose taxes. As people’s representatives elected by the public sit in Parliament and Councils, the ultimate power to tax rests with the citizens.

2.7.2 Land Taxation provisions in the Sessional Paper No.3 of 2009 on the National Land Policy

The National Land Policy acknowledges that the lack of a clear fiscal framework has restricted public revenue required for land banking and servicing of land. The current fiscal frameworks have also failed to discourage speculation and provide incentives for appropriate land uses.
Article 223 of the National Land Policy provides that the National Land Commission shall levy, collect and manage all land tax revenues except rates which shall be collected by local authorities and governments. Article 168 provides that government shall facilitate utilization of land and land based resources by establishing a land taxation regime which facilitates efficiency in revenue collection, utilization and servicing of land, provides incentives for appropriate land use and discourages land speculation. It also provides that the government shall improve the capacity of public institutions including local authorities to assess and collect taxes.

2.7.3 Property Taxation contribution to Vision 2030

Kenya *Vision 2030*, the long-term development blueprint for the country is motivated by collective aspiration for a much better society by the year 2030. The aim of Kenya *Vision 2030* is “a globally competitive and prosperous country with a high quality of life by 2030.” It aims at transforming Kenya into “a newly industrialising, middle income country providing a high quality of life to all its citizens in a clean and secure environment”. In other words the *Vision 2030* aspires to meet the Millenium Development Goals (MDGs) for Kenyans (GOK, 2008).

The *Vision 2030* is anchored on three key pillars: Economic; Social; and Political Governance. The economic pillar aims to achieve an economic growth rate of 10 per cent per annum and sustaining the same till 2030 in order to generate more resources to address the MDGs. The *Vision 2030* has identified a number of flagship projects in every sector to be implemented over the *Vision 2030* period to facilitate the desired growth that can support the implementation of the MDGs on a sustainable basis. In addition, the *Vision 2030* has flagged out projects addressing the MDGs directly in key sectors such as agriculture, education, health, water and environment (GOK, 2008).

The social pillar seeks to create just, cohesive and equitable social development in a clean and secure environment, while the political pillar aims to realise an issue-based, people-centred, result-oriented and accountable democratic system.

To achieve the *Vision 2030*, finances will be of utmost importance, public finances are heavily comprised of taxes, property taxes being one of the taxes will have to be enhanced to meet the eminent shortfall in revenue and enhancement of social equity.
2.8. Effect of Land Tenure on Land Taxation

Land tenure defines the methods by which individuals or groups acquire, hold, transfer or submit property rights in lands. Land tenure constitutes various laws, rules, procedures and obligations that govern the rights, interests, duties, and liabilities of the people in their use and control of land resources (Waiganjo C, Ngugi P, 2001). The 2010 Constitution of Kenya classifies land into public, community and private land.

The Constitution defines Public Land as unalienated government land; land lawfully held, used or occupied by any State Organ (except where the State Organ is a lessee); land transferred to the State by way of sale, reversion or surrender; land in respect of which no individual or community ownership can be established by any legal process; land in respect of which no heir can be identified by any legal process.

Public land also comprises all minerals and mineral oils; government forests (excluding community forests), government game reserves, game parks and animal sanctuaries, water catchment areas and specially protected areas; all roads and thoroughfares provided for by a Act of Parliament; all rivers, lakes and other water bodies as defined by an Act of Parliament; the territorial sea, the exclusive economic zone and the sea bed; the continental shelf; all land between the high and low water marks; any and not classified as private or community land under the constitution and land declared to be public land by an Act of Parliament (GOK, 2010).

Community Land is defined in the Constitution of Kenya as land lawfully registered in the name of group representatives under the provisions of any law; land lawfully transferred to a specific community by any process of law; any other land declared to be community land by an Act of Parliament; land that is lawfully held, managed or used by specific communities as community forests, grazing areas, shrines, ancestral lands, lands occupied by hunter-gatherer communities and land lawfully held as trust land by the county governments.

Private Land is defined in the Constitution of Kenya as land held by any person under any freehold tenure; land held by any person under leasehold tenure and any other land declared private land under an Act of Parliament.
At present, public land is managed as provided by the Government Land Act. The management of community land is governed through the Land Adjudication Act 284, Land Consolidation Act cap 283, Trust Land Act cap 288, and Registered Land Act cap 300. The manner in which private land is managed is provided under the Registered Land Act and the Registration of Titles Act.

Following the promulgation of the Constitution of Kenya in August 2010, the formulation of legislation giving effect to land tenure and management as prescribed by the Fifth Schedule of the Constitution is in progress. The Registered Land Act, Government Lands Act, Trust Land Act, and Indian Transfer of Property Act are under repeal by formulation of the Land Act (2012) which seeks to consolidate the laws relating to land registration. However, the current Land Acts do not have provisions on fiscal measures.

2.9. Challenges faced in application of Land Taxation in Kenya

In Kenya, major problems exist in the administration of property tax. Konyimbih (2000) notes that collection rates are extremely low and enforcement against non-compliance is virtually nonexistent. Fiscal cadastre information is incomplete and out of date. There is an over-reliance on individual parcel valuation—with no use of simpler mass valuation techniques. The country struggles with low property tax administrative capacity and a lack of political will for property tax enforcement. The result is low revenue yields, vertical and horizontal inequities, and economic inefficiencies.

The City Council of Nairobi, for instance, still uses the 1982 valuation roll. Initially, the roll was to be reviewed every 10 years, this was later changed to 5 years and again to every 10 years due to political pressure by interested parties. Land values have in the meantime appreciated drastically over the years. This rapid increase in land values has made re-valuation unpopular and a politically difficult issue, thus causing a slow growth of revenue from property tax (Konyimbih, 2000).

Mombasa continued to use the valuation roll prepared in 1959 up to 1981. The reason cited for failure to prepare a new valuation roll was lack of staff to undertake the exercise. The valuation roll currently in use was prepared in 1991, based on
land values of 1990/91. The effective date for this 1991 Valuation is 1996, with the current approved rate levy being 5 per cent for commercial properties, 2.5 per cent for residential properties and 1.5 per cent for agricultural areas falling within the municipality. Old town residents are currently paying half their rate values following their petition to the council after their area was declared a historical zone, which in essence has prevented re-development.

The procedure for collection and recovery of late payments/arrears are generally poor. Enforcement is both time-consuming and cumbersome as follow-up measures are not clearly defined. In some cases, lawyers hired to collect outstanding arrears have been known to hold the monies collected before remitting the same to the councils. The use of hired lawyers from the private sector also makes recovery of rate arrears expensive, and hence raises the administrative costs of rate revenue collection (Konyimbih, 2000).

Effective administration of property taxation is hindered by the lack of incentives to pay tax, inappropriate property tax policy and the lack of property administrative systems, trained personnel and synchronization of improved local service delivery with enhanced revenue mobilization (Municipal Development Programme, 1996).

2.10. Current institutional framework for Property Taxation in Kenya

Stamp Duty is collected by the Land Registrar prior to the transfer of ownership of land. The office of the Collector of Stamp Duty assesses the tax through government valuers and recommends the amount of tax based on the current Open Market Value of the property.

Rates are collected by the Revenue Offices in the County Councils. Often these Council lack the personnel and administrative capacity to effectively collect these taxes (Konyimbih, 2000). Administrative and accounting procedures must be tight enough so as not to create loop holes for theft of taxes through corrupt practices. Theft of taxes reduces revenue and adversely affects service delivery to the tax payers.
2.11. Effect of Land Governance on Land Taxation in Kenya

The primary mandate of a modern state is to ensure good governance which in turn ensures harmonious relationships among its populace; enabling people to work together united in building the nation. In the same vein, a key tenet of good governance is equitable distribution of national resources such as land which is a key means to their livelihood. Historically, the Kenyan land governance structures have been ineffective (Wamalwa, 2010).

The huge disparities in land ownership which date back to the colonial times and post-independence have continued to be a matter of contention unable to be resolved through the current fiscal frameworks. The National Land Policy proposes to address among other things the historical land injustices by providing a framework and direction for dealing with issues of land ownership, security of tenure, land use and development, and environmental conservation on a sustainable basis. To address this effectively revenue from land resources will need to be increased through an effective fiscal framework.
### 2.12. Summary of application of Property Taxation in other countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Tax base</th>
<th>Basis of assessment</th>
<th>Tax rate</th>
<th>Tax administration</th>
<th>Exemptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>Tax levied on immovable property in urban areas</td>
<td>Unimproved Site Value (site rating)</td>
<td>Uniform or flat rates</td>
<td>Levied by municipalities in all provinces. Metropolitan local councils levy and collect taxes in metropolitan areas. National and provincial government only regulate how tax is levied and collected. Assessment done by registered valuers.</td>
<td>Properties of religious institutions Rural properties Rural properties</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Improved Site Value (flat rating)</td>
<td>Tax rebates or relief provided</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Composite/ Differential (rating of land and improvements at different levels)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Site rating</td>
<td>Uniform/ flat rates</td>
<td>Levied and collected at State and Municipal level.</td>
<td>Landowners principal residence Primary producing land</td>
</tr>
<tr>
<td></td>
<td>Immovable properties primarily in urban areas – residential, commercial and industrial</td>
<td>Flat rating</td>
<td>Exemptions and gradations provided.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Tax base</td>
<td>Basis of assessment</td>
<td>Tax rate</td>
<td>Tax administration</td>
<td>Exemptions</td>
</tr>
<tr>
<td>---------</td>
<td>----------</td>
<td>---------------------</td>
<td>----------</td>
<td>-------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Canada</td>
<td>Residential, industrial and commercial properties.</td>
<td>Composite/ Differential rating</td>
<td>Tax rates vary between Municipalities Tax computed on tax rate('mill rate') expressed in dollars of tax per $1,000 of value</td>
<td>Levied by Federal and Municipal governments. Federal taxes collected by Canada Revenue Authority.</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>Undeveloped land, leasehold sites, non-residential property in urban centres, industrial property</td>
<td>Composite/ differential rating</td>
<td>Taxes vary between municipalities.</td>
<td>Collected by Swedish Tax Agency</td>
<td>Private residences Property abroad</td>
</tr>
<tr>
<td>Singapore</td>
<td>Imposed on immovable properties.</td>
<td>Flat rate</td>
<td>0% for the first $6000 of Annual Value; 4% for the next $59,000 of AV; 6% for the balance of AV in excess of $65,000.</td>
<td>Tax is levied and collected by the Central government. Tax is paid annually in advance or monthly by direct debit.</td>
<td>Public place of worship; public schools; buildings used for charitable purposes or to promote social development</td>
</tr>
</tbody>
</table>

1 South Africa is organised into 9 provinces, 6 metropolitan municipalities, 50 district municipalities and 228 local councils.
2 Australia is a federation of 6 States – New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania (IPART, 2008)
2 For example, in Toronto the property tax on an office tower is 4 per cent while a house is charged at 1.24 per cent. (Cushman & Wakefield, 2010).
2.13. Conclusion

The primary focus of this study is taxes levied on land and land-based resources. Taxes levied against land and land-based resources capture the value in the resources and bring it to bear on development.

There is a case for introducing land tax in agricultural areas across the country in line with the canons of taxation. This research examines the current status of land taxation in Kajiado County and the viability of a proposals for improved fiscal measures that influence land use and management.

The land and property tax system is currently based on legislation that gives extensive powers to the State and local authorities to assess and collect a variety of taxes, including land rents, stamp duty, estate duty property rates and income tax on rents. However, nationally, land based revenue sector contributes only 1 % to government revenue. This may be attributed to inefficiencies in the land markets or in policy and administrative procedures and is the subject of this research. It is imperative that land reform brings to bear fiscal measures that will enhance revenue collection, discourage land speculation, improve land utilization and cause land to contribute to development.
The current land taxation system applied in Kenya is similar to that of the other countries assessed which is *Ad Valorem* with the exception of some areas in South Africa which apply area rating. Differential or graded property tax systems, where land is taxed at a higher rate than improvements have been used in several Canadian provinces as well as several cities in the United States (Oates and Schwab, 1995; Brueckner, 1986; Wuensch et al, 2000).
Chapter Three

The Study Area

3.1. Location

Kajiado is a rapidly growing cosmopolitan County located near Nairobi. Kajiado County lies along the southern boundary of Kenya. It is bordered by the United Republic of Tanzania to the south, Taita Taveta County to the west, Narok County to the east and the counties of Nakuru, Kiambu, Nairobi Machakos and Makueni to the north.
3.2. **County Statistics**

Annual rainfall: 500 – 1,250 mm per annum

Temperature: Min 16°C to Max 32°C

Area: 21,900 sq km

Population: 687,312 (KNBS, 2009)

Primary Towns: Ngong, Kajiado, Loitoktok, Ongata Rongai, Kitengela, Isinya, Kiserian

Primary land use: Pastoralism

3.3. **Administrative framework**

Kajiado County comprises three district; Kajiado North, Kajiado Central and Kajiado South with statistics as shown below:

<table>
<thead>
<tr>
<th>District/Constituency</th>
<th>Headquarters</th>
<th>Population</th>
<th>Land Size (sq.km)</th>
<th>Land Size (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kajiado North</td>
<td>Ngong</td>
<td>387,538</td>
<td>7,400</td>
<td>740,000</td>
</tr>
<tr>
<td>Kajiado Central</td>
<td>Kajiado</td>
<td>162,278</td>
<td>8,089</td>
<td>808,900</td>
</tr>
<tr>
<td>Kajiado South</td>
<td>Loitoktok</td>
<td>137,496</td>
<td>6,411</td>
<td>641,100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>687,312</td>
<td>21,900</td>
<td>2,190,000</td>
</tr>
</tbody>
</table>


With three times the land area of Nairobi, this county has the opportunity to implement fiscal instruments in a manner that promotes highest and best use principles while ensuring sustainable and equitable use.

A vast portion of Kajiado County is inhabited by the Maasai who are the indigenous people of the area. This County has however experienced increasing immigration of other tribes into the area primarily due to the availability of large tracts of land and its proximity to Nairobi city.

The County was traditionally group ranch land held communally under various group ranches and administered by the Land (Group Representative) Act, Cap 287. In the mid-1080’s these group ranches were subdivided among members and individually registered under the Registered Land Act Cap 300.
3.4. **Topography**

The general topography of the County is characterized by plains and occasional volcanic hills and valleys. The land rises from altitudes of about 500m around Lake Magadi to about 2,500m around the Ngong. The topography may be categorized into the Rift Valley, Kapiti Plains, Central hills and Amboseli plains (GOK – DRSRS, 2011).

The Athi-Kapiti plains are mainly open, rolling land. The Central hills comprise numerous gneiss and limestone hills rising to an altitude of 2,800 metres. This area is dissected by many water courses which drain into the Kiboko River, a tributary of the Athi River. The Amboseli plains comprise gently undulating plans on the eastern side and the rift valley on the western side. The rift valley section hosts Lake Magadi and Lake Natron (GOK – DRSRS, 2011).

3.5. **Geology**

The County consists of three geological regions: quartenary volcanic; basement system rocks comprising various gneisses, chits, quartzite and crystalline limestone; and Pleistocene. Minerals found in the County include gypsum, limestone, soda ash, salt, quartile and meerschaum (GOK – DRSRS, 2011).

3.5. **Land Use activities**

**a) Pastoralism**

Pastoralism is the main land use. Maasai community livelihood is based on herding of cattle, sheep and goats. These animals form the basis of their social and economic system and their primary goal is to maintain sufficient livestock in the face of an unpredictable physical environment. The Maasai grazing patterns reflect the seasonal and annual variations in the availability of water and pasture (GOK - DRSRS, 2011).

In recent years the primarily pastoral Maasai have began to farm both under rain-fed conditions on the mountain slopes, and in the plains where horticultural production has expanded around swamps and along perennial streams. This change from pastoralism to agro-pastoralism way of life has been necessitated by drought occurrences and livestock disease that occasionally wipe out their herds (GOK – DRSRS, 2011). The annual rainfall varies between 500 to 1,250 mm.
b) **Industrial, Commercial & Residential Development**

The areas around Kitengela, Ongata Rongai, Isinya and Ngong towns have seen rapid subdivision, land sales, development and change of use in the past decade. The main towns have seen much residential and commercial development.

The demand for land for industrial, commercial and residential development has led to Kitengela plains shrinking considerably due to settlement patterns, expansion of Nairobi city boundary and industrial activities which include cement mining at Athi River and soda ash mining at Lake Magadi.

![Photograph 1: Upcoming residential land use](image)

c) **Mining and quarrying**

Kajiado County has immense potential for commercial mining and manufacture of building materials for both local and exports markets. The County has large deposits of limestone, sand, gravel, ballast, silica, gypsum, salt and soda ash.

Quarrying of building materials is mainly done in Kajiado, Ngong, Kitengela and Ongata Rongai. There are large deposits of soda ash in Magadi, Mile 46 and Loodikalani areas. Gypsum is mined at Isinya while limestone is available in large quantities in Kibini, Toroka and Ngatatek areas (GOK – DRSRS, 2011).
d) **Agriculture**

The Maasai community’s way of life is slowly changing from pastoral livelihood to agro-pastoral system where livestock keeping as well as crop cultivation are becoming a common way of life. This has been necessitated by individual land ownership, increased human population, livestock diseases and drought phenomenon (GOK – DRSRS, 2011).

e) **Wildlife conservation**

Wildlife conservation is rated as the second most important land use after pastoralism. The County hosts the Amboselli National Park and community wildlife conservancies such as Kimana, Selenkei, Osupuko and Elerai. The Conservancies are rich in flora and fauna and entry fees to visitors for game viewing comprise an important revenue source for the community conservancies. Wildlife are also found on private and community land in the Athi Kapiti plains.
However, wildlife conservation as a land use is increasingly under threat from changes in land use and increase in human population and settlement. These changes have resulted in obstruction of wildlife migration routes by fences and human settlements and have contributed to increased human wildlife conflict in the County (GOK – DRSRS, 2011).

*Photograph 3: Wildlife in Kajiado County*
3.6.  Water resources

Kajiado County has few permanent sources of surface water including Lake Magadi, Uaso Nyiro River and two streams in the northern part of the Athi-Kapiti Plains, the Kiboko River which drains much of the Central Hills, Lake Amboselli which dries up during the dry season and several springs in the Southern part of the Amboseli Zone (DRSRS, 2011).

3.7.  Changes in Land Use and Land Cover between 2000 and 2010

A study of changes in land use and land cover conducted by the Department of Resource Surveys and Remote Sensing in the Ministry of Environment and Mineral Resources in year 2011, found a significant increase in land under agricultural land, open woody grassland, closed shrubby woodland, mined and urban areas. A decrease in land cover was found in medium grassy shrub land, closed grass shrub land and open grassy shrub land as summarized in the table below.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural land</td>
<td>157,283.92</td>
<td>178,102.30</td>
<td>+20,818.38</td>
<td>13.24</td>
</tr>
<tr>
<td>Medium shrub land</td>
<td>158,665.86</td>
<td>54,120.30</td>
<td>-104,545.56</td>
<td>-65.9</td>
</tr>
<tr>
<td>Closed grass shrub land</td>
<td>185,760.01</td>
<td>128,367.90</td>
<td>-57,392.11</td>
<td>-30.9</td>
</tr>
<tr>
<td>Open shrub grass land</td>
<td>518,124.94</td>
<td>627,195.20</td>
<td>+109,070.26</td>
<td>21.05</td>
</tr>
<tr>
<td>Open grassy shrubland</td>
<td>114,149.78</td>
<td>86,366.70</td>
<td>-27,783.08</td>
<td>-24.34</td>
</tr>
<tr>
<td>Open woody grassland</td>
<td>137,015.87</td>
<td>189,643.50</td>
<td>+52,627.63</td>
<td>38.41</td>
</tr>
<tr>
<td>Closed shrubby woodland</td>
<td>100,242.68</td>
<td>106,153.50</td>
<td>+5,910</td>
<td>5.90</td>
</tr>
<tr>
<td>Mined areas (quarry)</td>
<td>1,890</td>
<td>2,695</td>
<td>+804.50</td>
<td>42.5</td>
</tr>
<tr>
<td>Urban</td>
<td>1,580.50</td>
<td>2,069.40</td>
<td>+488.90</td>
<td>30.9</td>
</tr>
<tr>
<td>Total area</td>
<td>1,374,714.10</td>
<td>1,374,714.10</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The 13.24% increase in agricultural land use was attributed primarily to the diversification of sources of livelihood by the Maasai to include cultivation of agricultural crops, and the subdivision of group ranches to individual ownership. The 42.5% increase in mining and quarrying activity was attributed to rapid urbanization resulting in the need for building stones within the County and the nearby Nairobi city. The 30.9% increase in urban land use in Ngong, Kiserian, Ongata Rongai,
Kitengela and Isinya areas was attributed to high demand for residential development to cater for the increasing (Nairobi) city population. While the reduction of grassy shrubland was attributed to clearing of vegetation for agricultural activities and human settlements.

Sub-division of Group Ranches (Kimana Group Ranch)

Source: African Wildlife Fund (AWF), 2010

3.8. Conclusion

The proximity of Kajiado County to the Capital City has seen its rapid growth in the past decade as people search for land for housing and other economic activities. The County is endowed with many natural resources whose extraction or exploitation could increase the level of land based revenue. The County provides a good area for a study on fiscal measures due to these potential and the opportunity to apply constitutional provisions to revise fiscal policies that can influence land reform.
The changes in land tenure and use have resulted in land fragmentation; incompatible land uses; increased human-wildlife conflict; and increased susceptibility of local communities to ecological changes and climate change due to reduction of open grazing land and degradation of rangelands.

The increased 30.9% of urban land should be put under taxation to increase revenue for land management services and to influence land use.
Chapter Four

Data presentation and analysis

4.1. Introduction

The data collected was qualitatively and quantitatively analysed as detailed below. The qualitative data was analysed by use of description while quantitative data was analysed by use of computer software for analysis of social science statistics. The results are presented descriptively and by use of tables and diagrammes.

4.2. Sources of Land-Based Revenue in Kajiado County

The study found that the key sources of land-based revenue in Kajiado County are as follows:

- Land rates,
- Land rent,
- Appropriations in aid
- Mining fees,
- Quarry extraction fees,
- Sand harvesting fees and
- House rent.

The amount of Revenue derived in Financial Year 2010/2011 from land-based sources was provided as follows:

Table 5.1: Sources of Land based Revenue at Ol Kejuado County Council

<table>
<thead>
<tr>
<th>Contribution in Lieu of Rates (CILOR)</th>
<th>5,607,956</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land rates</td>
<td>2,315,363</td>
</tr>
<tr>
<td>Land rates penalties</td>
<td>814,780</td>
</tr>
<tr>
<td>Other property charges</td>
<td>137,704</td>
</tr>
<tr>
<td>Ground rent</td>
<td>12,181,786</td>
</tr>
<tr>
<td>Stand premium</td>
<td>692,870</td>
</tr>
<tr>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Application fees</td>
<td>4,899,202</td>
</tr>
<tr>
<td>Plot transfer fee</td>
<td>8,951,500</td>
</tr>
<tr>
<td>Plot subdivision fee</td>
<td>6,102,060</td>
</tr>
<tr>
<td>Document search fee</td>
<td>783,637</td>
</tr>
<tr>
<td>Consent to charge</td>
<td>590,721</td>
</tr>
<tr>
<td>Sand, gravel and ballast extraction fees</td>
<td>51,143,982</td>
</tr>
<tr>
<td>Quarry extraction fees</td>
<td>36,983,651</td>
</tr>
<tr>
<td>Mineral extraction royalties (cement, silica etc)</td>
<td>9,000</td>
</tr>
<tr>
<td>Limestone royalties</td>
<td>1,385,200</td>
</tr>
<tr>
<td>House rent</td>
<td>332,000</td>
</tr>
<tr>
<td>Change of user</td>
<td>3,888,500</td>
</tr>
<tr>
<td>Market plot rent</td>
<td>106,890</td>
</tr>
<tr>
<td>Beacon search pointing fee</td>
<td>497,000</td>
</tr>
<tr>
<td>Building plan approval fee</td>
<td>20,145,252</td>
</tr>
<tr>
<td>Buildings inspection fee</td>
<td>122,500</td>
</tr>
<tr>
<td>Land rates penalties 2</td>
<td>18,146</td>
</tr>
<tr>
<td>Ground rent 2</td>
<td>1,500</td>
</tr>
<tr>
<td>Plot transfer fee</td>
<td>80,000</td>
</tr>
<tr>
<td>Document search fee</td>
<td>700</td>
</tr>
<tr>
<td>Consent to charge 2</td>
<td>24,000</td>
</tr>
<tr>
<td>Change of user 2</td>
<td>10,000</td>
</tr>
<tr>
<td>Beacon search pointing fee 2</td>
<td>63,500</td>
</tr>
<tr>
<td>Building plan approval fee 2</td>
<td>116,400</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>158,005,800</strong></td>
</tr>
</tbody>
</table>

*Source: County Council of Olkejuado (December 2011)*

The total revenue for the financial year was provided as KShs.303,743,839/- indicating that land-based resources contributed 52% (per cent) of the revenue.

Other income is derived from fees charged for services such as application for change of land use, approval of building plans, transfer of County plots, amalgamation, survey, beaconing, re-beaconing, consent to charge a property and commercial film shooting.
The County Council of Olkejuado (C.C.O) collects land rent from sites leased in the counties three major towns – Ngong, Ongata Rongai and Kitengela. Approval for lease of land within the County must be made through the Ministry of Local Government. The land leases are issued by the Commissioner of Lands on confirmation of the County Councils agreement to lease.

Rates are levied in all the townships under the jurisdiction of the County Council. The Valuation Roll of Kajiado County was revised in year 2008 and is under implementation to bring more townships under rating.

Application for mining and extraction of materials originate from the Department of Mines and Geology. Mining approval fees are charged at KShs.50,000/- per approval and subsequently charges are made at KShs.100 per tonne of material extracted. The levies applied to mining are determined by government Valuers depending on the mineral and other factors such as accessibility.

Gazette Notice No.5126 of 13th June 2008 provides the approved fees charged by the Olkejuado County Council. The prescribed fees include fees charged for house rent, mining, transfer of plot, plot search fees, subdivision fees, change of use, amalgamation, survey fees, change of use, plot identification, beaconing, re-beaconing, consent to charge and commercial filming.

4.2.1 Environmental taxes

The research found that there are no environmental taxes applied in the County (and country) at present. However levies and duties are charged for substantial developments which have an effect on the environment. The duties are charged to provide revenue for environmental restoration and include:

a) Charges for Environmental Licences which are assessed at 1% of the value/worth of the development project;

b) Excise Duty which is assessed at 50% of the end value of plastics produced (ex-factory price).

c) Water Abstraction Levies charged by the various Water Resources Authorities.

d) Environmental Impact Assessment and Environmental Audit fees.
The research further found that environmental duties and levies are charged by multiple institutions including the National Environmental Management Authority (NEMA), various Water Resources Boards, Local Authorities and the Judiciary. NEMA charges environmental levies which are used as revenue for the organizations activities. Water Resources Boards charge water abstraction levies while local authorities charge fees for application for change of use. Penalties for non-compliance with environmental regulations are paid by the offender to the Judiciary upon a judgement.

4.3. Institutional framework for collection of Land Taxes

4.3.1 Collection of Stamp Duty

The research found that Stamp Duty is administered through the office of the Collector of Stamp duty in the Ministry of Lands. However, since year 2008 the collection of monies for Stamp Duty is done through the Kenya Revenue Authority. Stamp Duty payments are made through banks. At present, these banks are National Bank of Kenya, Kenya Commercial Bank and Central Bank of Kenya.

Once collected, Stamp Duty is remitted to Treasury and the Ministry of Lands is not allowed to retain any percentage. Stamp Duty as a tax is a major contributor to Treasury and/or the national budget.

Table 5.2: Contribution of Land-Based Taxes to National Budget (2008 – 2011)

<table>
<thead>
<tr>
<th>Year</th>
<th>Stamp Duty</th>
<th>National Budget</th>
<th>Contribution to National Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2008 – 2009</td>
<td>4,760,708,596.62</td>
<td>773,000,000,000</td>
<td>0.59%</td>
</tr>
<tr>
<td>FY 2009 – 2010</td>
<td>5,331,648,562</td>
<td>805,300,000,000</td>
<td>0.66%</td>
</tr>
<tr>
<td>FY 2010 – 2011</td>
<td>6,805,446,588</td>
<td>998,300,000,000</td>
<td>0.85%</td>
</tr>
</tbody>
</table>

*Source: Kenya Revenue Authority and Kenya National Bureau of Statistics*
4.2.2 Collection of Land Rates

The research found that the rating function has been devolved to fourteen (14) townships within Kajiado County. The Rating offices prepare Rate demand notes and residents pay the dues at these decentralized offices. The offices were established in the year 2009 to decentralize the collection of rates from the headquarters of the Olkejuado County Council and bring the service closer to the residents given the vastness of the County.

These satellite revenue collection centres located in Kitengela, Isinya, Kajiado, Ngong, Mashuuru, Loitoktok, Bisil, Bulbul, Ongata Rongai, Kiserian Namanga, Masimba, Kimana and Sultan Hamud townships. Each rating office is manned by a Revenue Clerk and a Rating Officer. Landowners in the locality make their rate payments at these offices. Upon payment, a receipt is issued and the payment noted on a register.

Each Rating Office has a Revenue Clerk (Cashier) and Rating Officer. The operations of the Rating Offices are coordinated by the Revenue Officer at the Olkejuado County Council. An Officer of the County Council is stationed at the exit gate of each quarry site to weigh the tonnage of extracted material.

The fees charged for land transfers and sub-division schemes are administered through the Land Control Board which is chaired by the District Commissioner.

4.4. Challenges in Revenue collection from Land Resources

a) Land under Freehold Tenure

The study found that approximately 90% of land is held under freehold tenure and is therefore does not attract Municipal Rates. The research further found that prospective purchasers prefer to purchase freehold land to avoid the costs (rent & rates) associated with ownership of leasehold land.

b) Limited productive use of Land

The research found that the County Council of Olkejuado was reluctant to levy rates on agricultural land in the area as the primary land use is pastoralism which leaves
a lot of land idle. Further much of the land is not arable due to lack of water and it would be difficult to levy tax on unproductive land.

c) **Encumbered Land**
The research found that after individualization of titles to group ranches in the 1980’s, some land owners took loans against the land from the Agricultural Finance Corporation (AFC) and some have had difficulties making repayments while others have had their land auctioned. The Revenue Officer at the County Council was of the opinion that charging taxes would further burden these land owners.

d) **Attitude of Land Owners to Benefits of taxation**
The research found that the Community did not see the necessity of land taxation for revenue generation as the revenue collected did not impact on service delivery. The respondents decried the lack of land management services such as physical planning and survey; and the lack of good infrastructure. The residents were of the opinion that land taxes were not employed to the improvement of their living environment.

The research also found that there is an on-going dispute before the court instituted by rate payers protesting the implementation of the new Valuation Roll.

e) **Lack of Cadastre Records as a basis of taxation**
The research found that most of the plots within the township are not surveyed to the level of forming a cadastral record and this poses a challenge to the application of taxation. Also, that the County Council of Ol Kejuado had computer software and had computerized the finance administration function to improve record-keeping and reporting.

f) **Rapid increase in Land Values**
The research found that Market Value of land in most areas of the County had tripled in the last three years. For instance, a one-eighth plot in Ngong sold for KShs.500,000/- in year 2008 and was selling for KShs.3M in December 2011. This meant that the rates which are based on Unimproved Site Value did not reflect the true land value.
g) **Land Control Board**

The research found that the control of land use through Land Control Boards is difficult to regulate as the project proponents did not use formal channels to seek approval to transfer and approval to sub-divide. The project proponents in collusion with land agents and members of the Land Control Board have crafted a short-cut by way of a Special Consent which is given by the District Commissioner.

The research found that as a result of this, change of use was not communicated to the County Council for application of the relevant fees and taxes.

h) **Vastness of the County**

The research respondents were of the opinion that the size of the County makes administration of tax difficult although this has been eased by establishment of Rating Offices in some townships but many small centres are still not covered. The research found that one has to travel long distances for land management services. For instance, the county land survey and physical planning offices are located in Kajiado and Ngong towns and residents from as far as Magadi, Loitokitok, Rombo and Namanga have to travel to these places to access land management services.

i) **Disjointed National Revenue Collection System**

The research found that the national revenue collection system was disjointed. The revenue collection systems under the Kenya Revenue Authority and the local authorities are not integrated. As a result, it is not possible to tell the amount of revenue collected through application of Stamp Duty Act from Kajiado County.

j) **Default and Evasion of Tax**

The research found that default and evasion of tax contributed to reduced revenue from land.
4.5. **Incentives and Penalties**

The Revenue Officer noted that the Physical Planning Act provided penalties for illegal construction where the necessary approvals have not been made. He noted that the Council had put owners of such illegal constructions on notice. Council regulations also provided that the Council may repossess plots which are not developed in the manner agreed with the lessee at the time of allocation.

The research found that the Council levied penalties for late payments but did not give concessions on early payments. Further the Council had instituted punitive penalties and as a result many landowners pay their Rates before the March deadline. For instance, the County Council levies a penalty of 25% on late payments of outstanding land rent.

4.6. **Adequacy of Land Taxes in influencing Land Use and Management**

a) **Level of land rates**

The responses on adequacy of land taxes in influencing land use and management was analyzed by use of SPSS as shown in the bar chart below.

**Figure 5.1: Adequacy of the Level of Taxation**

*Source: Author’s field study, April 2012*
The study found that 43% of the respondents felt that the level of land taxation at present is high while 32% found that it was adequate. Only 11% of the respondents felt that the level of taxation was low.

The Collector of Stamp Duty at the Ministry of Lands was of the opinion that the current level of tax applied at 4% for urban properties and 2% for rural properties, is adequate.

b) Adequacy of Taxes in influencing Land Management

The study found that 54% of the respondents felt that taxes are not adequately used to provide land management services such as planning, survey, valuation and processing of title documents. In particular the respondents cited that they had to make payments for all land management services despite paying land taxes. A summary of the key issues of contention are as shown in the pie chart below.

**Figure 5.2: Key Issues relating to delivery of Land Management Services**

![Pie Chart showing key issues](source: Author’s field study, April 2012)

a) Payment for Land Management Services Out of Pocket

54% of the respondents were of the opinion that Land Management services such as Surveying should be provided by the government and not by private surveyors at the land owners cost. Respondents indicated other land administration costs incurred as Transfer fees and Registration fees for the Title deed. Respondents further noted that the Physical Planning Department is not involved in advising the residents and often individuals were forced to engage a private planner at a fee. As a result the land
owner paid for services out of pocket despite paying taxes to provide government revenue for the same service.

b) **Limited Land Management Budget of Government Departments**

Some of the respondents were of the opinion that the national budget allocated to the Ministry of Lands and the local authority for land management activities is not enough to cater for provision of services such as surveying, planning and valuation.

c) **Lack of Equipment by Government Land Management personnel**

8% of the respondents cited lack of land management equipment in government offices for use in land management as influencing service delivery. In particular the respondents mentioned the lack of cars and computers which are essential in efficient provision of the Land Management Services.

d) **Mismanagement of Public Revenue and corrupt practices**

21% of the respondents were of the opinion that the revenue collected by the government does not provide the public with land management services. The landowners were of the opinion that there is no benefit from land taxes paid to the government as the same is mismanaged and does not reflect on service delivery.

A further 3% felt that the absence of land management was attributed to fraudulent activities. Some of the respondents felt that Land management services such as surveying, planning and valuation are not adequately provided by the government due to fraudulent activities, for instance, bribing of officers to pay attention to an individual land transaction. Some respondents were of the opinion that government valuers willingly understate the land values so as to lower the Stamp Duty paid by the buyer. This in turn minimizes the amount of revenue collected.

e) **Under-staffing and work ethic issues in the Land Registry**

Some of the respondents were of the opinion that most of the government officials such as Valuers do not visit the site and often give estimates of land values from their offices. Some of the residents indicated that it is difficult to get government
surveyors and the District Surveyor can only be engaged where there are disputes in the demarcation process. There are also inadequate personnel in the lands office and this slows down the service delivery since the number of transactions is numerous.

4.7. Proposals for bringing more land under taxation

98% of the respondents were of the opinion that the level of taxation should not be increased for the following reasons:

- the revenue they are already paying does not benefit them.
- Land is not productive so paying more taxes will be doing them more harm than good.
- The land is freehold and does not attract any taxes.

The respondents proposed ways in which more land could be brought under taxation to increase income available for land management activities.

The proposals included:

a) Change of land tenure from Freehold to Leasehold

According to the Revenue Officer at the Olkejuado County Council, 98% of land in the County is under Freehold tenure. The land therefore does not attract land rent and land lying outside the municipal boundaries does not attract rates.

The research found that there is currently no framework for change of use from Freehold to Leasehold upon sub-division of agricultural land and its conversion to urban use.

b) Change of user from Agricultural to Residential or Commercial

Many landowners upon subdivision of agricultural land do not pursue a change of use to the new user where the new use could be residential or commercial purpose. This denies the County Council revenue from the improved use.

The research found that the County Council does not follow up on the change of use from agricultural purposes to other higher uses and application of levies related to change of use. In addition, the municipal boundaries have remained as historically set despite the growth of the urban area.
c) **Making arid area more productive**

The research found that vast areas of land in the County are arid or semi-arid and only suitable for pastoralism. The respondents were of the opinion that the productivity of land needed to be improved through mechanisms such as irrigation and green houses before taxation is increased.

4.8. **Impact of Land Taxation on Land Management, Use and Provision of Services**

**Figure 5.3: Impact of Land Taxation on Land Management, Use and Provision of Services**

82% of the respondents felt that the revenue collected from land taxation does not benefit the public through provision of infrastructure, provision of land management services neither did it influence land use.
4.9. Enhancing the Application of Tax to Influence Land Use and Management

The respondents proposed various ways that revenue collected from taxation of land could be used to benefit residents and influence land use and management. These included provision of infrastructure services, provision of social amenities, application of ICT to improve service delivery and provision of land management services.

59% of the respondents felt that revenue should be used to provide infrastructure such as roads, electricity, water, drainage and sewerage systems. The opinions of the respondents are as summarized in the pie chart below.

Figure 5.4: Enhancing the application of Tax to influence Land Use and Management

Source: Author’s field study, April 2012

a) Provision of infrastructural services (roads, electricity, water, drainage and sewerage system)

59% of the respondents felt that the revenue collected should be used in provision and improvement of infrastructural services in the area. These include construction and up-grading of roads especially those in remote areas, rural electrification, provision
of water, drainage, sewerage and garbage collection. Some respondents highlighted that large towns in the area such as Kitengela and Kajiado had no sewerage system yet they generated a lot of revenue from taxation of land transfers.

Respondents noted that drilling of boreholes by individuals is common in the area due to lack of water provision by the local authorities. Furthermore, most of the residents buy water from vendors which is expensive and users are not assured of its quality or safety.

b) ** Provision of social amenities like education facilities, hospitals **
17% of the respondents suggested that the revenue collected should be used in provision of social amenities such as hospitals, schools and offering educational bursaries for students.

c) ** Improvement of service delivery through technology **
8% of the respondents were of the opinion that the revenue collected should be used in installation of modern technologies like computers to enhance service delivery in the Land Registry offices and at Rating Offices in Kajiado County.

This is because the Land Registries are involved with voluminous transactions that are done manually which leads to loss of documents and inefficient service delivery due to inadequate staff to serve the public.

The low level of response in this area was attributed to a lack of understanding of the benefits of technology in keeping of land records and in taxation.

d) ** Provision of Land Management Services (Survey, Planning and Valuation) **
16% of the respondents were of the opinion that the revenue collected should be used in efficient delivery of Land management services such as planning, surveying, valuation and processing of title documents. The revenue should also be used to improve the Land Registry offices, for instance to have some waiting area and seats for the public as they wait to be served.
4.10. Land Governance

The research found that the collection of Stamp Duty is adversely affected by forgeries of remittance documentation. In addition Stamp Duty is understated by government Valuers deliberately in collusion with land purchasers.

4.11. Conclusion

The study found that a gap exists between the collection of revenue through land taxes and the delivery of land management services. It also found that the main challenges were related to land governance and delivery of land management services rather than the adequacy of revenue collected from land and land based resources.

The research also found that the culture of the inhabitants of the area and the low level of literacy influenced their thinking on the productive use of land and on the necessity and benefits of taxation.
Conclusions and Recommendations

5.1. Study conclusions

5.1.1 National Land Policy context

Article 168 of the National Land Policy provides that to facilitate efficient utilization of land and land-based resources, the government shall establish a land taxation regime that facilitates efficiency in revenue collection, utilization and servicing of land, provides incentives for appropriate land uses, discourages land speculation and improves the capacity of public institutions, including local authorities, to assess and collect taxes.

This research found that the laws relating to land taxation and land use have failed to achieve productive, equitable and sustainable use, and provide resources for provision of land management and infrastructure services. The research found that the residents of Kajiado County are more interested in the application of revenue and in the provision of infrastructure, rather than in the provision of land management services. Over 90% of the land is under freehold tenure and lies outside municipal boundaries and therefore does not attract land rates.

The activities of the Land Control Boards in the County are not reconciled with the records at the Land Registry and at the Olkejuado County Council. Approvals for subdivision and change of use made by the Land Control Board are sometimes not notified to the County Council. As a result, the level of rates applied to subdivided parcels remains that of agricultural land. In addition, the necessary levies are not applied to the formerly agricultural land.

Although the rating function is devolved to 14 townships in the County, the Rating Offices do not have adequate capacity to analyse data for purpose of decision-making. The Rating offices are manned by a Revenue Clerk and a Rating Officer and operate as Rate collection centres. The Rating Officers do not compute tallies of the amount of Rates they collect per year. The money is collected and forwarded to the main
Revenue Office without an analysis of the amount collected. This makes it difficult to analyse revenue information per Urban Centre and also to assess the particular locations where revenue may be increased by adjusting the municipal boundaries.

5.1.2 Land Governance issues

Corrupt practices such as collusion of land owners with government Valuers have resulted in reporting of land values that are below the Market Value, therefore reducing the amount of Stamp Duty payable on land transactions. These negatively affected the amount of revenue collected from this tax. It is notable that along with more efficient fiscal measures, the government must deal with governance issues.

The land taxation levels in their current state are sufficient to provide revenue for land management services. However, only a small fraction of government revenue gets to the government as the balance finds its way into individuals’ pockets. The issue is not about increasing tax but tightening the procedures and loopholes in the administration of tax. Tax collectors are not accountable and they engage in corrupt practices. The principles of good governance, transparency and accountability need to be incorporated into fiscal frameworks.

5.1.3 Regulation of Land Transactions & Operations of the Land Control Board

There is no framework to follow up on change of use to enable the land now having a higher use to be taxed at a different rate. It is necessary for a policy framework to be created to remove this vacuum. This is made more urgent by the fact that the Land Control Boards have not been extinguished by the new Land Acts through the repeal of the Land Control Act.

In addition, the community is selling land too rapidly without giving thought to their livelihood as pastoralists. The land available for pasture is reduced yet the community has not embraced alternative sources of income and land use.
5.1.4 Improvement of Capacity of Public Institutions to collect Tax

The location of the County close to the Capital City has accelerated its urbanization. The urban use has increased by 30.9% over the last ten years. As a result, the demand for land administration and management services has also increased further straining the capacity of the two Land Registries to deliver services to the public.

Further, the revenue collection systems at the national and local authority levels are disjointed. The various institutions collecting tax need to automate the processes and ultimately have the systems integrated to enhance cross-referencing of data and information sharing.

5.2. Recommendations

a) Following up of change of use

Records on land transaction in the County need to be updated urgently and the attendant change of use levies applied where appropriate. This will increase the revenue available to the County for land management services and infrastructure development.

b) Provision for Land Banking for Investment and other purposes

The provisions of compulsory acquisition and compensation should be applied to create land banks for investments in infrastructure and other public benefit facilities. Suitable land can also be reserved for development though Public Private Partnerships.

c) Enforcement of Government procedures and Local Authority Bylaws

All government valuations should provide evidence of inspection and relevant comparable sales data. Also enforcement of special conditions under leases granted by the County Council. The enforcement of development within 24 months would stop speculation on land and avail it for investment. It would also check the land prices often increased by speculators and stabilise the land market.
Enforcement of by-laws relating to rates, levies and fees applied to land resources. There is a need for periodic inspections to identify land whose use has been changed.

d) Improvement of ICT and implementation of e-government across Public Institutions and Local Authorities

Tax collection should be automated. We further recommend the automation of the County Council land registry records and a mechanism to link the Council Land records to those of the Land Registries. In addition, the Public Valuation Roll should be updated and the Contributions in Lieu of Rates adjusted appropriately.

A mechanism should be developed to provide a platform for various institutions collecting tax, to cross-reference data and to promote information sharing. Such a system would ensure that all data sources are covered.

e) Reviving the Capital Gains Tax

Reviving the Capital Gains tax under the income tax Act should be done to tax gains from appreciation of values of land resources.

f) Revision of the Schedule to the Stamp Duty Act and Land Related Levies

The schedule of instruments upon which stamp duty may be paid was last amended in 1994 although few amendments have been made since. The schedule should be revised to reflect current realities.

The various fees and levies charged for transactions and applications related to land should be revised periodically, say after every five years.

g) Revision of Municipal boundaries

The municipal boundaries should be revised to reflect the increasing urban development in the County and increase the tax net.
h) **Create Linkage between Operations of Land Control Board & County Land Management Boards**

The County Council needs to be notified of all transactions approved by the Land Control Board in order to up-date its records on land ownership and taxation. The County Land Management Boards will need to have representatives from the County Council.

i) **Physical Planning as a Tool to Guide Land Use**

Physical planning should precede development. Zoning and development control approvals or otherwise should guide land use. Local Authorities should penalize land owners and users for non-conformity to zoning regulations. In addition, zoning regulations should incorporate environmental aspects to prevent degradation.

j) **Application of Modern Fiscal Instruments**

Further proposals for mechanisms to increase land-based revenue and influence land use include:

a) Fiscal measures that encourage land use e.g. Wildlife Conservancies which increase the per capita income for each household.

b) Payment for Environmental Services (PES) such as extraction of water, fuel wood, soda ash etc. At present the government pays for Namanga and Oloolua forest. Payments are made in form of contribution in lieu of rates. However, the Service for which the payment is being made needs to be specified and national projects such as dams should be exempted.

c) Payments for easements on land forming wildlife migratory routes and dispersal areas.

d) Use of Land Use Plans and Spatial Plans to provide a framework for approval of change of land use.

e) Use of compulsory acquisition and compensation for projects of national importance.

g) Recognition and reward for initiatives leading to environmental improvement e.g. Payment for Ecosystem Services (PES), Voluntary environmental easements etc.

h) Fiscal exemption for improvement of land: agricultural activity, social housing, infrastructure projects.

i) Tax on capital gains on property.

j) Revision of tax framework on extraction of materials, mining and water.

k) Fiscal incentives for organic agriculture and eco-tourism to motivate creation of conservancies.

l) Fiscal incentives concessions and subsidies on other eco-promoting initiative such as rain harvesting, use of green energy, waste re-cycling, reforestation, clean production etc.

m) Sale of rights for utilization of public goods, flora and fauna under management by public bodies for instance, KWS, KFS.

5.3. Policy recommendations

5.3.1 Creation of a mechanism to co-ordinate and consolidate land taxation regimes
The office of the controller of budget should establish a mechanism for co-operation
with land management institutions, including the National Land Commission and the County Land Management Boards to consolidate and coordinate land taxation regimes. Subsequently Parliament should harmonise land resource taxation laws to incorporate governance principles outlined in the Constitution of Kenya 2010.

5.3.2 Provision of incentives for appropriate Land Use
The application of appropriate land use should be rewarded and application of inappropriate uses penalized, for instance, through tax holidays.

5.3.3 Enhance the Capacity Building of Judicial Officers on Environment and Land Matters
Capacity building of the Judges of the Environment and Land Court on matters relating to land; natural resource conservation and management; and other relevant areas should be made mandatory. This will enable them understand the natural resource values and therefore give appropriately punitive penalties to deter change in land use that is detrimental to natural resource conservation and management.

5.3.4 Centralization of the authority to charge Environmental Taxes
There are currently multiple institutions that levy environmental fees including NEMA, Local Authorities, KFS, KWS and the Judiciary. The policies on these levies are fragmented and the funds are not used for the purpose of environmental restoration.

The Authority to prescribe and charge taxes ought to be centralized in one institution. The process prescription of the fees should be participatory in order to obtain input from all stakeholders including the Kenya Revenue Authority.

5.3.5 Enhance Capacity for use of Computer-aided Mass Appraisal
The capacity of Counties to use computer-aided mass appraisal methods in assessing rates requires to be enhanced. This will entail the procurement of relevant hardware,
software and engagement of experts to operate the new systems. The National Land Commission should undertake the task of procuring and operating these systems in performance of the functions of tax assessment and establishment of Land Information Management System.
References


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