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Analysis of the Impacts of Land Reforms on Urban Development in Kenya

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Abstract

Land reform is an emotive cross-cutting issue especially in Africa. Land reform is viewed in the context of establishment of secure and formalized property rights in land and redistribution of property rights. Over the last two decades, Kenya has carried out a number of land reforms touching on urban land with the major milestones being the formulation of land policy and its entrenchment in the Constitution of Kenya 2010; establishment of an independent National Land Commission (NLC); and reducing land leases from 999 years to 99 years. Despite huge investment made in land reform agenda, not much has been achieved in the improvement of the welfare of its citizens especially in the Urban areas, as evidenced by over 70% of the population languishing in poverty and living in informal settlements. The proposal to issue out 3 million titles by 2017 is yet to be achieved and that land owners will have to wait for long to access resources for development due to lack of collateral security. This paper therefore reviews and analyses the impacts of land reforms in Kenya and its implications on urban land development. It gives suggestions on what needs to be done to make land reform process succeed and be beneficial to all.

Key Words: Land, Reforms, Tenure, Property, Rights

Introduction

Land reform usually refers to redistribution of land from the rich to the poor. More broadly, it includes regulation of ownership, operation, leasing, sales, and inheritance of land. The most obvious argument in favour of land reform is equity. In a land-scarce country with a significant section of the rural population below the poverty line, the case for ensuring that everyone has access to some minimum amount of land seems compelling from this point of view (UN Habitat, 2008).

Kenya has land surface area of approximately 582,646 sq. km. comprising 97.8% land and 2.2% water surface. Only 20% of the land area can be classified as medium to high potential land and the rest of the land is mainly arid or semi-arid. Forests and woodlands occupy about 37,000 sq. km. (6.35%). Some of these form part of National Reserves and Game Parks which together account for 10% of the country's area. Kenya has a population of about 45 million people with about 70% of the population living in rural areas. Figure 1 shows land use categories in Kenya.

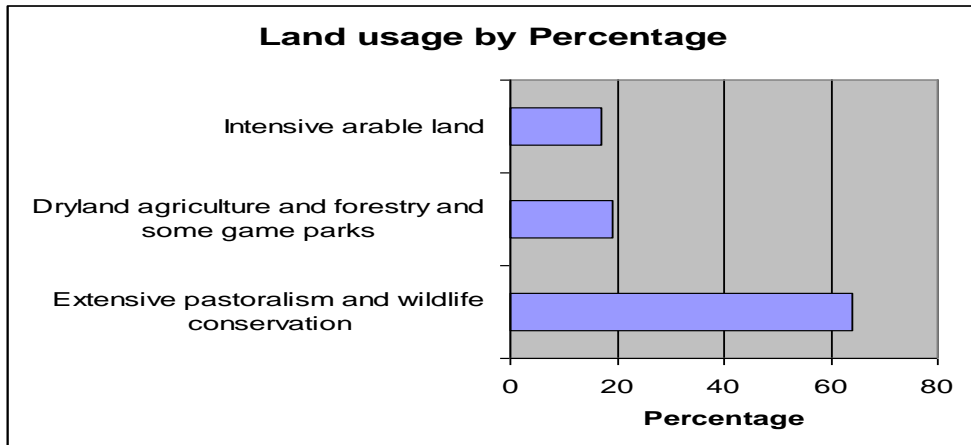


Figure 1. Land Usage Derived from National Land Policy (2009)

Land Reform Process in Kenya

The Njonjo Land Commission was one of the precursors of Land reforms in Kenya. The Key finding of the Njonjo Land Commission was that there was lack of a coordinated policy for the development, use and administration of either urban or rural land. It recommended that a new institutional framework for land administration would take over the functions of the Ministry of Lands comprising the Departments of Survey, Physical Planning, Lands and Adjudication and Settlement. District land authorities enabled the devolution of land administration and planning an important role in issues of inheritance, dispute resolution and land adjudication (Njonjo, 2002)

The Ndungu Land Commission was tasked by the Government to inquire into irregular land allocations in 2003. The Commission found out that due to massive grabbing of public land during the last fifteen years, some 200,000 illegal titles had been registered and needed to be revoked (Musyoka, 2004). The Njonjo and Ndungu Land Commissions set the stage for further land reforms in Kenya.

Reforming the land sector is a multi-stakeholder process. There were too many actors with conflicting and competing

interests on land. UN Habitat (2008) outlines in detail steps which any country should follow in the establishment of an effective land sector. The major ones include:

- i) Stakeholder analysis with the state and the institution dealing with land taking the lead in identification of all relevant Actors including donors, state and non-state actors,
- ii) Outline of the road map or an envisaged process,
- iii) Consultation workshop with all stakeholders mainly to agree on joint vision,
- iv) Identification of a focal point to spearhead reforms such as the Secretariat or the Principal Secretary,
- v) Establishment of a co-ordination unit with clear terms of reference for monitoring progress,
- vi) Agreement on roles of non-state actors, on harmonization process and responsibilities,
- vii) Set-up of co-ordination groups and sub-groups, including development partners who might want to support specific areas like Land Information System,

- viii) Establishment of a Technical co-ordination committees or task forces and development of terms of references for them,
- ix) Form a steering committee in which partner government organizations, development partners and non-state actors consult on matters arising during the process, approve work plans and budgets and discuss the way forward.
- x) Application of a demand-oriented and flexible approach, which can realistically accumulate stakeholders' expectations

without losing the momentum for the reform process (UN Habitat, 2008)

The Kenyan process of Land reform followed this pattern with the Ministry of Lands forming a Land Reform Transformation Unit (LRTU) and the Secretariat to spearhead land reform formulation processes which have led to enactment of new land laws in Kenya. The land reform agenda in Kenya is still on-going. The Constitution of Kenya 2010 provides a time frame within which new land laws must be formulated. The timelines and the corresponding achievements are as indicated in table 1.

Table 1: Land and Environment Legislations to be Enacted by Parliament

Legislation to be Enacted	Constitutional Time Lines	Current Status
Community Land (Article 63)	Five years	Community Land Act No.27 of 2016 enacted
Regulation of Land Use and Property (Article 66)	Five years	Not Completed
Legislation on Land (Article 68)	18 months	Land Act 2012 National Land Commission Act 2012 Land Registration Act 2012 Environment and Land Court Act 2011 Urban Areas and Cities Act 2011, enacted.
Agreements relating to natural resources (Article 71)	Five years	Not Completed
Legislation regarding Environment (Article 72)	Four years	Not Completed

Analyzed from Constitution of Kenya 2010

Policy and Legal Frameworks Underpinning Land Reforms in Kenya
Constitution of Kenya 2010

Land and Environment issues are entrenched in the Constitution of Kenya 2010, in chapter five from article 60 to article 72. The salient issues touching on land as stated in the constitution are: the classification of land as public land, community land and private land; and the Creation of the National Land Commission as a key institution whose main responsibility is to manage public land on behalf of the national and county governments.

The constitution revolutionizes land tenure and property rights of land own by foreigners. Foreign nations owning freehold land as well as their citizens who own land on 999 year leases are all required to revert to 99-year lease. In this regard, the constitution adopted the recommendations of the National Land Policy number 3 of 2009.

National Land Policy

The National Land Policy (NLP) as adopted by Parliament in December 2009 proposed establishment of an efficient and equitable institutional framework for land ownership, administration and management. The policy states that the government shall establish a

National Land Commission to carry out land administration and management efficiently, equitably and sustainably. The policy further stipulates that land policy reforms would not succeed in the absence of a sound Constitutional framework. Section 41 of the National Land Policy requires that the Constitution shall provide for the establishment of a National Land Commission (NLC) to carry out efficient, equitable and sustainable land administration and management. Consequently, NLC was adopted as a Constitutional body under Chapter Fifteen of the Constitution (on Commissions and Independent Offices) and it has the powers, privileges and authority as accorded to such commissions under the Constitution.

Land Act 2012

The Land Act provides a new legislative structure for land governance and rights in Kenya, largely aligned with that required by the Constitution. The Act articulates functions for the National Land Commission (NLC), Cabinet Secretary, Registrar and Parliament at the national level, and also local-level functions for the NLC, Registrar and County Land Management Boards. The Act recognizes three categories of land as public, community and private, and gives guidelines for conversions between these categories. The Land Act contains guiding values and principles, incorporating a comprehensive list of land governance principles from the Constitution. The Act also emphasizes on transparency requirements and public safeguard provisions for public lands allocations, and provides for clear protections for landholders and interested parties within the purview of compulsory acquisition. The power of eminent domain is invoked in acquisition of land to be earmarked for public purpose. In article 68(i), it is stated that Parliament shall prescribe minimum and maximum land holding acreages in respect of private land. The requirement is yet to be met as a study to establish land use thresholds has not been commissioned.

The Land Registration Act 2012

The main objectives of land registration Act are to: protect property rights, facilitate transactions in land, and enable land to be used as security for a loan. Land registration systems should indicate each individual land parcel and provide either evidence or confirmation that the person named in the register has specified property rights to that parcel. The Land Registration Act repealed the Registered Land Act (Cap 300), Registration of Titles Act (Cap 281), Government Lands Act (Cap 280), and the Land Titles Act (Cap 282). The Act recognizes joint tenancy for land held between spouses, and establishes strong protections for Spousal land rights in the context of transfers, including sale, lease and mortgage. Spousal rights to Matrimonial property are listed among overriding interests, and to which any registered transactions are subject (USAID, 2012). Section 107(3) clarifies that any lease granted to a non-citizen shall not exceed ninety-nine years. On the transition to electronic files, the Act provides for the use of electronic files in Section 9(1).

National Land Commission Act 2012

The broad mandate of the National Land Commission is derived from the Constitution of Kenya 2010 and the enabling statutes namely: the National Land Commission Act 2012, Land Act 2012 and the Land Registration Act 2012. The constitutional functions of National Land Commission include:

1. Management of public land on behalf of the national and county governments;
2. Recommend a national land policy to the national government;
3. Advise the national government on a comprehensive programme for the registration of land throughout Kenya;
4. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

5. Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
 6. Encourage the application of traditional dispute resolution mechanisms in land conflicts;
 7. Assess tax on land and premiums on immovable property in any area designated by law;
 8. Monitor and have oversight responsibilities over land use planning throughout the country; and
 9. Perform any other functions prescribed by national legislation (NLC Act 2012).
- b) The Cultural and Social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and not inconsistent with any written Law;
 - c) The principle of International cooperation in the management of Environmental resources shared by two or more states;
 - d) The principle of Inter-generational and intra-generational equity;
 - e) The polluter pays principle;
 - f) The precautionary principle; and
 - g) The Principle of land policy under Article 60 (1) of the Constitution

The Environment and Land Court Act 2011

The Environment and Land Court Act 2012 repealed the Land Disputes tribunal Act. Part (iii) of the Act, on the jurisdiction of the court, states in section 13(1) that the Court shall have an appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2)(b) of the Constitution and within the provisions of the Act or any other written law relating to environment and land. Section 13 (2) in exercise of its Jurisdiction under Article 162(2) (b) of the Constitution, the court shall have power to hear and determine disputes relating to environment and land including disputes relating to: environmental planning and protection, climate issues, land and planning, title tenure boundaries, rent, rates valuations, mining, minerals and other natural resources, compulsory acquisition of land, public, private and community land.

In Section 18, in exercise of its functions under the Act, the court shall be guided by the following principles:

- a) The principle of public participation in the development of policies, plans and processes for the management of the environment;

The matters that were previously handled by the land disputes tribunal and Physical planning Liaison committees are to be determined in Courts. It is also notable that when handling environmental cases, production of scientific evidence to prove environmental damage is not a requirement. Any aggrieved person can represent himself or herself in Court as every citizen has locus standi, unlike the case of Wangari Mathai vs Kenya Times Media Trust.

Urban Areas and Cities Act NO. 13 of 2011

It is the act of Parliament to give effect to article 184 of the constitution to provide for the classification, governance and management of urban areas and Cities, to provide for the criteria of establishing urban areas, and the principle of governance and participation of residents. In Part II of section 12 (1) of the Act, the management of a City and Municipality is vested in the County government and administered on its behalf by Board constituted in accordance with section 13 or 14 of the Act. A manager is appointed pursuant to section 28 and such other staff or officers in the County Public Service. Board of Cities comprises a board of eleven members, six of who shall be appointed through a competitive process by the County Executive Committee, with the approval of the County Assembly. The Chair person and vice-chair person of the

board are elected by members of the board to hold office for five years. The functions of a Board of a city or a Municipality are to:

- (a) Oversee the affairs of the city or Municipality;
- (b) Develop and adopt policies, plans, strategies and programmes, and may set targets for delivery of services;
- (c) Formulate and implement an integrated development plan;
- (d) Control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passengers transport, agriculture and freight and transit stations within the framework of the spatial and Master plans for the city or Municipality as may be delegated by the County government;
- (e) Promote and undertake infrastructural development and services within the City or Municipality;
- (f) Develop and manage schemes including site development in collaboration with the relevant National and County agencies;
- (g) Implement applicable National and County Legislation;
- (h) Monitor the impact and effectiveness of any service, policies, programmes or plans;
- (i) Establish, implement and monitor performance management systems; and
- (j) Promote a safe and healthy environment.

The Powers of Boards of Cities and Municipalities include:

1. To ensure the implementation and compliance with policies formulated by both the National and County government;
2. To make bye-laws or make recommendations for issues to be included in bye-laws; and

3. To ensure participation of the residents in decision making, its activities and programmes.

Another salient issue of the Act is the inclusion of the concept of Citizen Fora, whereby residents of a city, municipality or town are encouraged to deliberate and make proposals to the relevant bodies or institutions on proposed national policies, national legislations and development plans of the County and of the National government. The Government is to receive representation including feedback on issues raised by the County Citizens from elected and appointed officials.

In terms of management of Cities, a City County shall be governed and managed in the same manner as County government. A City or Municipal manager for every City or Municipality established under the Act shall implement the decisions and functions of the board and shall be answerable to the Board.

It is envisaged that every City and Municipality shall operate within the framework of an integrated development plan which shall give effect to the development of urban areas and Cities and be the basis for the preparation of Environmental management plans, provision of physical and social infrastructure and transportation, preparation of annual strategic plans for a City or Municipality, disaster preparedness and response, and the overall delivery of services including provision of water, electricity, health, telecommunication and solid waste management. The integrated development plan will also serve as a premise for the preparation of geographic Information system for a City or Municipality, promote development of informal commercial activities in an orderly and sustainable manner, provide for a framework for regulated urban agriculture, and be the basis for development control. A County government is mandated to initiate an urban planning process for every

settlement with a population of at least two thousand residents.

Community Land Act 2016

The Community Land Act No 27 of 2016 was assented on 31st August, 2016 and commenced on 21st September, 2016. It is an Act of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; and to provide for the role of county governments in relation to unregistered community land and for connected purposes. The Act repeals two old Laws: the Land (Group Representatives) Act, (Cap. 287); and the Trust Lands Act (Cap. 288). In the definition of terms, “community land” means land declared as such under Article 63(2) of the Constitution and land converted into community land under any law. The major provisions in the Community Land Act 2016 include:

- a. Community land shall be vested in the community and maybe held under customary, freehold and Leasehold. Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with the Act. The County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held;
 - b. Formation of the community land management committees whose role is to manage and administer registered community land on behalf of the respective community, and coordinate the development of community land use plans in collaboration with the relevant authorities;
 - c. Proper land use and development planning of community land, taking into consideration any conservation, environmental or heritage issues relevant to the development, management or use of the land, any environmental impact plan pursuant to existing laws on environment, and, be bound by any approved relevant physical development plan;
 - d. Conservation and management of resources in community land taking cognizance of measures to protect critical ecosystems and habitats; measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources, and procedures for the registration of natural resources in an appropriate register;
 - d. Provisions for land conversion regarding the four types of land conversion including: conversion from Community land to Public land; conversion from Community land to Private land; conversion from Public land to Community land and conversion from Private land to Community land;
 - e. Use and management of natural resources and community land. Natural resources on community land should be used and managed;
 - i. sustainably and productively;
 - ii. for the benefit of the whole community including future generations;
 - iii. with transparency and accountability; and
 - iv. On the basis of equitable sharing of accruing benefits.
- a) Land disputes and conflict resolution. The methods of settlement of disputes relating to Community land should involve mediation, arbitration and judicial proceedings.

It is too early to critically assess the effectiveness of Community Land Act 2016 as the law is still new and its impact has not been felt countrywide in Kenya.

Impacts of Land Reforms on Urban Land Development

The concomitant effects of land reforms in Kenya can be examined from the dimensions of social, economic and environmental aspects. The impacts may be direct or indirect as well as being short term or long term.

Institutional Strengthening

Land reform processes in Kenya have contributed towards constitution of new institutions as well as strengthening the ones which use to exist before. The National Lands Commission (NLC) is now in place and its role is to manage land on behalf of the County and the National Governments. It has established liaison offices within the Counties. Other land management institutions in Kenya include: Ministry of Lands, County Governments, County Land Management Boards, National Construction Authority, Land Control Boards and the Environment and Land Courts.

Urban Development

The impact of land reforms can be reflected in the sector of housing as houses are built on available legal land. As a strategy to increase housing supply, the government of

Kenya targets, in its development agenda, to construct over 150,000 public housing units every year. However, the target is not commensurate with the demand for housing thus forcing many people to seek accommodation in the informal settlements. The Government uses the National Housing Corporation (NHC), a semi-autonomous institution to deliver decent and affordable shelter for Kenyans. As an example, the State Department for Housing completed 822 residential units in Kibera Soweto Zone A. The National Housing Corporation completed 240 residential units in Nairobi, Kisumu and Kisii counties. The total number of reported private buildings completed increased by 10.5% from 9,054 units in 2015 to 10,002 units in 2016 with residential buildings accounting for 86.2% of the completed private buildings. This shows that the private sector has continued to play a key role in the provision of both residential and non-residential houses which are based on land (KNBS, 2017).

Table 2 shows the number of private buildings reported as completed in the City of Nairobi and public buildings completed across the country.

Table 2. Reported Number of Completed New Private and Public Buildings, 2012 – 2016

Year	Private (Nairobi City County)			Public (Nationwide)		
	Residential	Non-Residential	Total	Residential	Non-Residential	Total
2012.....	4,824	637	5,461	2,015	20	2,035
2013.....	5,447	876	6,323	376	-	376
2014.....	6,538	985	7,523	243	-	243
2015.....	7,834	1,220	9,054	45	-	45
2016*.....	8,623	1,379	10,002	1,062	-	1,062

Source: National Housing Corporation & The State Department for Housing and Urban Development

* Provisional

The Government of Kenya is also targeting registration of three (3) million land parcels in the country by the year 2017 as a medium term indirect strategy for increasing housing supply. It is believed that having the rights of land registered in citizen's name, will give boldness to put up permanent and

decent houses as it eliminates uncertainty that is connected with unregistered land (Ministry of Lands, 2013). As an example of the impact of land reforms in the urban Kenya, Eldoret town has been experiencing rapid urban growth and the building projects which were recorded by the National

Construction Authority (NCA) including commercial and residential developments have been on the increasing trend as reflected in Figure 2.

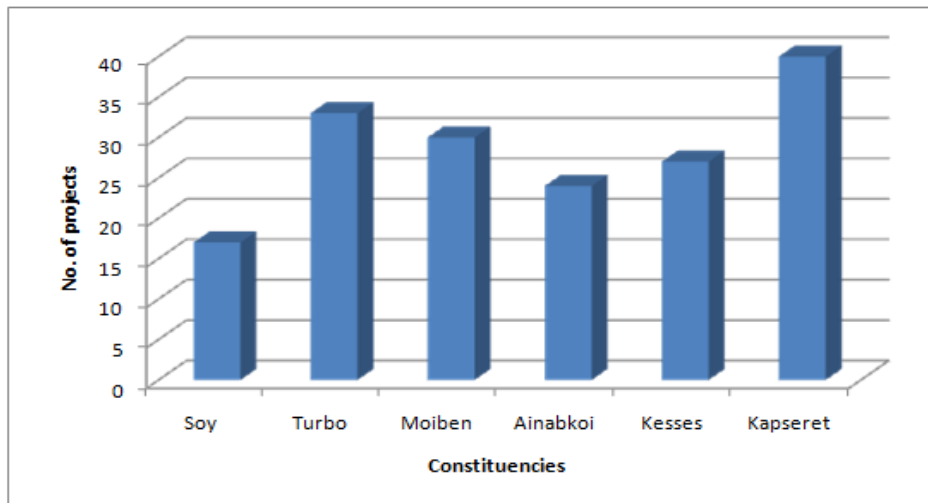


Figure 2. Number of Building Projects Processed by NCA in Eldoret in 2015 as Indicated by Ngetich (2016)

Business Process Reengineering

Land reforms have resulted in ease in doing businesses as investors are getting licenses and approvals on time. Significant achievements have been recorded in a number of areas, according to Ministry of Lands (2013), including:

1. Reviewed and documented land Processes and procedures that total over 30 in each department taking a period of 2 years to complete a process;
2. Redesigned the land processes and procedures with an aim of reducing the over 30 procedures to less than 10 thus reducing time taken from 2 years to approximately 3 months; and
3. Installed a File Tracking System for all Settlement Plot Files totaling 110,000.

Land Information for Informal Settlements

In the area of Land information system, a Geographical Information System (GIS) Data Base has been developed for mapping of informal settlements, as a net result of land reforms. This modern technology is

being used to map and plan informal settlements in Kibera in the City of Nairobi.

Development and Implementation of an Integrated Land Rent Database System

An in-house integrated land rent database system has been developed and implemented. The system has captured all leasehold properties in Kenya. It is in this system that people with these leases can access their land rent information through the mobile phone (SMS) service. This system is web based and citizens can access their land rent status/balances through their mobile phones (SMS). This system is fast, transparent and it has promoted accountability and land investment.

Revocation of illegally acquired land

The Land reforms has provided legitimacy for repossession of illegally acquired public land as exemplified by the over 500 titles that have been revoked since the process was started (Ministry of Lands, 2011).

Increase in Revenue Generation

The land reforms instituted have gone a long way in increasing revenue generation from the land sector. The Lands sector which has, for so many years, recorded less

than 1 billion Kenya shillings in revenue collection, realised 9.561 billion shillings in the 2011/12 financial year. It now boasts of being the second highest revenue collector

for the Government after the Kenya Revenue Authority. Figure 3 shows Land Revenue Generation trends.

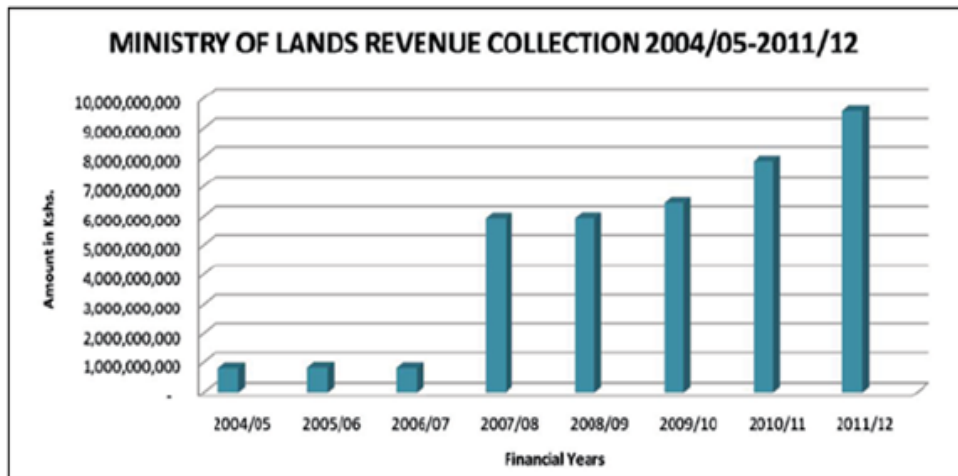


Figure 3. Land Revenue Generation Trends according to Ministry of Lands (2013)

Conclusion and Recommendations

Land Reforms in Kenya is yet to yield tangible socio-economic development of the nation, as it has not helped eradicate poverty and improved access to decent housing in urban Kenya. Most of the achievements recorded are institutional and process-based and not beneficial directly to the urban dwellers. Over 70% of land in Kenya within the 47 Counties has not been mapped out and registered. Indeed as Polar (2002) puts it in his book on 'The Mystery of Capital Why Capitalism Triumphs in the West and Fails Everywhere Else', explains the importance of property rights in promoting prosperity. This underscores the need for a developing country like Kenya to invest in land management programmes in such areas as in the preparation of land cadastre systems, land titling, spatial planning, environmental conservation and provision of infrastructure packages with the sole purpose of stimulating urban development. The National and County Governments in Kenya should work in tandem to create stable land markets which can generate revenue for national development. The National land policy should continuously be

reviewed from time to time with provisions for creation of harmony and synergy amongst various stakeholders with competing interests in the lands sector, for sustainable development.

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