GOVERNANCE OF URBAN LAND MANAGEMENT IN NAIROBI, KENYA

UNDERSTANDING THE POLITICAL ECONOMY OF CONSTRAINED URBAN LAND ACCESS

by

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Outline

• Introduction
  - Context: problematic land administration system/duality between the urban and rural areas in Kenya

• The Nairobi Case Study
  - Possibilities of expanding urban land access: conversion of land from rural to urban use; allocation of public land for industrial, commercial and multi-residential use

• The Questions
  - To what extend does it translate to expanding urban land access? What character of urban development does it create - (opportunities and challenges)
Methodology

• Use of satellite images and parcel/RIM maps
• Interviews to examine both formal and typical processes
• Understanding of actors, methods and tactics used (empirical analysis)
• Analysis of costs and benefits
• Implications for sustainable urban development (expanding access to urban land)
City of Nairobi: Boundary Extension over time.

Dynamics of Rural to Urban Land

• Three case studies in Eastern part of Nairobi
  - Mulolongo: “Trust Land” – Government Land
  - Syokimau: Freehold Land - Former Scheduled Area
  - Mulinge Scheme: Government Land/ lease hold

• Land Conversion- rural to Urban
  ➢ Formal(statutory) process (as it ought to occur)and Typical Process (in practice)
  ➢ Fig. 1.1 -1.6
### Land Allocation under Cap. 280 Cost

<table>
<thead>
<tr>
<th>ITEM</th>
<th>REQUIREMENT</th>
<th>IMPLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Advertisement in Kenya Gazette</td>
<td>Limited circulation</td>
</tr>
<tr>
<td>2.</td>
<td>Ability to Develop - Auction - Bank Statement (Ksh. 20,000) - Presidential “Green Pen”</td>
<td>Out of reach of low and middle income</td>
</tr>
<tr>
<td>3.</td>
<td>Survey by registered surveyor: Minimum Ksh. 60,000 per plot</td>
<td>Out of reach of low and middle income</td>
</tr>
<tr>
<td>4.</td>
<td>Building Plan by registered Architect, Quantity Surveyor, Planner Approx. Ksh. 100,000</td>
<td>Out of reach of low and middle income</td>
</tr>
<tr>
<td>5.</td>
<td>Rates to CoL (Stamp Duty) Approx. Ksh. 30,000</td>
<td>Out of reach of low and middle income</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Ksh. 210,000</strong></td>
<td>Out of reach of low and middle income</td>
</tr>
</tbody>
</table>

### Land Allocation (N gwata)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>REQUIREMENT</th>
<th>IMPLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Information thru. Popular media (markets, barazas, churches)</td>
<td>Use of campaign machinery by politicians</td>
</tr>
<tr>
<td>2.</td>
<td>Cost from Ksh. 5,000- to 37,000 – in instalments</td>
<td>No Bank Statement, No Survey Fee, Affordable</td>
</tr>
<tr>
<td>3.</td>
<td>Variable size of plots to suit different income levels</td>
<td>Crude subdivision, All Land sub divided into plots using ropes (non-surveyor), No community facilities/roads, Certificates not recognized by (formal) banks</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Ksh. 37,000 payable in instalments</strong></td>
<td>Affordable to low and middle income</td>
</tr>
</tbody>
</table>
LAND USE IN MULOLONGO

CURRENT LAND PRICES IN MULOLONGO
Tactics used under the Ngwata system

• Exploitation of asymmetric access to information and proximity to policy makers:

• Formation of the amorphous Ngwata land association to avoid litigation:

Tactics used under the Ngwata system

• The use of courts to resolve disputes between the central Government and the Ngwata land owners:

• Use of Bribery to acquire land in Mulolongo:

• The use of political power to coerce original land owners to relinquish interest
Tactics used under the Ngwata system

- Sabotage by Development control authorities
- Intense lobbying from the Ngwata association and politicians eventually forces the Government to formalize some of the land in Mulolongo

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### Cost of Formalization
(Under GLA (cap.280, RTA (Cap, 281), LGA (Cap. 265))

<table>
<thead>
<tr>
<th>ITEM</th>
<th>REQUIREMENT</th>
<th>IMPLICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Original certificate (Transfer)</td>
<td>Ksh. 37,000</td>
</tr>
<tr>
<td>2.</td>
<td>Land be Surveyed</td>
<td>Ksh. 60,000</td>
</tr>
<tr>
<td>3.</td>
<td>Submit Building Plans</td>
<td>Ksh. 120,000</td>
</tr>
<tr>
<td>4.</td>
<td>Local Authority charges, EIA, Physical Planning charges</td>
<td>Ksh. 62,000</td>
</tr>
<tr>
<td>5.</td>
<td>Stamp duty and Other Charges to Col</td>
<td>Ksh. 60,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>Ksh. 339,000</td>
</tr>
</tbody>
</table>

*Note: Letter allotment comes with conditions of development and payment of rates*
Case of Mulinge Scheme

Mulinge Scheme
(Undeveloped)
Allocation of Public land for Industrial, Commercial and Multi-residential Use

• Public Land allocation thru.

➤ Existing Government Land

➤ Compulsory land Acquisition (Land Acquisition Act).

Mombasa Road Industrial Corridor
Industrial Area- Land Ownership
Change of ownership of public allocated land (1982-2010)

<table>
<thead>
<tr>
<th>OWNERSHIP</th>
<th>Allotment</th>
<th>%</th>
<th>Current</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>21</td>
<td>68</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>Company</td>
<td>10</td>
<td>32</td>
<td>27</td>
<td>87</td>
</tr>
<tr>
<td>Total</td>
<td>31</td>
<td>100</td>
<td>31</td>
<td>100</td>
</tr>
</tbody>
</table>
Allotment and Market Values of Public Land Allocation (1982)

- AVG_MKT (1982)
- AVG_ALV (1982)

Windfall from Public Land Allocation

Proportion of Allotment Value to Market Price (1981-1982)

- Average Allotment Value per Hectare
- Windfall (Market Value - Allotment Value)
Conclusion

• Inadvertent *(De facto)* Urban Sprawl – peri-urban
• *Ngwata System* is used – to avoid expensive formal land delivery system (survival by the poor), Political Capture, strategic choice by middle income
• Formalization leads to *market displacement* of the low income owners; emerging peri-urban lacks public services and infrastructure – *Trouble in Paradise*
• Patronage in allocation of public land leads to *land speculation/windfall* and increases cost of investment/urban development

Broader Implications

• Outright defrauding of the Kenyan public of the value of trust or government lands as well as a loss of revenues linked to the value and use of the land. *The analysis of the magnitude of the public revenue loss from such land transactions is staggering.*
Implications

• Loss of opportunity for investment in housing, public amenities, industry and infrastructure, loss of public land increases the cost of future urbanization and redevelopment (eg. Weigh bridge in Mavoko or road construction multiple compensations?)

Implications

• Inequitable land-use that fails to provide adequate low and middle income housing even though land exists for these developments even within city boundaries (eg Kenya Railway land, City Council land-no upgrading of existing housing stock). In slums the poor are made to pay in effect large bribes to access public land.
Implications

- People are forced to seek informal means to accessing land, which is now the predominant mode of land access including subdivision of private land and this means places are unplanned and tend to have no services unless provided by residents themselves (Musyoka 2006). Those who develop housing through informal means maximize profit by avoiding public amenities and passing the cost onto residents and government.

Implications

- Uncontrolled development with severe consequences for public health, risk of natural hazards (eg. Kaputei housing, residences in unused quarries, riparian zones) as well as encroachment on agricultural land needed for food production, water sheds needed for water supply and power generation, sprawl leading to traffic congestion and pollution.
- *Note not just land access matters but land use.*
Implications

• Speculation, land hoarding and increased land prices and living expenses (eg Ruiru).
• Increased litigation and contestation and volatility-mortgages on illegally acquired land creates uncertainties for the financial system. Legal sanctity of title compromised.
• Politicization and political polarization over land (land issues around election time tend to be activated).

Strategic Engagements

• **Recommendation 1:** Support the Kenyan public policy dialogue on land reform that has grown in force in the last decade.
• **Recommendation 2:** Address the urgent task of tenure security for the poor by finding ways to leverage evidence of illegality of past land allocations to negotiate regularization of informal settlements. Negotiate the repossession of land for a clear public and planned use in critical areas.
Strategic Engagements

- **Recommendation 3**: Explore fiscal instruments to curb land speculation and hoarding such as increased and improved Land Value Taxation
- **Recommendation 4**: Leverage the requirements for land-use planning in current law and support local collaborative planning processes at different scales from neighborhood (Kosovo-Mathare) to the metropolitan level. These processes would render existing land-use open to public scrutiny and dialogue and involve non-state actors especially residents and their associations (KARA, KLA and Mungano wa Wanavijiji).

Strategic Interventions

- **Recommendation 5**: Break asymmetries of information around land-use through collaborative planning and also leverage technology to improve land information systems and the public access to provision of satellite data for planners and the public (Currently this is expensive and hard to find even for government planners!)
Interventions

- **Recommendation 6:** Encourage the involvement of planners and other professionals in the current harmonization of land laws (especially Government Lands Act and Physical Planning Act). Encourage discussion of loopholes in the law that have emerged in the actual practice of land use planning such as the jurisdictional issues between Ministries of Local Govt and Land.

Interventions

- **Recommendation 7:** Involve professional associations in the land policy dialogue and encourage professional associations to sanction members who abuse land use plans and laws. Encourage competitions for innovative urban design and renewal projects around mixed use housing that could be open for public discussion.
Interventions

• **Recommendation 8:** Involve local universities (like DURP at the University of Nairobi-Policy Innovations Lab, Centre for African Cities with Rockefeller Foundation) in inter-disciplinary research needed for improved land-use planning and nurture links to public policy. Encourage also the transformation of curriculum to impart to the next generation sensitivity to the implications of land mis-use and the need for ethical engagement and improved governance of land.