

Application of Fiscal Instruments in Land Management

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Role of Fiscal Instruments in National Development

- Contribute to government revenue and expenditure
- Economic stability – influence inflation/ deflation
- Ensure fair distribution of income
- Optimize allocation of resources and deflection of resources to areas of strategic growth
- Create employment opportunities

Fiscal Instruments: Policies & Legislation

Fiscal Instruments applied in Kenya:

- Property Rates
- Stamp Duty
- Estate Duty/ Inheritance Tax
- V.A.T
- Income Tax Assessments (Capital Gains Tax)
- Environment Tax (EMCA)
- Other Land Based Revenues

Role of Fiscal Instruments in Land Management

- Revenue generation
- Creation of a land trust for land banking, servicing of land, land reclamation etc
- Incentive for productive use
- Discourage speculation



Land Rates

- Most significant revenue for local authorities
- Authority from Rating and Valuation for Rating Act
- Valuations prescribed to be done every 10 years
- Based on Unimproved Site Value
- Variation of the method of rating allowed in law
- Tax Rate regulated by national government
- Public and Community land exempted from most Valuation Rolls – loss of Contribution in Lieu of Rates
- Key challenges are lack of capacity to collect and dated land records.

Stamp Duty

- Most significant land-based tax for the central govt.
- Administered through the Stamp Duty Act and Finance Act (1999)
- Originated from the need to validate transfer documents by affixing a stamp
- Stamp Duty on land is based on land value as assessed by a government valuer.
- Rate: 4% - Urban Areas, 2% - Rural Areas
- Tax on transfer of land, shares and securities.
- Can be effectively applied to discourage speculative purchase of assets.
- Potential for direct benefit if administered by County Governments.

Estate Duty/ Inheritance Tax

- Administered through Estate Duty Act
- Arises upon the demise of a land owner
- Application of the tax has been in abeyance for the last two decades
- Proposed for implementation by the NLC

V.A.T

- Imposed on the process of production or consumption of goods and services
- Authority based on the Income Tax Act
- Locally applied to rental properties

Capital Gains Tax

- Provided for under the Income Tax as Income Tax Assessments
- In abeyance for the last two decades
- Levied on profit released upon the sale of a capital asset
- May not be realized in an inflationary environment
- Could be implemented to bring capital appreciation benefits to bear on the poor e.g by funding provision of low cost housing by the government

Other Land Based Revenues

- Environment Taxes
- Betterment Taxes – Service Charge
- Road Toll charges
- Mineral Extraction Royalties
- Fees and Levies

Contribution of Land Tax to GDP

Gov't Expenditure (09/10) – KShs.805.3bn
Gov't Expenditure (10/11) – KShs.998.3 bn
Contribution of Land Tax to GDP (09/10) – KShs.5.33bn (0.66%)
Contribution of Land Tax to GDP (10/11) – KShs. 6.80 (0.85%)

Constitutional Basis for Application of Fiscal Instruments to Land:

Article 60 of 2010 Constitution provides principles on use including: Productivity, Equitability, Sustainability, Efficiency

Article 66 gives the Gov't authority to regulate the use of land or any interest in or right over land for public interest.

Article 67: NLC to tax land and premiums on immovable property

NLP Provisions on Application of Fiscal Instruments to Land

Article 119: Gov't shall ensure all land is put into productive use on a sustainable basis

Article 168: Gov't establish a land taxation regime that facilitates efficiency in revenue collection, Utilization and servicing of land, Incentives for appropriate land use, Discourages land speculation, Improves the capacity of public institutions to assess and collect taxes,

The Problem:

The current fiscal measures has resulted in:

Ineffective land taxation, assessment and collection systems,
Inadequate revenue for land management systems,
Failure to discourage speculation,
Failure to encourage effective land use & sustainable land use.

Research Objectives:

To review the current fiscal measures that relate to land,

To review the effectiveness of these measures and the gaps that require to be addressed and

To provide policy recommendations for use in the revision of legislation and formulation of policies



Study Area: Kajiado County

Area: 21,900 sq km
 Population: 687,312
 Annual Rev: KShs. 158M (\$2M)
 Primary Land Use: Pastoralism

Land Uses in Kajiado County

- Pastoralism (main)
- Industrial, Commercial & Residential Development
- Mining and Quarrying
- Cultivation Agriculture
- Wildlife Conservation

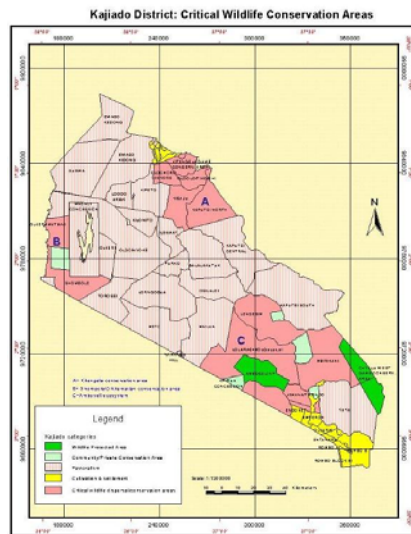


Changes in Land Cover in Kajiado County Year 2000 - 2010

Land Use/ Cover	Area (Ha) Year 2000	Area (Ha) Year 2010	% Change	Cause
Agricultural Land	157,283.92	178,102.30	13.24	Increased cultivation
Open Grassy Shrub land	114,149.78	86,366.70	-24.34	Clearing for cultivation and human settlements
Open Woody Grass land	137,015.87	189,643.30	38.41	Deforestation
Mined Areas	1,890	2,695	42.5	Demand for Building materials
Urban	1,580.50	2,069.40	30.9	Population Growth
Total Area	1,374,714.10	1,374,714.10		

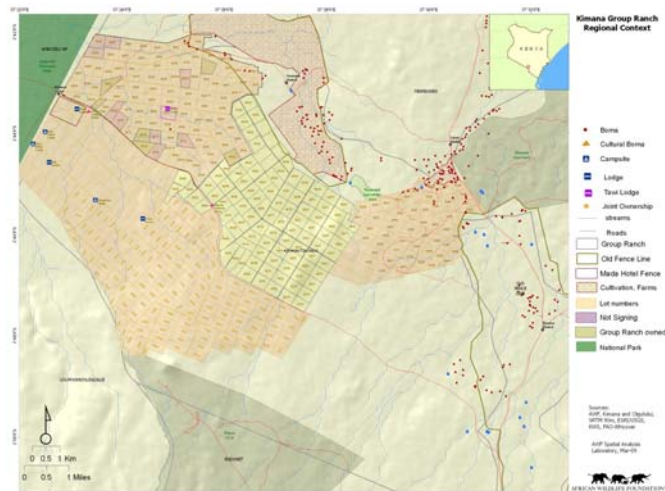
Source: Department of Remote Sensing and Resource Surveys, 2011

Group Ranches before Subdivision to Members: Kimana GR



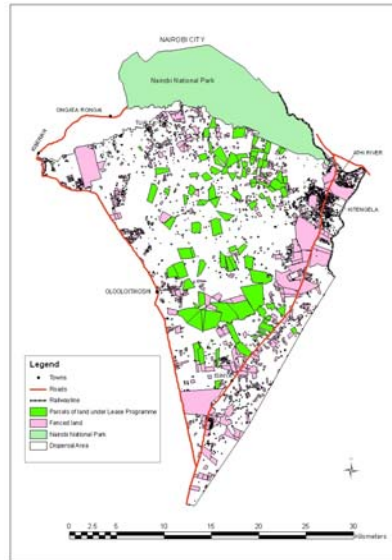
Source: African Wildlife Foundation, 2010

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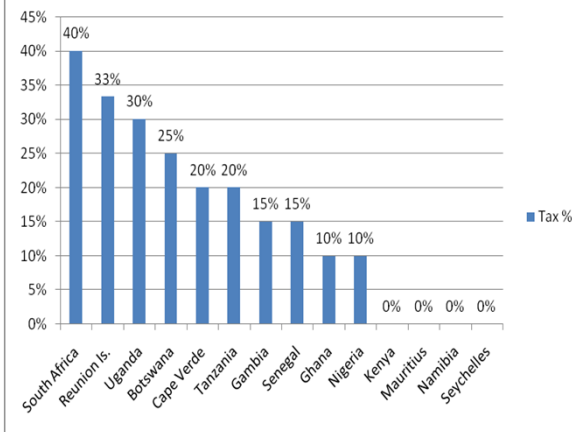


Source: African Wildlife Foundation, 2010

Effect of Change of Land Use on Wildlife Conservation (Migratory Corridors)



Capital Gains Tax in African Countries %



Source: Global Property Guide (2012)

Study Methodology

Observation – Field Visit

Literature Review

Interviews

Questionnaires

Findings

- Nationally land only contributes 0.6% of government budget (KShs.8bn of 805.3bn)
- Primary land based revenue sources:
 - Land Rates
 - Land Rent
 - Housing Rent
 - Mining Fees
 - Quarry Extraction Fees
 - Sand Harvesting Fees
 - Levies on application for change of use, approval of building plans, transfer of County plots, amalgamation, survey, beaconing, consent to charge land and commercial film shooting

Findings....cont'd 1

- Revenue collection decentralised to 14 towns – Kitengela, Isinya, Kajiado, Ngong, Mashuuru, Loitoktok, Bisil, Bulbul, Ongata Rongai, Kiserian, Namanga, Masimba, Kimana and Sultan Hamud
- C.C.O total revenue FY10/11 – KShs.303.7M
- 52% of revenue (KShs.158M) for C.C of Olkejuado is land based
- Need for Computer Assisted Mass Appraisal
- Normadic pastoralism still prominent land use and hard to apply tax
- Benefit not derived from Stamp Duty

Findings.....cont'd 2

- Key Challenges to Taxation of Land
 - Approx 90% of land under freehold tenure
 - Limited productive use of land
 - Lack of up-dated cadastral records
 - Resistance by land owners
 - Rapid increase in land values so USV does not reflect capital value
 - Inability to reign in Land Control boards
 - Capacity to collect tax vis a vis vastness of County
 - Corruption and land governance issues which reduce the amount of revenue availed for use
 - Landowners Attitude to Tax
 - Disjointed National Revenue Collection System
 - Default and Evasion of Tax

Findings.....cont'd 3

- Key Challenges to Taxation of Land.....cont'd
 - Limited government budget provided to Ministry of Lands for land management services
 - Poor management of public funds for land management
 - Service delivery and work ethic issues

Recommendations

1. Consolidation of land tax regime between national and county governments
2. Participatory approach to formulation of fiscal policy
3. Conversion of land tenure from freehold to leasehold upon change of use
4. Change of use from Agricultural to higher use upon subdivision and charging of attendant fees and levies
5. Increase productivity of land eg through irrigation to provide basis for taxation
6. Improvement of service delivery by adoption of technology and implementation of e-government across public institutions and local authorities.

Recommendations.....cont'd 2

7. Improvement of land governance through audits
8. Regulation of land transactions and operations of County Land Management Boards
9. Improvement in the capacity of Public Institutions to Collect Tax
10. Land banking for investment purposes
11. Enforcement of government procedures
12. Reviving of the Capital Gains Tax

Recommendations.....cont'd 3

13. Enforcement of Physical Planning and Development Control with penalties for non-compliance and tax holidays for compliance.
14. Payment for environmental services – extraction of water, fuel wood, soda ash, building material etc
15. Enforcement of polluter pays principle under Environment Tax laws.
16. Capacity building of judicial officers of the Environment and Land Court to make judgements that deter non-compliance
17. Customisation and standardisation of modern economic instruments eg REDD in place of “command and control” methods which lead to tax evasion.