



1. Background Information

This research is based on a critical analysis of the findings of the 2003 Commission of Inquiry Into The Illegal/Irregular Allocation of Public Land in Kenya

- Land is a focal point in Kenya's history. Land was the basis for waging Kenya's struggle for Independence
- Land is pivotal to Kenya's social, economic, political, and legal relations
- Since colonial times to date, there have been a myriad of state managed policies and legal interventions to address land-related grievances due to the inadequacy of the laws and institutional frameworks for land management and land administration.
- Access to land, particularly, access to public land has over the years been inequitable, favoring the 'well-connected'
- On 30th June 2003, the 'Commission of Inquiry into the Illegal/Irregular Allocation of Public Land' was appointed by His Excellency the President, Hon. Mwai Kibaki vide gazette notice number 4559 to *inquire into the allocation, to private individuals or corporations, of public lands or lands dedicated or reserved for a public purpose.* This Commission is now known as the Ndung'u Commission
- The illegal/irregular allocation of public land and the subsequent creation of a land market for these 'illegal' parcels of land had started to impact on urban and rural land markets in the form of 'spiralling land prices; illegal developments; etc
- Illegal/irregular allocation of public land emanated from the disregard of the principle of public interest, of the laws and procedures governing the management and disposal of public land by professionals, leaders, the Kenyan people.
- Kenya has been experiencing a major crisis in its public tenure system where land meant for public purposes has over the years been wantonly and illegally allocated to private individuals and corporations in total disregard of the public interest. The privatization of public land in this manner is referred to as '*Land Grabbing*'
- Laws relevant to this research are: Kenya's Constitution; Government Lands Act; Trust Land Act; Land Acquisition Act; Physical Planning Act of 1996; Local Government Act, Registered Land Act; Registration of Titles Act.
- '*Land grabbing*' seems to have reached its crescendo between 1990 & 2002, with its effects still being felt in the urban land markets particularly in the 3 major towns i.e. Nairobi, Mombasa and Kisumu

2. Definition of terms

- Public land:** All that land which is vested in the public or held under public tenure. It includes a wide variety of different kinds of land that is administered by central government, local authorities. Types of public land are un-alienated government land, alienated government land, government land or trust land Held under leasehold tenure and, private land compulsorily acquired for public purposes.
- Allocation:** The process of selection of the person to whom an are of land is to be allocated or allotted for the specific purpose of development for a particular and identified use
- Letter of Allotment:** A formal letter written by the Commissioner of Lands to a person/individual who is approved for the allocation of un-alienated government land under the process of allocation. It is a letter of offer and does not confer interest in or titles to land. The offer expires after 30 days.
- Urban lands:** All those lands situated in cities, municipalities and townships. They include un-alienated and alienated government lands; lands in former trust land areas which have been set apart for a public purpose.
- Government land:** The land that is vested in the Government of Kenya. It includes *un-alienated government land* i.e. those lands vested in the Government and over which no private title has been created, and *alienated government land* i.e. land which the government has leased to a private individual or body corporate, or which has been reserved for the use of Government ministry, state corporation or other public institution, or land set aside for a public purpose
- Illegal allocation:** Results from the allocation of land that is not available for allocation (such as allocation of alienated government land). This results in an illegal title
- Irregular allocation:** This is an allocation of land that is available for allocation but in circumstances where the standard operations/administrative procedures have not been observed. Such an illegal title can be rectified subject to compliance with legal formalities.
- Third parties:** Those people who, have subsequent to an illegal or irregular allocation of public land to the 'original allottee', 'acquired an interest' in such land. Such an interest could be through mortgage; bank loans; purchase or lease; etc

3. Research Objectives and Research Questions

- To analyze the impact of irregular/illegal allocation of public land on urban land market between 1992-2002
- To establish the factors leading to illegal/irregular allocation of public land
- To know who was responsible for initializing the illegal/irregular allocation of public land
- What role did the professionals play in this illegal/irregular allocation and what is the evidence?
- Who were the beneficiaries of this illegal/irregular public land allocation?
- What is the frequency of *third-party transfers* and their significance in terms of amending land laws in Kenya?
- Is it possible to implement the 2003 Ndung'u Commission report recommendations?

4. Data Collection

- All the data has been compiled from the Ndung'u commission report (volumes 1 and 2)
- The data was then analysed on the basis of irregular/illegal public and allocated in Nairobi, Mombasa and Kisumu.
- Analysis on basis of: the allocating authority, the identification of the original allottees and subsequent change in ownership/transfers of the 'illegal titles'; Details of the beneficiaries (private individuals; professionals; civil servants; politicians; companies; state corporations; community groups e.g. churches; foundations
- Access to land was also analyzed within the context of gender
- So as to address the issue of *third-party transfers*, the data was analyzed by comparing the names of the 'original allottee' and 'the present owner'

5. Research Findings

- Nearly all land illegally/irregularly allocated was *alienated land*
- The Mechanisms of illegal/irregular allocation of public land:
 - Abuse of Presidential powers to make a direct grant of government land by COL and politicians
 - Misuse of the powers of the Commissioner of Lands (COL) to dispose of land within townships
 - The Letter of Allotment (LOA) as an Instrument of Land Grabbing (although the Letter of Allotment is not transferable to a third-party until the allottee has fulfilled the conditions made by the Government when the offer is made, such transfer being only possible after 2 years, LOA were effectively used to 'sell' interests in land
 - Allocation of public land by Unauthorized persons (the provincial administration) using the colonial Circular of 1951 developed in order to stem land speculation by ensuring applications for public land were vetted by a Selection Board. The effect of this circular was formalization of allocation of Crown Government land by direct grant
 - Abuse of Current laws leading to illegal/irregular allocation of public land:
 - Substantive abuses of the laws i.e. GLA, by the President and Commissioner of Lands;
 - Abuse of the Trust Land Act by the COL and local authorities.
 - Procedural abuses – it is in the 'allocation process' that most of the land grabbing[have] occurred
 - The challenges of dealing with third party interests/third-party transfers:
 - Financial institutions e.g. banks, had granted huge loans against the illegal title as security. These institutions seem to favour the 'correction' of these titles to protect investment.....
 - Some of the illegally acquired land have massive developments e.g. housing...Multiplier effects of demolishing court cases by 'allottees' challenging the Government Guarantee to Title.....with several successful court cases
 - Beneficiaries of land grabbing:
 - Benefits were of a monetary value, for the professionals, the business community, private individuals. Land was also used for political patronage. Those with Letters of Allotment disposed off of such letters by selling them to a third party in whose name to the Title to the land would be Issued. Land would obtain value 100-1000times on the same day' within a few days.
 - Gender issues in land grabbing: the men were more involved in land grabbing than the women...NOT SURPRISING?
 - Land Information Management System contributed to land grabbing due to the manual land records that make it easy to manipulate records, destruction of files, and the deliberate misplacement of files; and have missing files
 - Lack of professional integrity, indeed, it is the professionals that 'shepherded' the land grabbers, with several of these professionals obtaining monetary returns as well as land allocations(e.g. a professional (a land surveyor) was allocated 19/106 Road Reservation plots in Nairobi as 'part of payment of his professional fees').
 - Incomplete land information: as a result of this, the Ndung'u Commission was not able to establish the status of various public land that had been grabbed. Furthermore most public institutions do not keep a land inventory or up-date their land inventory

URBAN LAND MARKETS AND CORRUPTION IN KENYA

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Table 5.1: Summary of Illegal/Irregular Public Land Allocation in Nairobi, Mombasa & Kisumu

TOWN	PLOTS WITH FILES	TOTAL AREA	MISSING INFOfiles	ALLOCATING AUTHORITY		
				COL	LA	N/State
Nairobi	551	547.2 ha (271plots)	248 plots	251	125	175
Mombasa	407	300.0 ha (388plots)	277 plots	217	185	2
Kisumu	186	27.4 ha (118plots)	101 plots	186	0	0
TOTAL	1144	874.6 ha (787plots)	626 plots	654	310	177

Table 5.2: Beneficiaries of Illegal/Irregular Public Land Allocation in Nairobi, Mombasa & Kisumu

Town	Companies	Individuals		Community Orgns	Local Authority[LA] Councillors		LA Officers	Civil Servants	State Corps	Not Stated	
		Male	Female		Male	Female					
		Nairobi (551)	81		149	32					11
Mombasa (407)	121	246	15	11	7	0	5	0	1	0	1
Kisumu (186)	36	110	29	5	0	0	0	0	0	6	0
TOTAL	238	515	76	27	8	1	39	4	2	6	238

Table 5.3: The Current (2003) Use of Land that was previously public land in Nairobi, Mombasa & Kisumu

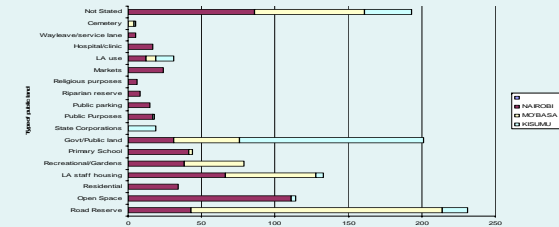
TOWN	Residential	Private Residential	Business/ Residential(BCR)	Commercial	'Private' Community	Government Use	Not Stated
Nairobi (483)	306 [63.4%]	0	48 [9.9%]	34 [7%]	21 [4.3%]	13 [2.7%]	61 [12.6%]
Mombasa (398)	91 [22.8%]	241 [60.6%]	19 [4.8%]	40 [10%]	5 [1.3%]	1 [0.5%]	0
Kisumu (177)	62 [35%]	101 [57%]	0	8 [5%]	4 [3%]	0	0
TOTAL	459 [14.5%]	342 [32.4%]	67 [6.4%]	82 [7.8%]	30 [2.8%]	14 [1.3%]	61 [5.8%]

Table 5.4: Third-Party Interests in Illegal/Irregular Public Land in Nairobi, Mombasa, and Kisumu

Ownership Type	Nairobi		Mombasa		Kisumu	
	No. plots	%	No. Plots	%	No. Plots	%
Original Allottee	275	56.6	152	38.2	107	57.5
Changed Ownership	211	43.4	246	61.8	79	42.5
TOTAL	486	100.0	398	100.0	186	100.0

Section 6 below provides a summary of the research findings, clearly showing the type of public land that was illegally allocated during the 1992–2002 period. Since all this land was illegally allocated, the titles to the land are null and void. The Commission recommended that the illegal allocations be revoked, and the land be returned to the public land inventory. Illegal allocation of public land affected the urban land market through release of land from the public land market through release of land that was already alienated to the private sector, thus escalating land prices sometimes by 1000 times or more.

6. Summary of Types of Public Land Illegally/Irregularly Allocated from 1992 – 2002 in Nairobi, Mombasa and Kisumu



7. The Way forward to protecting public land in Kenya

- Ministry of Lands should maintain a comprehensive public land inventory through a legal requirement to establish an integrated LIMS
- All local authorities should maintain their own land inventory of all the land they own (Mandatory legal requirement)
- The professionals involved in land management such as lawyers, planners, surveyors, valuers/property experts etc took advantage of land information in their possession. The public has remained generally ignorant and scared of the land laws. There is therefore a need to simplify Land Laws & Land Information and demystify Land Information Management System in Kenya so as to ensure inclusiveness of the public
- The proposals in the on-going national land formulation process is a step in the right direction as it is addressing fundamental issues relating to review of laws like the GLA so as to give the power to hold land in trust for the public to a National Land Commission
- Kenya needs to be educated on the fact that they stand to lose their money and properties when they acquire illegal public land. Indeed, these lessons are already being learnt by those who have had their land lost by those who have had their land revoked and property demolished that had occupied road reserves. Although many say that 'they did not know' ignorance of the law is clearly no defense
- Although computerization of land information in Kenya is paramount, the Government must spend money and time in recreating all the land
- Records in order to ensure that they are comprehensive and represent the true picture on the ground. There is no need to computerize bad data.
- Clearly, all the illegally acquired public land was mainly converted into private use, particularly for residential purposes(76%). It is important that Kenya's national land policy ensures access to land for housing policy ensures access to land for housing for low and middle income groups
- Implementation of the Ndung'u recommendation to 'Revoke all the Titles to illegally/irregularly allocated public land' [...the public must learn from experience]

8. Future Research Questions

- How can public integrity and the doctrine of public interest be ingrained in Kenyans in general and the professionals in particular
- How can land information be simplified so as to demystify land transactions of both public and private land?
- How can we build the capacity of central government, local authorities and public institutions to create land inventories which are interlinked so as to ensure comprehensiveness of our land information system
- How will Kenyans be taught to be inquisitive and ask questions relating to land transactions?

Funding Source: Own Resources