UNIVERSITY OF NAIROBI

COLLEGE OF ARCHITECTURE AND ENGINEERING

School of the Built Environment
Department of the Real Estate and Construction Management

TITLE:
IMPLEMENTATION OF SECURE LAND RIGHTS FOR ALL IN KENYA

(A CASE STUDY OF ATHI RIVER TOWN)

A

RESEARCH PROJECT SUBMITTED TO THE UNIVERSITY OF NAIROBI IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR AWARD OF DEGREE IN BACHELOR OF REAL ESTATE

BY

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DECLARATION

Candidate’s Declaration:

I, Kinyagu John Kinuthia, hereby declare that this project is my original work and has not been presented in this or any other University for award of a degree.

Signature………………………………. Date………………………………...

Kinyagu John Kinuthia

Supervisor’s Declaration

This project has been submitted for examination with my approval as the University Supervisor.

Signature………………………………. Date………………………………...

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**ABBREVIATIONS AND ACRONYMS**

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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CoK</td>
<td>Constitution of Kenya</td>
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<td>CoLs</td>
<td>Commissioner of Lands</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<tr>
<td>FIG</td>
<td>International Federation of Surveyors</td>
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<td>GoK</td>
<td>Government of Kenya</td>
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<td>LA</td>
<td>Land Act</td>
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<tr>
<td>LAM</td>
<td>Land Administration and Management</td>
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<tr>
<td>LIS</td>
<td>Land Information System</td>
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<tr>
<td>LRA</td>
<td>Land Registration Act</td>
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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MMC</td>
<td>Mavoko Municipal Council</td>
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<tr>
<td>MoL</td>
<td>Ministry of Lands</td>
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<tr>
<td>NLC</td>
<td>National Land Commission</td>
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<tr>
<td>NLP</td>
<td>National Land Policy</td>
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<tr>
<td>RLA</td>
<td>Registered Land Act</td>
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<tr>
<td>UN</td>
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<td>UN-ECE</td>
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<td>UNHCS</td>
<td>United Nations Commission on Human Rights</td>
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<tr>
<td>USMAS</td>
<td>United States Maps Accuracy Standards</td>
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<td>WCARRD</td>
<td>World Conference on Agrarian Reform and Rural Development</td>
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ABSTRACT

Secure land and property rights for all are essential to reducing poverty, because they underpin economic development and social inclusion. Secure land tenure and property rights enable people in rural and urban areas to invest in improved homes and livelihoods. They also help to promote good environmental management, improve food security, and assist directly in the realization of human rights, including the elimination of discrimination against women, the vulnerable, indigenous groups and other minorities. However, securing land rights for all in most countries including Kenya has remained to be a major challenge.

The study’s main goal was to evaluate the implementation of secure land rights for all as envisaged in the CoK (2010) covering aspects such as the concept of land tenure and land rights, processes and procedures of administering land rights, land ownership related emerging issues and recommendations on the possible ways of addressing identified challenges. Athi River Town was selected as the study area. The study targeted land owners as well as those who could access and use land through their family members or friends. The sample size chosen was a fair representation of the town’s population. The main data collection instruments included administration of questionnaires to the residents and undertaking direct interviews to the Deputy CoLs, MMC (any worker in the lands office) and District Land Registrar. The data obtained from the field survey and from other augmenting sources was qualitatively and statistically analyzed.

The study established that there were weaknesses in the current land tenure and land administration systems, legal and institutional constraints, lack of capacity, lack of shareholders’ participation and political goodwill, lack of awareness on the content of key land sector governing documents, corruption and abuse of powers, and lack of appropriate dispute resolution mechanism. Generally, the study concluded that failure to address the weaknesses in the current land administration system is the major cause to the non-realization of secure land rights for all in Kenya. The study recommends the need to consider various tenure options; adoption of incremental approaches; improvement of land management and administration system; provision of financial, technical and human capacity; detailed policy formulation, legislative reform and institutional change; and the need to facilitate policy enforcement, engagement of stakeholders as well as creation of public awareness on land reforms.
CHAPTER ONE
INTRODUCTION

1.1. Background of the study
The biblical encounter between King Ahab and Naboth (1st Kings, 21) illustrates land as a commodity that can be owned, exchanged, bought or sold. In verse 2, King Ahab pleads to get Naboth’s vineyard but Naboth is adamant because he views land not just as a tradable commodity, but an inheritance for which he has a stewardship. The Kenya Vision 2030 recognizes that land is a critical resource for the socio-economic and political developments spelt out in Vision 2030. The National Land Policy (2009) adds that land is critical to the economic, social and cultural development of Kenya. It is crucial to the attainment of economic growth, poverty reduction and gender equity. Its importance is also recognized by various Government initiatives including the initial Poverty Reduction Strategy Paper (PRSP), political party manifestoes and the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007). It is out of such great significance that the first president of Kenya, Mzee Jomo Kenyatta, noted in 1964 that “Our greatest asset in Kenya is our land. This is the asset we received from our fore fathers. In land lies our salvation and survival” (Harbeson, 1971).

Despite the importance of land on global and national levels, issues surrounding land in most cases have remained complicated or are shrouded in a lot of mystery. Most societies cannot balance these often-conflicting demands hence land continues to be the cause of social, ethnic, cultural and religious upheavals, and much effort has been devoted to developing systems to manage and administer land rights through land management and administration systems that are governed by legal and institutional framework. It is out of these complexities that scholars such as Dale and McLaughlin (1999) have emphasized for state to ensure that efficient and effective land administration mechanisms are put in place. Therefore, it is not surprising that the importance of supporting the land sector is a consistent key message from the respective World development Reports (WDR) for 2008, 2009 and 2010, which advocate for stepped up support for land policies and institutions.

Secure land rights are fundamental to the achievement a variety of development objectives, including the achievement of the Millennium Development Goals (MDGs). They are particularly important in helping to reverse three types of phenomena: gender discrimination; social exclusion of vulnerable groups; and wider social and economic inequalities linked to inequitable and insecure rights to land (UN-HABITAT, 2008).
Many countries across the world have undertaken a number of initiatives in order to guarantee land rights to all citizens through land policy development or land tenure reviews. Africa as a continent has been particularly active since the 1990s, whether through new laws, commissions of inquiry, national conferences, land commissions or policy processes (or some combination of the above), and national land processes have been initiated in many countries though with varied experiences. In Kenya specifically security of land rights has over a long time not been guaranteed while inequality between various classes and categories of people has been the order of the day right from colonial era. It is against this background that the Constitution of Kenya (CoK) and the National Land Policy (NLP) identified the need for a land administration and governance regime that secures land rights and ensures equitable access to land. While these principles are enshrined in both the constitution and the policy document, a large proportion of Kenyans feel that this has not been actualized.

Formulating an efficient and effective land reform implementation mechanism thus remains paramount. It is on this basis that this study was set to evaluate on the strategies of implementing secure land rights for all as envisaged in the CoK (2010) and the NLP (2009) with a view of exposing the outstanding predicaments. This will mainly help policy makers in their effort to develop and implement secure land rights for all citizens in Kenya.

1.2. Problem statement

While delivering his speech to the Habitat II Regional Policy consultation on access to land and security of tenure for sustainable development, in Jakarta in 1995, Dr Wally N’Dow, observed that “security of tenure and enforceable property rights are a cornerstone of sustainable housing and urban development…Moreover, failure by some governments to develop equitable national land policies…remains a primary cause of poverty, inequality and hence political and social instability in many societies”(UNCHS, 1997).

While some progress has been made in improving secure access to land and other natural resources for the rural and urban poor, a number of outstanding challenges remain. Although ancestral rights to land and other natural resources are a cornerstone of the livelihoods of indigenous people, the legal recognition and safeguarding of such rights has been uneven. Despite women being the principle farmers or producers in many parts of the world, significant gender inequities continue to exist with regard to use of and control over land and other natural resources leading to social exclusion. Reliable statistics on land ownership are difficult to obtain
but there is a broad consensus that the vast majority of women in the world do not have formally registered land rights. Globally, many rights to land and other property are not legally recognized and documented. Even when land is included in a land registration system, the records of who holds rights to that land are often out of date (FAO, 2009).

Sound land policies should protect people from forced removals and evictions, or where displacement is determined by legitimate processes as necessary for the greater public good and is carried out in conformity with national and international norms; ensure they have access to adequate compensation. Another critical dimension is ensuring gender equality, because women face such widespread discrimination in questions of land and property. Yet when women enjoy secure and equal rights, everybody benefits. Also, a secure land rights for all citizen contributes to conflicts reduction and improvement in environmental management as well as household living conditions (UN-HABITAT, 2008). However, most of the third world countries are still lacking the tools, systematic strategies and support necessary to deliver secure and equitable land rights that is acceptable to all.

In Kenya, insecurity of land rights and inequality in access to land has been the order of the day right from colonial era. It is against this background that the CoK and the NLP identified the need for a land administration and governance regime that ensures secure land rights and equitable access to land and land based resources. While these principles are enshrined in both the Constitution and the policy document, a large proportion of Kenyans feel that this has not been actualized (The Forth Score Card Report, 2011). It is on this background that this research was devised in order to offer a route map especially to policy makers in their effort to develop and implement secure land rights that will serve all citizens.

1.3. Objectives of the study

1.3.1. General Objectives

The overall objective that will form the main focus of this study will be:-

 To evaluate the implementation of secure land rights for all as envisaged in the Constitution of Kenya (2010).
1.3.2. Specific objectives
Specifically this study will be guided by the following objectives:-:
   a) To understand the concept of land tenure and land rights.
   b) To evaluate the processes and procedures of administering land rights.
   c) To establish the land ownership related emerging issues.
   d) To recommend possible ways of addressing the challenges identified in Kenya.

1.4. Research questions
   a) What is the meaning of the concept land tenure and land rights?
   b) What are the processes and procedures of administering land rights?
   c) What are the various land ownership related emerging issues?
   d) What are the possible ways of addressing the challenges identified in Kenya?

1.5. Hypothesis
Failure to address the weaknesses in the land administration system is the major cause to the non-realization of secure land rights for all in Kenya.

1.6. Significance of the study
Secure land rights are particularly important in reversing three types of phenomena: gender discrimination; social exclusion of vulnerable groups; and wider social and economic inequalities linked to inequitable and insecure rights to land (UN-HABITAT, 2008).

After thorough analysis of literature considered in this proposed study it has been revealed that a lot has been done in regard to development of comprehensive land policy, management and reform with little attention being given towards establishing mechanisms to implement secure land rights and equitable access to land. Despite various land reforms being established, various stakeholders in the land sector continue to express their dissatisfaction specifically with security of land rights and even access to land. These stakeholders mainly include the poor, women, marginalized and the voiceless in the society. This necessitates the need for a comprehensive research to be carried out on the modalities of implementing secure land rights for all.

This research will be of immense benefit to various stakeholders in the land sector predominantly the policy makers in their effort to implement secure land rights as envisaged by the CoK (2010) and NLP (2009). The study will also serve other stakeholders such as the
customary authorities, private sector, international organizations as well as the general public as it will provide guidelines intended to ensure good land governance. It is for all those in land management and development who are looking for the best ways of safeguarding land rights and meeting increasing demand for land. It also stresses the need for policies that facilitate access to land for all sections, to both existing and future generation particularly those on low or irregular incomes. The focus is on urban, rural and peri-urban land issues.

1.7. Scope of the study
As a result of the envisaged financial and time constraints, formulating a manageable geographical and conceptual scope before undertaking the research remains paramount. This study is limited within Athi River town in Machakos County. Considering its proximity to Nairobi city centre, this area faces growing demands of land for housing, property development and commercial and industrial investment. This have tremendously attracted land transactions over the years calling for strategic land rights measures to be put in place in order to safeguard against land rights related irregularities. In addition, though Kamba community dominates the area, it is worth noting that this locality forms part of the larger Nairobi metropolitan comprising people with varied ethnic orientations hence the survey ensured inclusion of views from people with divergent regional and ethnic groupings. Rather than over-emphasizing on the broader issues of land policy, management and reform, this research specifically focused on the means of achieving secure land tenure impinging briefly on certain components of land administration.

1.8. Research methodology
In order to accomplish the objectives of this case study research, both qualitative and quantitative information were reviewed. The study sought to evaluate the nature land tenure and its associated land rights, processes and procedures of administering such rights, land ownership related emerging issues and recommendations on the means of resolving the underlying issues. Special attention was paid to the principle of secure land rights and equitable access to land envisaged under the CoK (2010) and the NLP (2009).

Both primary and secondary sources of data were used in collecting information. Primary data was collected using questionnaires administered to residents of Athi River Town during the fieldwork period. Both structured and open ended questions were used. Owing to the difficulties of considering the entire population, a representative sample size was determined and then
questionnaires administered using stratified random sampling method. Apart from administration of questionnaires; direct interview, personal observation and photographs also served a useful purpose. Secondary data was compiled through review of both published and unpublished literature relevant to the study.

Collected data was subject to descriptive statistical analysis using tools such as mathematical calculations and analysis including quantitative descriptions and interpretations. The results were then presented in form of tables and graphs in reporting issues such as trend while pictorial presentation was used in representation of information on the ground. A more detailed coverage of this section as well as the case study area is done in chapter three of this study.

1.9. Organization of the study
The study report will be organized in five chapters discussed as follows:-:

Chapter one: This is an introductory chapter incorporating background of the study, statement of the problem, research questions, study objectives, research hypothesis, significance of the study, scope of the study, research methodology, and research project structure.

Chapter two: This constitutes a review of published and unpublished literature that includes the concept of land tenure and property rights, process and procedure of administering land rights, emerging issues, chapter summary, and suitable conceptual framework among other fields. This Chapter is to set the foundation upon which data is to be collected and analyzed.

Chapter three: Comprises of an exposition to the study area and the research methodology including a description of the study area, study population, sampling techniques and sample size, research instruments, data analysis and presentation techniques as well as ethical issues considered in the study.

Chapter four: This incorporates a data presentation and analysis section.

Chapter five: Conclusions and the recommendations based on the findings of the study are discussed in this Chapter. Proposed areas of further research are also mentioned in this section.
CHAPTER TWO
LITERATURE REVIEW

2.1. Introduction

Land is arguably one of the most important assets for people throughout the world. This is particularly true for the rural and urban poor, where land may form the most significant part of their asset base. Land is also the foundation for a wide range of cultural and social identities: it is a cornerstone of economic activity and regularly serves as the basis for institutional development; it is the underpinning for markets; and it is almost impossible to divorce from natural resources management (World Bank, 2007).

This was also well captured by the Njonjo commission Report which cited one of the fundamental aspects regarding the African and sociology of land in human relations, which is worth quoting: “For indigenous Kenyans, land has an important spiritual value, for it is not merely a factor of production; it is first and foremost the medium which defines and binds together social and spiritual relations within and across generations. Land belongs to a fast family of which many are dead, few are living and countless members are still unborn” (Njonjo Commission, 2002).

Good stewardship of land is therefore paramount for present and future generations. The Kenya vision 2030 takes land as the foundation to economic and social development. This foundation is dependent on how land is managed and how secure the rights of each individual are safeguarded. Therefore, initiating and implementing efficient and effective land reforms in order to improve land administration system to manage land rights is essential for realization of vision 2030 as well as the Millennium Development Goals (MDGs).

2.2. Definition of Land

Dale and McLaughlin (1999) argue that land is the physical thing that encompasses the surface of the earth and all things attached to it. From the geographer’s point of view, it is the surface of the earth, all things attached to it, the space above to the universe and it’s underneath including the minerals to the centre of the earth. In legal attributes land is any portion of the earth over which rights of ownership, stewardship or use may be exercised including the earth’s surface, water cover lands, water and mineral resources as well as features and resources attached to the land be they natural or manmade (Mwangi, 2008)
2.3. Concept of Land Tenure

2.3.1. Background

The concept of tenure has its origin in Norman Conquest of England in 1066 (Wanjala, 2000). After the conquest, the King William I declared: “all land in England must be held as grant by the King of England as an incident of his legal authority”. This simply put, meant that nobody owned the land but the crown and his successor to the crown. The subjects held the land with the permission of the king, dependent upon continued rendering of services to the crown. The different methods of landholding were based on different forms of services to the king, which became known as tenures. The subjects owned an abstract entity called an abstract entity called the ‘estate in land’ which denoted the duration of a grant of land from the crown.

The term land tenure is derived from the Latin word tenere which means “to hold.” It defines the social relations between people in respect of the object of the tenure, in this case land. Tenure also defines the methods by which individuals or groups acquire hold transfer or transmit property rights in land (Ogolla and Mugabe, 1996). Formal rules of tenure therefore define the nature and content of property rights in land or other resources and the conditions under which those rights are to be held and enjoyed (Waiganjo and Ngugi, 2001).

According to Ogolla and Mugabe (1998), land tenure is both culture-specific and dynamic. It is culture specific because it is determined by the history, social organization and land use patterns of a given community which reflect, among other things, the ecological characteristics of the region. Land tenure is dynamic as it responds to social change by man. It is this dynamism that provides a basis for integrating tenure reform considerations into land tenure reform considerations into land tenure system.

2.3.2. Tenure Security

UN-HABITAT (2008) views tenure security in various ways: the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it; the certainty that an individual’s rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically, the right of all individuals and groups to effective government protection against forced evictions.

Security of tenure may be related to a community-recognized and socially sanctioned right for that individual to use the land or it may be more formal in terms of lease or title documents.
security is derived from the ability of the individual to enforce or ensure his/her right of continued access to the land. Insecurity of tenure would conversely imply that there are few mechanisms available to the individual to protect his/her land and property rights (Myer and Hetz, 2004).

Security of tenure can be provided from a variety of sources: it may stem from community and the special groups that form within it (water users, pasture management, and farmer groups); or it can stem from special resource user groups (special districts organized around key assets), or from government and legal institutions within government. Authoritarian regimes can be perceived as sources of security in the absence of democratic state authority during conflict and post-conflict situations. To provide security, land tenure and property rights must be of sufficient number and duration to provide incentives for investment/inputs, have some way of assuring the holder that rights will be recognized and enforced at low costs and should be accompanied by mechanisms that allow for adjustment/variation in a changing environment. We also think of tenure as strictly formal or informal, but acknowledge it as a broader range of systems (World Bank, 2007).

It can also be noted that all forms of tenure have two major components namely: reasonable duration of rights to the use to which the land is put and the social needs of the land user; and the effective legal protection against eviction or arbitrary curtailment of land rights, with enforceable guarantees and legal/social remedies against the loss of these rights. Other important aspects of tenure security include plot users’ freedom to bequeath land to heirs, and to lease, lend or grant land to others on a temporary or long-term basis with reasonable guarantees of being able to recover the land. Where ultimate ownership rights are vested in government or a customary land holding group, there may be restrictions on the land users’ freedom to transfer land, to exclude others or to use it in particular ways. However, these restrictions do not necessarily compromise the tenure security of the land holder.

Tenure security is partly a matter of perception and can be safeguarded under various forms, provided the rights of land users and owners are clear. In addition to formal titles, security can be achieved through clear long term rental control or formal recognition of customary rights and informal settlements, with accessible and effective dispute mechanisms (UN-HABITAT, 2008).
2.3.3. Tenure security Strategies

For several decades, efforts to provide secure tenure and property rights have specifically focused on land law, land titling and registration, land administration, and the redistribution or restitution of land. More recently, these interventions have examined ways to multiply the sources of secure land tenure and property rights to result in both economic growth and sustainable natural resources management (World Bank, 2007). Moreover, insecure land and property rights might be addressed through institutional reform, land registration program, or law reform initiatives (Myer and Hetz, 2004).

In 2011, during UN-Habitat’s 23rd Governing Council, member states committed themselves to promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and intensifying efforts to achieve secure tenure in post conflict and post-disaster situations. This statement was a key signal of the need to develop tenure security measures within the continuum of land rights. UN-HABITAT (2008) as well as FAO (2009) has presented a global overview of various strategies adopted by various countries in an attempt to strengthen security of land rights.

One strategy has been to provide legal recognition of customary forms of tenure. While this has occurred in many parts of the world, it has been particularly evident in Africa, where many countries have legally recognized customary tenure, including Burkina Faso, Ghana, Mali, Mozambique, Namibia, Niger and Uganda. In Mozambique, for example, the 1997 Land Act gave legal recognition to land use rights that had been acquired through customary occupation, through “good faith occupation” (unquestioned use for ten years or more), or through a formal request to the state for new rights to be allocated. Uganda’s 1998 Land Act recognizes customary tenure as a legal form of tenure, and customary rights holders can be individuals, families or communities. Customary forms of tenure are also recognized in Indonesia, Thailand, several Pacific Island states, including Papua New Guinea, and in several Central and Latin American countries including Brazil, Ecuador, Honduras and Mexico. “Indigenous” land rights can represent a special form of customary tenure. While there is no internationally accepted definition of “indigenous people”, the term has emerged as a distinct category of human societies under international law and in the national legislation of many countries. In Cambodia,
the rights of indigenous peoples had historically not received recognition but the 2001 Land Law explicitly grants collective land rights to indigenous communities.

Another strategy has been to provide or recognize intermediate forms of tenure (land certificates, rights to occupy, short term leases, etc.) in both rural and urban areas. Such rights have been extended to people in many countries, including for example Brazil, Cambodia, Colombia, Ethiopia, Kenya, Mexico, Tanzania and Trinidad and Tobago. In Ethiopia, for example, the Government has issued approximately 20 million rural land use certificates to some 6 million households in less than two years. In Colombia, a range of intermediate tenure options exist that act as stepping stones enabling poor households to strengthen their land rights progressively over time while securing land for housing.

A third strategy has been large scale land titling programs. In these examples, incremental approaches are replaced with a direct leap to the strongest available form of land rights, often individual freehold title. In Peru, for example, the COFOPRI programme regularized 1.5 million titles between 1996 and 2004 in urban and peri-urban areas. Other examples include the well-known example from Thailand, and more recent experiences in Armenia and the Kyrgyz Republic.

The principle governance challenges that have arisen from these programs include the following: delivering security of tenure at sufficient scale in a way that is affordable, accessible and sustainable; large scale adjudication of land rights to prevent the unintended dispossession of land rights from legitimate rights-holders; avoiding other unintended consequences associated with recognition, for example, gentrification in urban areas; securing the land rights of specific groups such as renters, sharecroppers, pastoralists and other secondary rights holders.

FAO (2009) specifically argues that part of the challenge lies in the fact that there are no technical solutions that enable the large-scale adjudication and registration of a range of land rights, including in particular in relation to overlapping rights and claims. Capacity and sustainability issues are also legitimate areas for concern. Large scale registration also requires a long period of time (15 to perhaps more than 30 years) and in the process, people may not feel there are sufficient incentives to justify registering subsequent transactions, sometimes rendering the registry records out of date before they are even completed. This can result in a
drift back into the same insecurity and informality that the registration process was supposed to address. Yet another part of the answer may lie in the fact that there are vested interests that benefit from a lack of certainty. Powerful elites, developers or speculators can use this uncertainty to grab land that is otherwise held under socially recognized forms of tenure. Some professionals may benefit from a steady demand for title searches or other services.

2.3.4. Forms of Land Tenure

The country context determines the types of land tenure (i.e. the relationships between people with respect to land and related natural resources) that exist. As mentioned earlier, these relationships reflect the power relationships in society and so are an important source of information regarding power and the political economy of land. In any country, the types of tenure can be expressed as a “continuum of tenure” or as a range of land rights. These rights vary greatly with regard to what a person holding such a right can do with the land. The rights also vary with regard to the certainty or the lack of it and that that a holder of land rights can continue to enjoy those rights in the future. Uncertainty may arise for reasons such as a threat of eviction, the vagueness of the conditions under which a person is occupying the land, or with a short term lease where the person is not certain if the owner will renew of the lease (FAO, 2009).

Figure 2.1 illustrates the situation found in many countries where land rights range from informal and insecure rights through to formal, registered private ownership of land (i.e. “registered freehold”), but it should be noted that land is owned by the state in a number of countries and as a result the most secure form of rights that a person can have in such countries is something other than ownership.

**Figure 2.1: Tenure Types or Range of Land Rights**

<table>
<thead>
<tr>
<th>Perceived tenure approaches</th>
<th>Informal</th>
<th>Leases</th>
<th>Occupancy</th>
<th>Advanced possession</th>
<th>Anti evictions</th>
<th>Group Tenure</th>
<th>Registered freehold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source: UN-HABITAT (2008)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
The different types of tenure have different strengths and weaknesses. Table 2.1 provides an overview for a select group of tenure types. It is important to note that the relative strength or weakness of any tenure type will vary from country to country and even within a country (from one neighborhood or region to another). Individual freehold tenure may offer the greatest security, freedom of use, collateralization and potential to realize value increases, but it may be difficult to provide such rights on a large scale for the poor because of the cost of doing so, the capacity required, the potential for gentrification, etc. Other forms of individual and group tenures may provide many of the benefits of formal private ownership but in a more cost-effective and appropriate manner (FAO, 2009).

Table 2.1: Tenure systems and their Characteristics

<table>
<thead>
<tr>
<th>Tenure system</th>
<th>Characteristics</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freehold (private ownership)</td>
<td>Ownership in perpetuity.</td>
<td>High security; freedom to use, dispose, inherit; use as collateral for loan; maximizes commercial value and enables holder to capture value increases.</td>
<td>Expensive to access. Requires high technical standards, strong Government capacity to administer, clear incentives to register transactions. Risk of gentrification if applied piecemeal.</td>
</tr>
<tr>
<td>Registered Leasehold</td>
<td>Ownership of a leasehold estate for a specified period. The Landowner has to create the leasehold estate and transfer it to the leaseholder.</td>
<td>Almost as secure as freehold, however, time bound. The leaseholder can sell the lease, and the remaining years on the lease will be transferred to the new leaseholder.</td>
<td>Requires legal framework and costs of access generally high.</td>
</tr>
<tr>
<td>Rental (Public or Private)</td>
<td>Two options (i) Public: occupation of state-owned land or house; (ii) Private.</td>
<td>Both have good security, however, a legally enforceable contract is more important for private rental. Mobility depends on supply,</td>
<td>Public rental can be limited in supply and poorly located. Private rental may be open to abuse. Both have maintenance issues.</td>
</tr>
</tbody>
</table>
which is often better in private.

<table>
<thead>
<tr>
<th>Co-operative and Condominiums</th>
<th>Ownership vested in cooperative or corporate body of which residents are co-owners.</th>
<th>Good security; maintains group cohesion; advantages for group repayment of housing loans.</th>
<th>Legal framework required; restrictions may reduce incentive to invest; double registration required – land and association. The corporate bodies may suffer from weak management.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customary/Traditional</td>
<td>Ownership vested in family, community, group or tribe. Land is managed by leaders on behalf of community. A variation is religious tenure.</td>
<td>Wide acceptance and practice in certain parts of the world. Simple to administer. Social cohesion maintained</td>
<td>Under pressure from Rising land values and commercialization of land. Accountability of traditional authorities may be weak.</td>
</tr>
<tr>
<td>Intermediate tenures</td>
<td>Pragmatic arrangements, often of short term nature (e.g. certificates, occupation permits, etc.)</td>
<td>Provide reasonable security, while protecting long term public interest and options for change of land use.</td>
<td>Government becomes liable for compensation in event of relocation; this may inhibit re-development. Often perceived to be insecure because of short term nature.</td>
</tr>
<tr>
<td>Non-formal tenure</td>
<td>Squatting, unauthorized sub-divisions, unofficial rental, etc.</td>
<td>Often a response to failure of public land allocation; may operate with elements from “formal” system</td>
<td>Risk of eviction; Exposure to corrupt practices; hazardous location; inadequate shelter;</td>
</tr>
</tbody>
</table>

Source: Adapted from UN-HABITAT
In Kenya, Section 5(1) of the Land Act (2012) establishes four forms of land tenure namely: freehold, leaseholds, customary land tenure as well as partial interest as may be defined under the Land Act or other law such as easements. Public land tenure has also been recognized in Article 62(1) of the CoK (2010). According to Payne (1997) the criteria by which each of these tenure systems can be judged is based on clarity of tenure status and registration of land rights, efficiency, equity and accessibility. There is therefore need to inculcate these principles in the Kenya’s case.

2.4. Evolution of Land Tenure Systems in Kenya

The various forms of land tenure have already been discussed above and thus we shall just focus on its historical background and the various classification of land under the Kenyan law.

2.4.1. Historical Background

Since independence Kenya has had customary and statutory land tenure systems only. The net effect of these tenure systems on land administration was to perpetuate a dual system of economic relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry (NLP, 2009).

It has transited from pre-colonialism, to colonialism and to post colonialism. Before colonization, Kenya practiced customary land tenure where land was owned by different clans based on a socially and culturally known and accepted arrangement among the community members. Resolution of all land disputes were subject to customary law that was constituted of spontaneously evolved rules emerging through past dispute adjudication (Ojienda 2008: 13). Customary land tenure was (and is) anchored on the premise that land is much more than the physical soil. As such in many African societies, traditional philosophy ascribed a sacred significance to land. In particular, land did not belong to a particular person but to God. The Njonjo Commission of Inquiry into land law system of Kenya captured well this phenomenon in its 2002 report.

The colonization of Kenya in 1889 completely altered these arrangements. The colonial masters brought with them new institutions of ruler-ship which systematically undermined the traditional socially accepted institutions of leadership. According to the (GoK, 2002:21), to ensure state, political and economic power, one of the earliest imperial acts was the assertion of
sovereignty over land occupied by indigenous Kenyans and legislation of laws to protect their expropriated interests whereas destroying the customary arrangements. This came in three phases; first the imperial government acting on the advice of the law officers of the crown on December 13, 1899 expropriated all productive land not formerly held by the Sultan Arabs. This was followed by the colonial government promulgating an ordinance in 1908 in the ten mile coastal strip formerly held by the Sultan Arabs requiring individuals with interests in this land to make a claim thereof. Lastly, the colonial government created native reserves to facilitate simpler and more efficient control and administration of ‘natives’. It must further be noted that the 1915 crown Land Ordinance marked the onset of private land ownership in Kenya.

Since the mode of land holding by the indigenous people was seen as the greatest handicap to indigenous peoples contribution in agricultural sector, colonial masters introduced land reforms and legislations targeting structure of land access and land rights culminating in the formation of the Swynnerton Plan of 1954 which introduced the idea of modern farming and individual titles rather than group ownership. The doctrine of individual land rights and protection against arbitrary dispossession of private property without fair compensation was further firmly entrenched in our independence Constitution by virtue of Section 75. We thus literally abandoned communal ownership of land to private ownership. The CoK (2010) has affirmed this position but has adopted a more progressive approach to land matters and land right delivery system.

Onalo (1986) notes that in the colonial and post colonial Kenya, there had been change from communal land tenure to individual land tenure which introduced the freehold title to land. This was a government policy and even up to now, land held under customary law continues to be converted to individual tenure. According to Ogolla and Mogabe (1996) initiation of radical changes in tenure arrangements prior to and after independence in Africa states have been justified on the basis of the expected improvement in productivity, land use planning and decision making.

2.4.2. Categories of Land in Kenyan Law

In the Kenyan legal system, the 2010 Constitution recognizes three basic forms of land tenure in Kenya: public land; private land and community land.
The scope of public land is defined in Article 62 in a very broad sense. It includes un-alienated government land; any land held by a state organ or public agency, such as government forests, national parks, rivers, lakes, wetlands, and water resources, among others. It also includes all roads, minerals and mineral resources; the territorial sea, exclusive economic zone and sea bed; the continental shelf; and any land not classified as private or community land by the constitution. It further includes land that is vested in and held by a county government in trust for the people resident in the county. While it is vested by the constitution either in the national governments, or county governments, public land is to be managed on their behalf by the National Land Commission (NLC) established under Article 67 of the Constitution.

The scope of community land is defined in article 63 of the Constitution to consist of 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. It also include land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; or lawfully held as trust land by the county governments, but not including any public land held in trust by the county. The constitution provides that community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. In addition, any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held. Parliament is expected to enact legislation to provide for further guidelines, an approach which is endorsed by Section 37 of the Land Act, 2012.

Private land is defined, by Article 64, as land held by any person under freehold or leasehold tenure and any other land declared private land under an Act of Parliament. Under the former constitution, private land was regulated through Registration of Titles Act, Registered Lands Act and the Land Titles Act. These three legislations have been replaced by the Land Registration Act, 2012, which together with Part V-VI of the Land Act, 2012 extensively provide for the registration, administration and management of private land, either as freehold or leases.

2.5. Concept of Land Rights

2.5.1. Access to Land

UN-HABITAT (2008) views access to land as opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity, or the enjoyment of
recreation and rest. Land access is obtained by direct occupation, exchange (purchase or rental),
though membership of family and kin groups, or by allocation by government, other land
owners or management authorities. This Access is a fundamental basis for human shelter, food
production and other economic activity, including by businesses and natural resource users of
all kinds. FAO (2002) provides wide range of strategies of gaining access to land. These
include:

- Purchase, often using capital accumulated while working as migrants in urban areas.
- Adverse possession or prescription (the acquisition of rights through possession for a
  prescribed period of time). In some countries, this may be the only method for small
  farmers to gain formal access to vacant or abandoned land and to bring it into productive
  use.
- Leasing, or gaining access to land by paying rent to the owner.
- Sharecropping, or gaining access to land in return for paying the owner a percentage of
  the production.
- Inheritance or gaining access to land as an heir.
- Squatting illegally on land.

Dedication that involves the owner making a voluntary gift for use of his land to the public for
the benefit of the public has also been widely accepted in most countries. In regard to Kenya,
Section 7 of the LA provides nine (9) ways through which title to land may be acquired namely:
allocation, land adjudication process, compulsory acquisition, settlement programs,
transmissions, transfers and prescription. Other methods include long term leases exceeding
twenty one year’s created out of private land; or any other manner prescribed in an Act of
Parliament.

2.5.2. Rights of Ownership
The NLP (2009) views rights of ownership as a quantity of rights ‘bundle of rights’ that
different tenure systems confer on individuals or groups of individuals. The principal rights of
ownership are the right to use, the right to dispose of, and the right to exclude others from the
land owned. The definition and scope of these rights to land differ from one tenure system to
another, depending on policy considerations such as the need to ensure equity in access to land.
According to the Food and Agriculture Organization of the United Nations (FAO), the breadth
of tenure rights in land may comprise three elements, mainly (a) use rights (to use the land for
grazing, growing subsistence crops, gathering minor forestry products); (b) control rights (to
make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of crops); and (c) transfer rights (right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights). This content of tenure rights highlights their utility in the context of decision making on how the land should be utilized, and the breadth of rights allocated to a landholder therefore defining how much authority they possess over the land.

2.5.3. Importance of Secure Land Rights
Secure property rights are a critical component of economic development and social stability. Inappropriate property rights policies and institutional structures that are not synchronized with economic, political, and environmental realities can undermine growth, erode natural resource bases, and catalyze violent conflict. Insecure and non-negotiable property rights are some of the critical factors limiting economic growth and democratic governance throughout the developing world. Conversely, strong property rights systems, which are viewed as legitimate, transparent, and negotiable, can lead to increased investment and productivity, political stability, and better resource management (World Bank, 2007). UN-HABITAT (2008) notes that securing land and property rights for all supports economic growth, reduces poverty and provides opportunities for empowerment. It enumerates this benefits as discussed below.

Secure land rights are a firm springboard for economic and social development. They facilitate household income gains, improve food security and act as a safety net in times of hardship. More equitable land distribution reduces social inequality. Secure land rights can also provide a source of financial security, and a transferable asset which can be sold, rented out, mortgaged, loaned or bequeathed. It also creates incentives for land users to invest labor and other resources to improve and maintain the productivity of farms, the quality of dwellings and the value of land and property.

Secure rights of access to land contribute to business development as it is a prerequisite for productive investment. Difficult access discourages enterprises of all sizes in both urban and rural areas. Easier access depends on effective, accessible land administration systems, proper regulation, transparency and an end to bureaucratic discretion and corruption.
It also promotes social stability by reducing uncertainty and conflicts over land including mitigation of insecurity, unemployment, poverty and social exclusion associated with landlessness and homelessness. It also reinforces gender equality. Equal property rights for women and men are fundamental to social and economic gender equality. However, gender discrimination in access to land and secure land rights is unjust and undermines women’s human rights. Furthermore, it will ensure reduction of conflicts and natural disasters. Land rights must be included in humanitarian and development response to disasters or civil conflict. Conflicts over land rights between different ethnic, social or generational groups can lead to communal violence, economic instability and war. To help prevent this, land policies must guarantee secure land rights to competing interest groups in an equitable way.

Poverty often remains concentrated in rural areas where agriculture is the main source of livelihood. People need secure land rights to provide reliable opportunities for food production so as to ensure rural development. Policies should foster not only access to land, but also productive use of land. Securing land rights will also strengthen environmental conservation. Clearly defined tenure and access arrangements over natural resources provide a basis for long-term stewardship and reconciliation of competing claims by different users and interest groups. Lack of these in rural areas can lead to environmental degradation.

2.6. Administration of land rights in Kenya
UN-ECE (1996) defines land administration as the process of determining, recording and disseminating information on tenure, value and use of land. It is all public sector activities that aid alienation, adjudication, land valuation, land registration, transfer, development and use of land as defined by planners (Dale and McLaughlin, 1988). A good land administration system should provide guarantee a land tenure security, supports the process of land taxation and land development as well as providing guidelines on effective and efficient and effective land transactions. Most of the processes will be discussed briefly apart from land titling and registration where we shall be more comprehensive since it has been cited to be one of the strategies of securing land tenure. These processes include:

2.6.1. Land Alienation
The owner of freehold (fee simple absolute) under English law has the right of alienation and in most cases the government is the radical title owner of land (UN-HABITAT, 2003). Part 1 of the Land Act, 2012 defines land alienation as the sale or other disposal of the rights to land.
Britton et.al (1980) gives some ways though which land may be alienated which includes: assignments, leaseholds, subleases, freeholds, encumbrances, easement and restrictive covenants. In Kenyan context, Section 12(1) of the LA (2012) provides various means of allocating public land which includes; public auction, application confined to a targeted group of persons or groups, public notice of tenders, public drawing of lots, public request for proposals as well as public exchanges. Public bodies that facilitate the process include NLC.

2.6.2. Land Adjudication

According to (Onalo, 1986) land adjudication refers to the process of ascertainment of land rights and interests in the land for the purpose of registration of titles to such land. Once ascertained, such rights and interests are entered into a land register, which facilitates the accuracy of the land information system and enables efficient transactions in land. However, according to Simpson (1976), the process does not create rights, it only establishes what rights exist, by who are they exercised and what limitations if any they are subject. Generally, Land adjudication is classified into sporadic and systematic adjudication systems. In Kenya the process is governed by the Land Consolidation Act Cap 283, Land Adjudication Act Cap 284, Group Representative Act Cap 287 and Agriculture Act Cap 318 supported by other land laws.

2.6.3. Land Planning

Physical planning is the process whereby changes to the environment can be brought about through formal procedures. It is said to be the process of allocating resources, particularly land, in order to achieve maximum efficiency while respecting the nature of the environment and the welfare of the community (UN-ECE 1996). GoK (2008) notes the importance of planning in the recognition that, for sustainable development to take place, a balance should be negotiated between the economic development, community development and ecological development processes. The major output of land planning is a representation or a map (plan). This output may show physical development in form of buildings shown in a given form/design or physical land development plan that shows what land could be used for what, the size, limitation to use and any other matter that benefits the local area. This spatial representation in totality shows how human activities are to be ordered on the ground. The manner in which physical planning is conducted depends on the country’s political system but in most cases the responsibility lies with the organs of central and local government.
2.6.4. Valuation

UN-ECE, 1996 defines valuation as the process of estimating the worth of landed property based on experience and judgment. It outlines that the purpose of valuation is to determine “value” a term which is general prefaced by some description as market value or benefit value. Property valuation is necessary for a number of public and private functions in the land sector, including state disposal of land, compensation for state acquisition, taxation of land, stamp duty and determination of the value of collateral assets. Determination of the value of collateral assets is critical to the health of the financial sector, because overvaluation can create large, hidden exposures in loan portfolios. International Valuation Standards Committee provides various valuation approaches that can be used in the valuation process namely the Sales comparison method, Investment method and Cost method. In Kenya the process is undertaken by the Ministry of lands (MoL) under the department of Lands in the Valuation division governed by the Valuers Act Cap 532 supported by other land legislations.

2.6.5. Land Surveying

According to the United States Maps Accuracy Standards (USMAS) land surveying is the actual ground demarcation of a parcel of land, preparation of boundary description and measuring of the area of the portion on the earth’s surface; the lengths, direction of the boundary lines or the contour of the surface for their determination and description for conveyance or for recording or for establishing, locating, defining and marking or documenting land boundaries or lines and the platting of land or subdivision. The NLP (2009) argues that the process helps in preparing the maps and plans to support land registration as well as mapping the earth for land use planning. Section 15(1) of the LRA (2012) mandates the office or authority responsible for survey of land to prepare maps to be known as cadastral maps for every registration unit. In Kenya, land surveying is performed by the MoL in the department of Survey governed by the Survey Act Cap 299 supported by other land laws.

2.6.6. Land Titling and Registration

International Federation of Surveyors (FIG) defines land registration as the official recording of legally recognized interests in land which is part of cadastral system. UNECE (1996) and Onalo (1986) argue that land registration provides the means for recognizing formalized property rights and for regulating the character and transfer of these rights. There are three systems of land registration: private conveyance, deed registration and title registration. Onalo (1986) and GoK (2002) recognize that the finality principle of land registration is with the land registries.
In Kenya, Section 26(1) of the LRA (2012) views certificate of title as the legal proof of ownership. The process is currently governed by the LRA (2012) supported by other land laws. The Department of Lands under Registration Division in the MoL prepares registers and issues title deeds for all categories of land, including also registration of transactions relating to land. UN-ECE (1996) argues that there are three systems for recording rights in land which include private conveyancing, registration of deeds and registration of title.

In *private conveyance*, documents agreeing to the transfer of ownership are passed between the seller (vendor) and purchaser (vendee), usually with the guidance of a lawyer. The State merely provides legal framework within which this process takes place. Private conveyance is generally regarded as inefficient and potentially dangerous since it can be subject to fraud as there is no easy proof that the vendor is the true owner.

Under a system of *registration of deeds*, a copy of the transfer document is deposited in a deeds registry. An entry in the registry then provides evidence of the vendor’s right to sell. In countries where there is a national deeds registration system, the registry is under the control of the State. A copy of all agreements that affect the ownership and possession of the land must be registered at the registry offices and one copy of all documents is retained. Each document will normally have been checked by a notary or authorized lawyer and its validity ascertained. As a result, by searching the registry for the most recent document of transfer, any would-be purchaser should feel confident that the vendor has the right to sell. Inspection of the register will show how the vendor obtained the property and the conditions under which it was acquired. This of course provides no proof that the previous transaction was legitimate, hence the transaction before that should be inspected, and so on through a sequence of inspections until the purchaser is confident that there is a clear chain of title. A registration of deeds system has a number of limitations. On its own, the system gives no guarantee of title and it also leads to the storage of vast quantities of ancient documents, creating what has been referred to as a “mausoleum of parchment”. Not only is this costly but the retrieval of data can also be difficult and time-consuming, depending on the volumes of documents stored.

An alternative to the registration of documents is the *registration of title* to land. In this system each land parcel is identified on a map and the rights associated with it are recorded on the register. In addition, the name of the owner is recorded. When the whole of the land is subject to transfer, only the name of the owner need be changed. When part of the land is transferred, the
plans must be amended and new documents issued. The definitive record is taken as that held by the titles registry. Under such a system the ownership of land can be guaranteed. The title registration system introduced by Sir Robert Torrens in South Australia in 1858 was a model for many such systems in other jurisdictions and is based on three main principles (Dale and McLaughlin 1999:38):

- The ‘mirror principle,’ where the register reflects accurately, completely, and beyond all argument the current facts that are relevant to the rights in a parcel of land;
- The ‘curtain principle,’ where the register is the sole source of information for interested parties in ascertaining rights in land;
- The ‘insurance principle,’ where, if through human frailty, the register fails to give an absolutely correct reflection of rights in land, anyone who suffers a loss is entitled to an indemnity from the government.

According to UN-ECE (1996), a good system for recording land ownership should contain a legal definition of real property units that accurately reflects conditions on the ground, facilitate land transfer through a system that is simple, secure, and cheap to operate, eliminate the need for extensive searching for a chain of titles, be supported by legislation that requires it to be kept up to date at all times, for example when mutations occur, meet local needs; record specific real property rights, ownership and restrictions on ownership that are not otherwise transparent and should cover all land, including that held by the state as well as by individual private citizens or institutions.

2.7. Land ownership related emerging issues

"What is a title deed anyway? It is just a pièce of paper" (Daily Nation, 29/02/96). These words were spoken by a Kenyan Minister after the bloody eviction of twelve thousand families by the minister's private army and police from an immigration zone in southern Kenya in October 1993. His words summarize growing conflicts over and tensions about security land rights and access to land on the African continent. As recently as 1989, the World Conference on Agrarian Reform and Rural Development noted that "... land availability was not a major problem in the context of most African countries" (WCARRD, 1989:17). Providing security of tenure for a wide range of land rights has proved surprisingly resistant to resolution.

Various challenges still remain in safeguarding land rights for all. Although ancestral rights to land and other natural resources are a cornerstone of the livelihoods of indigenous people, the
legal recognition and safeguarding of such rights has been uneven. Despite women being the principle farmers or producers in many parts of the world, significant gender inequities continue to exist with regard to use of and control over land and other natural resources leading to social exclusion. Reliable statistics on land ownership are difficult to obtain but there is a broad consensus that the vast majority of women in the world do not have formally registered land rights. Globally, many rights to land and other property are not legally recognized and documented. Even when land is included in a land registration system, the records of who holds rights to that land are often out of date (FAO, 2009).

In Kenya, the NLP (2009) notes that the existing policies and laws on land have protected private land rights, especially under the RLA, at the expense of indigenous or communal land rights especially in areas inhabited by pastoral communities. While there are relevant provisions within the law that could be invoked to give meaning to indigenous peoples’ land and resource rights, the legal framework is generally inadequate with regard to protection of these communities. There is overwhelming evidence of the state’s disregard for the particular demands of indigenous peoples, manifested by inadequate or total lack of consultation and participation of these groups in issues that affect them, including the way in which their lands should be utilized.

The Poor and vulnerable people lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources. The land rights of vulnerable individuals and groups are not protected and are subject to bias and discrimination. Further, the vulnerable lack cohesive institutions to represent their interests. According to the NLP (2009) the most vulnerable persons in Kenya include, but are not limited to, subsistence farmers, pastoralists, hunters and gatherers, agricultural laborers’, unskilled and low-skilled workers, unemployed youth, persons with disabilities, persons living with HIV and AIDS, orphans, slum and street dwellers, and the aged. UN-HABITAT (2012) specifically points out that land laws, policies and tools focus almost exclusively on adults. They tend to ignore the rights and development needs of the majority of the world’s population – children and young people, as well as the elderly. There are currently 1.2 billion youth in the world, the largest number ever to have existed. It is estimated that as many as 60 per cent of all urban dwellers will be under 18 by the year 2030.
Women often face discrimination in formal, informal and customary systems of land tenure. For instance, they gain access to land generally through male relatives and exercise only subordinate rights; these are vulnerable to breakdowns in relationships, divorce and to the changing priorities of male land owners. Gender discrimination in access to land and secure land rights is unjust and undermines women’s human rights (UN-HABITAT, 2008). In Kenya for example, less than 5% of the holders of land titles are women (Mbote and Mubuu, 2002). In spite of their legally disadvantaged position, African women produce 80% of the continent’s food (FAO, 2010). Article 17 of the Universal Declaration of Human Rights 2 recognizes the rights of everyone to own property either alone or in association with others, and that no one should be arbitrarily deprived of their property. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 15 and 16 also reiterates the same message.

The UN Committee for Economic, Social and Cultural Rights (CESCR) adopted General Comment Number 7 on forced evictions in 1997, significantly expanding the protection against forced evictions. While it does not ban outright every possible manifestation of eviction relocation, it strongly discourages the practice and urges states to explore “all feasible alternatives” prior to carrying out any forced evictions. However, it is estimated that worldwide some 5 million people are victims of forced evictions each year (FAO, 2009). A current example of tenure vulnerability, even with a formal arrangement, is the eviction of plot-owners from Kenya’s Mau Forest. People were formally resettled in the forest during the 1980s and 1990s by the then government because their original location was blocking a major water source. Evictions, which began in 2009, were justified on environmental grounds. The effect on the lives of those evicted is usually catastrophic, leaving them homeless and subject to deeper poverty, discrimination and social exclusion. Such communities are invariably evicted against their will, and in most cases, without any compensation or alternative housing (UN-HABITAT, 2007).

In 2005, an estimated 934 million people lived without secure tenure in informal settlements in the urban areas of developing countries. This number is projected to increase to 1.5 billion by 2020 and two billion by 2030. This suggests that even if the MDGs (No 7, target 11) of improving the lives of at least 100 million slum dwellers by 2020 is achieved, it will meet only a small proportion of existing needs and only seven per cent of future estimated needs by 2020. In rural areas, some 200 million people (almost 20 per cent of the world’s poor) have no access to sufficient land to make a living (UN-HABITAT, 2008).
Landlessness or near-landlessness also seems to be on the rise all over the world, in the urban as well as in the rural areas. Landless agricultural workers do not have access to this productive resource. Near-landlessness has been defined by Leonard (1989:13) as "... access to plots of land too small to provide a minimal livelihood under existing land use patterns and technical capabilities". In Kenyan context this problem in most cases has been argued to be a direct consequence of the colonial land policy and law.

Corruption and other fraudulent dealing also pose another problem. Indeed, the Kenya’s NLP (2009) notes that this has had serious negative effects in the distribution and management of land. Existing statutes enacted to specifically deal with corruption emphasizes on criminalizing it, thereby focusing on prosecutions as the most important means of fighting corruption. This presupposes an ideal situation that cases will at all times be detected, thoroughly investigated, successfully prosecuted and convictions obtained. However, this has, more often than not, not been the case.

Disputes over land are also common all over the world: for example, neighbors’ disagreeing over boundaries, two parties disputing ownership over a piece of land, conflicts between landlords and tenants, disputes over use rights on common property or collective land, intra-household disputes, inheritance disputes, etc. The critical governance issue regarding disputes, however, is not whether there are disputes, but rather what rules, processes and mechanisms are in place to address grievances, manage disputes and to enforce agreements (FAO, 2009).

Poor land governance is to blame for the anomalies. Many parcels in the land registration systems are uncertain and hold ambiguous information, despite attempts to create land registration systems with certain, highly accurate spatial information. Central issue in Africa is the proliferation of conflicting and overlapping laws. There are also problems surrounding the flow of spatial information for land administration purposes within government, between departments at national level, between national and lower level tiers of government, and between government and the private sector and users. Coordination thus remains a critical issue.
2.8. Conclusion and Conceptual Framework

Despite various milestones achieved in terms of securing land rights for all, various hurdles still exist manifested through the continued emergence of various land rights issues. Poor land governance is to blame for the anomalies. Even where various reforms have been proposed the country usually lacks the tools, systematic strategies and support necessary to deliver or implement secure land rights for all.

States should consider the particular obstacles faced by different categories of people with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection and that laws that recognize their tenure rights are implemented and enforced. Relevant policies, laws and procedures ought to be developed through participatory processes involving all affected parties, ensuring that all people are included from the outset. In developing appropriate practice we need to borrow from FAO (2013) that establishment of sound land tenure governance system out to follow a logical sequence from policy making, to law and to implementation and will encompass various stakeholders in each phase.

Firstly, each country has its own unique set of geographical, economic, social and cultural features, as well as its own political system and patterns of land use and landholding. All stakeholders need to understand this local context so that they can participate in the policy making process as effectively as possible. Once the policy is developed translation of policy into law becomes necessary. In many countries, the presence of different tenure systems creates confusion when different laws and customary norms and practices conflict. In other cases, good land laws may not be applied because regulations, procedural manuals and implementation strategies are lacking.

It then becomes necessary to establish strategies for facilitating the representation and participation of all people in the institutions of land tenure governance (including customary institutions) and for developing the capacities of these institutions. We then need to consider technical issues of land administration which also need approaches that are sensitive to the needs of all, methods and technologies. It should embrace technical innovation in order to tap the benefits that come with it. This also involves designing a land administration system that serves and that gives equal participation of all people in administration activities. The final face involves establishing the most effective communication strategies and methods and addresses
key issues in getting the message across, including gender sensitization, awareness raising, advocacy, legal literacy and long-term change in values and attitudes.

Finally we need to borrow from Williamson (2001) argument that there are two key outcomes required in building or re-engineering land administration systems; first the establishment of an appropriate land administration system and secondly ensuring that there is sustainable long term capacity of educated and trained personnel to operate the system in both the public and private sectors. All human resource development (HRD) and capacity building principles are therefore central to these objectives. Diagrammatical representation of the framework is drawn in figure 2.2 below.

Figure 2.2: Conceptual Framework for the implementation of secure land rights for all

Source: FAO, 2013
CHAPTER THREE
CASE STUDY AND RESEARCH METHODOLOGY

3.1. Introduction

This chapter outlines a brief background of the study area as well as an exposition on the research methodology that was used in collecting and analysing the data. The first section covers the geographical setting, physical base, land use activities and the related infrastructure in the study area. Research methodology is the second section in this chapter which entails description of the research design, study population, sampling techniques and sample size, data collection instruments, data analysis and presentation techniques including ethical issues and the limitations of the study.

3.2. Regional Setting

Athi River also known as Mavoko, is a fast growing industrial town located in Machakos district some 25km southeast of Nairobi with a high proximity to two busy highways connecting Nairobi with the port of Mombasa and Tanzania. The town came into existence through trading, with the main business activity being centered at the old town area next to the railway station. The town hosts Mavoko Municipal Council (MMC) and is also the Headquarter of Athi River/Mavoko division in Machakos district. It stretches from latitudes 0º 45’ south to 1º 31’ south and longitudes 36° 45’east to 37º 45’ east. The district borders Kitui and Mwingi to the East, Makueni district to the South, Kajiado to the West, Nairobi City and Thika districts to the North West, Murang’a and Kirinyaga district to the North and Mbeere district to the North East (Source; Machakos Development Plan,1997-2001).

The entire Mavoko Municipality on the other hand, covers an area of 693 km² with a population density of about 54 people per Km2 stretching from KAPA/Airport area where it borders with Nairobi City Council and covers Katani, Ruai on Kangundo road through Muthwani-Lukenya, Makutano (Kyumbi) where it borders Machakos Municipal Council. It covers Kapiti plains to the south west towards Kitengela area where it borders with Olkejado County Council, then to Embakasi at Nairobi City Council border.
Map 3.1: Showing the geographical boundaries of Athi River Town

ATHI RIVER TOWN

Source; Google Maps 2012

Source; Author 2013
3.2.1. Topography
The district has a variety of topographical features. The landscape is largely a plateau that rises from 700M to 1700M above sea level. Athi River division owes its more or less flat terrain to the Kapiti and Athi plains broken by the Lukenya hills. It has several seasonal rivers, but the most significant one is Athi River, draining the region to the West of Yatta plateau. The basement rocks are mainly volcanic and most parts of the division is endowed with soil of acrisol/ferrasol type, which is clay in nature. Athi River division is also endowed with diatomite, limestone and granite rocks.

3.2.2. Climate
Machakos district is hot and dry. It has two rainy seasons; the long rains commencing at the end of March or the short rains which starts at the end of October till December. Annual rainfall averages 600mm and a low reliability. This area is ideal for ranching purpose but with irrigation techniques, farming can be practiced. Furthermore, the mean monthly temperature averages 18°c to 25°c, the coldest month being July while March and October are the Hottest (Source; Meteorological Department, 2009).

3.3. Land use analysis
Land use within the Municipality is divided into nine categories and its allocation and character of land use in the town is explained below:

3.3.1. Industrial subsector
The rapid growth of Athi River is due to industrial expansion in the area. In fact, employment pattern has changed considerably from cattle ranching in the 1950s to commercial and industrial activities today. The town has benefited from the establishment of an Export Processing Zone (EPZ) and a growing number of other industrial entities, such as cement manufacturing, textile manufacturing, meat processing steel, mining, flower farming, horticulture, distillers, and quarrying. In total there are over sixty factories. These industries are the main employers in the area and attract large numbers of semi-skilled and unskilled workers from around the country. The EPZ alone, for example, employs around 10 percent of Mavoko’s total population. According to the 1970 land use plan Industrial use was allocated approximately 2007 Ha covering 20% of the total land area.
3.3.2. Commercial subsector

The area is characterized by a number of whole sale and retail businesses, small and medium scale enterprises and commercial service providers. According to the 1970 land use plan, commercial use was allocated approximately 102 Ha comprising 1% of the total land area. The area also has potential for tourism due to existence of various tourist attraction sites such as Maasai Ostrich Resort including a number of hotels, motels and accommodation facilities. There are also established game ranches for commercial purpose.

3.3.3 Residential subsector

The Municipality acts as a dormitory town for Nairobi city, other nearby growing centres and also provides housing for the local industrial workers. The people working in Nairobi and Machakos find it more affordable to live in Mavoko and commute to work. According to the 1970 land use plan residential use was divided into three sub-categories namely low, medium and high density and allocated approximately 2722 Ha of land comprising approximately 27% of total land area.

3.3.4. Educational facilities

The area is served with nursery, primary, secondary and tertiary educational services. There also exists training institutions. There are 37 pre-primary schools, 17 primary schools and 4 secondary schools. There is one polytechnic and one higher education institution in the area (Source; Machakos District Development Plan 2008-2014). Private schools exceed government
schools demonstrating that private education is a lucrative business in Mavoko. According to the 1970 land use plan, educational use was allocated approximately 348 Ha comprising 3% of total land area.

3.3.5. Recreational land use
Recreational land use was allocated approximately 818 Ha according to the 1970 plan, this comprised 8% of total planned area. The recreational activities provided according to this plan were parks, playing fields, public open spaces and a proposed stadium.

3.3.6. Public purpose
The 1970 plan provided for public purpose activities such as a social hall, Ministry of Works land, churches, land for administration and a proposed cemetery. The plan allocated approximately 250 Ha comprising 2% of total land area. In regard to health amenities, the middle- and high-income groups rely on the town’s private clinics, whereas the poorer groups are forced to use the government-run health clinic only for outpatients. The nearest hospital is in Kitengela, a neighboring town in a different district which means that many have to travel long distances for medical care making it unaffordable for the poor.

3.3.7. Public utilities
Public utilities consisting of water, sanitation and waste facilities had an allocation of approximately 76 Ha comprising 1% of total land area according to the 1970 land use plan. Athi River in the past has been the source of water in this locality. However, owing to increased population growth and industrial development, this source has been inadequate hence necessitating sourcing of water from the Nairobi water supply system. This system has however been inefficient due to the failure of the council to settle water bills to the city council.

The sewerage system consists of gravity flow system (Municipal sewer line), which links to a collecting tank. However, most parts of the town such as slums have not been reached hence residents in such areas result into inappropriate methods of waste disposal. As a result of the inadequacy, some developers have developed their own cesspools in their plots. In the recent past, the EPZ in conjunction with the MMC have constructed a 19 Kilometres sewer line and treatment ponds to ease the problem of lack of adequate sewerage system for the industries in the area. In regard to power supply, the Kenya Power and Lighting Company provide electricity throughout Kenya. Mavoko has relatively high energy consumption levels due to the number of
large industries in the area, many of which operate 24 hours per day. The council is promoting alternative sources of energy, such as solar energy, especially to new developers as Mavoko enjoys year-round sunlight. Most slums are without electricity and use paraffin lamps, tin lamps, batteries and candles for lighting, and kerosene or charcoal for cooking, which harm the environment, cause air pollution and respiratory diseases. Other public utilities in the town include police stations, Administration police line and administrative offices. The Council has currently provided one fire fighting vehicle in the town.

3.3.8. Transportation
The town is located at about 25 Kilometres from Nairobi city centre and just about 12 Kilometres from Jomo Kenyata International Airport and the inland container depot of Embakasi. Athi River town is served by two major highways, the Nairobi-Mombasa highway and the Nairobi-Namanga-Highway. There is also the main railway line that links Mombasa and Nairobi plus other major towns. Approximately 510 Ha of land comprising 5% of total land area was provided for transportation according to the 1970 plan.

3.3.9. Deferred land
Deferred land was allocated approximately 3230 Ha comprising approximately 32 % of planned area.

3.4. Demographic characteristics
The town’s population is in a constant upward trend as shown in the figure below:

<table>
<thead>
<tr>
<th>Year</th>
<th>1989</th>
<th>1999</th>
<th>2009</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athi River division</td>
<td>21,789</td>
<td>29,678</td>
<td>37,521</td>
<td>45,600</td>
</tr>
<tr>
<td>Athi River Town</td>
<td>13,072</td>
<td>21,596</td>
<td>29,957</td>
<td>39,400</td>
</tr>
</tbody>
</table>

Source: Machakos District Development Plan, 2005-2010

Although the divisions’ population is fairly low it is concentrated mainly in town, implying that it is highly urbanized (about 60%).
3.5. Research design

Kothari (2004) defines research design as the arrangement of conditions for collection and analysis of data, in a manner that aims to combine relevance to the research purpose with economy in procedure. It is the conceptual structure in which research is conducted; it constitutes the blueprint for collection, measurement and analysis of data.

According to Cooper and Schindler (2003), research design can be classified by the approach used to gather data into two broad categories: Observation and communication approaches. Observation involves the full range of monitoring behavioral and non-behavioral activities and conditions such as listening, reading, visual data collection, smelling and touching. The communication approach involves surveying people and recording their responses for analysis. It is the most reliable method for of learning about opinions, attitudes, motivations, intentions and expectations. It is the most effective method for collecting the survey data. It is also an effective method for eliciting issues that are exclusively internal to the respondent, as the most qualified person to provide such information.

Kothari (1990) views research by using a case study as being designed as a form of qualitative analysis and involves careful and complete observation of the social unit which can either be a person, family, an institution, a cultural group or the entire community. The research seeks to obtain information that describes the existing phenomenon by asking individuals about their perceptions, values and attitudes. For this particular study, the case study was Mavoko Town where the entire community was observed. A reconnaissance visit was conducted before the researcher began the actual execution of the study with intent of familiarizing with the extensive area of the town.

3.6. Study Population

The study targeted all categories of people who were land owners as well as those who were not land owners but they can access and use land through their family members or friends. The sample size chosen was taken to be a fair representation of the town’s population which was projected by the Machakos District Development Plan (2005-2010) to be about 29,957 people. Apart from the general public other stakeholders whose views were crucial included the private and public sector operating in this area. The researcher only concentrated on industrial, commercial and residential land uses since they were considered to be the key drivers of this town.
3.7. Sampling techniques and sample size

Mugenda and Mugenda (1999) define sampling as the process of selecting a number of individuals for a study in such a way that the individuals selected represent a large group from which they were selected. Owing to time and resource related limitations hindering examination of the entire population, the technique was adopted.

The data sought in the exercise capitalized on evaluation on the nature of land rights and how we can improve it, examination on the process and procedures of administering such rights as well as land ownership related emerging issues. Special attention was paid to the issues affecting the primary victims of insecure and inequitable land rights namely the vulnerable groups such as the women, youths, elderly, poor, disabled and other marginalized groups residing in Athi River town. Collected data was then analyzed in order to derive the necessary conclusions and recommendations that can be adopted in addressing existing challenges. Such information was obtained through administration of questionnaires to residents of Athi River Town. Direct interviews were also used to gather information that could not have been obtained through questionnaires. Staff from public sector bodies especially the Deputy Commissioner of Lands (CoLs), District Land Registrar as well as Deputy Town Clerk in MMC was part of those who were interviewed. Private sector bodies such as private surveyors and valuers in the area were also resourceful to us. Personal observations and taking photographs of various physical features in the area was also very instrumental.

A reconnaissance survey was undertaken first as a way of familiarizing with the area. Secondly, pre-test questionnaires were administered which revealed that majority of the residents were willing to share a lot of information hence the researcher had to take a considerable amount of time. Considering that the town is structure in different zones, a stratified random sampling method was adopted in distribution of samples so as to ensure that the research is representative of views all people in this zones. This was aimed at guarding against collecting biased data.

According to the Machakos District Development Plan (2005-2010), the projected population of Athi River town for the year 2009 was 29,957 people. We relied on that population size in computing the sample size using the following shown in the following page.
\[
\frac{Z^2pqN}{e^2(N-1)+Z^2pq}
\]

(Chava and Nachmias, 1996)

Where: \(N\)=population size; \(n\)=sample size; \(p\)=sample population assuming a 95% confidence level of the target population; \(q=1-p\), \(e\)=Acceptable error i.e 5% while \(Z\)=the standard normal deviate at the required confidence level i.e 1.96.

\[
n=\frac{1.96^2*0.95*(1-0.95)*29,957}{0.05^2*(29,957-1) + 1.96^2*0.95(1-0.95)} = 73 \text{ Respondents}
\]

The entire sample size of 73 respondents was only distributed to the main land uses in the area namely industrial, commercial and residential subsectors as shown in the table below.

**Table 3.2: The sample size of plot owners from each of the land use zones**

<table>
<thead>
<tr>
<th>LAND USE ZONES</th>
<th>SAMPLE SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial</td>
<td>24</td>
</tr>
<tr>
<td>Commercial</td>
<td>24</td>
</tr>
<tr>
<td>Residential</td>
<td>25</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>73</strong></td>
</tr>
</tbody>
</table>

*Source; Author 2013*

Questionnaires were distributed in a systematic manner using the area valuation roll supplied to us by the MMC (Rates office). In the roll a total of 2322 plots were identified. These parcels had been classified either under Government of Kenya, Local Authority, private or under public corporations. For the purposes of this study we considered private parcels which summed up to about 996 plots comprising of 42 commercial plots, 896 residential plots and 58 industrial plots. In selection of the samples, this plots were classified and arranged in the three categories in the order in which they appear in the list and then samples selected in a systematic manner. Commercial and industrial plot numbered in even digits were selected including every 38th residential plot. Questionnaires were then administered to the owners or the persons in charge of the selected plots.
3.8. Data collection instruments
Both primary and secondary sources of data were used in collecting information. Primary data was collected during the fieldwork period using questionnaires administered to the respondents namely residents of Athi River Town and clarification given to questions where respondents had difficulties. Both structured and open ended questions were used. Structured questionnaires were considered to be economical, and easier to analyze and administer while open ended design gave the respondents complete freedom of response hence introducing comprehensiveness in data collection. Information from illiterate, elderly and disabled people was obtained through in-depth questionnaires.

In order to gather detailed information that could not be obtained through administration of questionnaires, direct interviews were used to gather information from various officials especially the Deputy CoLs, MMC (any worker in the lands office) and District Land Registrar upon securing an appointment. Interviews were also extended to private sector firms especially real estate professionals who also turned to be resourceful in our study.

Personal observation and photographs also served a useful purpose. Personal observation involves information being sought by way of investigators own direct observation without asking the respondents while photographs are an indirect way of data collection. This was used in capturing existing conditions of developments and geographical features in the area of study.

Secondary data was compiled through review of both published and unpublished literature relevant to the study. These include books, position papers, articles, internet, magazines, newspapers, reports, journals, legislations and government policies. Maps and physical development plans of the area from the relevant authority constituted secondary data as well.

3.9. Data Analysis and Presentation
Data was analyzed and interpreted using various descriptive statistical tools such as mathematical calculations and analysis, including quantitative descriptions and interpretations. Percentages were also used in comparing data. The results were then presented in form of tables and graphs in reporting issues such as trend while pictorial presentation was also used in representation of information on the ground.
3.10. Ethical Issues
Mugenda and Mugenda (2003) argue that ethics are rules of conduct or set of principles that are in conformity to the conduct of a given profession or group. Researchers must be people of integrity who will not undertake research for personal gain or a research that will have a negative effects on the others (Zikmund, 2003). The respondents’ identity was protected by keeping the information given confidential and not disclosing the names of respondent where appropriate or expressly required. The researcher also conformed to the principle of voluntary consent where the respondents could only willingly participate in the research.

3.11. Limitations of the Study
The researcher faced challenges of time, costs and scope. The research was also conducted in the middle of the semester alongside tight schedules of lecture works. This time was inadequate bearing in mind the complexity of the Athi River land issues that required thorough investigations before its associated problems of classification, appropriation and use are analyzed and conceptualized. The researcher worked on a tight program often requiring high time management skills. Time inconveniencies due to cancellations of interviews appointments posed another challenge.

We also witnessed outright refusal by some residents to answer questionnaires fearing that the research conclusions and recommendations might endanger their lives due to sensitivity of the issues involved. Others felt that the researcher was the principle beneficially of the work and wanted to be paid to fill the questionnaires. However, these problems were easily solved through adoption of appropriate interpersonal skills in persuading and correcting such misperceptions. Suspicion was another problem leading to reluctance of some of the respondents to cooperate. The researcher tried to address such problems by ensuring careful personal introduction and attentive introduction of the purpose of the study. Illiteracy was also a major hurdle since some elderly land owners could not speak in Swahili or English while others could not comprehend some of the issues raised by the researcher. In such instances the researcher had to provide assistance in reading the questions, interpreting the issues including writing where respondents were unable to write.
CHAPTER FOUR
DATA ANALYSIS AND PRESENTATION

4.1. Introduction
This chapter gives a detailed presentation of the data and information that the researcher collected from the field. Data collected was analyzed and presented in form of photographs, written texts, tables, pie charts and bar graphs. As discussed earlier in the previous chapter, this data was collected mainly by use of questionnaires administered to the sampled population together with interviews to clarify issues raised in the questionnaires thereof. Observations, street surveys as well as photography were also used to capture the real life situations and features in the case study area pertinent to the study. Data analysis and production was done with aid of a computer.

One category of questionnaire and three categories of interview guides were designed for the purpose of data collection. Questionnaires targeted the residents of Athi River Town specifically plot owners while the interview guides targeted the Deputy CoLs, District Land Registrar and the Deputy Town Clerk at MMC. Interviews were also extended to private sector firms especially real estate professionals who also turned to be resourceful in our study. The analysis of the collected data was guided by the objectives and hypothesis of the study.

Table 4.1: Distribution of the questionnaires and the response rate

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Questionnaires issued</th>
<th>Questionnaires Received</th>
<th>Percentage Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Zones</td>
<td>25</td>
<td>23</td>
<td>92%</td>
</tr>
<tr>
<td>Commercial Zones</td>
<td>24</td>
<td>22</td>
<td>91.7%</td>
</tr>
<tr>
<td>Industrial Zones</td>
<td>24</td>
<td>23</td>
<td>95.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>73</strong></td>
<td><strong>68</strong></td>
<td><strong>93.2%</strong></td>
</tr>
</tbody>
</table>

Source: field survey 2013

From the above it can be noted that there was a response rate of 93.2% and only 6.8% formed the non respondent. Mugenda (1999) underscores the fact that a response of 50% is adequate for analysis and reporting. Therefore, response rate of 93.2% was considered adequate enough to give valid and reliable results.
4.2. Concept of land Tenure and Land Rights

During the field survey, respondents as well as the staffs interviewed specifically the Deputy CoL in the Ministry of Lands (MoL) and the District Registrar of Lands argued that successive governments including MMC have been poor stewards of Government land and Trust land, due to factors such as abuse of trust and lack of administrative capacities for effective management. The main problems in the systems that were recognized include the following: multiplicity of statutes dealing with land matters making procedures to acquire secure rights to land unnecessarily complex; inadequate and ineffective application of land laws and land administration procedures; lack or inadequate skilled human and other resources to facilitate prompt and efficient enforcement of land laws including abuse of powers. Furthermore, the rapid urbanization and accelerated population growth that has continued to be witnessed in the area has resulted in inadequate resources, exorbitant land prices and unprecedented expansion and proliferation of low income urban informal settlements. They also criticized the formal land registration system for not being neutral as in most cases and where titling is implemented, people with intermediate tenure often lose their rights. Women, poor and overlapping rights holders are very vulnerable in these circumstances.

It is also crucial to note that the government and private entities own the majority of land in Mavoko while a large number of people are landless or squatters, the processes lack transparency and that the Deputy CoLs from the MoL allocates land in Mavoko without consulting the MMC often giving land to out-of-town people, which is disapproved of by the MMC. There is also no land use plan in existence, information on land allocation does not reach the poor communities on time and the majority are unaware of the legislation concerning their land rights and have difficulties accessing legal advice especially in eviction matters, the poor are mostly excluded by market-based land pricing, and are dependent on the informal market for their land as the rising demand for land has increased prices making it even less accessible to the poor, evictions are commonplace and there are no regulations to protect slum dwellers while insecurity of tenure prevents the poor from investing in land. However, it is worth noting that most of all the above land tenure related problems have already been addressed under the NLP (2009) and Chapter Five of the CoK (2010) whereby in regard to land tenure the guiding principles include secure land rights as well as equitable access to land and land based resources. When interrogated on the on their awareness on the two documents land owners gave their responses as shown in Table 4.2 in the next page.
Table 4.2: Awareness on the NLP (2009) and Chapter Five of the CoK (2010).

<table>
<thead>
<tr>
<th>Awareness level</th>
<th>Residential user zone</th>
<th>Commercial user zone</th>
<th>Industrial user zone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
</tr>
<tr>
<td>Very aware</td>
<td>1</td>
<td>4%</td>
<td>2</td>
</tr>
<tr>
<td>Aware</td>
<td>4</td>
<td>17%</td>
<td>5</td>
</tr>
<tr>
<td>Slightly aware</td>
<td>7</td>
<td>31%</td>
<td>5</td>
</tr>
<tr>
<td>Not aware</td>
<td>11</td>
<td>48%</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>23</td>
<td>100%</td>
<td>22</td>
</tr>
</tbody>
</table>

Source, Field Survey 2013

On average across the three user zones only 7% of the sampled land owners are very aware, 21% are aware, 28% are slightly aware while 43% are not aware of the contents of the two critical documents. This serves as an indication that only a small portion of the residents are fully conversant with the two documents which is a confirmation that civic education on those documents has not been effective. Low levels of education were also noticed with only a small section of the selected plot owners gone above secondary education. Overall, of all the 68 respondents considered, 9% of them had informal training, 25% primary education, 44% secondary education and only 22% with university or college education. The field study also revealed the following relationship between the level of education and the awareness level on the two documents.

Chart 4.1: Awareness levels across land owners’ education levels

Source, Field Survey 2013
As can be seen from the chart, the higher the level of education the higher the awareness level and the lower the education level the lower the awareness level. This indicates that other than the effectiveness of civic education mechanism adopted, citizens’ level of education also plays some role in enhancing the awareness on the two documents amongst the landowners in the town. Fortunately, by conducting interviews to various staffs especially the Deputy Town Clerk and the Deputy CoLs from the MoL as well as some local leaders we were able to establish some of the tools that can be adopted in creating the awareness which were further ranked by the respondents in order of their effectiveness as follows.

Chart 4.2: Methods of creating the awareness

Source, Field Survey 2013

On average considering the three zones, 34% of the respondents viewed the media (print and mass media) as the most effective means of creating the awareness due to its huge convenience, wider coverage and the fact that it facilitate faster flow of information though it was said to have its limitations such as lack of affordability to some people. Barazas and seminars/workshops recorded 26% each, providing other favorable options of bringing information to the common citizens on the ground despite their narrow coverage. Another method that can also be explored includes the internet including the social media which is becoming a common mode of disseminating information especially among the youths. However, its main challenge is lack of internet connection in most sections of the town.
4.2.1. Land tenure systems and tenure security perception

All land owners considered in the town irrespective of their user held either freeholds or leaseholds which are some of the land tenure systems recognized under the Kenyan Law. Distribution of the various tenure systems across the three user zones is shown in Chart 4.3.

**Chart 4.3: Distribution of land tenure systems amongst the three user zones**

![Chart 4.3](image)

Source, Field Survey 2013

Other than the above formal tenure systems, direct observations as well as discussions with some of the residents revealed emergence of non-formal tenure systems. These informal tenure systems include squatting, unauthorized subdivisions, and unofficial rentals among others. People under these informal tenure systems are living under eminent danger of eviction and demolition. It was also noted that issues affecting land tenure in Athi River Town have escalated to a breach of tenure security. Efforts by the government and the local leaders to resolve the crisis have not borne fruit and the matter has been heavily politicized which has further escalated problem. When interrogated on their perception towards land tenure security in the town, landowners in all the three zones and who all held formal tenure systems (freeholds or leaseholds) as shown in Chart 4.3 expressed their different views as shown in Table 4.3 in the next page.
Table 4.3: Perception on security of tenure among the residents

<table>
<thead>
<tr>
<th>Satisfaction level</th>
<th>Residential user zone</th>
<th></th>
<th></th>
<th>Commercial user zone</th>
<th></th>
<th></th>
<th>Industrial user zone</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
<td>Percentage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Satisfied</td>
<td>3</td>
<td>13%</td>
<td>5</td>
<td>23%</td>
<td>6</td>
<td>26%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair</td>
<td>8</td>
<td>35%</td>
<td>9</td>
<td>41%</td>
<td>9</td>
<td>39%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unsatisfied</td>
<td>12</td>
<td>52%</td>
<td>8</td>
<td>36%</td>
<td>8</td>
<td>35%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>23</td>
<td>100%</td>
<td>22</td>
<td>100%</td>
<td>23</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source, Field Survey 2013

On average across the three zones, 21% of the respondent landowners expressed their satisfaction, 38% said that it was fair while 41% revealed their dissatisfaction with the current land tenure security systems. They also expressed their expectations on how we can strengthen land rights security which for the purposes of data analysis and presentation were grouped into seven major points and ranked depending on the land owners preferences as shown below.

Table 4.4: Expectations regarding security of land rights amongst the land owners

<table>
<thead>
<tr>
<th>Expectations</th>
<th>Residential user zone</th>
<th></th>
<th></th>
<th>Commercial user zone</th>
<th></th>
<th></th>
<th>Industrial user zone</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
<td>Percentage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Titling programmes</td>
<td>15</td>
<td>65%</td>
<td>16</td>
<td>73%</td>
<td>17</td>
<td>74%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customary tenure recognition</td>
<td>3</td>
<td>13%</td>
<td>2</td>
<td>9%</td>
<td>2</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Informal tenure recognition</td>
<td>5</td>
<td>22%</td>
<td>3</td>
<td>14%</td>
<td>2</td>
<td>9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elimination of corruption</td>
<td>10</td>
<td>44%</td>
<td>11</td>
<td>50%</td>
<td>11</td>
<td>48%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resolution of land disputes</td>
<td>7</td>
<td>30%</td>
<td>6</td>
<td>27%</td>
<td>6</td>
<td>26%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protection of land rights</td>
<td>14</td>
<td>61%</td>
<td>16</td>
<td>73%</td>
<td>15</td>
<td>65%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Harmonization of land laws</td>
<td>6</td>
<td>26%</td>
<td>6</td>
<td>27%</td>
<td>6</td>
<td>26%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source, Field Survey 2013
Overall across the three zones, titling programmes scored 71%, customary tenure recognition scored 10%, informal tenure recognition scored 15%, elimination of corruption scored 47%, resolution of land disputes scored 28%, protection of land rights 67% while harmonization of land laws scored 26%. This indicates that of all the seven mechanisms the most preferred in the area is initiation of titling programs followed closely by protection of land rights while elimination of corruption took the third position.

4.2.2. Equitable access to land and land bases resources
The Kenyan society has been characterized by inequality between various classes and categories of people for a long time right from the colonial era. It is against this background that we also sought to investigate whether access to land and land based resources in this area has been equitable. While this principle of equitable access to land is enshrined in both the constitution and the policy document, a large proportion of land owners considered feel that this has not been actualized.

Chart 4.4: Land owners’ perception on equitable access to land and land based resource.

This indicates that on average considering the three zones 13% of the respondents were satisfied with the current situation, 40% found it to be fair while 47% of the land owners expressed their dissatisfaction with access to land and land based resources due to inequality concerns in the area. It can also be noted that the level of satisfaction and dissatisfaction varied substantially amongst the three user zones. Most of the land owners of the industrial plots were comfortable perhaps because their acreage is huge. Over the years there has been complains that most of this
entities are holding large plots at the expense of large number of squatters and the landless. On the other hand, higher levels of dissatisfaction were noticed amongst owners of residential and commercial plots. Perhaps this is because land owners in these zones hold smaller plots compared to the ones in industrial zones. The difference in plot sizes across the three user zones is shown in table 4.5 below.

Table 4.5: A summary of plot sizes in Athi River Township

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Plot size(Acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>0.125-0.25</td>
</tr>
<tr>
<td>Commercial</td>
<td>0.125-30</td>
</tr>
<tr>
<td>Industrial</td>
<td>0.5-290</td>
</tr>
</tbody>
</table>

Source, Field Survey 2013

To improve equality, residents said that they expect land allocation malpractices to be curbed, elimination of discrimination (gender, ethnic etc), land taxation, resolution of historical injustices, improvement of tenure security, facilitation of efficient utilization of marginal lands and the need to ensure affordable and efficient land transactions.

Table 4.6: Expectations on how to ensure equitable access to land and land based resources

<table>
<thead>
<tr>
<th>Expectations</th>
<th>Residential user zone</th>
<th>Commercial user zone</th>
<th>Industrial user zone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
</tr>
<tr>
<td>Curb land allocation malpractice</td>
<td>15</td>
<td>65%</td>
<td>15</td>
</tr>
<tr>
<td>Indiscrimination</td>
<td>7</td>
<td>30%</td>
<td>7</td>
</tr>
<tr>
<td>Allocate land to the landless</td>
<td>13</td>
<td>57%</td>
<td>13</td>
</tr>
<tr>
<td>Land taxation</td>
<td>5</td>
<td>22%</td>
<td>5</td>
</tr>
<tr>
<td>Resolve historical injustices</td>
<td>10</td>
<td>44%</td>
<td>10</td>
</tr>
<tr>
<td>Improvement of security of tenure</td>
<td>8</td>
<td>35%</td>
<td>8</td>
</tr>
<tr>
<td>Utilization of</td>
<td>4</td>
<td>17%</td>
<td>4</td>
</tr>
</tbody>
</table>
On average across the three zones curbing land allocation malpractice scored 62%, elimination of discrimination scored 29%, allocation of land to the landless scored 52%, land taxation scored 19%, resolution of historical injustices scored 40%, improvement of security of tenure scored 32%, utilization of marginal lands scored 16% while ensuring affordable and efficient land transactions scored 47%. This indicates that curbing land allocation malpractices is the most preferred mechanism of ensuring equitable access to land and land based resources in the area followed by allocation of land to the landless while land taxation and utilization of marginal lands are the least preferred mechanisms.

4.2.3. Rights of Ownership

Different tenure systems in this area were found to confer quantity of rights ‘bundle of rights’ on individuals or groups of individuals owning land in this area. The definition and scope of these rights to land differed from one tenure system to another. The study revealed that land owners in the area enjoy a wide range of tenure rights in their land which were grouped broadly into three elements, mainly use rights; control rights; and transfer rights.

When further interrogated as to the extent to which they are able to exercise these three categories of tenure rights land owners considered expressed varying views. Majority of them expressed their satisfaction with the extent to which they are able to exercise use and control rights arguing that even where such rights are endangered it is easy to claim those rights especially through legal mechanisms though sometimes the process turns to be expensive, complex and time consuming. However, they argued that these rights are at risk citing the recent outright invasion of public and private lands. In regard to transfer rights respondents said that various hurdles exist hindering them from fully exercising these rights. This mainly includes bureaucracies and complicated procedures and consents/approvals required before a transfer is executed. These responses were analyzed and presented graphically as shown in Chart 4.5 in the following page.
4.3. Land Administration

4.3.1. Processes and procedures

From the data gathered from the area land owners as well the interviews conducted to various private and public sector officials including oral discussions with the local people, it was noticed that the current land administration system has not met the expectation of ordinary citizens in Athi River Town. Respondents argued that land delivery services are bedeviled by; complexity in the processes, which breeds uncertainty, increases costs and encourages fraud. Secondly the system involves bureaucratic processes leading to indeterminable completion time and costs which encourages the growth of informal land markets with major losses of revenue to the government. Moreover, land information is currently held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making about land. Others cited deficiencies in the existing Land Information Management System include expensive cadastral surveys, centralization of cadastral processes, and slow, cumbersome procedures. The system is also undemocratic and prone to abuse, resulting in inordinate delays and injustice in the administration of land. The system is thus customer unfriendly and marred with a lot of fraudulent dealings.

The system has not achieved equitable and fair distribution of the limited land resources. For example, there are no clearly defined procedures for the allocation of land in settlement schemes leading to manipulation of the lists of allottees and exclusion of the poor and the landless/slum dwellers. These problems are compounded by the lack of clearly defined procedures for
identifying, and keeping records of genuine squatters and landless people. In addition there are numerous cases of underutilized land by allottees. The unsatisfactory land rights delivery system is also a result of land speculation, corruption, political interference and the abuse of power by the public agencies mandated to manage land. The inefficiency of the existing land delivery system is due to poor record keeping which has encouraged multiple allocations and registrations of plots of land.

In regard to land planning, little effort has been made to ensure that such plans are effectively prepared and implemented. This has been largely due to the glaring functional disconnect between the plan preparatory authorities and implementing agencies, lack of appropriate technical and institutional capacity of local authorities, inadequate human resource establishment in the ministry responsible for physical planning, absence of broad based consultation and the lack of an effective coordinating framework for preparation and implementation of the planning proposals and regulations. Lack of a national land use framework has made the situation even worse.

Land surveying and mapping have been hampered by slow, cumbersome and out-dated modes of operation while land adjudication and registration processes have been affected by existence of too many statutes dealing with the registration of land rights. There is need to harmonize the registration statutes to enhance the efficiency, transparency and accountability of the process of land registration. Even if no dispute occurs land registration in most cases takes 15 to 18 months on average, while realistically two to seven years is not uncommon. This lengthy and costly procedure means that tens of thousands of land titles are usually pending and becoming obsolete as time passes. However, residents expressed optimism arguing that harmonization of these statutes has already commenced. They cited the recent enactment of the LRA (2012) and the LA (2012) as a good example but they added that there is much that still needs to be done.

Respondents noted that the current land registration system is also not as neutral as is often claimed. Attempts to expand these systems usually benefit the elite, with many of the poor in the area ending up with less security and access to land. Most titling and registration interventions have always aimed at supporting active tenure security: they try to make it easier to transact in land that has been formalized and documented (or “titled”). But for most of the poor, the first order of business is to get passive tenure security, where the intended result means no more fear of being evicted or losing one’s existing rights. The current land
administration system, and especially their land recording or registration components, cover only a limited part of the territory and reach only certain segments of society, usually the rich and well-connected. But many people especially the poor, women or otherwise marginalized, do not have their relationship to land included in a formal land administration system. Moreover, the current land administration systems captures only the more formal types of tenure, not the whole continuum of land rights. Expanding the coverage of formal systems thus remains critical.

Slum development and illegal construction of structures are much faster than formal development and current tenure systems are not able to keep up. Land recordation and (index) mapping are not kept up-to-date. The same limitations apply to land allocation, land taxation, land distribution and the spatial planning, and mirror the limitations of legal and land documentation system. Many slums and the poor in the area have no, or few, legal land records and thus the need to begin acquiring documents that will support the recognition of their tenure rights. The residents further ranked performance of various land administration processes as shown below.

Table 4.7: The performance of various land administration processes

<table>
<thead>
<tr>
<th>Land administration processes</th>
<th>Residential</th>
<th>Commercial</th>
<th>Industrial</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
</tr>
<tr>
<td>Land Alienation</td>
<td>2</td>
<td>5</td>
<td>16</td>
</tr>
<tr>
<td>Land Adjudication</td>
<td>6</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Land Planning</td>
<td>1</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>Valuation</td>
<td>8</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Survey</td>
<td>2</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>Titling &amp; Registration</td>
<td>7</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Total (t)</td>
<td>26</td>
<td>42</td>
<td>70</td>
</tr>
<tr>
<td>Percentage (t/[6*23 or 22])</td>
<td>19%</td>
<td>30%</td>
<td>51%</td>
</tr>
</tbody>
</table>

Source, Field Survey 2013

Overall considering the three zones 48% of the respondents felt that performance of the entire processes is poor, citing low levels of completion of the work, the lengthy processes, indeterminate time frame and poor reception from institutions involved. This was noted, more often than not, acts as a trigger towards corrupt tendencies, as consumers seek short-cuts in
order to acquire services. This leads to low morale amongst service seekers and impacts negatively on the land administration system in the area. Moreover, poor image negatively affects investor confidence, especially where the investments are premised on land as a resource. Of all the six processes, land planning performed the worst with 79% of the overall respondents across the three zones rating it poor.

The researcher also evaluated the loopholes in the current land administration system from the residents and by holding interviews with various private and public sector officials namely the Deputy CoLs from the MoL, District Lands Registrar and the Deputy Town Clerk. The land owners considered cited various weaknesses which were narrowed down to nine issues, though with different frequencies.

Table 4.8: Weaknesses in the current land administration system

<table>
<thead>
<tr>
<th>Expectations</th>
<th>Residential user zone</th>
<th>Commercial user zone</th>
<th>Industrial user zone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
</tr>
<tr>
<td>Bureaucracies</td>
<td>19</td>
<td>83%</td>
<td>17</td>
</tr>
<tr>
<td>Corruption/abuse of powers</td>
<td>13</td>
<td>57%</td>
<td>13</td>
</tr>
<tr>
<td>Poor LIS</td>
<td>9</td>
<td>39%</td>
<td>10</td>
</tr>
<tr>
<td>Poor work attitude</td>
<td>14</td>
<td>61%</td>
<td>12</td>
</tr>
<tr>
<td>Lack of capacity</td>
<td>17</td>
<td>74%</td>
<td>16</td>
</tr>
<tr>
<td>Poor institutional framework</td>
<td>15</td>
<td>65%</td>
<td>14</td>
</tr>
<tr>
<td>Poor legal framework</td>
<td>14</td>
<td>61%</td>
<td>14</td>
</tr>
<tr>
<td>Poor dispute Resolution mechanisms</td>
<td>13</td>
<td>57%</td>
<td>12</td>
</tr>
<tr>
<td>Lack of stakeholders participation &amp; political goodwill</td>
<td>14</td>
<td>61%</td>
<td>13</td>
</tr>
</tbody>
</table>

Source, Field Survey 2013

On average considering the three zones, bureaucracies in the land administration processes were rated at 79%, corruption/abuse of powers at 59%, poor Land Information System (LIS) at 43%
while poor work attitude manifested through absenteeism and poor reception of clients in the institutions involved was rated at 57%. Lack of capacity especially the general lack of financial, technical, and human capacity was rated at 74%. Because the system is under-resourced, many of them were said to be out of date, expensive to maintain, and inefficient. Poor institutional framework was rated 63%, poor legal framework at 60%, poor dispute resolution mechanisms at 54% while lack of stakeholders’ participation and political goodwill in the implementation of the necessary reforms was rated at 60%.

4.3.2. Legal and Institutional Frameworks

a) Legal Frameworks

From the field study it was noticed that the current legal framework is not suitable for many of the contemporary issues that have arisen in the realm of the land sector. In the first instance there is the multiplicity of laws dealing with substantive and procedural land issues compiled over decades with little attempt to rationalize the ambiguity resulting from successive legislation. The legal framework is therefore “plagued by confusing and contradictory norms originating in an exceptional manner and executed by multiple entities that do not have an integrated vision of the process. Essentially, there seems to be the relative ease of creating new laws, compared to the effort required to improve existing legislation with the legal framework both aiding and abetting the institutional chaos. In addition of this laws, there are also many sectoral laws and policies on land. However it was noticed that initiatives to synchronize or harmonize these laws have already began especially with the enactment of two critical legislations namely the LA (2012) and the LRA (2012). In the second instance, institutions created by different laws are uncoordinated. Thirdly; the enforcement of rights protected under the laws has been suboptimal. Forth and related is that the management of land rights and registration of functions has been abused by diverse actors over the years reading to a crisis of trust in the system. Moreover, the frequent reliance on a litigious approach in dealing with land disputes rather than administrative processes extends the time and cost of resolution to the point where justice is very difficult, if not impossible, to achieve, and usually precludes all but the very wealthy.

b) Institutional Frameworks

Residents as well as the staffs interviewed argued that issues relating to the institutional framework have presented the biggest challenge to successful land administration reform. The area faces the existence of multiple organizations, each with legislation empowering them to participate in the delivery of some part of the land administration cycle. The powers often
overlap and add to bureaucratic red-tape, which allows agencies to remain self-serving, with scant regard to community needs and demands. Amidst this confusion there is ample opportunity for cronyism, patronage, informal fees, and other forms of corrupt practice that preclude the least able from participating in the formal land market and gaining security of tenure. Those who benefit from chaos are reluctant to support change, which results in lack of confidence in the formal system of land administration and a concomitant growth in informality. Therefore, the structure is prone to inefficiency, ineffectiveness, lack of public participation, corruption and lack of accountability. This therefore raises the need for overhaul of the existing institutional framework for land administration and management.

4.3.3. Property Market

It is also worth noting that this locality has continued to witness high rate of land purchase attributed to its accessibility through Mombasa Road and Nairobi-Namanga Highway, industrial expansion in the area as well as its close proximity to Nairobi city centre hence turning to be a suitable dormitory for Kenya’s capital city. However a major problem that was noticed during the field survey include instances of fraudulent land transactions hence investors find themselves in illegal ownership of plots leading to demolitions and forceful evictions after development. From the field survey 60% of the residential plot owners, 58%of the commercial plot owners and 55% of the industrial plot owners pointed out that this was a result of little knowledge about landed property transfers amongst most of the people. 60% of the residential plot owners, 59% of the commercial plot owners and 58% of the industrial plot owners attributed the intense land subdivisions to the residential land uses since most people even those working in Nairobi find it easy to commute to the city even on a daily basis. Again on the issue of the intensification of land subdivisions due to the residential land uses, 30% of residential plot owners considered gave the reasons as that of seeking jobs from the industries in this area.

Development of vibrant land markets has been hindered in this area by inadequate information, political interference, bureaucratic inefficiencies, corruption, and the persistence of insecure and unclear land tenure arrangements and the absence of innovative market mechanisms. There are currently emerging new land markets including rental markets, which should be encouraged since the more common land markets based on sale and long term leases is not effective in ensuring equity and access to land. Land rental markets thus have the potential to provide access to land to those who are productive but own little or no land. On the other hand, population growth and the demand for land have resulted in excessive fragmentation of land into sub-
economic units which were found to vary widely depending on the use as shown in table 4.5 previously.

Out of the total 68 sampled plot owners across the three zones, 51 land owners reported to have purchased their land while 17 land owners had obtained their land through leasing. This translates to 75% land owners having purchased their plots while 25% had obtained their plots through leasing. This data was then related with the land owner’s levels of satisfaction on their tenure security and presented as follows.

Chart 4.6: Relationship between land acquisition and perception on tenure security

![Chart showing relationship between land acquisition and tenure security]

Source, Field Survey 2013

Of all the 51 respondents who had obtained their plot through purchase, 24% fill satisfied with tenure security in the area, 41% fill that it is fair while 25% expressed their dissatisfaction. On the other hand of all the 17 sampled land owners who had obtained their land through leasing, 12% fill satisfied, 29% fill that tenure security is fair while 59% expressed their dissatisfaction. Thus tenure security performed better amongst land owners who had obtained their plots through purchase than those who had obtained plots through leasing implying that tenure security is higher in land obtained through purchase than leasing. Also noticed is that on average considering the three zones 73.5% of the overall land owners had their land registered and title deed or certificate of lease issued, 17.6% were in the process of registration whereas 8.8% had not bothered to register their land. This indicates that the supply of formal land ownership documents is still not sufficient. This, in turn, encourages facilitation fees and
malpractices that mean the poor are excluded. The current status of land registration in the area has been depicted in Table 4.9 below.

Table 4.9: Current status of land registration in the area

<table>
<thead>
<tr>
<th>Registration status</th>
<th>Residential user zone</th>
<th>Commercial user zone</th>
<th>Industrial user zone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>Percentage</td>
<td>No. of respondents</td>
</tr>
<tr>
<td>Registered</td>
<td>16</td>
<td>70%</td>
<td>16</td>
</tr>
<tr>
<td>In the process</td>
<td>3</td>
<td>13%</td>
<td>4</td>
</tr>
<tr>
<td>Not bothered</td>
<td>4</td>
<td>17%</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>23</td>
<td>100%</td>
<td>22</td>
</tr>
</tbody>
</table>

Source, Field Survey 2013

4.4. Land ownership related emerging issues in Athi River Town

4.4.1. Emergence of Land Disputes

One of the major problems that were established during the fields study is largely attributed to issues of land conflicts. These arises as a result of the outright invasion of public and private lands by invaders, who are not genuine squatters but rather organized groups in a well calculated move to, take possession, subdivide and sell the land to unsuspecting Kenyans at astronomical prices. Another reason is associated with the disposal of institutional land for various reasons without offering the local people an opportunity to buy. The affected institutions include East African Portland Cement Company (EAPCC), Numerical Machining Complex (NMC), National Social Security Fund (NSSF) and National Housing Corporation (NHC) among various Cooperative Societies. These invasions on as well as the displeasure by the local community at the sale of land to their exclusion, has created major differences among the locals and the buyers. This situation has escalated to a breach of security in the entire town. Efforts by the local leaders to resolve the crisis have not borne fruit and the matter has been heavily politicized which has further escalated the conflict and insecurity.

4.4.2. Emergence of Informal Settlements/Squatter Problem

The squatter problem in Kenya and particularly in Athi River Town can be traced to the colonial times when the “natives” were moved to the reserves. The emergence of a select few as a wealthy land-owning class created a larger group of poor landless classes who later turned into landless “squatters” unable to register any land that they occupied for several successive generations. This includes the former workers of the defunct Kenya Meat Commission, Tanning
Factory and Coral Paints among others who became homeless with no source of income. They started looking for areas of occupation and thus created the informal settlements. These informal settlements (slum-dwellings) are scattered all over the Athi River Town and include City Carton with over 2000 squatters, Canaan with over 2000 squatters, Embawasili, Jam city, Ngimo Village, Sofia, Kosoko, Manyatta slum, Slota, Bondeni, Slum 39, Kisumu Ndogo among others. In total, it is estimated that there are over 10,000 squatters living in these informal settlements without security of tenure in the entire Athi River District. Most of these informal settlements are occupying public utility and privately owned lands.

Plate 4.1. Emergence of informal settlements (Embawasili Slum)

The NLP (2009) has proposed some reforms in order to deal with the problem. The Government should create a regime of secondary land rights as a means of improving security in informal/spontaneous settlements; recognize and protect the rights of informal land occupiers and guarantee their security of tenure; and establish a legal framework and put in place procedures for transferring unutilized land and land belonging to absentee landlords to ‘squatters’ and the landless.

4.4.3. Self-land acquisition phenomenon “Ngwata”

The squatter problem is what led to the concept of self-land acquisition “Ngwata”. The application of Ngwata (Kamba word to denote self-land acquisition) was first noticed on the parcel of land situated at Mlolongo Area between the old Mombasa Road and the Syokimau...
Stream. The above scenario did set a precedent which has since been replicated in several other areas. Respondents said that in the recent past there are a number of cases where the MMC have arrogated themselves the responsibility of issuing the allottees with Temporary Letters of Allotment (TOL) so as to give the allottees some confidence in their occupation of the land. Land speculators have also taken advantage of the apparent squatter problem (landless people) to invade public and private lands in the entire Athi River District in a disguised bid to secure land for this category of people. These current land speculators mainly target unfenced and unoccupied parcels of land and even acquire fake “titles” which they use to sell the land to unsuspecting buyers. Some buyers have gone further and developed both residential and commercial properties which are massive investments in a bid to give the perception of legitimacy of ownership. This creates a presumption that such investments could not be demolished because of the attendant cost implications and the spiral effects that would go along with such an action for demolishment. The legitimate owners are prevented access to their lands and some are normally attacked by the invading gangs when they attempt to take possession of their properties.

4.4.4. Fraudulent Land Transactions
Majority of respondents complained of massive fraud in the allocation of public and private land in the area. Specifically, they argued that there has been outright invasion of public and private lands by invaders, who are not genuine squatters but rather organized groups in a well calculated move to, take possession, subdivide and sell the land to unsuspecting Kenyans at astronomical prices. The shocking revelations include an instance where documents recovered from a demolished structure used to sell grabbed land show that the grabbers had raised KSh.250m from unsuspecting residents. This is basically amplified by the controversial subdivision approvals as well as evasion of the law. There is therefore need to improve land administration systems in the district to be effective in eliminating these problem in the town.

4.4.5. Land Grabbing and Corruption
Land grabbing and corruption were the most obvious reasons for inefficiency and ineffectiveness in land registration process at the district lands office. The District Land Registry in Machakos for instance has been criticized in the past of working with speculators by “intentionally delaying issuance of search certificates thus creating an opportunity for land speculators to mislead potential buyers”. On the other hand, Mavoko municipality is envisaged to be one among the top municipalities with the highest number of land grabbing cases.
Respondents specifically expressed numerous complaints that ‘outsiders’ were grabbing public land in the industrial town at the expense of thousands of squatters. A major example includes Mavoko Stadium, which was grabbed and allocated to individuals. Those usually implicated includes prominent personalities in the present and past governments who irregularly benefited from public land and turned them into private property. The grab land and subdivide the parcels into plots and latter sell those plots to unsuspecting people. The recent evictions and demolitions in the municipality especially the syokimau saga was evidence on how impunity on land has taken shape in the area.

4.4.6. Irregular and Multiple allocation of land

Majority of the residents lamented of the increasing instances of irregular and multiple allocation. For example they claimed that allocation of Mavoko Stadium, which was grabbed and allocated to individuals in June 1994 was irregular as it left the municipality without a stadium. They cited some of the beneficiaries of the stadium land including two former military chiefs, a senior official at the Treasury, a sitting Member of Parliament and a former colleague and media owner, among other prominent business persons. They claimed that despite most of these land allocations by being irregular, the council continues to receive land rates and issue Rates Clearance Certificates without verifying ownership. In regard to multiple allocation of land those linked include the CoLs and MMC. The CoLs and MMC have been allocating land without consulting each other.

4.4.7. Demolitions and Forceful Evictions

Hundreds of unsuspecting settlers, who in most cases possess forged title deeds, have faced eviction and demolitions in many instances following increasing discoveries of massive fraud in the allocation of public and private land. Majority of these people were said to have been living on land belonging to Government institutions, including Kenya Airports Authority, East African Portland Cement Company, Numerical Machining Complex, NHC and the National Social Security Fund. These demolitions and forceful evictions are usually associated to the fraudulent land transactions in the town as well as abuse and negation of the law by some public officers. The residents further pointed that there has been a notice served for demolitions of ‘Canaan settlement’ which has been subdivided and plots sold to investors at a shocking cheap price of thirty thousand shillings (Kshs 30,000) per plot. Another notice has also been issued to the residents of ‘Kwa Mang’eli area’. It is said that the subdivision and selling of the plots was illegal and that the place was planned for cemetery for Mavoko Municipal Council. One of the
recent demolition within the jurisdiction of MMC occurred in Syokimau Phase 4 on Monday 5th February 2013 in which the affected individuals were quoted vowing that they will never buy land near Nairobi even if it is being dished out for free due to the huge financial loss encountered (Daily Nation, 5th February 2013).

Plate 4.2: Recent demolitions at Syokimau Phase 4 in Mavoko Municipality

From our field survey it was established that the poor and vulnerable people lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources. The land rights of vulnerable individuals and groups are not protected and are subject to bias and discrimination. Further, the vulnerable lack cohesive institutions to represent their interests. The most vulnerable persons in Athi River Town include, but not limited to, unskilled and low-skilled workers, unemployed youth, persons with disabilities, orphans, slum and street dwellers, and the aged among others. The survey for example revealed that only 6% of the total plot owners considered in the three zones were women while over 50% were aged over 45 years including an estimated 10,000 poor people living in informal settlements without security of tenure. This phenomenon can heavily be associated with the lack of empowerment especially the lack of financial resources while the culture and traditions in most cases exclude the children, youth and women from accessing, and making decisions over land. This indicates that equality in access to land and security of land rights for all has not
achieved in the town across all gender types, age and various levels of income segments respectively.

4.4. Underutilization of Land
A survey of the town showed that, most of the land in the town is underutilized. Along the roads and the streets there are many fenced undeveloped plots. This underdevelopment can be associated with the fraudulent property market in the town. For instance, one plot owners pointed that it is very hard to get a customer for a plot in the town especially if the plot is not developed. People fear that they will be conned and most of them have no confidence with the municipal council. The figure below shows some of the huge undeveloped plots in the town.

Plate 4.3: Undeveloped plots in the town

![Undeveloped plots in the town](image)

Source, Field Survey 2013

Table 4.10 shown below provides a summary of all the above land ownership related emerging issues as ranked by the residents considered during our field study. They rated them differently depending on their prevalence in the area.

<table>
<thead>
<tr>
<th>Expectations</th>
<th>Residential user zone</th>
<th>Commercial user zone</th>
<th>Industrial user zone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondent</td>
<td>Percentage</td>
<td>No. of respondents</td>
</tr>
<tr>
<td>Land disputes</td>
<td>19</td>
<td>83%</td>
<td>18</td>
</tr>
</tbody>
</table>
Overall land disputes was rated at 81%, informal/squatter settlements at 78%, self land acquisition at 46%, land grabbing and corruption at 75%, fraudulent land transactions at 84%, irregular & multiple allocations at 68%, demolitions & forceful evictions at 72%, bias and discrimination at 27% while underutilization of land was rated at 49%. Therefore, it can be implied that there is a huge land rights related challenges in the area manifested by the continued emergence of the issues discussed above. There is therefore need for an urgent attention to these problems through appropriate land reforms.

**4.5. Conclusion**

This chapter has dealt with data analysis and presentations of the findings. It is here where the concepts of land tenure and land rights in relation to Athi River Town, processes and procedures of administering land rights and the land rights related emerging issues were identified and discussed. The next chapter will deal with the conclusions and recommend the possible solutions of the same.
CHAPTER FIVE
CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction
This chapter gives the conclusions and the recommendations emanating from the research findings. The conclusion section will unearth areas of rectification by giving a brief discussion of the underlying loopholes in the administration of land rights hindering achievement of secure land rights for all in Athi River Town. From this, appropriate recommendation will be derived geared towards resolving the underlying hurdles. Hypothesis testing will then be undertaken followed by a proposition of areas of further studies so as to throw more light on the potential areas that can be explored in safeguarding land rights for all citizens in the area.

5.2. Conclusions
All along, the study has emphasized the need to establish an efficient and effective land administration system that is able to safeguard land rights for all people regardless of class or category. Without simple and strong tenure systems, service conscious institutions, unambiguous laws and enforceable regulations, smooth and inexpensive administrative processes, transparent and effective land market, and proper dispute resolution mechanisms it becomes difficult to secure land rights for all in the town. Generally, the study concluded that failure to address the weaknesses in the current land administration system is the major cause to the non-realization of secure land rights for all in Kenya. However, some of the main conclusions drawn from the findings of this survey include the following.

5.2.1. Weak land tenure system
The current land tenure system is inadequate in ensuring secure land rights for all in Athi River Town due to the underlying loopholes discussed mainly in Part 4.2 on the concept of land tenure and land rights. To start with there are multiplicity of statutes dealing with land matters; inadequate and ineffective application of land laws and land administration procedures; lack or inadequate skilled human and other resources to facilitate prompt and efficient enforcement of land laws including abuse of powers. Furthermore, the rapid urbanization and accelerated population growth that has resulted in inadequate resources, exorbitant land prices and unprecedented expansion and proliferation of low income urban informal settlements. These problems calls for land administration reforms, equal recognition and enforcement of land rights arising under all tenure systems as well as the need to ensure non-discrimination in ownership of, and access to land under all tenure systems.
5.2.2. Poor land administration system

One of the critical issues in building or re-engineering land administration systems and which has been captured in our conceptual framework is the establishment of an appropriate land administration system. The existing land administration and delivery systems needs a major overhaul in order to address a number of issues. Part 4.3.1 for instance depicts the systems as being bureaucratic, expensive, undemocratic and prone to abuse, resulting in inordinate delays in the administration of land. The system is thus unable to address land rights security concerns as well as equitable access in land in the area. Some of the weaknesses in the system calling for urgent intervention according to Table 4.8 include bureaucracies, corruption/abuse of powers, poor LIS, poor work attitude, lack of capacity in the, poor institutional framework, legal framework, poor dispute resolution mechanisms, lack of stakeholders participation and political goodwill in the implementation of the necessary land reforms. In addition, land information is currently held mostly in paper form and managed manually. This is inefficient, time consuming and cannot support timely decision making about land including land rights issues. Moreover, only little has been made to harmonize all the land statutes to ease the process of registration of land rights and facilitate speedy access to land registration information. This lengthy and costly procedure means that tens of thousands of land titles are usually pending and becoming obsolete as time passes.

5.2.3. Legal constraints

The current legislative framework needs to be reformed as it is unable to deal with most of the current land issues including securing land rights and ensuring equitable access to land. In fact poor legal framework has been cited in Table 4.8 as one of the loopholes in the current land administration system. The underlying issues in this framework have exhaustively been captured in Part 4.3.2 previously. They mainly encompass multiplicity of statutes, aids and abet institutional chaos; institutions created by different laws are uncoordinated while the management of land rights and registration of functions has been abused by diverse actors over the years reading to a crisis of trust in the system. Addressing such legal issues ought to be the second phase of implementing secure land rights for all in accordance to our conceptual framework but this still remains a major challenge.

5.2.4. Institutional constraints

As seen in our conceptual framework, development of secure land rights for all calls for the resolution of all the underlying institutional issues and the need to build capacities of these
institutions. However, as shown in Table 4.8 poor institutional frameworks still remains a major constraint. Issues in the current institutional framework have been expounded in Part 4.3.2. To begin with the land sector is faced with the existence of an institutional structure for Land Administration and Management (LAM) that has high centralization, poor service provision and is inadequately funded; insufficiently accessible to the poor, hostile to users and is perceived to be corrupt; has a land information system that is manual, inefficient and urgently needs computerizing; has not entrenched stakeholder involvement in decision making at the community level; and that uses complex legal and administrative processes. There is therefore need to ensure complete overhaul of the existing LAM and related institutional structures to ensure that service delivery is efficient, effective and equitable.

5.2.5. Lack of capacity
Capacity building is of fundamental importance in enabling land sector institutions deliver secure land rights for all. Indeed, this fact has been considered in our conceptual framework in Chapter 2. However, as indicated in Table 4.8, lack of capacity in terms of the general lack of financial, technical, and human capacity, indeed of all resources remains a major limitation in our current land administration system. Because the system is under-resourced, many of them are out of date, expensive to maintain, and inefficient. There is therefore need to facilitate capacity building if secure land rights for all is to be achieved.

5.2.6. Lack of stakeholders’ participation & political goodwill
The conceptual framework developed in Chapter 2 argues that in developing secure land rights for all, the relevant policies, laws and procedures ought to be developed through participatory processes involving all parties and ensuring that all people are included from the outset. However, lack of stakeholders’ participation as well as political good will in the implementation of appropriate land reforms remains a challenge as can be seen in Table 4.8. Therefore, we need to urgently incorporate stakeholders’ participation and political good will in our land reforms agenda.

5.2.7. Lack of awareness
In reference to the conceptual framework in Chapter 2 of this study, it can be noted that the last phase in the implementation of a secure land rights for all is about establishment of the most effective communication strategies and methods including addressing key issues in getting the message across. On the contrary, Table 4.2 shows that quite a large number of the people in
Athi River Town are not conversant on how land tenure issues have been addressed in the NLP (2009) and Chapter Five of the CoK (2010) which are the two main documents. This has been associated with ineffectiveness in the civic education including low levels of education in the town which can be seen in Chart 4.1. Up-scaling awareness creation thus remains critical so as to guarantee ownership of the reforms by the public.

5.2.8. Corruption and Abuse of Power
Corruption and abuse of powers by public officers in the land sector especially in the previous regimes was also cited as a major hindrance in the current land administration system as can be seen in Table 4.8. This can be evidenced in the area through the continued emergence of irregular and multiple allocation of land as can be seen in Table 4.10. The District Land Registry in Machakos has also been criticized in the past of working with speculators by "intentionally delaying issuance of search certificates thus creating an opportunity for land speculators to mislead potential buyers. There is therefore need to devise strategies necessary in fighting corruption and abuse of power in the land sector.

5.2.9. Lack of Appropriate Dispute Resolution Mechanism
Lack of appropriate dispute resolution mechanism has also been argued to be another issue as can be seen in Table 4.8. In resolving this challenge, there is need ensure that there is access to timely, efficient and affordable dispute resolution mechanisms in Athi River Town. This will facilitate efficient land markets, tenure security and investment stability in the land sector.

5.3. Hypothesis Testing
From the research analysis and findings; the hypothesis that failure to address the weaknesses in the land administration system is the major cause to the non-realization of secure land rights for all in Kenya has been substantiated. As revealed from the study, land administration which is the system through which land rights are secured and guaranteed is faced with many challenges. Part 4.3.1 for instance depicts the systems as being bureaucratic, expensive, undemocratic and prone to abuse, resulting in inordinate delays in the administration of land. In regard to Table 4.8 the various weaknesses in the system that are in need of correction include bureaucracies, corruption/abuse of powers, poor LIS, poor work attitude, lack of capacity in the, poor institutional framework, poor legal framework, poor dispute resolution mechanisms and, lack of stakeholders participation and political goodwill in the implementation of the necessary land reforms. Furthermore land information is currently held mostly in paper form and managed
manually. This is inefficient, time consuming and cannot support timely decision making about
land including land rights issues. On the other hand, only little has been made to harmonize all
the land statutes to ease the process of registration of land rights and facilitate speedy access to
land registration information. This lengthy and costly procedure means that tens of thousands of
land titles are usually pending and becoming obsolete as time passes. The system is thus unable
to address land rights security concerns as well as equitable access to land.

5.4. Recommendations
As demand grows for better access to productive land and housing in Athi River Town, land
and natural resources are coming under increasing pressure. This forces governments, developers and communities to deliver secure land rights and improve the management of this urban environment. Instruments like conventional titling programs and urban master plans are no longer appropriate in view of rapid urban growth and land use change. More flexible development and management strategies are needed. If population growth and competing land uses must be accommodated, pro-active planning can help bring about economic growth. However, this will require considerable political will and professional commitment to meet the challenges of up-scaled provision of secure land rights. The public, private and civil society sectors must improve co-operation, as must central, provincial and local government; this would offer great scope for better secure land access for all. Considering the situation in Athi River Town, we propose the following recommendation in order to secure land rights for all.

Consider various tenure options. Generally, options for improving land access and tenure security should depend on local circumstances and resources, including institutional capability. Therefore, before making any policy decisions regarding land tenure or property rights, it is advisable to review the existing tenure situation to understand the issues involved including consideration of the benefits and limitations of different tenure options. The policy and the law should for instance recognize and protect land rights established under customary, religious and informal tenure systems; they should provide guarantees and legal remedies against arbitrary eviction without adequate compensation. It should also be noted that, though title/deeds are not considered as a universally useful tool for delivering tenure security for low-income groups it is also advisable to expedite issuance and safeguarding of titles especially for the formal tenure systems.
Adopt incremental approaches to tenure change. The trend today is away from the idea that individual land rights are the ultimate goal when undertaking the regularization of informal settlements. Rather, today the trend is towards the creation of flexible legal formulae for guaranteeing security of tenure. The approach will enhance short- to medium-term security at a large scale, whilst allowing MMC time to build capacity for more comprehensive and locally sensitive long-term options. These measures will provide a sustainable, cost effective and socially progressive way of improving the tenure security and rights for millions of the poor people.

Improve the current land management and administration system. Alongside the legal framework, land administration systems are the main instrument of land policy administration. If land rights are to be effectively secured, land access improved, land allocations made fairer, land more productive and demand better matched with available supplies, two conditions must be met. This includes institutional arrangements for land administration must being accessible to all and developing a comprehensive, up-to-date land information system which can capture the complexity of existing land occupation, use and claims, including overlapping sets of rights. A fully inclusive LIS must also be adopted to identify priority areas for secure land rights and conflict resolution and capture land interests in areas where land rights are not fully specified, for instance, informal settlements. Developing affordable dispute resolution mechanisms for dispute resolution, transparent and publicly accountable allocation and management of land resources including a timely, transparent, and efficient and an efficient land markets to minimize emergence of informal markets also remains crucial.

Provide financial, technical, and human capacity, indeed of all resources with an aim of strengthening land-related institutions and organizations and enhancing skills of land sector staffs. This will improve efficiency and effectiveness of land sector institutions as well as equip policy-makers and practitioners with adequate skills and knowledge. It is specifically required for the restructuring and improvement of land administration processes, conversion of land records from manual to digital formats and for the improvement of customer services for all types of land users, including the poor and vulnerable, as well as business users. This will often include staff training with regard to land use, preparing planning briefs for private developers, regulations for marital co-ownership, customary rights and common property, as well as reducing corruption.
Support policy formulation, legislative reform and institutional change. This must take place in parallel, rather than in a sequence. Major stakeholders endorse a road map setting clear milestones for reform. Policy must take into account the costs of implementing institutional reform and strengthening, above all where new institutions are to be created. Legislation should avoid detailed prescriptions and timetables for institutional change, unless it is very clear that these are feasible and the costs can be met. Fundamental institutional changes will likely be required such as merging land agencies, creation of new land agencies independent of the civil service, and formalizing the status, mandate and authority of new bodies, such as local land boards. Once the general lines of policy and proposed legislation are in place, a pilot scheme or phased implementation can start.

Policy enforcement, engagement of all stakeholders as well as creation of public awareness on reforms should also be strengthened. In order to instill good governance in land administration and management, there will be need to put in place integrated enforcement measures and protect the Policy from political and/or other interference. It is for civil society organizations to provide checks and balances on government decision-making and the implementation of land policy. Because land issues involve political choices, broad public debate of the options at stake is essential. It is usually critical for government to engage with various parts of society at all levels; this will ensure that policies and practices reflect the broader public interest and protect vulnerable groups. All along the reform process the public out to remain informed on all aspects so as to retain public support. This process takes time, but is ultimately more efficient.

Due to time and budgetary constraints this study is limited in scope. However, it has accomplished the objectives of the study enumerated in chapter one. It has culminated into a number of recommendations which when put in place can go a long way in establishing a secure land rights for all people. As a result of this limited scope the researcher felt that there is need for further study in the same field and identified the following areas for further study.

5.5. Areas of further Studies

This study suggests further research to be done on:

1) Innovative practices in land tenure security.
2) Causes of insecure land tenure in rural and urban areas.
3) Impacts of insecure land tenure on urban land development.
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APPENDIX 1: A QUESTIONNAIRE ADMINISTERED TO THE RESIDENTS OF ATHI RIVER TOWN

Fourth year Research Project

This questionnaire is in aid of research being conducted by Kinyagu John Kinuthia, a student from the University of Nairobi, Department of Real Estate and Construction Management on “Implementation of Secure Land Rights for All”.

Any information you give as well as the identity shall be treated confidential and will be used only for the purpose of the research. Your assistance and cooperation will highly be appreciated.

Section 1: Personal Details

1. Age
   - Below 25
   - 26-35 yrs
   - 36-45 yrs
   - Over 45

2. Gender
   - Male
   - Female

3. Highest Level of education
   - University/college level
   - Secondary School level
   - Primary school level
   - Informal training
   - Never been in school
   - Other (Specify).................................................................................................................................

4. What is your awareness on how land tenure issues are being addressed under the National Land Policy (2009)?
   - Very
   - Aware
   - Very aware
   - Slightly aware
   - Not aware
5. What are the best methods that can be employed in enhancing awareness on these terms?

6. What is the size of your plot and how was the land acquired?

7. Is your land registered?
   - [ ] Yes
   - [ ] No
   - [ ] In the Process of Registration

8. What is the form of your land tenure?

9. How do you rank various ownership rights that you enjoy on your land?

<table>
<thead>
<tr>
<th>Land Rights</th>
<th>Satisfactory</th>
<th>Fair</th>
<th>Unsatisfactory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Control Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

10. How do you rank access to land in the town in terms of whether it is equitable?
   - [ ] Satisfactory
   - [ ] Fair
   - [ ] Unsatisfactory

11. What do you think ought to be done in order to achieve equitable access to land in Mavoko town?

12. How do you rate security of land rights in Mavoko town?
   - [ ] Satisfactory
   - [ ] Fair
   - [ ] Unsatisfactory
13. What do you expect to be done in order to secure land rights for all in the town?

14. How do you rate the performance of the following land administration processes in Athi River Town?

<table>
<thead>
<tr>
<th>Land administration processes</th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Alienation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Adjudication</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Land Planning</td>
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<td></td>
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<tr>
<td>Valuation</td>
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<td></td>
<td></td>
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<tr>
<td>Surveying</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Titling and Registration</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

15. What do you think are the major weaknesses in the current land administration system?

16. What measures do you propose to be one done as a way of resolving these issues?
17. What land ownership related emerging issues have you witnessed in the town in the recent past?

18. What do you think are the causes of these problems?

19. What would you propose to be done in order to solve these problems?

Thank you for your cooperation
APPENDIX 2: INTERVIEW GUIDE TO THE MAVOKO MUNICIPAL COUNCIL

Fourth year Research Project

This interview guide is in aid of research being conducted by Kinyagu John Kinuthia, a student from the University of Nairobi, Department of Real Estate and Construction Management on “Implementation of Secure Land Rights for All”.

Any information you give as well as the identity shall be treated confidential and will be used only for the purpose of the research. Your assistance and cooperation will highly be appreciated.

1. What do you think is hampering implementation of secure land rights in Athi River Town?

2. How do you describe awareness on the ongoing land reforms amongst residents of Mavoko town and what methods do you think can be employed in enhancing awareness creation amongst the residents?

3. What is your view on the status of security of land rights and equitable access to land in Mavoko Town and what do you think out to be done in order to facilitate realization of those principles?

4. What are the various land ownership issues in the town and what is the role of the council in safeguarding the residents against such detriments?

5. How do you describe the current land administration system and what do you think ought to be done to enhance its efficiency and effectiveness?

Thank you for your cooperation
APPENDIX 3: INTERVIEW GUIDE TO DEPUTY COMMISSIONER OF LANDS

Fourth year research project

This interview is in aid of research being conducted by Kinyagu John Kinuthia, a student from the University of Nairobi, Department of Real Estate and Construction Management on “Implementation of Secure Land Rights for All”.

Any information you give as well as the identity shall be treated confidential and will be used only for the purpose of the research. Your assistance and cooperation will highly be appreciated.

1. What do you think is hampering implementation of land reforms especially those touching on land tenure in Kenya and what is the ministry doing in resolving the problem?

2. What methods are you employing in creating awareness on land reforms amongst the citizens?

3. What are you doing in ensuring secure land rights and equitable access to land in the country?

4. Is your ministry aware of emergence of various land ownership issues in Kenya and what are you doing to address such problems?

5. What is your ministry doing in terms of reforming the current land administration system in order to facilitate its efficiency and effectiveness?

Thank you for your cooperation
APPENDIX 4: INTERVIEW GUIDE TO THE DISTRICT LAND REGISTRAR

Fourth year Research Project

This interview guide is in aid of research being conducted by Kinyagu John Kinuthia, a student from the University of Nairobi, Department of Real Estate and Construction Management on “Implementation of Secure Land Rights for All”.

Any information you give as well as the identity shall be treated confidential and will be used only for the purpose of the research. Your assistance and cooperation will highly be appreciated.

1. Do you think that the entire land titling and registration process is efficient and effective in Machakos County and do you think there are other ways other than titling and registration that can be adopted in creating secure land rights?

2. Do you think that the land titling and registration process guarantees security of land rights for all in the district and what do you think out to be done in order to strengthen the process?

3. What land ownership issues are being witnessed in Athi River town?

4. Describe the current land administration system and propose ways of enhancing its efficiency and effectiveness?

Thank you for your cooperation
REF: B04/0363/2009

TO WHOM IT MAY CONCERN

Dear Sir/Madam,

RE: KINYAGU JOHN KINUTHIA – B04/0382/2009

This is to certify that the above named is a student in the Department of Real Estate and Construction Management, pursuing a Bachelor of Real Estate. He is currently in his fourth year of study.

He is carrying out research on “An Implementation of Secure land Rights for all in Kenya – A Case Study Of Athi River Town”, in partial fulfillment of the requirements of the degree programme.

The purpose of this letter is to request you to allow her access to any kind of material he may require to complete her research. The information will be used for research purposes only.

Please accord him all the necessary assistance she need.

[Signature]

Mary Kimani,Phd,MBS.
Chair &Senior Lecturer
Dept. of Real Estate and Construction Management