

An Economic Assessment of the Draft National Land Policy

The Economic Importance of Secure and Freely Transferable Property Rights

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1. The Economic Importance of Property Rights

General Principles

"There is a fundamental connection between secure property rights, freedom and prosperity. Be it property rights to one's self (human capital), to one's investments (physical capital) or to one's ideas (intellectual capital), secure claims to assets give people the ability to make their own decisions, reaping the benefits of good choices and bearing the costs of bad ones. Without property rights, no other rights are possible."¹

In Kenya, it is precisely those things that belong to "the people" which have been despoiled – wildlife, urban air, open access rangelands, and public water sources. In contrast, where property rights are well developed and freely transferable owners have the incentive to husband and invest in their resources and thus capture the future value of their conservation and use.

From this it follows that when individuals have invested in goods and assets such as land and property, and those investments are threatened by takings, then freedom is diminished and prosperity will inevitably decline.

The very economic prosperity of Kenya, both agricultural and commercial, and the basic freedoms enjoyed by its population, are based on secure and freely transferable property rights.

Property Rights and Smallholder Agricultural Land

Throughout the agricultural lands of Kenya, the improvement in land use and the investment in land management over the last 30 years has been driven both by population growth and by the development of markets, especially the burgeoning markets in all urban areas. However, it was the granting of private, freehold tenure which made the investment in land worthwhile to landowners.

In strict economic terms, the net returns to land are greater on freehold land compared with unadjudicated land (Table 1); by a factor of 3.7 on land of high potential and 1.6 on land of lower potential. In statistical terms, some 78% of the value in net returns to land can be explained by differences in land tenure while only 22% can be explained by land potential. This gain in the value of production, and thus of rural wealth, is a function of secure land tenure.

Property Rights and Rangelands

The same principles apply in rangeland areas. Comparing adjudicated Group Ranches against rangelands occupied under trust or usufruct rights, it is clear that the group ranches are significantly more "developed" (Table 2). Wildlife populations on the adjudicated Group Ranches are stable rather than decreasing; while growth in livestock sales, total cultivation and maize cultivation are 1.9, 4.2 and 5.3 times

¹ From Anderson, T.L. and Huggins, L.E. (2003) Property Rights: a practical guide to freedom & prosperity. Hoover Institution Press Publication 515, Stanford University, Stanford.

higher respectively. With adjudication comes security of tenure, which is in turn followed by investment.

2. Economic Impacts Of The Draft National Land Policy

Most agricultural, urban and commercial land in Kenya is held under private freehold tenure by hundreds of thousands of small holders and other private and corporate landowners. Motivated primarily by issues of minority land rights and a wish to redress real or perceived injustices dating from the colonial era, this proposed new Land Policy launches an outright assault these private property rights, on the security of such property rights and on the free and unencumbered transfer of such property rights. Specifically:-

FIRST: the sanctity and security of property rights² are severely compromised by proposals to convert some private tenure to leaseholds – specifically along the "coastal strip" and on "all islands and lake shores"; to convert existing long leaseholds to 99 years; to restrict all new leaseholds to a maximum of 99 years; to restrict renewal of leaseholds; to revert all Group Ranches back to communal tenure, but under the control of central Government rather than County Council; to restrict ownership of land by "foreigners"; and to confiscate land (private or leasehold) that is considered (by whom?) to be "unutilised", "idle", "unoccupied", "mismanaged", "undeveloped" or owned by "absentee landlords", or for "resource conservation".

SECOND: by proposing to place restrictions on the free transfer of property rights (of any sort) by allowing entitlements from other parties³. Specifically, transfer of property rights must first take into account all other legitimate rights or interests held, or claimed, by other persons over the affected land; with an obligation to obtain their prior written and informed consent in advance of any transfer.

If implemented, the provisions set out in this Draft National Land Policy will weaken the economic foundations of agricultural and commercial development in Kenya; undermine the accumulation of wealth by its citizenry; lead to capital flight and disinvestment; and create, accentuate and perpetuate both rural and urban poverty.

By compromising the security and transferability of property rights, whether of leasehold or freehold land, and to agricultural, domestic and commercial land alike -- or even the sense of such security -- land and property will no longer be regarded as a secure asset for securing loans. Long term mortgages, arguably the foundation of all investment in property and land, are rarely available once leases have less than 60 years or so to run; while it becomes increasingly difficult to obtain mortgages of any term on leases with 35 years or less to run. Furthermore, landowners will no longer be able to use their land titles as security to raise working capital for land improvement and new agricultural technology.

² DNLP paras 77(b), (e); 79(c); 193(d), (g)

³ DNLP paras 73(a); 75(b), (c); Para 137ff

These are not idle suppositions, and this draft National Land Policy is already creating uncertainty and damage. Use of agricultural titles as security for short term loans and overdrafts is already being refused by some Banks and mortgage lenders because of reservations over the future value of the assets they represent; and the first case had now been recorded of the cancellation of a major investment assured by agricultural title.

3. Current Trends In Property Rights In Kenya

The Draft National Land Policy is also in error in its attitude towards the sub-division of land which it assumes to lead to social disharmony, disenfranchisement and increased poverty. Evidence suggests otherwise. In general, sub-division leads to increased wealth and creates opportunities for investment. Any attempts to halt or, even worse, to reverse the sub-division process will lead to outright resistance on an unprecedented scale.

Sub-Division of Agricultural Land

The assumption that the sub-division of agricultural land leads inevitably to increasing poverty is only true if production per unit area and the value of that production remain static. All the evidence suggests this is not the case. Yields per hectare have increased steadily over the last 30 years; from better technology (terracing, water harvesting, availability of inputs, cultivation methods, biological pest control) and from more advanced plant varieties with genetic resistance to drought, disease and pests. Farmgate prices have also risen in real terms, for example by 433% in the smallholder horticultural sector since the late '80s (Table 3).

These increases in yields and prices have been driven by population growth (more must be obtained from each hectare) and by the development of markets – especially the burgeoning urban markets. Furthermore, there is ever increasing demand for products of ever higher quality and value as these urban markets themselves become more sophisticated.

Today, a farmer with a single irrigated hectare of bananas around Mount Kenya selling into the Nairobi market nets some K.Shs 600,000/- per year, while a farmer with one hectare of irrigated red onions in the swamps of Loitokitok nets some K.Shs 350,000/- each year. My research assistant and her sister are going through a private University in Nairobi funded entirely from a (single parent) 3.5 hectare farm in Machakos selling (irrigated) vegetables into the Nairobi market.

Sub-Division of Rangelands

There are two critical dynamics in Kenya's rangelands today: first, the increasing rate of agricultural expansion into formerly pastoral areas (fully 48% of the rangelands receiving in excess of 700mm of rainfall a year are now converted to agriculture); second, the rapid evolution of property rights in which large land

parcels previously managed under communal, or Trust, tenure are changing to small land parcels managed under private tenure. The most conspicuous example is around the Maasai Mara National Reserve where 38 communal holdings of some 33,000 hectares each have been converted into some 35,000 individually owned parcels of land (see the sub-division map of just two Group Ranches, Figure 1).

This process of land sub-division in rangeland areas, on Group Ranches, on ranches owned by land companies, and on non-adjudicated land alike, is being driven by three incentives:-

- First, for security of tenure -- from in-migration, and from land alienation by political (or economic) elites, government or even conservation minded NGOs;
- Second, from the clear dilution of the value of communal resources following population growth and in-migration; and
- Third, to capture the economic benefits of agricultural, livestock and wildlife production directly at the household level rather than through communal institutions such as group ranch committees, land company management boards or other agencies.

Once again, the assumption that such sub-division leads to impoverishment is not borne out by any research data. Today, pastoral landowners in Kenya no longer rent out land to grow wheat but instead own, maintain and drive their own multi-wheel tractors to cultivate the land themselves – just as they are doing throughout the pastoral areas of Tanzania. This drive to develop cultivation is fuelled by the marked differential returns to agriculture with respect to both livestock and wildlife (Figure 2) and the motivation to capture these benefits, individually, at the household level.

This rapid evolution of property rights from communal to private tenure on rangelands is having two important and very positive economic impacts. First, sub-division and private ownership imposes on the landowner a change from extensive to more intensive methods of production, which in turn leads to raised productivity and an increase in the value of production. Second, land values rise precipitously with sub-division, making it easier to raise capital for land development (and making the land more attractive to outside investors).

As with agricultural land, the sub-division of rangelands creates new opportunities for investment and wealth generation. For example, on the now sub-divided Group Ranches around the Mara, especially on the former Koiaki and Olkinyei ranches, neighbouring private landowners are pooling their access and user rights to wildlife by forming Wildlife Conservancies or Wildlife Associations. In return for leaving their land undeveloped and unused for settlements or livestock, these associations are now able to negotiate directly with tour operators for significantly higher rents than before when everything was channelled through Group Ranch Committees. Furthermore, these rents are captured directly by the individual, private landowners who make up the association, and provide them with the working capital needed to develop farms elsewhere.

A similar process is seen in Machakos District where ranches owned and managed by land companies have been forcibly sub-divided by shareholders who

saw no returns on their investment due to gross mismanagement. Groups of these newly private landowners are now pooling their land holdings and are seeking investors to rent these blocks for agricultural or commercial exploitation, making payments to them directly.

Finally, sub-division is often driven by rising land values, for example on the Kitengela around Nairobi (Figure 3) which should now be reclassified as peri-urban land rather than range or even agricultural land. The days of wildebeest, zebra and cattle are long gone for the fortunate owners of this valuable resource.

FIGURES

Figure 1: Sub-division map of Koiyaki and Olkinyei Group Ranches

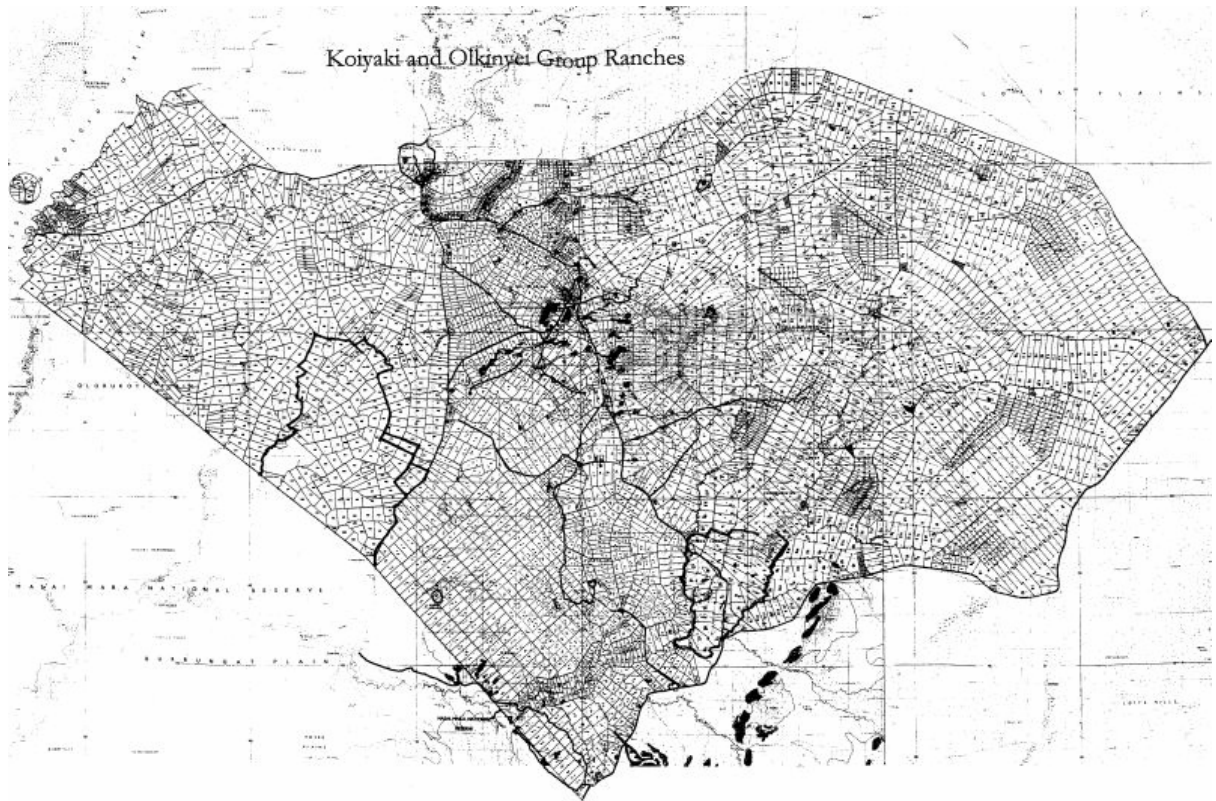


Figure 2: Differential Returns to Agricultural, Livestock and Wildlife Production

Net Returns to Agriculture, Livestock and Wildlife

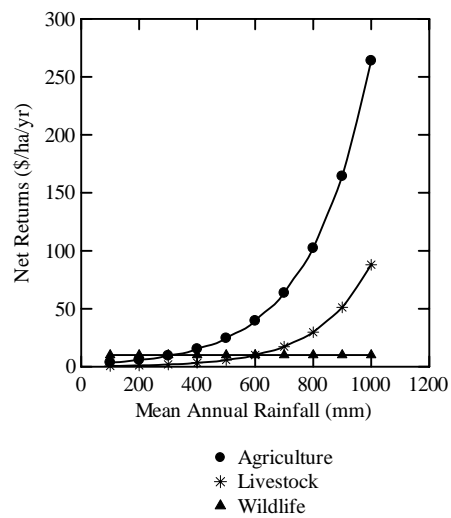
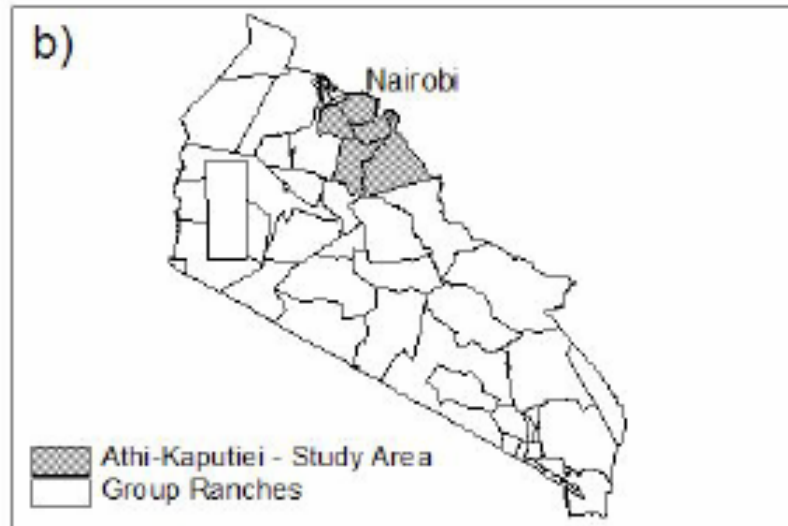
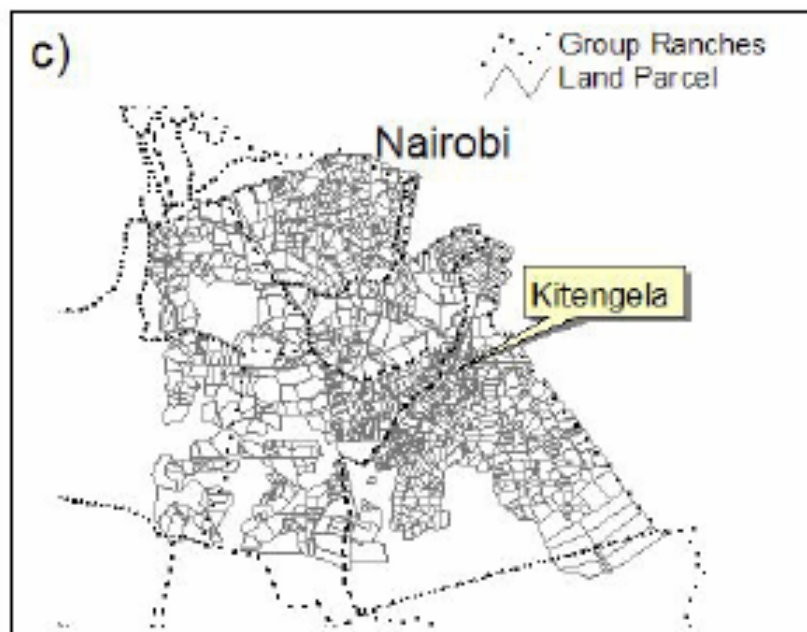


Figure 3: Evolution of property rights on the Kitengela, Nairobi

In the late 1960s there were more than 50 group ranches in Kajiado District (b). Sub-division began with the Athi Kaputei Maasai (shaded area) in the mid 1980s with allocations of between 50 and 300 hectares per family.



Land privatisation continued throughout the '90s and by 2004 the mean parcel size was about 70 hectares (c). The largest parcels were some 1200 hectares, and the smallest around 2 hectares.



TABLES

Table 1: Net returns to land under private and customary tenure in areas of high and medium agricultural potential

	High Potential Land	Medium Potential Land
Adjudicated land under private tenure	\$257 ha ⁻¹ y ⁻¹	\$170 ha ⁻¹ y ⁻¹
Unadjudicated land under customary rights	\$69 ha ⁻¹ y ⁻¹	\$104 ha ⁻¹ y ⁻¹
Adjudication effect	3.7	1.6

Table 2: Economic Development on Group Ranches Compared With Unadjudicated Ranches

Trends (1977-1997) in:-	Adjudication Effect
Wildlife numbers	Stable (rather than decreasing)
Livestock numbers	Stable
Offtake of Livestock	1.8 times higher
Cultivation	4.4 times higher
Maize Cultivation	5.3 higher
Adjudication effect: compares the difference between the adjudicated ranches of Kajiado, Laikipia, Narok and Taita Taveta to those in all other ASAL Districts	

Table 3: Increase in Smallholder Horticulture Prices Since Late 1980s

Farm Gate Prices to Smallholder Horticultural Producers 1989 – 2002			
		Year	K.Shs
A	Average Net Returns ha ⁻¹ y ⁻¹	1989	6,446
B	Discounted value 1989-2000	2000	31,460
C	Current average net returns ha ⁻¹ y ⁻¹	2000	136,258
	Difference in real terms 1989-2000		+433%
Data sources:			
A	From a "basket" of produce (cabbage, carrots, Irish potatoes, sweet potatoes, kale, onions, tomatoes, bananas) -- Tegemeo data 1989		
B	From IBRD discount tables		
C	Same "basket" of produce -- Tegemeo data 2002		