



# **UNIVERSITY OF NAIROBI**

## **COLLEGE OF ARCHITECTURE AND ENGINEERING**

**“AN EXAMINATION OF CHALLENGES OF WAYLEAVES  
ACQUISITION FOR INFRASTRUCTURE DEVELOPMENTS IN KENYA”**

**A CASE STUDY OF KISII-AWENDO POWER TRANSMISSION LINE.**

**BY**

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**A Research Project submitted in partial fulfillment of the requirements for the Award of  
Master of Arts Degree in Valuation and Property Management, Department of Real Estate,  
Construction Management and Quantity Surveying, School of the Built Environment,  
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**JULY, 2021**

**DECLARATION**

**Candidate's Declaration:**

I, **Mutinda Jones Kioko**, do hereby declare that this project is my original work and has not been presented in any other University for the award of a degree.



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09.08.2021

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**Supervisor's declaration:**

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



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## ABBREVIATIONS AND ACRONYMS

KETRACO	Kenya Electricity Transmission Company
NLC	National Land Commission
FAO	Food and Agriculture Organization
PAPs	Project Affected Persons
PIT	Project Implementation Team
RoW	Right of Way
LRA	Land Registration Act
NGOs	Non-Governmental Organizations
CBOs	Community Based Organizations
RAP	Resettlement Action Plan
EIA	Environmental Impact Assessment

## **ABSTRACT**

Ownership of land provides the owner with control over people who might need access to that property for their livelihood. Secure land rights enable land owners to enjoy the economic benefits that flow from land without the fear of eviction. Compulsory acquisition gives the government powers to acquire private rights in land for a public need or purpose and without the willing consent of its owner or occupant. This brings conflict between governments or acquiring authorities and private land owners during implementation of government infrastructure. This acquisition-compensation conflicts have been witnessed in many government projects despite having legislations and policies in place that govern land acquisition and compensations.

The study's main goal was to evaluate the process of wayleaves acquisition for power transmission project, establish the project affected persons' perceptions and opinions while examining the challenges encountered by both land owners and the acquiring authorities. Appropriate measures to ensure efficient and smooth acquisition process are also discussed in this study. Questionnaires as the main data collection tools were administered to the Project Implementation Team and Project affected Persons along Kisii-Awendo Power Line. The data obtained from field survey and from other sources was qualitatively and statistically analyzed.

The main findings of the study indicated compensation rationale or rates as the main source of conflict between private land owners and acquiring authorities, making the process to be far from good or fair practice criteria. This conflict has led to delays in project timelines and with effect in increasing the cost of the projects. There have been gaps and lags in inclusiveness and awareness during the acquisition process creating mistrust between Project affected Persons and the authorities. The research highlighted legal and economic challenges which include succession matters, appeals, court cases among others, to be the main barriers in acquiring wayleaves.

The study recommends a well-designed wayleaves acquisition process for government projects in order to minimize the challenges discovered. This includes the need to avail adequate funding for compensations by the government, addressing legal gaps in acquisition procedures, finding alternative dispute resolution mechanisms to handle grievances, raising public awareness, sensitization and inclusiveness, benefit sharing of the investments between the local communities whose land has been acquired and also prior infrastructural planning as an alternative to compulsory acquisition.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

Compulsory land acquisition refers to the legitimate authority bestowed to the government to acquire private owned land for utilization by the public without the willing agreement with the land owner or occupant (Keith, 2008). This authority or power to take private land by the government for public utilization got different identities based on countries legitimate traditions like eminent domain, expropriation, takings and compulsory purchase. Irrespective of the name given, obligatory acquirement of private land a vital developmental instrument embraced by the government for making sure there is land for utilization in essential public projects like construction of infrastructure unforeseen event that land markets are not always able to achieve.

Land is a very significant natural resource that people embrace to create wealth in numerous societies. A man's relationship with land is almost sacred. Ownership of land grants the owner authority and control of individuals who purposes to utilize the resource for livelihood or habitation. Therefore, there is an inevitable intersection between land as a property and power. All land issues and conflicts are directed on land rights. The Biblical encounter between King Ahab and Naboth (1<sup>st</sup> Kings, 21) illustrates land as a commodity that can be owned, exchanged, bought or sold. In verse 2, "Let me have your vineyard to use for a vegetable garden, since it is close to my palace. In exchange, I will give you a better vineyard or its worth in money." But to Naboth, land is not just a tradable commodity, but an inheritance to which he has stewardship. He has temporary rights of use, but no permanent right of disposal. In the book of Genesis Chapter 23, the encounter between Abraham and Ephron demonstrates that ownership of land is entrenched with fundamental rights such as accessing, using, transferring, exchanging, selling or disposing in what is termed as "Open market value" (Muriithi, 2006).

The basic foundation for political and social powers is ownership of land brings forth economic authority. According to Kenyan founding President Mzee Jomo Kenyatta in 1964 the greatest asset to citizens is the land. Land remains to be the main inheritance that Kenyans received from the forefathers and in land there is redemption and existence (Harbeson, 1971). Unlike the other factors of production such as labour and capital, land is fixed in supply. All human activities are premised on land giving land fundamental importance as a basic source of livelihood particularly

in agrarian economies such as Kenya. This scenario represents one of the many challenges that confront statutory bodies like Kenya Power, Kenya Pipeline and road construction authorities on the one hand, and landowners on the other, when it comes to procuring land for laying prerequisite infrastructure. Based on the high economic and social importance attached to land, it is never going to be easy carving out private land for the sake of public projects.

The authority for the state to utilize the compulsory land acquisition can therefore be defined as the concept of expropriation, which is based on a sovereign's power of eminent (ultimate) domain. Globally this power is recognized and permits the government to acquire private owned land for the benefit of the public. Major laws relevant to eminent domain in third world countries are congenital from the former colonist (Muriithi, 2006). In Kenya, legal instruments have been put in place to cater for the issues of land acquisition for infrastructure developments. In this acquisition-compensation mix is the National Land Commission (NLC), the body mandated to make sure that land under the management of State agencies is well utilized and appropriate compensations given to the owners. In Kenya, the Land Act of 2012 and the National Land Commission Act No.5 of 2012 provides guidelines on how the acquisition of land for infrastructure development, for public interests by bestowing the powers to the National Land Commission. In Kenya under Section 40 of the Constitution, the state is empowered to acquire private land compulsorily for public benefit upon swift payment of the compensation fee. The principal legislation which guided the process is the Land Acquisition Act Cap 295 (Repealed) which has now been repealed and replaced with the Land Act, 2012 Part viii (compulsory acquisition of interest in land).

Muiruri, P. (2015, August 6<sup>th</sup>) ***“Why selling land to the Kenyan Government is such a pain: Standard Newspaper”*** highlights how new power connections need to traverse private land where owner consent is vital unlike roads that may have some land reserved for expansion despite the legal relief to the process. The article underscores how “aggrieved” land owners express their distress in land compensations for the easement at an agreed portion of the value of the parcel of land where the power lines were to be erected. The main areas of conflict highlighted include surveying or acreage of the parcels, compensation rates and mismanagement of ownership documents by the government authorities. These disagreements end up delaying

such infrastructure projects, which are cost-intensive and meant to benefit the entire country. Therefore, it is a prerequisite to understand the nature of challenges that are encountered (both by the acquiring authorities and by the persons affected by projects) in land acquisition for infrastructure development in Kenya in order to ensure effective implementation of projects while preventing human, economic and social costs as a result of land acquisition.

## **1.2 Problem Statement**

Compulsory land acquisition is essential in a market economy to deal with certain aspects of market failures and in the interests of enhancing the welfare of the citizens. These include the need to provide collective goods such as, infrastructure network and public services (schools, hospitals, parks etc), regeneration where the state may need to disrupt a prisoner's dilemma situation, as well as the redistribution of wealth to less affluent income groups (Grover et al, 2007). The intention of compulsory land acquisition is to reduce the costs to the public of obtaining these Government services. Many people do not understand why the Government either compulsorily acquires some land through outright purchase or obtains owner consent with fractional compensation for the right of way in other cases. The government uses both systems in procuring land for their infrastructure development. In compulsory acquisition, the Government pays for the particular piece of land at current market value.

Sustainable development call for the governments to make available public amenities as well as infrastructure that advance the interests of the natural environment. Land acquirement is the first procedure for providing facilitates and services to the public. Places that are most suitable for the establishment of public facilities may not be available to the state via the land markets. In some instances the land may be needed for public use but the private owner of the land may not be willing to sell the parcel of land when the government needs it. The government has the legitimacy through compulsory acquisition of land to acquire a properties required for public utilization without compelling the owners to sell it to be utilized by the public. Compulsory land acquirement or wayleave acquirement has always been sensitive and subtle particularly with the speedy development as well as alteration of land usage. When it is executed poorly it may be abused.

Worldwide acquirement of private owned land by the government for public utilization is a common practice. According to Atahar (2013 in Bangladesh where people are in need of land, land acquisition is perceived as something threatening and frightening to property-owner. High population as well as inadequate land put huge pressures on land ownership. As a result Land is a valued asset in Bangladesh because it is the means by which people earn livelihood and it also viewed as a noble indicator of social power, pride, status, and happiness. Considerably, possession of a big track of land is a clear indicator to an individual prosperity. Numerous families are rooted to the land inherited from their forefathers that creates a very strong psychological bond with the land, the feelings and emotions they experience with the possession of their land cannot be reimbursed for through any means if they should lose it.

The main dilemma for developing countries has been how to acclimatize structures of expropriation with the aim of provision of collective goods without destroying private property rights. It is argued that compulsory acquisition systems in market economies involve two challenges. One is the establishment of processes to expropriate private property that guarantee that central human right particularly the nonviolent gratification of private property are not breached. The other challenge, apart from the constitutional mandate, is the provision of adequate and prompt reimbursement for individuals whose properties have to be taken so that they are not made poorer by the procedure (Muriithi, 2006). In many countries including republic of Kenya there are laws that gives the government authority to mandatory acquire land for communal utilization even though the process experiences a lot of impediments. The challenges tend to prolong the process of land acquisition, delayed, multifaceted and expensive. On the other hand, obligatory acquirement of land disrupts people's way of life. The displacement of people from their homes, societies and business is expensive even if the compensation process is fair and efficient. In places the procedures are premeditated or executed poorly the social-economic as well as political expenditures might be huge because they can lead to abridged lease security, reduced investments in the economy, debilitated land markets and creation of opportunities dishonesty as well as misuse of power (FAO, 2008).

The research has been fueled by persistent complaints by project affected persons (PAPs) and project time and cost overruns on the side of the infrastructure authorities through the media which are attributed to land or wayleave acquisition procedures. For instance of major concern is

the outcry by the project affected persons that high voltage power lines may pose health impacts that attract media and research (Nzioki, 2008).

The construction of high voltage electricity transmission projects affects numerous people both positively and negatively (Li, Ng, & Skitmore, 2012; Mahalingam & Vyas, 2011). The resultant investments makes it possible for the region to be accessed which in turn attract other investors (Carvallo Salas, 2006). These projects purposes to bring about economic benefits to all the people including those who are relocated to create a way for the project. These project affects both the owners of the land as well as those who reside in the property to be acquired on compulsory basis remains as a part of recipients (ADB, 2007; World Bank, 2001). Nonetheless, wayleave acquirement for high voltage transmission lines often lead to displacement and resettlement of residents.

### **1.3 Objectives of the Study**

1. To evaluate the process of land or wayleave acquisition and its impact on private land rights.
2. To establish the Project affected Persons (PAPs) perceptions and opinions on the extent to which the acquisition and compensation practices are “just” and “satisfactory”.
3. To examine the challenges encountered by both the acquiring authorities and the project affected persons (PAPs) in land or wayleave acquisition for infrastructure development.
4. To recommend appropriate measures to ensure an efficient and smooth process of land and wayleave acquisition.

### **1.4 Research Questions**

1. How does land or wayleave acquisition impact on private land rights?
2. Are land acquisition and compensation processes satisfactory and accredited to be “just or fair” by the project affected persons?
3. What challenges do both the acquiring authorities and persons affected by project (PAPs) encounter in acquisition of way leave for infrastructure development?
4. What measures should be put in place when acquiring land for infrastructure development to ensure an efficient process?



## **1.5 Proposition**

The proposition of this research study is that “*Compensation rationale and rates is the main source of conflict between project affected persons (PAPs) and the acquiring authorities during government-initiated infrastructure developments in Kenya*”.

## **1.6 Significance of the Study**

This research study aimed at unearthing the procedures and challenges experienced in land or wayleave acquisition, both by acquiring authorities and by the persons affected by the projects. The land owners will benefit from this research through adoption of fair and prompt compensation practices in order to avoid any human suffering during provision of public goods by the Government. It is expected that the findings of this study will also enable the government authorities and the National Land Commission to improve on the existing procedures and process of compulsory land acquisition and hence improve on its service delivery to the public at minimal costs and time lines.

The Government will also be able to get land in order to provide public goods faster and easily by unearthing the challenges faced by the acquiring authorities in their procedures to acquire land for infrastructure development. The displaced persons will be able to receive fair and prompt compensation hence reducing their resistance to Government projects which involve the power of compulsory acquisition and finally professionals in the in land management field will be able to improve on their approach in decision making especially regarding compulsory purchase and acquisition of land for infrastructure development.

In Kenya land ownership matters, its utilization and management are extremely sensitive they took the lead and the need for coming up with a new constitution. After lengthy debates and an all-inclusive community involvement process a new constitution was promulgated. In the Constitution principles governing land utilization and laws concerning land needed to be, combined and rationalized within certain timelines. In Kenya, literature on compulsory land acquisition is limited. Some of the available literature among others relate to the effect of obligatory land acquirement on evacuated families (Syagga & Olima, 1995). Expropriation of land for urban development causes of variation in evaluation for land reimbursement, the impact of compulsory land acquisition, public use, a looming crisis in compulsory acquisition and economic growth as a

public purpose in compulsory acquisition (Njoroge, 2010). The challenges involved during land acquisition for infrastructure development have not been comprehensively addressed.

Again, the reasons, process, ideologies of reimbursement and conflict resolution determination mechanisms are defined in our laws. Nonetheless, issues concerning the compensation come up the procedure and process as seen from public concern, research and media. This has confirmed that our laws have not addressed fully problems emanating from land acquirement process.

### **1.7 Scope and Justification of the Study**

The scope of this study is limited to evaluating the process of land or wayleave acquisition for infrastructure development, unearthing the impact of the process on private land rights, establishing the challenges of land acquisition on infrastructure development and recommending the possible ways of encountering the challenges identified. The researcher is going to concentrate only on limited use of land through the purchase of easements by power transmission companies unlike in compulsory acquisition of land for projects like road and railway passage where the government pays for the particular piece of land. Special regard is given to wayleave acquisition for electricity transmission lines by the Kenya Electricity Transmission Company (KETRACO) because the limitation of time did not allow the study to cover all infrastructure development companies or rather acquiring authorities.

Some other key aspects that needs to be considered in establishing the scope of the study included the size of the population and funds or monetary limitations because of the extensive areas traversed by electricity power lines. The length of the Kisii-Awendo Power Line which was 44 Kilometers seemed manageable.

It would have been costly to collect data if this research study considered several power transmission lines through purposive sampling. This owes to the fact that the power transmission lines were situated in different regions in Kenya and as such the data collection period would take longer than was planned

## **1.8 Research Methodology**

Research methodology addresses the research design, study population, instruments of data collection and procedure of data collection and data analysis. Specifically, the research used the survey technique to allow collection of substantial data regarding the challenges of land acquisition for infrastructure development with specific focus to wayleave acquisition by Kenya Electricity Transmission Company.

The study was based on the Kenya Electricity Transmission Company (a government electricity transmission agency) on Kisii - Awendo Transmission Line; because electricity transmission is one of the major infrastructures in Kenya with no land reserved and hence affecting many private land owners.

In regard to this, several land owners (Project Affected Persons) and KETRACO staff or wayleave acquiring officials such as land economists and project engineers involved in the process were interviewed to unearth their position on the land/wayleave acquisition process. For this study, random sampling was used in selecting specific persons affected by the projects across all the registration sections affected by the power line. The survey instruments comprised of structured questionnaires and interviews for collecting data.

Moreover, photography and site visits were conducted on the chosen case study. Direct field observations, as a tool of data collection, involved personal visits by the researcher who recorded features and/or events as they occurred.

Secondary data in form of published and unpublished literature was also used in information collection. This was from books, journals, magazines and literature from doctorate thesis. These sources of secondary data were accessed from libraries, archives of documented works relating to the topic and the online websites and journals.

## **1.9 Organization of the Study**

The research study is comprised of five chapters. These are:

**Chapter One:** This is an introductory chapter comprising the background of the study, problem statement, research questions, and research objectives, scope of the study, significance and justification of the study, research methodology and organization of the study.

**Chapter Two:** This is a review of relevant literature that include definition and understanding of the key terms, the concept of eminent domain, global perspective to eminent domain or compulsory land acquisition and an overview of the procedures in a comparative country, the history of land acquisition in Kenya, principles and standards of compulsory land acquisition, legal instruments on land acquisition, infrastructure development and land acquisition process in Kenya.

**Chapter Three:** This chapter contains the research methodology including a description of the study area or organization, research design, sampling techniques and sample size, data collection instruments and procedures.

**Chapter Four:** The chapter comprises data analysis and discussion on the findings of the research study.

**Chapter Five:** Summary of main findings, conclusion and recommendations based on research findings are discussed in this chapter, and a log frame matrix as well as identification of potential areas for further research.

## **1.10 Definition of Key Terms**

### **Land acquisition**

This refers to the whole or partial acquisition of land. Whole acquisition means exercising an entire piece permanently for the infrastructure (e.g. road, rail, and dam) or the entire parcel of land meaning total displacement of persons. Partial acquisition could be overhead power line traverses with land beneath utilized for other uses such as grazing or agriculture or only part of the land parcel being acquired therefore partial displacement.

### **Eminent domain**

*Eminent domain* refers to the authority of mandatory acquirement of private owned land for communal utilization (Sifuna, 2006). The exercise of eminent domain powers is one way in which the government has powers to take private owned land for the public utilization. These powers bestowed to the government and the private property owners interests are settled with broader community interests. It should be possible for the state to take private owned land for the interest of public utilization.

### **Involuntary resettlement**

This is a coercive government purposed initiative requiring people to be displaced from their habitats for resettlement to other areas to pave way for a public project. It is a legally and officially state sanctioned coercive act with a convergent compensation point for positive public interest and negative consequences for the project affected persons. It is the forced evacuation of project-affected persons to relocate from project-identified sites to other areas.

### **Wayleaves and Easements**

A way leave is a right of way (RoW) through someone land. The permission from the land owner or occupier to allow sewage pipes, electricity line or oil pipeline to pass through their land which may interfere with the facilities or structures already in the land. In Kenya the Way leave Act (Repealed) Cap 292 and Energy Act of 2006 grants authority to permit transmission lines pass private land. Permission to pass transmission through private owners land is registered as easement. Agreement to use someone land for transmission is not limited to specific time lines it is supposed to last forever. As a result of life time utilization of someone land for power transmission reimbursement to the land owners is always capital.

## **CHAPTER TWO LITERATURE REVIEW**

### **2.1 Introduction**

Chapter two entails literature review on Kenya on other developed countries pertaining to the importance of right to private property, justifications and main elements of eminent domain, arguments in sustenance of and in contrast to obligatory acquirement of land, the chapter further examines the procedures of land acquisition in Kenya and other developing countries, the history of acquisition in Kenya including the institutional and legal frameworks, and principles underpinning these legislative tools concerning mandatory acquirement of land in Kenya.

#### **2.1.1 The Concept of Compulsory Acquisition (Land or Wayleave Acquisition)**

Compulsory acquisition requires one to establish the pivot among the state need for the land use and making available land tenure security and fortification of individual property ownership rights because it can be fundamentally unsettling. When individuals are paid for their land to be used for public, people who are relocated from their permanent homesteads, business and societies incur a big human expenses. In situation where the implementation process is poorly conducted, the way and means of livelihood, social in addition to leadership costs tend to be huge which is against the key pillars of sustainable development.

According to the Sustainable development it is the responsibility of the state to ensure the state facilities as well as structures meet safety, wellbeing as well as welfare, societal and financial improvement additional to refurbishment of the natural surroundings. Purchasing of a suitable piece of land, appropriate procedures of making available infrastructures and facilities should be taken by the government. Nonetheless, parcels of land being a scarce resource may not be obtainable or be sold when it is required. The government has the power to acquire the land where it is being sold or needed. The government may request the owner to sell the land to be used for state purposes. According to Otubu (2012) the process of government exercising this power makes private owners of land loss their land which sometimes makes them loss their way of life, their economic means of production as well as their religious practices. Considering the actions of land or way leave procurement of land is sensitive when the state put into practice mandatory acquirement of land needs to be well-organized, impartial as well as legitimacy.

According to Nabutola (2006), **Eminent domain** (United States), **compulsory purchase** (United Kingdom, New Zealand, Ireland), **resumption/compulsory acquisition** (Australia) or **expropriation** (South Africa and Canada's common law systems) refers to the power of the government to take individual owned land, take the property, or take a native's rights in possessions with financial compensations and the private owner permission is not a requirement.. The land taken from private owner may be put in use by the state or a third party entity is granted permission to use the property for the state, public use,<sup>2</sup> in some instances for economic expansion. Mainly the properties are utilized for public utilities road construction and railway construction.

The abovementioned annotations end result in well-known sphere actuality a fairly argumentative legal subject. The states policies on the other hand tend to ensure the right of individual ownerships, while on the other hand it grants the state powers to take properties for the interest of the public without the will of the private owner. This is tend to look giving on one hand and taking with the other. There exists a constitutional duty on the government to respect and protect private assets. The government has got conforming moral duty to make sure that the land is obtainable and it is the responsibility of the government to provide land that will support existence of biodiversity.

### **2.1.2 Elements of Eminent Domain**

According to Muriithi (2006) there exists four components that the government must be ascertained in almost all the countries. The components are explained broadly as follows:

#### **1. Private property**

The private land to be taken must be private or individual owned. The private land to be taken by the state comprises land, fixtures, leases, options, stocks, as well as other items. The power of eminence authority can be practiced over any private property or community owned properties. A decision can make all portion of private possessions fee and making it easy or of any possessions right as well as a leasehold and might be converted to temporary or permanent.

#### **2. Taking**

Taking entails taking physical properties, or some part thereof, also possessing of properties by reducing there worth. Assets cost can be condensed because of noise, ease of access hitches, or

other go-betweens. When the utilization of property is extensively similar to seizure of the property repayment must be carried out.

West Encyclopedia of America Law observes that various assets at a times get state laws security for example water rights. In cases where land is converted from water front to inland property by constructing roads. For instance change of land from waterside to domestic properties for establishment of road network on the coast line, individuals owning the land that is taken for road edifice private owners of the land taken are paid for their lost land or utilization of the riverside.

The other possessions right that is contested besides habitually endangered is the authority to the realistic in addition to normal utilization of space above in private ownership of land. Precisely, airplane fly above private property that meaningfully affect the property proprietor's usage may possibly lead to a taking. The flights cannot be perceived as taking not unless they are flying low frequently in order to create direct as well as abrupt intrusion with the proprietor's utilization and enjoyment of the property.

### **3. Public use**

In Public use it is a requirement that properties taken to be utilized for the benefit of the community or the state rather than few individuals. The law courts determines if a specific utilization of property is to be considered public. The courts to find out if the properties are possessed for utilization by the state. The law courts has responsibility to establish the utilization of the property by many people of the bigger population. In the recent times the law courts have lately expanded the meaning of public use to entail aesthetic concerns. In *Berman v. Parker*, 348 U.S. (1954) the judges stated that the shantytowns to be demolished for beautification of the city. In the case of *Commissioner of Lands and Another v. Coastal Acquaculture Ltd. (Civil Appeal No. 252 of 1196)*, Nairobi, the high court ruled in favor of the appellant by holding that, when giving notice during the acquisition the communal utilization reasons and the public body for which the land acquisition was not indicated.



#### **4. Just compensation**

The Kenya Constitution Section 40 3b (i) there should be immediate compensation, to the individuals affected by the acquisition. Muriithi (2006) argues that repayments means recompense or amends when used in these settings. This refers to the finances that the proprietors could have received when his/her land is sold in an open market in addition to the losses that may come as result from the recommencement. The repealed Land Acquisition Act Cap 295 under the Schedule Section 1(2) states the factors to be put into considerations in establishing repayment while under the Land Act, 2012 these matters are under review as per Section 111(2).

The law states that when a property is take for public interests or destroyed the amount of money to be given to the individuals affected should be fair to the individuals affected and to the government. In trying to establish what should be the unit of repayment Murithi (2006) states that there exist no measurement in mandatory property acquisition laws when evaluating the compensations to be made. The measure or unit of compensation is left to the mediator's to establish due to the openness of the regulations. The courts puts more emphases on the on the rights of the proprietors in well-known domain proceedings. When properties are needed by the state for communal usage the property, proprietor does not start the action but is brought in court case because his or her property is need for utilization by the state. It paramount for the owner to take part in the process of litigation because the property he owns is needed for communal utilization. This owner's participation may affect them emotionally or financially. The payment to be given to the property owner is always the reasonable market value of the land that is to be utilized by the public.

#### **2.2 Acquisition of Private Rights in Land**

In African states land remains to be a very sensitive aspect in people's lives especially where people earn living through agriculture. The republic of Kenya economy is anchored on crop cultivation and rearing of domesticated animals which requires some arable land. Therefore, in Kenya all land is considered as crop and animal rearing land expect the land under protection areas and in the urban centers. In other words land is perceived as the only elementary natural resources that man kid can utilize to earn a living through cultivation of crops and animal keeping. Good utilization of land and equal distribution should be a concern to all citizens of any

nation. Land being a heritage it should be managed and utilized well to generate good income that will benefit the present as well as generations to come. Land remains to be a natural resource that makes available good sustenance of biodiversity and needs to be utilized wisely. As the world population continue to increase day in day out land will stand to be a natural scarce resource.

Private property ownership remains to be one of the dominant right of any free nation (Jeremy, 2006). This right provide a protection to all persons and makes available embankment against abusive state machinery and tyranny regardless of the gender, ethnic background age or social economic background of the people. Absence of this right would make people not to be free and independent from their state machinery. As George Washington asserted “Private property and freedom are inseparable.” Section 40(1) of the new Kenya Constitution under the bill of rights pledges fortification of right to property and also Section 40(3b) of the old Constitution. In the case of *Torino Enterprises Limited v. Attorney General, Nairobi High Court, Petition 38 of 2011*, the judgment acknowledged that the acquisition of the suit property by the defendant was done in infringement of Article 40(3) of the Constitution of Kenya and the Land Acquisition Act, and thus the occupation, retention, detention and any continuous occupation of the said portion of the suit land amounts to compulsory acquisition, devoid of reimbursement conflicting with Article 40(3) of the Kenyan Constitution. Jeremy (2006) additional stated that the private land ownership protects people in numerous ways. Firstly, it established division of authority among the citizens, the government and among the citizens. This gives the people freedom as well as self-reliance in which all the people can carry them self in a way they are not intimidated by the state or other citizens.

Regardless of the characteristic of land as a communal resource, when it is owned by an individual it is referred to as private property. The national set laws guarantees individual owned land as inviolability. The Land Registration Act of 2012 (In Kenya) protects this view point. This act grants individuals who own registered land complete ownership and takes them as the absolute proprietor. It evident that one of the primary role of the state is to protect private owned properties. These assertions have bases in law practice as well as law theories. However, Private ownership of properties concept is not unbounded. There exist a requirement to establish pivotal point between individual ownership with broad interests like communal interests, future

generations and heritage. According to Sifuna (2006) the state law safeguards the latter via the practice of well-known sphere influence. State of private ownership of land intervention can be justified using numerous existing reasons.

### **2.3 The Right to Property versus Compulsory Acquisition**

Obligatory acquirement or purchase of land refers to the course taken by the regional or national government for establishment reasons. They take in consideration with the best interest of the public. The government has the authority to take individual owned land without permission of the propriety or the inhabitant in for it to be of benefit to the community. According to Otubu (2012) word compulsory acquirement has numerous implications which take account of compulsory buying of land, expropriation, land-take or eminent domain. In most of the incidences land owners or those residing in the land are not given their property ownership rights for superseding societal need or community benefits.

Mandatory acquisition of private property is anchored on the presence of private property rights. The obligatory acquirement entails a validation as well as acknowledgement of the central right to private property, in that it grants a priori acknowledgement to the private property rights. Based on the common interpretation of the notion it assumes the presence of proprietorship rights in of individuals, other people, the government and the public in general. The real action comes when the state decides to mandatory take land belonging to someone else for utilization by the community. This comes as a result of state requires land to for developmental reasons as well as the need to make available public facilities by itself and or via the agency of private commercial enterprise (PPP). Marcus (2010) argues that compulsory acquirement of private land can be found in Legitimate as well as jurisprudence argument is that is obligatory acquirement is for the benefit of the bigger population.

Individuals affected by the compulsory acquisition of property are compensated through resettlement or financial compensations. According to the state law the affected individuals are repaid based on the value as well as quantum of their losses. Repayment of the individuals whose properties are taken by the state is based on the argument that no person should be individually or completely be held back by the requirement to give away their resources for utilization by the whole community. The process is always a stage of equal sharing of communal burden by all

the people, this is because the repayments from one governmental source. It is evident that in areas where the land is owned by the community there exists no compulsory acquisition process. In situation where the interests of the property owner is less than proprietorship; but not when it is the State that got the reversionary interest in the land. The presence of the two ideas is equally comprehensive.

## **2.4 Rationale or Arguments for Compulsory Acquisition**

In the recent past law makers, investigators NGO's and CBO's have disapproved the obligatory acquirement of land and properties, other people have been advocating for it as they perceive it as an instrument for developments. Some on the other hand have also advocated for it, seeing it as a necessary tool for development. According to an article by Ding 2007 "*Policy and praxis of land acquisition in China,*" highlighted below theoretical rationales for the legislature:

### **(i) Provision of public goods**

In third world countries certain facilities needs a lot of finances to be provided to the private sector. These facilities include water dams for provision of water, electricity, reservoirs, airports, roads, railways, police stations and urban development like face-lifting of urban centers' as well as restoration. The state may not allow some type of facilities to be operated by individuals because of the income oriented intentions. The state provides infrastructures that need some pieces of land to be utilized. The government has to adopt and apply compulsory land acquisition policies to make the land available for utilization. Making available such communal facilities ensures there is equal distribution of resources among the destitute and the rich. In cases where individuals are given chances to operate in addition to make available those essential infrastructures the destitute may not be granted chance to utilize and benefit from the resources.

### **(ii) Land use compatibility**

The state some time is required to acquire land compulsorily to ensure compatibility of land utilization. Land compatibility is often common in areas where land is privately owned by private investors especially in third world countries. The government restricts land utilization in order to restrict disorganized expansion in terms of the kind as well as power to create peaceful, secure, accessible, and economic and functionality in the urban center's as well as

cities in our towns and cities. In third world developing countries it is common because there is antagonistic land utilization to the customary ownership of land.

### **(iii) Promote equity and justice**

Mandatory acquirement of land is a utilized instrument to make sure there equality, evenhandedness and impartiality amongst the noble and the poor more so in the growing urban centers. Noticeably, the destitute have scarce access to land as a consequence of appreciation of land. In developing countries the well-off individuals purpose to own big pieces of Land as an asset. The rich people utilize their financial muscles to exploits the land market as well as tenure security leaving the destitute because they are not able to buy their land. To ensure equal and fair distribution of land the government utilizes the concept of compulsory land acquisition.

It easy to construct enough amenities to the community in region where land is permitted to function at market place profit. The government ensures sustainable development through provision of essential facilities to the people. The intention of private institutions while providing facilities is to make profits. In the third world countries there are inadequate public goods and services and the challenge is very acute in the third world nations. In this rationale the state may obtain land compulsory to make available the required amenities by the community.

#### **2.4.1 Arguments against Compulsory Acquisition**

Numerous researchers have backed up compulsory acquisition of land. According to Adu-Gyamfi (2012) the foregone benefits linked to tools is the forgone utilization of the land as well as handing over cultural, social, economic and health results. The connected consequences on property ownership may not be measured and enumerated. The process purposes to make citizens lives better but most of the times it ends up in few individuals in losing main financial resources and does not grant people chance to use the basic individual rights required to make living standards better.

The inconsistencies plus indiscretions that from payment that are not fair lead to social unfairness. A lot of finances are needed in the implementation of acquisition efficiently and successfully needs sufficient resources. When property owners are not compensated well in scenarios where there is abuse of human, way of life and how people earn their living. The

organization executing the process may face rigidity from the group of people affected by mandatory acquisition of the land. For instance in China inequalities exist in reimbursement determinations. Acquisition of land for commercial utilization attracts more payments as compared to those that are taken by the government for construction of public amenities such as canals, airports, road networks or water supply (Ding, 2004). Acquisition equivalence needs to be applied in order to make sure good conduct regardless of the purposes for acquisition.

Adu-Gyamfi (2012) indicates that the production mechanism, trading activities as well as individuals' way of life are affected when their land is acquired by the government without their consent. When people are displaced from their homestead this affects their family structure. In areas where there is minimal economic avenues around the new community the social interconnectedness is altered. In most cases the youth are not willing to relocate together with their families to the new places of residence. Individuals who focused on crop cultivation become squatters when their land is taken for public utilization. A better strategy that needs to be embraced is the land to land livelihood plan to quickly bring back agriculturalist's way of life. Communities whose land is taken are separated with their historical and as well cultural locations. In a study conducted by Syagga and Olima (1996) established that the average income of a family before relocation stood to be 1126 US dollars per hectare every year, attained from rearing of livestock and cultivation of plants. Only 122,196 US dollars were accumulated by the whole population woodlots and cultivation of crops every year. The household income of the people after displacement was only 205.50 US dollars standing in for eighteen percent of their previous income which is viewed as intensified reduction.

Individuals whose land is acquired compulsorily for public utilization may face land tenure insecurity. Individuals lack tenure security when the government embraces eminent domains to acquire their lands. There is misuse of trust following the unfairness in the laws that defend personal as well as communities. When the land owners are not contented with amount of money given this might delay the project. The effect on the livelihood of individuals should be critically scrutinized for the reason that even in circumstances where the process for the acquisition is applied and fair reimbursement is given to the affected individuals and there exist human costs associated. The vulnerable people from the displaced families may be affected by

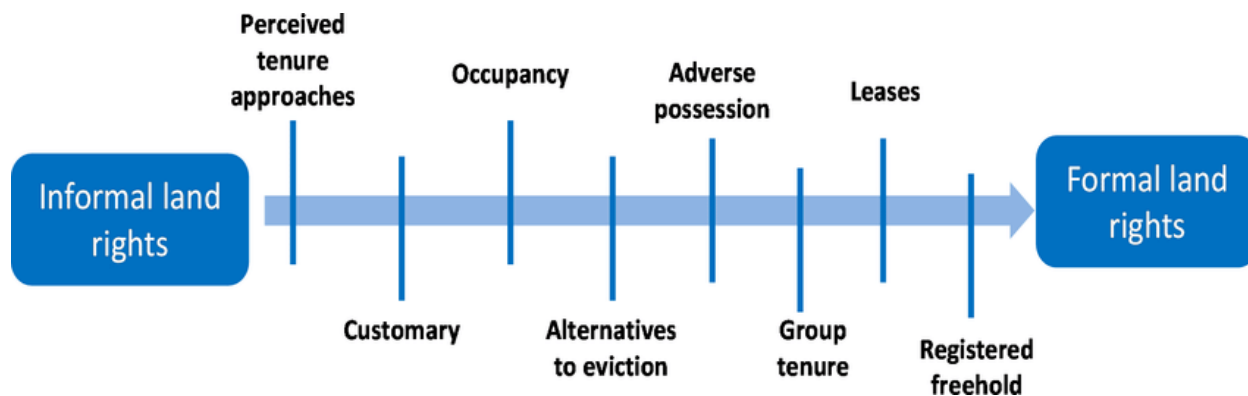
the resettlement to a different climate after displacement from their original location. The affected individuals may also lack adequate food after the displacement.

In land acquisition the state should include the affected people and protect them to avoid the above misfortune from affecting them this is by ensuring fairness and protection of the public interests. When the people affected are included issues that face them in the initial stages may be brought on board and the necessary remedies are taken. Through Compulsory land acquisition if well done the livelihood of the people may be restored to their normal state before the acquisition or make their lives better by bringing fourth the required social infrastructures to the society. It vital that land acquisition implementation organizations to follow the due course of embracing precision as well as transparency.

## **2.5 Land Tenure Systems**

UN-Habitat (2008) defines land tenure as set of rules, authorities, institutions and norms that governs the way people in a particular jurisdiction relate to land. Land tenure mostly determines the person to utilize what facilities, the period of utilization of the resource and on what bases in terms of responsibilities and constraints (Abdulai, 2006).The rights to utilize the resources can be granted by the government or customs these rights may be given to societies, institutions, organizations, household's or specific individuals.

On the other hand, Ogutu (2009) defines land tenure security, as the degree of clarity and confidence that an individual's piece of land will be recognized by law as well as by members of the community and protected when there is dispute. This means that tenure security can be manifested in different forms which are the de facto, the perceived and de jure, the legally recognized. To increase tenure security, a formal recognition of all rights to land is necessary as explained by the UN-Habitat (2008), in a continuum of land right (Figure2.1) showing the different forms of land rights and their transition to formalization hence improving tenure security.



**Figure 2.1: Continuum of Land Rights**

SOURCE: UN-Habitat, 2008.

### 2.5.1 The Status of Tenure Security in Kenya

Secure occupancy is one of the factors of ensuring sustainable economic development. With secure tenure, the universal call to end poverty and protect the planet is attainable (Ogotu, 2009). Since its perception is a key justification that provides incentives for investment in land resources and therefore a stimulus for attaining the Sustainable Development Goals (SDG). Kenya's land tenure systems are historically, economically, technically, culturally and politically complex. These factors have impacted on the government efforts to improve tenure security.

In societies land ownership system structures the circulation of property rights in a community. Battles as a result of land that result from such system well are best regarded as being nested inside greater arguments as well as tensions. In the colonial era the British government denied Africans legitimate possession and usage of land utilization rights to their customary lands, commencement a paradigm of marginalization and dispossession. In most of the African countries post-colonial agricultural groups, the colonialist legacy is mainly lop-sided pattern of sharing the land in favour of the enlightened individuals. In nations like Kenya the government purposes to reverse the history, granting customary systems legitimate foundations or making efforts to establish new integrated ownership structures.

Kenya National Land Policy (2009) defined land tenure as positions and state of affairs from which land is gotten, retained, utilized, disposed or conveyed. Formal land rights are usually secured through various Acts of parliament, while the informal land rights, the government is



developing laws and regulations to formalize them. Additionally, the Constitution of Kenya (2010), designates that all land are owned by the citizens collectively.

### **2.5.2 Evolution Process of Tenure System in Kenya**

In republic of Kenya Land tenure was predominantly based on unwritten laws. These, just like any other rules that governed the people, were passed down from generations to generations through storytelling. The Chiefs, who acted as a political entity, allocated land access and usage rights to persons. However, individual ownership and right to dispose of land at will never existed, moreover, land was not perceived as a tradable good. This system worked quite well for the community members and even non-members whom in several occasions, through the chiefs, could be gifted or allocated land. Although customary land tenure bestowed equal rights to all members, there was a bias towards men within that community and this is still the norm in customary tenure system.

According to Ogutu (2009) in 1920 Kenya was pronounced a colony all the Kenyan land was declared crown land Tenure insecurity was officially born during this regime. It was depicted through the forceful manner of land acquisition by which the white settlers were given the most fertile land around central Kenya known as “the white highlands”. Those who owned or used the land in these regions were displaced to the “native reserves” at the lower Rift Valley with low rainfall, poor soil and lack of enough pasture.

Like the two sides of a coin was the status of tenure security during this era. Primarily, there was secure tenure for the Europeans, whose interest on land was legitimized. Contrary to Kenyans, whose land was grabbed and did not have land ownership right.

In 1963, Kenya gained its independence and due to fear of Kenyans ruling, the Europeans opted to leave the country. Their lands were placed under the executive mandate of the presidency to initiate resettlement programme. However, the settlement scheme was massively affected by corruption from the presidencies, local politicians, elites and businessmen. They grabbed the opportunity to not only allocate themselves land, but to also infringe on others land as well. This was made possible through illegal allocation of land and further conspiring with the officials to

destroy transaction evidence. Even though Kenya had gained its freedom, they fell prey to their leaders and instead of restitution, more land injustices were committed.

Promulgation of the 2010 constitution was perceived by many as a new dawn. Since it legalized the recommendation for land reforms made by the 2009 National land policy. However, policies are not an end in themselves there is need for effective implementation. This relates to land administration infrastructures and building transparent and sustainable institutions. Refusal to implement these recommendations in a structured manner, due to fear of implications from the perpetrators, has been the main stumbling block in the improvement of the land tenure status in Kenya.

### **2.5.3 Land Tenure versus Livelihoods**

Livelihood refers to the methods people and societies embrace to sustain their lives by acquiring food, shelter as well as clothing. In simpler terms it refers to the process of living. It entails assets, natural, physical, human, financial and social, undertakings and access arbitrated by organizations as well as communal associations. In incidences where by people are able to make money and access means of production the society is said to be secure. When people are faced by hazardous conditions individual's people become vulnerable when they are exposed to life threatening conditions whether natural or artificial. Ability to live well is anchored on cultural rights, economic rights as well as social rights. For instance; the right to food, good house, health and the right to satisfactory living standards are all precarious to an improved living. A shared factor to the rights is that they rely on accessibility of land. To actualize the right of access to food people must have land to cultivate their crops. To ensure there is enough food for every person in the society people needs to have physical and economical accessibility to food at all times. Land as numerous usages that is crop cultivation, construction of homesteads, water, cultural and spiritual activities as well as grazing of livestock. All people in the society especially the smallholders; pastoralist, fisher-folk and native societies require land to be able to live a decent and standard life.

In Kenya cultivation of crops and livestock rearing are the economic backbone this implies that land is the greatest asset to Kenyans. Nonetheless, land is limited resource while the land left is grabbed by people. In Kenya a piece of land is important because majority of Kenyans outputs

gotten from peasant farmers as opposed to large scale farmers. Ownership of land means that Kenyans and their community are well in position that can sustain their livelihoods effectively.

According to Mbote and Kindiki(2008) matters concerning land rights are highly deliberated on in political arena in the republic of Kenya. The Kenyan new constitution 2010 addressed matters relating to utilization and management of land ownership. In the Kenyan constitution 2010 article 62 chapters 5 indicates that the land belongs to all Kenyan citizens as a whole, societies and as individuals. In attempt to address the outstanding land matters the National Land Commission was constituted pursuant to the National Land Policy of 2009, Constitution of Kenya 2010, National Land Commission Act, 2012, the Land Act 2012 and the Land Registration Act of 2012.

People have the chance to get and utilize land through land ownership a land being a natural resource. This research investigation has unearthed issues of land fragmentation, conversion of land utilization use as well as infrastructure expansions as concepts of land ownership system. Land use change is the change of piece of land from utilization morphology over time, and it typically agrees to a specific socio-economic expansion phase (Grainger, 1995). Land-use changes, socio economic issues direct land change while they are limited by physical conditions. According to Long, Heilig, Li, and Zhang (2007) land changes are characterized by the transformation of land from crop growing land to construction land; all these are related with human production endeavors. (Transformation of land from cultivation land to construction land may lead to damages, change or disintegration of homes (UNEP, 1999).

The African countries may or may not recognize predominate in the land customary rules of land tenure. Various African states have adopted clear exertions to put all the land civil rights in registers, in situation where the land is owned by the government or bestowed with the state in trust for the state. This entails protection of customary land rights as well as giving them a chance to register them. According to McAuslan (2000), land reform decree in Uganda declared customary land-holders tenants at will of the government the 1995 Constitution and the 1998 Land Act, as corrected, protected the customary land rights. In Mozambique's land act 1997 the customary rights were put in protection, in Tanzania the 1999 village land as well as Tanzania's Land, Niger's Rural Code 1993 and the 2002 Namibia's Communal Land Reform Act. The customary rights are recognized as legal source of land claims in the Niger the Rural Code.

According to the Mozambique's Land Act 1997 the concepts of ownership of land protects "rights of use and benefit", which are attained either on the basis of "customary law" or through good-faith occupation for at least ten years. In Mali the abrogation of customary rights was carried out by post-independence legislature (Codes Domaniale et Foncier) of 1986 and 2000 (as amended in 2002) considers customary land rights as legitimate and gives them (some degree of) lawful fortification. In nations like Mozambique and Ethiopia the land is owned by the government. Land is unequally shared and commercialized in South Africa this has led to land being taken by people with big pieces of and while the peasant's farmers supply casual labour this brings about either a positive or negative effects on family food security.

There exist the following categories of land ownership: private land, public land and trust land. The British colonial empires started the concept of this placed communal land 'in trust' under County Councils. Based on the Under the New Land Policy 'community land' (previously called 'trust' land) will be demarcated and its title apportioned to a specific members of the community. The rights of the communities to identify the rights of societies (including pastoralists) to entrance resources upon which they depend on. The management of access and utilization of land was based on Community (elected) was established. The roles of women were acknowledged and utilization and accessibility of water is accounted for.

#### **2.5.4 Neo-classical Economic Theory**

Neoclassical economic theory scrutinizes the subject of land tenure from a methodological individualist point of view. According to Johnson (1972) land ownership systems led to utilization of resources description as well as apportionment of assets rights; a technique of allocation of money making using on land, it established incentives for economic agents to use land in its most-valued uses (net of transaction costs), and negligible limitations on the sale of land so as to raise the balance level of investment in and attached to land. Johnson (1972) stated that the land rights defined clearly, transaction charges upsurge. Marginal High transaction costs reduce the marginal productivity of land. Neo classical, therefore, argue that the sale of land should involve minimal transaction costs and that this objective can be achieved by clearly defining property rights to the land in order to maximize its returns. According to the Neo classical discussion on the cost and rewards costs should be assumed at the individual level for well-organized use of land. This is so that policymaking unit will eventually try to get the best

out of his plunders and minimize his costs. When costs and rewards are not internalized there are no incentives for agents to properly combine it with other factors of production to ensure that the marginal benefits are being maximized.

The Neo classical argue that establishment free-hold titles minimizes the transaction expenses in relation to transfer of land. The private owner of the land benefits from the nonexistence land sale restrictions when the exchange are greater than the costs of transfer. As a consequence agreements in land market allow the achievement of these benefits that may lead to advanced marginal significance product and bid land away from less productive utilization. Individuals who engage in bidding procedures as well as utilize it in conjunction with other factors of production in order benefit from it (Christenson et al., 2007). Based on the above highlights the individualization of land tenancy is a more efficient form of land tenure as it upsurges tenure security while minimizing expenses like litigation over land conflicts and thereby giving opportunity for allowing for utilization of benefits to those using the land. This theory provides informative explanations behind land disintegration and change of land utilization purposes. Apart from inheritance of land fragmentation of land and changes of land use are influenced by financial gains as well as perceptions on efficiency.

### **2.5.5 The Lockean Property Theory**

The Lockean Property theory John Locke's property theory (1660) uses unilateral seizure to argue that property rights includes ethically compulsory limitations on others in advance of – and possibly with greater power than any social agreement. Locke indicated that on person can obtain ownership rights over moveable and non-moveable parts of the earth in a state of nature, absent government. The rights entail the permission to possess properties and all the government put into consideration the property ownership rights. Locke commences of countryside with enough natural resources but no state, money, or trade. It noted that people have fair claim, or absence of equal claim, no utilized resources (mainly land), this implies that the land is not owned by everyone (utilization of property by every person but not for use of everyone but property of no one) or collectively owned (as if by company in which all and sundry owns a share). The first individual to integrate his or her labor with land needs no one else's agreement to suitable it. An agriculturalist (who alters the land through labor) appropriates it; a hunter-gatherer (who labors on land deprived of meaningfully changing it) does not. The theory

elaborates vast factors of squatters as well as if they own pieces of land to the pieces of land they occupied. By virtue of their active ownership of a specific piece land along with tending it; can it entitle them some form of ownership?

## **2.6 The History of Compulsory Land Acquisition in Kenya**

The notion of well-known domain is not new. It has been there from the biblical times, when King Ahab of Samaria offered Naboth reimbursement for Naboth's vineyard (The Bible, 1 Kings Chapter 21, and Verse 1-3). It is noted that properties owned by people could be seized by the roman government for public utilization in ancient Rome. In France in 1789 recognized properties ownership right reimbursement for taken assets, in the French Declaration of the Rights of Man and of the Citizen, which reads, "Properties being an unbreakable and consecrated right no one can be underprivileged of it, not only when the public requirement simply demands it, and upon condition of a just and previous insurance."

According to Muriithi (2006), mandatory acquirement of land for development was started by the colonialist. When the colonial government started to build Kenyan- Ugandan railways from the Indian Ocean shores to Lake Victoria was a major developmental project that colonial government did. For example the reason was not direct for establishment of urban centers but for transport network that ultimately brought about growth of various towns across the country.

In 1896 Hardinge, the "Commissioner of the East Africa Protectorate" established a Commission to value for compensation of about 400 acres of land on Mombasa Island and the adjoining Kilindini foreshore required by the Railway Authority (Muriithi, 2006). However, the Commission was resisted by European and Indian settlers, who had bought land from the local Arabs arguing that Hardinge had no legal authority to expropriate the land. In response to this, Hardinge borrowed the "Indian Land Acquisition Act" of 1894, made the concept of compulsory land acquisition from British subjects for public works to apply to the protectorate. Muriithi (2006) further adds that this at originated from India it has borrowed a lot from the English Law. The law was immediately used to acquire land for railway purposes in Mombasa town. This marked the beginning and origin of land acquisition law used in Kenya today. The Indian Land Acquisition Act was later replaced by the Land Acquisition Act of 1968 (Cap 295) laws of Kenya which has now been repealed and changed with Part viii of the Land Act, 2012.

In the case of native land, Hardinge simply issued a declaration reserving all land for railway resolutions for a mile on either side of the line beyond the coastal strip, subject to any right that were proved to his satisfaction. In this case no law was applicable. According to Kimutai (1995) the history of trust land in Kenya dates back to the period before Kenya gained independence. It started when the Colonial Government appointed a Land Commission under the chairmanship of Morris Carter to investigate how the 1930 Ordinance was operating, the present and future land needs of the natives and the nature of claims that the natives had on land alienated to non-natives. The Commission recommendations were that the local frontiers of the native reserves be ingrained in an order in council. Onalo (1986) argues that the native lands trust in 1938 focused the reserves in reservation trust land board. This was done in 1938 Native Lands Trust Ordinance that vested the reserves in a Trust Land Board (Onalo, 1986). This board was granted opportunity to represent Africans interest. The governor excluded land from the reserve for the community reasons he had to be gratified that the impression was consented to by the preponderance of the Africans in the area and precisely that the local distinctive assembly had passed a determination in its favor. In addition, the trust land board had to be consulted as well as agreement to the implementation. Notification as well as gazettelement of matter that elaborated legislature provisions. The governor still reserved the supremacy to eliminate land from the local assets for certain resolutions.

During independence, the Constitution Section 208 converted all the land in the former African reservation into trust lands vested in the County Councils to be held in trust for their occupation. The administration of land the trustees were set out in the Trust Land Act Chapter 288. According to Onalo (1986) council and government it is these laws and procedure settling part of the trust land.

## **2.7 Current Legal Instruments on Compulsory Land Acquisition in Kenya**

Obligatory land acquirement in the republic of Kenya in most time has always been a delicate issue and is progressively so in this day and age in the context of rapid growth and changes in land use. The government is under growing pressure to deliver public services in the face of high and increasing demand for land. Economic development progress to establish insatiable need to encounter the demand for growth, building facilities, expansion of towns as well as resource extraction.

In Kenya today the right of expropriation is entrenched in the new Constitution under the bill of rights (Chapter 4) Section 40 and the process is guided by several Acts of Parliament. The principal one being the Land Acquisition Act Cap 295 (repealed and replaced with the Land Act, 2012 Part Viii), which empowers the Government to obtain land for public body where the acquirement is essential for public interest. The County Government under Section 107(1) of the new law has also been empowered to acquire land like the National Government. The Trust Land Act Cap 288 Section 13 (1) authorizes local authority to take land for local needs, which may include urban development and Section 7 (1) of same Act authorizes the Administration to expropriate trust land for community requirements. Some aspects of compulsory land acquisition were discussed in the case of *New Munyu Sisal Estates Ltd v. the Attorney General of Kenya*, H.C.CC NO. 320 of 1969. The case concerned itself with the question of quantum of compensation but went further into the question of law regarding mandatory acquisition at large i.e. the Kenyan Constitution, the Indian Land Acquisition Act 1894, and the Land Acquisition Act 1968 (repealed) and Agriculture Act Cap 318 Of the laws of Kenya (Onalo, 1986).

### **2.7.1 The Land Act of 2012 and the Land Acquisition Act Cap 295 (Repealed)**

The Land Acquisition Act Cap 295 (Repealed) underscored the concept of eminent domain in Kenya. Section 6 (1) to benefit the community the minister is granted permission to provide notice of land acquisition or the benefit of public interest, that the acquirement is required in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property.

The Land Act of 2012 makes intricate necessities for compulsory acquisition which assimilate as well as express new ideas and perceptions regarding reimbursement imburement, including making available extra reimbursement, profits on reimbursement money as well as destruction of properties that takes place while carrying out mandatory acquirement of land. For compensation to happen state policies provided for land utilization, which forms the emphasis of this segment. Outstandingly, it as well gives market specification of open market standards as the foundation of valuation of reimbursement (section 111 and 112). The Land Act (2012) allows the burden of numerous types of individual owned land utilization limitations for the advantage of all the individual as well as societal bodies. This also allows reimbursement to the individual institutions, in incidences where individual land utilizations restrictions are imposed for the



advantage of private bodies as well as by administration, in situations utilization of private land use limitations are imposed at the example of the state and for the advantage of the state as such or the benefit of the community via the government.

The new Land Act of 2012 borrowed heavily from the Repealed Land Acquisition Act Cap 295 in regard to Land Acquisition in Kenya with several differences to match the new Constitution and Land reforms in Kenya. Firstly, The Land Act of 2012, Section 107 and the Kenyan new Constitution (2010) gives the National Land Commission (NLC) the sole powers to compulsorily acquire land from private land owners for public purposes. Some of the highlighted differences in the course of land acquirement in Kenya between the Repealed Land Acquisition Act Cap 295 and the Land Act of 2012 are as follows:

**Table 2.1: Differences between the Land Acquisition Act (Repealed) and the Land Act of 2012.**

<i>PROCESS</i>	<i>Land Acquisition Act Cap 295</i>	<i>Land Act of 2012, Part VIII</i>
<i>Authority to acquire</i>	In incidences where the minister of land is content that any land is needed or public utilization reasons he might request the commissioner of lands to use the land acquisition section 6(I)	Under Section 107(1) the National or the County Government submit the request to acquire land through the respective Cabinet Secretary or the Executive Committee Member in writing to the National Land Commission.

<i>Compensation held</i>	<i>amount</i>	Under Section 13(2) any compensation which is not paid or paid to the court before ownership of the land , the Commissioner shall pay interest of 6% per annum from the time of taking possession till the period of compensation or imbursement into court	Any compensation amount held is supposed to be deposited in a special account held by the Commission as per Section 115(2) and attracts interest at the prevailing bank rates as per Section 117
<i>Taking possession</i>		Section 19(1) states that taking possession can take place after the landowner has been issued with an award.	Section 120(12) states that only after the award has been done and the amount of cash to be given will the commission take possession.
<i>Dispute arising</i>		Under section 28 disputes regarding amount of compensation is to be referred to the Land Compensation Tribunal while other disputes are to be handled by the courts as per Section 29.	Under Section 128 all compensation disputes are to be referred to the Land and Environmental Court.
<i>Serving notices</i>		Notices are given by the Kenya Gazette as per Section 33	Additionally the Kenya gazette Section 131(1e) notes that the Commission may publicize in the press national circulation

According to article 40(3) in the Kenyan Constitution notes that to payments or land that has been taken by the government for public interest while Article 40(4) presents the repayments to people occupying land that may not possess documents to show that they own the land. Additionally the customary land rights are documented in the Land Act 2012, section 5 as a method land ownership in Kenya. In compulsory acquirement of land or utilization by the public the laws to govern the implementation of these rules have not yet been formulated to ensure proper compensation of those who are affected. Therefore, more regulations need to be put in place to supplement the existing laws and in addressing the gaps and lags on authentic method identifying the owners of land, their welfares in land appreciated and reasonable reimbursement conferred in situation where their land is taken compulsorily in a way that acknowledges the land laws and embraces international agreed practices.

## **2.8 The Process of Compulsory Land Acquisition**

It critical for the state administration to put into practice procedures of compulsory acquisition of land to ensure fairness and legal process are adhered to. Acquirement or emergencies as well as for land reforms procedures are normally different from the process of mandatory land acquisition or government projects and developmental plans (FAO, 2008). Various processes are in place for the Kenyan electricity companies to get easements or servitudes. The overall compulsory land acquisition procedures should put the following critical steps into considerations (FAO, 2008).

**1. Planning:** establish various lands that can be utilized to cater for the societal needs. Identification of the land to be taken for public utilization the locale of the land and the acreage and the vital information is gathered. Individuals to be affected by the process are involved in the assessment of the project.

**2. Publicity:** the government circulates notice telling the land owners that they purpose to take that land or public utilization. Individual affected are requested for their payments processing. The notice gives a description of the purpose and process, together with vital time limit and the technical constitutional rights of people. Public meetings are formed to enable people acquire knowledge about the project, and to give their opinions and requirements for reimbursement.

**3. Valuation and submission of claims:** Corresponding repayment for the land to be taken is established on the valuation date. Claims for the payments are submitted by the land Owners. Governmental bodies or agencies are used in giving the value of the land. The land acquirement agencies are forwarded for the request for the payments. Dialogues might follow.

**4. Payment of compensation:** land owners are either given other land for resettlement or given money to buy new lands.

**5. Possession:** the state acquires proprietorship of the land for the purposed reasons.

**6. Appeals:** the land Proprietors and tenants are granted opportunities to challenge the obligatory acquirement o, as well as the pronouncement to obtain the land, the procedure by which the land was taken, and the money given for reimbursement.

**7. Restitution:** the chance for reimbursement of land if the reason for which the land was utilized is no longer pertinent. Other processes or procedures that do not include the above processes might not be fair and breed friction between the acquirement authority and personal land owners.

### **2.8.1 Standards for compulsory Acquisition Application**

FAO (2008) United Nations has listed three elementary philosophies to which mandatory acquirement of property must be put into practice. They comprise:

- (i) Protection of law and fair procedure:** Rules and laws are essential in guidance and shaping the lawmaking of obligatory acquirement. Mandatory acquirement of spelt out conventions and regulations. In order to prevent all disasters as well as disagreements between the property owners and the agencies the set rules should be observed. People should be granted chances through the law where they can air their issues about their reimbursement.
- (ii) Good Governance:** to achieve good governance all the institutions and individuals participating at the local, regional and national level to realize aims and intentions. The procedures of land acquirement must be open and ostensible to all the individuals to assist them in building trust among populates whose possessions are taken. Associations should be held answerable in their accomplishments to help avert exploitation and misuse of power. Penalties must embraced incase a need ascends to hinder all the foremost incidences.

**(iii) Equivalent compensation:** equal or fair compensation of property owners should be written own in countries laws. Executing organizations must at all times make sure that affected people are reimbursed not less than their acquired possessions but if possible the properties they are given should be equivalent to the property they have given for public utilization. Fairness in reimbursement enables those affected settle back to their livelihood very fast to prevent all economic failures that might happen. In assessment and repayment of individuals whose properties are taken for public utilization and competent quantity surveyors should be engaged. It is worth to note that the process of compulsory land acquisition will be complete when individuals involved are well contented.

### **2.8.2 Principles that should guide the process of Compulsory Acquisition**

The following principles must guide the whole process of land Acquisition (FAO, 2008):

1. A minimum of the land and land to be acquired must be maintained. For instance, if the establishment of an easement or servitude can address the specific goals of the project, there will be no need to attain proprietorship a parcel of land.
2. The planning should ensure that all the affected individuals participate including the owners and those who occupy the land, the state and the non-governmental institutions.
3. The due process should be set in law with detailed time limits for the individuals to understand and meet the deadlines.
4. Processes should be transparent and not fixed, and embark on in good faith.
5. A well written as well as verbal notices must be put in the language that the people affected understands with procedures clearly elucidated and guidance on to where to request for assistance.
6. For valuation and compensation of the individuals affected to be efficient help should be rendered to them for them to fully take part in the procedures.
7. Monitoring and supervision of the process should be conducted to ensure that the buying agency is responsible for its actions, and individual will is restricted.
8. Once partial payment together with well-defined payments guarantees has been done the state takes the property.

### **2.8.3 World Bank Safeguard policies triggered by the development projects**

To protect the surroundings in the developmental procedures the World Bank's environmental and social protection introduced policies, prevents and mitigates undue effects to human beings

#### **OP 4.12 - Involuntary Resettlement**

This policy is adopted in cases that involve mandatory acquirement of properties well as instinctive limitations on the permissions to use property in set parks and protected zones. The guiding principle purposes to:

1. To reduce and prevent the social and economic effects of involuntary relocation
2. The groups of displaced individuals are involved in planning and implementation of resettlements.
3. Purposes to assist in restoration of incomes and improvement of livelihood of people after their displacements.

Any projected development project activates this rule in that it intend to embrace mandatory acquirement of properties plus hindrances in accessibility of the property around the broadcast line Way leave. The planned project must act in accordance with the requirements of OP 4.12 by consulting the persons affected by the project (PAPs), residential communities as well as local nongovernmental organizations, Persons affected by the project (PAPs) must be well-versed with their human rights including immediate reimbursement at full replacement expenses for the loss properties as a result of the state development and backing throughout movement to new places as well as transitional provision and developmental support.

### **2.8.4 The African Development Bank Involuntary Resettlement Policy**

The African Development Bank Involuntary Resettlement guiding principle has been established to take care of instinctive dislocation and relocation of populace as a result of a Bank pay for project and it commonly happens when a developmental outcomes in evacuation or loss of homes among the individuals around the project zone, or their properties being taken or lives being affected. The basic objective of the involuntary relocation policy is to make sure that families being evacuated are treated justifiably, and that they share the paybacks of the project that encompasses their relocation.

## **Objectives**

1. To avoid involuntary resettlement where feasible, or reduce relocation effects where people dislocation is inevitable, trying to comprehend all viable project designs. Special considerations should be granted to society and culture or the land significant to the religion, the vulnerability of the affected people, or the presence of property replacement, particularly when they have significant imperceptible insinuations. In situations where a big population is affected the people would be subjected to relocation or would agonize from the effects which are hard to quantify and to pay off, consideration should be made on the probabilities of not pursuing the project.
2. To make sure that individuals displaced are given help in relocation. Especially under the project, to ensure their living standards, financial earnings capacity and production levels are better.
3. To provide advice to Bank staff and to the loan takers the conditions that should be observed concerning involuntary resettlement matters in Bank processes in order to alleviate the undesirable influences of dislocation and immigration and form maintainable economical as well as the social order.
4. To formulate the apparatus for monitoring the performance of involuntary relocation programs in Bank processes and improving difficulties as they come up in order to protect them from poorly prepared and execution of resettlement plans.
5. People should be engaged in planning and execution of people resettlement should be fortified.

Based on the writings by the African Development Bank's mandatory relocation laws, the plans for relocation should take into considerations to make sure that the displaced people are:

- (a) They are aware of their Informed about their options and rights concerning relocation
- (b) Give their views on the choices given and make available economic and technical feasible relocation choices.
- (c) Ensure people are compensated the amount for complete replacement cost for damages
- (d) Ensure help flat forms are available in the period of relocation.

- (e) Be given homes to live in, or places to build houses, sites to cultivate crops, locality rewards and other features that are similar to the land they relocated from.

In situation where the relocation objectives of resettlement plan the relocated persons should be able to

1. Be given assistance after the displacement, for transitional
2. In addition to reimbursement actions taken developmental help like preparation of land, provision of employment, loan services as well as training should be made available to those affected.

### **2.8.5 Compulsory Land Acquisition Procedure in Kenya**

The procedures of mandatory acquisition of land in Kenya are clearly outlined in the legislative instruments and specifically in Section 107 Part VII of the Land Act No.6 of 2012 that revoked the Land Acquisition Act Cap 295. The procedures are outlined and explained as follows:

#### **(1) Preliminary Notice**

Every time the state purposes to acquire some specific pieces of land under section 110, the minister of land or the county Executive Committee Member shall submit an appeal for acquisition of land to the Commission to acquire the land on its behalf.

Once the land request is approved, the Commission shall publish a notice to that result in the Gazette and the County Gazette, and shall distribute copies of the notice to the Registrar and all who appears to the Commission to be interested in the land.

#### **(2) Power of entry to inspect land**

The Commission grants permission to all individuals, to enter upon any land stated in an announcement circulated in section 107 and review the land and do all possessions that may be rationally needed to determine whether the land is appropriate for the envisioned resolution.

#### **(3) Payment for damages caused by entry for inspection**

The Commission shall make payment for any destruction as a result from the access.

#### **(4) Notice of acquisition and effect of acquisition on plant and machinery**



For the advantage of the state the government may take individual owned land if the commission approves using written document that the property is needed for public utilization or state interests.

#### **(5) Compensation to be paid**

In instances where compulsory acquirement of property under the Land Act (2012), payment is done to the affected individuals whose land is needed for the interests of the public.

#### **(6) Inquiry as to compensation**

The land owners are given one month make claims on their payments after publication by the government on the intentions to take their property for public utilization. Individuals interested with the land are given day after making inquiries to submit to the commission written compensation claims. At the inquiry the Commission intend to: establish the authentic owners of the land and those interested with the property to submit written reimbursement claims for it to be effected by the commission.

#### **(7) Award of compensation**

Once the inquiry process is done the commission formulate a written document from which the land commission shall write a compensation for all the individuals affected and whom the commission has confirmed interest with the land. According to the Kenyan constitution Article 40 (2), section 122 as well as 128 of the Land Act, the conclusive evidence of payments will be final of (a) the acreage of the land to be taken for public utilization (b) the worthiness of the property according to the commission (c) the amount of money to be given to the property owners if the owners have appeared for inquiry or not

#### **(8) Notice of ward and payment of compensation**

Once the commission determines individuals who interests are on the land will be issued with a notice of payment that the commission has established. Once the land is acquired by the commission, taking full ownership of land, the commission might get into agreement with property owners instead of giving them financial compensation the person is given another piece of land which does not exceed the worth of the land taken by the commission. Once the owner

agrees the person shall be assumed to have received the compensation from which the person is required to respect the land.

### **(9) Formal taking of possession and vesting**

If the document detailing the verifying title to the land acquisition have not been issued before the Commission should put in writing informing individuals with land ownership documents to submit them to the registrar in addition the individual should convey the pamphlets to the Registrar. After receiving the documents the registrar will:

- (a) If the land in the document have been acquired the title documents will be cancelled.
- (b) in case the land in the ownership documents have been acquired the registrar will register the remaining parcel of land and make it to be given to the people, title papers has been acquired, the Registrar shall register the resultant parcels and cause to be issue to the interested people and tiles be issued to the remaining parcel of land.

The compulsory acquisition process or procedure in the Kenyan legislative frameworks match the FAO (2008) guidelines and process. However, practical differences and conflicts occur majorly during valuation of interests in land and amounts to be compensated in what would mean “adequate or just compensation”. Literature on compulsory acquisition for the ongoing government reveal that there gaps in land and way leave procedures and hence the process is not adequate based on the best practices accepted globally.

### **2.9 Land Acquisition for Way leaves or Easements**

A way leave is a right of way (ROW) over the land of another. The ROW is utilized in carrying sewerage, drainage, electricity lines or water pipes line inside or through, over or under any lands which may affect the structures on the ground. Way leave Act (Repealed) Cap 292 and Energy Act of 2006 permit for Right of Way of transmission lines. A wayleave should be registered as an easement that is and might be explicitly well-defined as well as demarcated. Way leaves are to be used forever in transmission of line usually in eternity. As a result of this nature of transmission lines the land owners should be compensated.

An easement is a right to cross or use someone else's land for specified purpose. The proprietor of the land agree to take the holder of the easement to relish the Right of Way (Row) by overlooking to do some distinct act or letting some definite act to be achieved on his land. Easements can be effected by endowment express or indirect, decree or opposing ownership under the confines of actions act. There are exemptions Electricity Transmission Companies usually acquisitions easements for transmission lines and purchase fee simple property for substations. An easement gives inadequate rights to these companies or acquiring authorities for a stated utilization, though the properties owners may retain land for other utilization.

Given that most of the Transmission Companies got no ownership of land properties around the locality of these ongoing project, besides specified that the projects request to go through land that is not public owned, for the land to be acquired negotiation and symbiotic agreement with the land owner should be achieved before resorting to court or compulsory acquisitions procedures unlike in many government projects of public interest including the road and railway network constructions among others, where the acquiring authorities completely own the acquired parcels. Nearly all land parcels and easements by Electricity Transmission Companies are acquired through shared treaty with the property owners. In cases where there is no agreement between the two parties a denunciation action is presented to the states Superior Court where the land is located. Compulsory land acquirement is always the last alternative.

### **2.9.1 Analysis of Policy, Law and Practice of Compensation for Land Use Restrictions in Kenya**

The size of Kenya in square meters is roughly 582,646 sq. km. where by ninety seven percent of island while two point two percent is covered by water. Regardless of the fact that cultivation of crops and rearing of animals are the main ways by which people earn living as a result of minimal industrialization capacity, the land that can be categorized to as medium to high prospective cultivation land is 20% of the land. In contrast to the setting of the preceding conditions, the state ecological laws, agrarian laws and aquatic laws in the midst of others have imposes on individual land ownership, land utilization limitations for a multiplicity of goals, comprising biodiversity preservation as well as organized expansion plans. In additional to the state power of well-known area that allows mandatory acquirement of property for the state

utilization. The land and populace dispersal condition is such that except apparatuses incorporated in state rules and laws for satisfactory as well as quick compensation, monitoring controls of land utilization endeavors may perhaps lead to augmented battles as well as underdevelopment.

After investigations on the state limitations on utilization of individual owned land in Kenya numerous policies and governmental vicissitudes bearing impacts on reimbursement have been established including the 2010 new Constitution and an refurbishment of some of the state's land policies. According to the Kenya constitution article 66(1) establishes the foundations for governmental private land control and utilization of payments by arguing that:

*“The government can control the utilization of all the land or any interest on the use of the land, in the interest of security, public safety, public ethics, public wellbeing, or land usage planning.”*

The preceding are the public service devotions for which administration can limit private land usage. Nonetheless, it is elaborated in article 66(2) that:

*“The law makers will pass legislation safeguarding investments in possessions advantage the native societies as well as their frugalities.”*

New land laws have been formulated with respect to the Kenya new Constitution. The new laws introduced include: The Land Act of May 2012 revokes the Wayleaves Act, Cap. 292. Registration of land act that cancelled: Indian property transfer act 1882, the state land (Cap. 280), The titles record-keeping (Cap. 281), The Land Titles Act (Cap. 282) and the Registered Land Act (Cap. 300). The Environment Land Court Act, No. 19 of 2011 was also approved to inaugurate an Environment and Land Court (ELC) as needed by Articles 162(2) (b) and 165(5) of the state Constitution that denies the High Court of authority over issues regarding land and the surroundings.

Additional, a National Land Commission Act, number five of two thousand and twelve was approved for execution of the Article 67 of the Constitution which institutes a National Land Commission (NLC) which is mandated to endorse a state land policy to the national government, administration of state land for both national and devolved government, carry out investigations concerning land and utilization of natural resources, give suggestions to the

concerned parties, screening and performance of oversight duties on utilization of land arrangement around the country and embolden substitute problem solving strategies on land clash treatment and administration . administration and management of the trust land that is not registered, community land that is not registered on behalf of the state, development and maintenance of an operational land data management system at nationwide and counties levels, make sure that all the land owned by the government under the administration of organizations is utilized for the rightful purpose and for the generations to come and monitor the documentation of the interests and rights in land (section 5(1) & (2) of the National Land Commission Act).

The Land Act No.5 of 2012 is the act that is responsible for possession, acquirement and utilization of all groups of land in Kenya (public land, private land and community land) it provides requirements on different categories of issues concerning land in on 163 sections, they include guidelines for mandatory acquirement of private land for public utilization and compulsory repayment afterwards and easements and corresponding privileges comprising the right to reimbursement for specific easements. Further the law makes provisions, distinguishing the Environmental and Land Court that has exclusive authority over land and environmental issues, comprising matters regarding reimbursement for land and establishment of Land Compensation Fund, from which payment is done to people affected by mandatory acquirement of land as well as various types of the state limitations of private land utilization.

### **2.9.2 Compensation for Easements**

Establishment of usage or passages through private ownership of land or lease land is lawful by section 138 of the Land act that breaks down land easement as: authority to carry out some activities, under or upon the servant land, the right regulating activities being carried out, any right needed by the proprietor of servient land carry out some actions to, under or upon that land and whichever correct to look after animals on the servient land. These rights established over another's land got impact on limiting the utilization of the land over which they are established and may, contingent on the nature of the doings conducted thereon, minimize the worthiness of the servient land. Based on the nature of actions for which they are search for, easements can lead to obliteration of the possessions to the owner of the servient land.

In cases where easement are established for a specified timeline that might end a fixed date in the future or taking place stood established for a specified timeline that will be terminated at a set date in time to come or taking place of a particular activity in time to come or if the grantor passes on, the person receiving the grant or any other individual identified in the grant. As a result, permission is given to the people requesting for the easement of another land even though the land act does not make available cash for repayment. The individuals asking for establishment of an easement seeking to establish an easement over another's land and the land owner or lease holder to "negotiate" terms of an easement, together with reimbursement. Submission of Payments for easements is indirect in the necessities of segment 139, especially in subsection (3) (a) that stipulates that in establishing applications to the Court where an easement is not granted, deliberations shall be engaged by the Court "...the conduct and nature of dialogues among the owners of servient land and dominant land" as well as, having had regard to the nature of negotiations, issue orders. The governmental policies bring forward reimbursements for the losses emanating from obstructive easements but it does not indicate they type of losses to be paid. Nonetheless, the loss can be inferred to comprise damages emanating from decrease in the value of land value prompted by easement works for example placing of alternative cables and pipes and overhead power lines, destruction to land owner's fixings as well as the amenities and machinery connected to the land, businesses loss and physical destruction and all other damage to the land example pollution of the soils. Utilization of private land restrictions by way of easements is allowed according to section 98 of the Land Registration Act, No. 3 of 2012 but short of supplies for reimbursement.

## **2.10 The Principle of Equivalence or Just Compensation**

According to FAO (2008) repayment to those whose land has been taken by the government for the utilization can be in terms of money or being given another land or facilities is key in mandatory acquirement of private land. Due to compulsory acquirement of pieces of land, those affected lose homes, land and their means of production. Payment of those whose land has been taken should be anchored on equality as well as similar. Theoretically in cases where individual owned land are taken by the government, the payment that is given more than the actual land lost this is so to cater for the social and economic. According to the act the payment is done for the

property taken all the structures on the land, termination pay, injurious affection, disruption, distinctive price as well as reimbursements.

It is the responsibility of the provisions of the act, decrees and other pertinent statutory performances to guide the process of valuation of the amount of money to be paid. Techniques of valuation as well as procedures, heads of claims are all specified in the framework. The social-economic expansions for specified nations, developmental necessities, cultural practices as well as utilization of land. According to (2007) the valuation of payment to individuals whose properties are taken for public utilization should meet professional, constitutional, international needs, fairness, sufficient and reasonable value must be achieved

The Kenya Constitution Section 40 3b (i) require full compensation should be done to private owners whose land is taken for public utilization. The repealed Land Acquisition Act Cap 295 under the Schedule Section 1(2) states the factors to be taken into account on matters establish payments while under the Land Act, 2012 these matters are under review as per Section 111(2). In a study conducted by Elliott (1977) indicated that there exist nonentity in any obligatory acquirement laws cited on the degree or yardstick to be utilized in repayment assessment. Out of the abnormal open texture of the regulation repayment unit are left to the law makers or judges to establish. The payment to be given should be fair as per the market worthiness of the properties that is given or taken for the state utilization. The property value is discussed as the cost of a property after discussions amongst the property owner who want to sell a property and a specific individual wants to purchase it. In the case of *Kanini Farm Ltd v. Commissioner of Lands, (High Court Nairobi Land Acquisition Act Appeal No 1 of 1981)*, the it was indicated by the court that the market worthiness as the base for evaluating payment that the seller is ready to sell to a person who needs that land the buyer may be a risk-taker but a rational one.

In determination of amount of money to be paid to the land owners and land occupants it vital to respect the principle of equality because the land owners should neither made rich nor made destitute due to mandatory land acquirement. In cases where compensation is done in terms of Financial payments on the basis of equivalence of only the piece of land take for the purposes of public utilization this puts the affected owners in position as they were before acquisition of land due to other properties lost and the finances given cannot replace the properties lost. To

ensure that the compensation granted to owners affected numerous states got laws providing provisions for additional payments. Based on the fact that mandatory land acquirement purposes to support developmental growth there exists arguments that payment must make the lives of those affected better. The worthiness of land rights are used as the basis for the calculation of the compensation to be made or other related costs. Equivalent payment establishment is not easy when the land markets are absent or not strong, in scenarios where the land is owned by the community or when individuals have right to utilize land. Numerous issues may lead to unsatisfactory payment. Legislature is required to make sure fairness in establishing valuations as well as reimbursement. The state interest should ensure low cost is kept as low as possible this is done in relation to ensure equal payment is done to enable the affected people continue with their live after losing their land.

According to Eaton (1995) land owners whose land has been taken for public utilization in United States receive compensation. The situation in the United Kingdom is anchored on the principle of worthiness to the possessor or the principle of equivalence. The principle of equivalence according to Scott LJ in *Horn v Sunderland Corporation (1941)* is “*the right of the owner to be, so far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains the right to receive a money payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater.*” The payments to be done to the affected individuals should be based on the compensation principle based on market value altogether with other damages suffered by the plaintiff. In Australia and other commonwealth nations and regions embraces the compensation principle (Denyer-Green, 1994).

### **2.10.1 Determining Valuation and Compensation**

According to most laws on compulsory acquisition is broadly defined as equivalent compensation in consideration to the market worthiness or “just compensation”. Payment to individuals whose land is of public interest payments must be done to those whose land has been attained for construction as well as making the land acquired better, reduction in worthiness of land due to land acquirement, for all conflicts or other damages to the source of income of the owners or those occupying instigated by the attainment and dispossession. In cases where by the payment is based on market value legislature must explicitly indicate their understanding of



market value. A mutual methodology purposes to establish the market value by the “willing buyer, willing seller” model, i.e. Finances to be issued are supposed to be that of a willing buyer would pay a willing seller on the open market where various choices exist. The lawmakers must ,make sure that an evaluation should make sure the value changes of the properties emanating from the mandatory acquirement of land is not included.

In regions where land markets are not strong, evaluation of market value of a piece of land is not easy. Considerations of multifaceted issues are vital. Categorization of land into industrial/commercial land, residential or agrarian land affects the value of parcels of land. In cases where by the owner of land is utilizing the land in a way that is not in the code of regulations. How will the compensation be determined is it on the basis of the current utilization or on the other allowed utilization. Establishment of the value of the land utilization is by the highest value allowed utilization (the “hope” value) is embraced in the determination of market value of the land in. numerous land repayment laws permits compensation of the land on foundation that more worth utilization of the land could be adopted if mandatory acquisition had not been effected. When such cases arise there exists an explicit provision that deals with the expectations that are made permission to development for a better utilization than the existing one.

In some scenarios the private land owners are able to illustrate that some people are ready to buy the land for a price that is higher than the market value of the land example a neighbor may be interested with the land. In such incidences the valuation of the value of the land is gotten by including the extra value if there exist such offers in evaluation of compensation. Nonetheless cautiousness should be embraced by requesting for evidences to shun incidences whereby land owners falsely give a price that is exaggerated to make the price of land high. According to FAO (2008), market worthiness establishment cannot be possible in such cases. Other methodologies that may be based on the modes of production of a state the characteristics of the parcel of the land to be acquired as well as the nature of the land rights.

The worthiness of the payments to be made must comprise the value of making the land better. When mandatory acquirement of land is effected disturbances to the land owners affect their livelihoods methods. This may be an outcome of private owners losing crop cultivation grounds, traders losing their business as well as society losing it cultural lands. In cases where people’s

way of life is affected payment of disruption or disturbance should be done to the affected people. Extra payment for individual distress is allowed that the land owner may not be willing to give the land for public interest such individuals might be have lean on the land emotionally, spiritually, in culture which might all be affected by compulsory acquirement of their land. A practical method of establishing when repayments are equivalent and suitable to take account of all the numerous expenses as a result of mandatory acquirement of land as well as to enact that the compensation should include various types of the expenses. Law marking must cover unexpected costs in scenarios where repudiating payments can create inequalities. General principles should be started as we as ascertain an extensive and varied list of entitled expenditures must be considered in cases where additional factors are experienced.

According to Muriithi (2006) there exist three general agreed on techniques of calculating fair market worthiness of a piece of land. The techniques include the market data methodology, the capitalization of income methodology and the depreciated reproduction cost methodology.

#### **(a) Sales Comparison or Market Data Approach**

Comparing of sale prices or market information are perceived as the best method of establishing the market cost for commercial, residential and industrial land or direct sales comparison approach is generally regarded as the most reliable method of determining fair market value for unimproved residential, commercial as well as industrial land. This technique is embraced in to valuate housing, commercial and industrial properties. The properties got active markets many where by real estate dealings motivated by forces at work in the open market might be witnessed, examined and equated to the possessions in question. A order or stable size of sales of ordinary commercial and residential properties similar in prerequisites to the subject property, in relative closeness to the subject and sensibly near the taking (date of valuation) in point of time is usually acknowledged as an precise replication of how the marketplace would have retorted had the possessions been obtainable for sale to the hypothetical individual ready to buy by the hypothetical willing seller.

#### **(b) The Income Approach**

In some instances the owner of properties generating income may have bought the land as an asset with an aim of receiving more returns on the investment that could be made available for

all other possible investments. The income got from the investment is used to measure the return. In real estate rent is used to establish the amount of money made by the property owner. All other payments made by the tenants to the property owner are referred to as gross income (e.g., real estate tax apportionment, insurance and utilities, etc.). Net income is gross income (or gross rent) less finances that are a predicted or anticipated opportunity factor and for expenditures experienced by the proprietor in the operation of the property. Determination of the value of the property can be carried out in situations where the rate at which the income was being made, known or could be established. In real estate the rate of return is referred to as capitalization rate. The source of finances changes the total working revenue into a signal of worth by capitalization.

### **(c) The Cost Approach**

The accepted evaluation value of special purpose possessions, properties which are not normally bought and sold on the open market cost refers to an agreed on degree of value. Though, value is not cost. Cost of reproduction or of replacement can be established value once each is sufficiently reduced for physical, purpose as well as financial. Cost of repair, cost to cure, cost of latest expansions as well as probable cost of possible enhancements as part of a judgment of fiscal viability discovers its route hooked on countless circumstances (Muriithi, 2006).

## **2.11 Public Participation**

According to Creighton (2005) public participation refers to process that enables public matters, needs and values included in the national as well as corporate decision making Li et al. (2012) indicates that public participation in the planning and design of main communal facilities and construction projects is vital for success. Deininger et al (2011) stated that public participation predominantly acquisition of pieces of land is guaranteed by law most of the cases it always not clear on how the inputs are included in the decision-making. According to Li et al. (2012) public involvement entails community changing needs rapid economic growth as well as increasing burdens for sustainable development. In the process of planning and implementation of project it is necessary to highlight the needs of the persons affected and matters cornering various stake holders in order to come to agreement on the objectives of the project Atkin and Skitmore, (2008).

## **2.12 Impact and Effects of Wayleave Acquisition on Private Land Rights**

Literature review has documented the following as the main negative effects of wayleave acquisition process on private land rights, whether primary or secondary rights to land. These include:

### **1. Breach of the peaceful enjoyment of private property**

The land laws acknowledges that private land owners got the right own land, have the right to unaffected state of the possessions and to rational well-being and accessibility in its utilization. When involuntary settlement comes through the same legal provisions, it breaches the peaceful enjoyment of the primary and secondary rights of the project affected persons.

### **2. Reduced tenure security**

This is considered to be one of the main challenges where the processes of land acquisition are poorly designed leading to human, economic, social and political costs. Project affected persons are exposed to lose their rights in land, and the remaining land may not be of any economic use due to severance.

### **3. Effect on social attachment to the ancestral land**

Acquisition process of power wayleave and like any other compulsory land acquisition by the government deprives the land owners the social attachment to their land. Land in many communities is considered sacred, a commodity that is inherited and that should be preserved for the next generations. Involuntary resettlement forces land owners to relocate from their ancestral land.

### **4. Economic impact**

Wayleave acquisition processes make project affected persons worse off economically. If the process of acquisition is not well designed, the project affected persons are at risk of being economically worse off. This is also brought about by unfair compensation rates, impact of the power line on the land parcels especially where land parcel is disjointed into portions that cannot be of any economic use and financial costs of relocation and involuntary resettlement.

## **5. Reduced investments**

This is as a result of weakened land markets and reduced tenure security emanating from the poorly designed wayleave acquisition process.

### **2.12.1 Socio-Economic Impacts of Wayleave Acquisition**

According to Datta et al. (2009) land acquirement for construction of public infrastructure are appreciated by making sure that community benefit from their development and the state are constructing more infrastructure to make sure there is viable delivery of the facilities to the people. Additionally acquirement of private owned land makes utilization of land, possession and developments of the land (Syagga & Olima, 1996). Trade thrive, new livelihoods, increased job opportunities, business opportunities are triggered by establishment or value addition on the existing facilities (Datta et al.,2009).

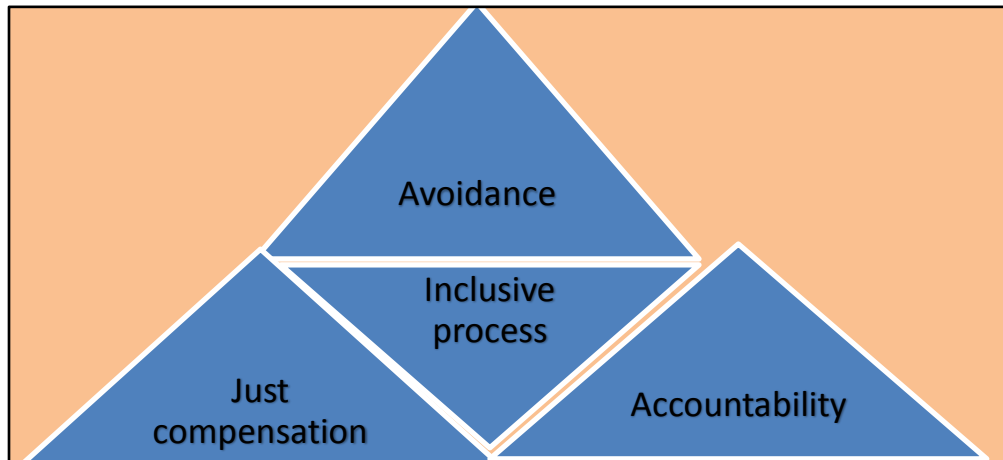
Nonetheless acquisition of private land for public utilization may lead to migration of persons and lose of properties including land Azuela and Herrera (2009). It evident that acquisition of land got economic as well as social effects based on the piece of land to be acquired(Syagga & Olima,1996). As a result of private land being acquired for public utilization affected people might be deprived from their usual way of life.

### **2.13 Conceptual Framework**

We have reviewed literature on the rights to private property, the four elements of eminent domain and the history and procedure of land acquisition especially in Kenya. The chapter has also discussed legal instruments on compulsory acquisition, involuntary settlement policies on land acquisition and also pointed out the reasons hindering land acquisition laws from meeting the globally accepted best practice.

This section on conceptual framework documents the working principles for a good compulsory land acquisition process. The principles provide a good guide for people who work in land administration and all those with an interest in land, land tenure and their governance. These principles explain what constitutes good practice in this area and are likely to be of most importance for use in countries that are seeking to understand land acquisition and to improve their own legislation and procedures of compulsory purchase and compensation on land and wayleaves for infrastructural developments.

## 2.14.1 WORKING PRINCIPLES ON USE OF EMINENT DOMAIN



**Chart 2.1 Working principles on use of eminent domain**

### **Principle No. 1: Avoidance (of use of Eminent Domain)**

Principle No. 1 requires alternative analysis similar to analysis needed for environmental impact analysis that takes in account considers all reasonable substitutions to utilization of distinguished domain taking into account the substitute methods/tools suitable including:

- (a) Alternative design of site plan, or location of road or infrastructure facility
- (b) Acquisition through “voluntary” sale
- (c) Adaptive reuse
- (d) Tax Increment Financing (TIF)
- (e) Tax Incentives

Utilization of eminent domain is for improvement the owner of the property should granted opportunity to rehabilitate property or take part in expansion.

Eminent domain is supposed to be a means of “last resort.” To ensure there is communal benefit in various nations the concerned environment monitoring organizations makes available prototypes that got meaningful applicability to such a significant subject. Optional analysis may make the national good faith thoughtfulness concerning all the options to the utilization of eminent domain. In Kenya this principle is normally violates some projects like road designs are

normally done in Nairobi using Registry Index Maps without taking into consideration the situation on the ground.

### **Principle No. 2: Inclusive Process**

Organize communal hearings on the avoidance analysis (needed by Working Principle No. 1). After public hearings on the circumvention breakdown of anticipated utilization of eminent domain, utilization of the eminent domain is established by the national to select optional, embrace communal hearing(s) concerning any amendments made to the plan for the taking of private property. Require legislative body approval of use of eminent plan by super majority.

One of the oppositions of property-owners whose possessions are made the target of an eminent domain action is that the processes is needed by the state law are not satisfactory to make sure significant opportunities for the private proprietor's as well as citizens commonly to be heard. Granting opportunities to the communal hearing process to the process of revising the fallouts of the evasion analysis before an eminent domain strategy is officially suggested there is a superior chance for landowners and citizens to make sure that the government will either circumvent the utilization of eminent domain in total, or carry out a revision its plan to reduce adoption of the eminent domain. This principle is typically functional in Kenya even though the lawmaker mainly the legislators impedes the procedures for political motives.

### **Principle No. 3: (Truly) Just Compensation**

World bank policies argue that involuntary settlements payments is supposed to take account of fair market value, attorney's fees, impermanent housing, revenue lost from the business, redundancy pay as well as transfer charges. Economic establishment for eminent domain developments indicates that repayment should include reasonable percentage of the value property taken for utilization by eminent domain.

### **Principle No. 4: (Post Taking) Accountability**

Finally, principle No.4 indicates that it compulsory to achieve the national benefits suggested in the proposal for making a private property public. Mechanisms to ensure that the enactment of eminent domain benefits the public must be considered.

### **Rationale for Principle:**

Eminent domains utilization has potential for misuse by the government refusal to put in place regulations to make sure that the community benefits are achieved. For the domain to be valid the State laws needs these mechanisms (whether by contract, public retention of fee interest or other method) be incorporated in the implementation of eminent domain to be valid. The other technique can be to make available the anticipated private properties transfer the properties are not developed according to the detailed communal need for taking private property for public utilization with the complementary requirement to carry out the specified public reasons for taking the land (Muriithi, 2010). In the republic of Kenya this principle is well protected by the courts although in the recent past some workers in ministry of land have illegally allocated themselves parcels of land set aside for public utilization.

### **2.14 Summary**

In Kenya, just like other countries, privileges to private property are enshrined in the Constitution. In the process of delivering of communal goods, the state finds it vital to acquire private property as from the colonial times. Private property rights in most countries are usually protected by the Constitution or the bill of rights of those states. This is to ensure that owners of properties are not deprived off their property by the state or any state organ. Anybody who desires to use or acquire an interest in a private property must have the consent of the owner. The government in the process of provisions of public goods finds itself in a situation desiring to take private property. In order to discourage individuals from hindering the government from accessing land for public purpose, statutes have been legislated to ensure that land is available for government use at any time the need arise. These laws permits the government to acquire from the landowners without their consent and they are prudently crafted to protect property owners against been deprived of their property arbitrary. In many states, for any compulsory acquisition to take place there must be a private property which must be taken for public purposes and with just compensation.

The explanations, procedure, philosophies of reimbursement as well as dispute resolution mechanisms are well-defined in our laws. Nevertheless, matters regarding adequacy of reimbursement amount procedure and process as seen from the few court cases discussed



previously in the context of literature review. This has confirmed that our laws have not fully addressed the problem arising from land acquisition process. The matter has now been left to the Nation Land Commission which has been given powers to recommend standards and guidelines to be followed by the acquiring authorities in land acquisition under Section 107 (2) and to make rules to adjust the assessment of just reimbursement under Section 111 (1) of the Land Act, 2012.

## **CHAPTER THREE**

### **CASE STUDY AND RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This section outlines the research methodology that was used in gathering and analyzing the data as well as brief background of the study area and the acquiring government authority. The information is meant to highlight important findings about the acquiring authority and effects of land and way leave acquisition by the Kenya Electricity Transmission Company (KETRACO) on private land ownership that relate to acquisition of power way-leave corridors (rights of way) across the country, with specific focus on the Kisii – Awendo 132Kv Power Transmission Line as the study area or project. It also deals with the description of the research design, study population, instruments of data collection and procedure of data collection and data analysis.

#### **3.2 Case Study Area: Kisii – Awendo 132kv Power Transimission Line**

##### **3.2.1 Brief introduction, description and physical scope of the study project/area**

Kenya Electricity Transmission Company (KETRACO) is 100% Government possessed and being a state corporation, it is controlled under the State Corporations Act, Cap 446. Planning, designing, safeguarding electricity transmission lines and substations are the main responsibilities of KETRACO. The voltage rating of the transmission lines include 132kV, 220kV, 400kV and 500kV. In response to this mandate, KETRACO has implemented a power transmission line within Kisii - Awendo, among other projects across the country. This purposed to make the performance of the West Kenya network to meet the rising load growth and achieve countries vision objectives.

The power transmission project of study is approximately 44Km long. This 132Kv single circuit transmission line has taken off from the existing 132/33kV Kisii substation and expected to terminate at the new proposed 132/33 Awendo substation. The width for the right of way (Row) is 30 Metres. The project started in 2012 and was expected to end by June 2017.

A Resettlement Action Plan (RAP) for Ketraco has scrutinized all legitimate and regulatory outlines and grievance redress processes for the Persons affected by the Project (PAPs), social economic outlines in the project areas, recognized areas that needs relocation and planned pertinent repayments and prerogatives.

The choice of Kisii – Awendo Transmission Line as the study area sought to determine the way leave acquisition procedures, impact on private land rights and challenges encountered by Kenya Electricity Transmission Company and the Persons affected by the project (PAPs) when the company is acquiring way leaves in its electricity transmission projects.

### **3.2.2 Project Transmission Line Route**

The power line starts at Kisii sustation situated aout one kilometrer from Kisii own, Nyaribari location, Keumbu sub location. The substation is accessible via Kisii -Sotik road. It only 50m from the road and ends at the sustation located 44 km from kisii town withinthe Sony Sugar Company compoud.

### **3.2.3 Kisii – Rongo Section (Background information)**

The locale is extremely populated. People have Settled within a radius of 500 metres away from the site. Around the substation there are homes for families who maily cultivate crops and keep animal. The common categories of crops grown are maize, banana, beans and sugar cane. Eucalyptus trees are also grown around the region. There are some powerlines There are existing power lines crisscrossing the homesteads. The volcanic soils around are very productive

According to the Resettlement Action and Framework Plan by Ketraco (2011), the line passes through Kisii–Sotik road and crosses brick works, homesteads and roads that are not tarmacked on the Southern part of Kisii town, passing through maize farms, beans, expansive tea and coffee plantations and eucalyptus trees. It also crosses River Kuja (Gucha) and a number of streams within the region to Nyakekogi market in Basii chache location. Here the main socio-economic activity of the residents is growing food crops such as maize, beans and Bananas. Tea is the major cash crop grown due to an existing Kahau tea factory.

The power transmission goes through Nyakekogi primary school on the correct of the current 33 Kv line it also passes together through the current 33kV line that is a few metres from the tarmac road. The transmission goes through Kilgoris Road Itumbe market. The line also goes through south Mugirango on the lower side of Nyabigena secondary school about 1 km from the corridor. Cultivation of Sugar cane is the main venture in South Mugirango. the tress in Omugwa are affected by the line that passes through the school compound. The line also affects some part of Omugwa market.

### **3.2.4 Rongo -Awendo Section**

#### **Background information**

In Rongo the transmission line circumvented schools and main towns and passes through homes around Rongo. The terrain around Rongo got a lot of hills. The population around the region is high and majority of the residents practices mixed farming.

The transmission line passes through people homes to western centre of ranen centre. The line goes through Sony Sugar plantation nuclear farms. The sony sugar sewerage treatment plant and sony sugar farms at about 500m.

#### **3.2.5 Physical Environment and Climatic Features**

Kisii County is located on the highland equatorial climate and the rainfall throughout the year it also worth to note that two main rainy seasons that (March to May as well as October to November). The average rainfall is over 1500 mm and is quite reliable, serving to sustain cash crops (such as coffee, tea and pyrethrum) and subsistence crops (maize, beans, millet and potatoes). The ecological conditions ranges between 10 °C to 31°C.

The terrain is very mountainous with some sudden elevation rise and fall but with elevations decreasing from high point at Kisii towards lower land at Rongo and onwards towards Awendo. The soils are mostly extremely productive volcanic henceforth promising for a wide range of crops.

#### **3.2.6 Social characteristics**

##### **Ethnic distribution**

Even though various communities live sideways the intended power transmission route. They are not deliberated as susceptible racial groups. Majority of the tribes along the project are the Gusii and Luos.

#### **3.2.7 Land use**

According to the Resettlement Action and Framework Plan (2011), the power line will pass through several subcounties that is Rongo, Gucha, and Kisii Central. As result of high population density the big part of the land is utilized in animal rearing and crop cultivation. Cultivation of crops occupies 52.7% of the land while 46.8 % is utilized in animal keeping. The commonly crops cultivated include sugar cane, bananas, avocado, beans , coffee, tea , millet and sorghum. Most of the farmers depends on rain fall in cultivation of crops.

### **3.3 Research Methodology**

This subsection focus on the methodology embraced and discusses the research design, sampling techniques, data collection tools and procedures.

#### **3.3.1 Research design and Data collection**

According to Kothari (2004) allude to Selltiz, et al (1962) states that research design is the organization of settings for gathering and carrying out analysis of the data in a style that purposes to join together significance to the study purpose with economy in the process. It is the conceptual structure in which study is carried out it entails the outline for gathering, quantifying and analyzing the data gathered.

A design refers to a roadmap from which the study project is conducted. The suitability of a research design depends on the specific objectives of the study and the data needed. This research requires an amalgamation of both quantitative and qualitative approaches of carrying out a research. Denzin (1970) proposed utilization of triangulation method in carrying out a research. Hart (1987) correspondingly stated the suitability utilization of quantitative and qualitative research designs in researches in social sciences. Based on the above researcher's suggestions it evident that combination of quantitative and qualitative research design is acceptable.

Approach used in collection of primary data can be categorized into; observation approach and communication approaches. Observation approach refers to monitoring of behavioral and non-behavioral undertakings and conditions such as paying attention, reading, visual data gathering, sniffing and touching. The communication approach entails surveying people and recording their answers for analysis. It among the most effective methods o is the most reliable method of learning about opinions, attitudes, motivations, intentions and expectations. It is the most effective method for gathering survey data. Information conveyance technic is an efficient method eliciting matters that are wholly internal to the participant's as the most competent individual to make available such information (Cooper and Schindler, 2003). This study therefore used cross-sectional survey design by getting first-hand information from the victims of the way leave acquisition whereby there responded to the questionnaires for our eventual analysis and in respect to the research objectives.

According to Kothari (1990) conducting investigation using a case study is premeditated as a form of qualitative analysis and encompasses careful and complete opinion of the social unit that can be individual, family, an institution, a cultural group or the entire community. The study purposes to gather data that defines the present phenomenon by questioning persons concerning their views, morals and assertiveness. This research will focus on Kenya Electricity Transmission Company Limited (KETRACO) on Kisii - Awendo Transmission Line.

A reconnaissance visit was conducted before the research began in an effort to scan and familiarize with the geographic area of Kisii–Awendo where the Power Transmission Line traverses. This enabled the researcher to get a general overview and structure of the Project affected Persons (PAPs), the status and progress of the project implementation in regard to the way leave acquisition, land compensation for limited use on land, as well as the relocation Act Plan by the acquiring authority (KETRACO). The bulk of the data was obtained using questionnaires, which were mainly researcher-administered owed to the understanding that most of the respondents could not have easily interpreted the questions due to their low educational backgrounds.

Mugenda and Mugenda (1999) stated that while administering questionnaires a response rate of 50 per cent is adequate for analysis and reporting, 60 per cent is a good response while 70 per cent is very good. The researcher-administered questionnaires were found appropriate and a fast and effective method since it ensured a very good response; and avoided the tussle of having to trace the way back to the specific Project affected Persons (PAPs), issued with the questionnaires. It is only few cases where questionnaires were left to Project affected Persons who could interpret and comprehend the questions in their own without the researcher's assistance; and efforts were therefore made to ensure that the questionnaires are collected within the agreed time period. The data collected was analyzed both quantitatively and qualitatively. Quantitative data was presented in the form of tables, and charts while qualitative data was presented in the form of prose text.

### **3.3.2 Study population**

The study targeted Project affected Persons (PAPs) whose lands were affected by the power transmission line. The researcher concentrated on private land parcels traversed by the power

line, and excluded any public land for purposes of this study research since the impact of the project on public land is distinct from the impacts and challenges encountered on private land rights. The researcher also targeted the Project Implementation Team (PIT), who are the staff of the acquiring authority and who would provide critical information on the status and progress of the power project, challenges encountered in implementation and unearthing the procedures of land and way-leave compensation as per the institution's policy and legal instruments. The population size that formed the basis for sampling was defined to include Project affected Persons, who enjoyed both primary and secondary rights to the affected land. The total study population was 975 No. of Project Affected Persons (PAPs).

### **3.3.3 Sampling and sample size**

Sampling refers to the process of selecting a number of respondents chosen to take part in a study representing the bigger population (Mugenda & Mugenda, 1999) The technique was embraced because, as earlier stated, the area is quite wide and could not be possible to assume an rigorous research if the entire population was chosen given the limitations of time and resources; and also owing to the fact that the area is more or less similar, thus the outcomes achieved can definitely be generated to the whole area. The data sought in this exercise included but not limited to:

1. The land or way leaves acquisition process and impact on private land rights.
2. Perceptions of the project affected persons (PAPs) on the extent to which the acquisition process and compensation practices are “just” and “satisfactory”.
3. Challenges encountered by both the acquiring authority and the project affected persons in acquisition of power wayleaves.

Based on the type of information needed as above stated, a close contact with the project affected persons (PAPs) was of dominant significance since such data gathered can be observation could visual observation.

The sample size should never be too small or too large that is it should be optimum in order to meet the needed reliability, effectiveness, flexibility as well as representativeness (Mugenda & Mugenda, 1999). The following are the key factors to be taken account of when selecting the sample size that is population size, time and budget challenges. Given the extensive area and length of the Kisii-Awendo Power Line (44Km), administration of a pre-test questionnaires was

performed which revealed that most project affected persons were willing to share a lot of information and majority shared similar opinions hence the researcher had to take a considerable amount of time.

The Kisii-Awendo Transmission Line traversed 8 No. land registration sections across a distance of 44 Kilometres. Therefore, time and budget constraints could not allow the researcher to study all the project affected persons (PAPs), covering an area of 44 Kilometers that traversed through Kisii and Migori Counties. For this study, both stratified and random sampling were used across the 8 No. land registration sections (Strata) to represent the study population. This was also meant to guard against collecting biased data, since one registration section could differ from another in critical aspects such as land valuation, parcel sizes, cultural aspects of the community, among other features that could have distorted accuracy of the data collected.

According to the Resettlement Action Plan (2011) by the Kenya Electricity Transmission Company, Kisii - Awendo Transmission Line has a total population of 975 no. Project affected Persons. A sample size from this population was designed through quota sampling across all 8 No. land registration sections that were affected by the power line. The total population (975 Project affected Persons) was used as the basis (population size) for framing the sample size.

The sample size was calculated using the formula:

$$n = \frac{Z^2 pqN}{e^2 (N-1) + Z^2 pq}$$

(Chava and Nachmias, 1996)

Where:

N = Population size

n = Sample size

p = Sample population estimated to have characteristics being measured. Assume a 95% confidence level of the target population.

q = 1-p

e = Acceptable error (e=0.05, since the estimated should be 5% of the true value).

Z = the standard normal deviate at the required confidence level = 1.96



$$n = \frac{1.96^2 * 0.95 * (1-0.95) * 975}{0.05^2 * (975-1) + 1.96^2 * 0.95 * (1-0.95)} = 68 \text{ No. Project affected persons.}$$

The researcher spread the sample size of 68 No. Project affected Persons equally across the 8 No. land registration sections affected by the Kisii - Awendo Transmission Line. Sixty (68) questionnaires were allocated to project affected persons in each land registration section of the study population. The structure of the sample size is shown below.

**Table 3.1: The structure of the sample size**

Land Registration Section	County	Sample Size
Nyaribari/Keumbu	Kisii	8
Bonyamoyio/Bosigisa/Boburia	Kisii	9
Bassi/Bogetaorio II	Kisii	8
Majoge Chache/Kanyimbo	Kisii	9
Majoge Chache/Boochi	Kisii	8
South Mugirango/Bogetenga	Kisii	9
Kamagambo/Kabuoro/Kanyajuok	Migori	8
Kamagambo/Kamasoga	Migori	9
<b>TOTAL</b>		<b>68</b>

Source: Field survey, 2017.

### 3.3.4 Data collection instruments

#### 3.3.4.1 Primary Data

The researcher used research administration of questionnaires to collect data from the respondents. It was mainly researcher-administered (questionnaire-guided-interview) since help was given to respondents to clarify the questions. The researcher employed and heavily relied on local research assistants who on several occasions had to interpret the research questions into the local dialect (Gusii and Dholuo) for easier comprehension. Utilization of questionnaires is a general technique of data collection, and Gall (1996) states that it is the most convenient and appropriate for statistical and surveys. A total of 68 No. questionnaires were administered and

distributed across the 8 No. land registration sections traversed by the Kisii - Awendo power transmission line and on which the study population (project affected persons) lived.

Administration of research tools by the researcher ensured quick and successful response from the targeted population as well as collection of the questionnaires on spot, but for few respondents, who could understand the questions on their own, were left with the questionnaires and collection was done later for their own convenience. The researcher successfully managed to collect 60 questionnaires, which represents 88% of the total questionnaires administered. This high-percent collection was linked to the researcher-administration technique, persistent follow-up and willingness of the project affected persons (PAPs) to participate in this research study. The investigator made sure that the research questionnaire were complemented with a brief introduction so as to elucidate to respondents momentarily about importance of the investigation and pledging them that their answers can be utilized for research purposes only as confidentiality would be observed.

Both structured and open-ended questions were used. The open-ended design proved helpful as it permitted adequacy and freedom of respondents in giving their responses. This helped unveil new aspects which originally were not anticipated to be asked by the researcher but useful to the study. In order to facilitate the above techniques, the researcher made use of communication tools such as the mobile phone to make inquiries, distribute and receive questionnaires. The local research assistants (2 No.) accompanied the researcher in all the trips within the study area. This was appropriate and convenient since we managed to take considerably the minimum time in executing the research fieldwork.

Apart from administering the questionnaires to the Project Affected Persons, the main respondent's dialogue and questionnaires were carried out by KETRACO Project Implementation Team. The total number of relevant employees who were approached to respond to the questionnaire/interview was 25 professionals categorized as follows:

- Design Engineers - 4 No.
- Land Economists - 4 No.
- Project Surveyors - 4 No.
- Project Managers - 3 No.
- Resident Engineers- 3 No.
- Legal Officers - 4 No.
- Accountants - 3 No.

They too supplied valuable information that aided in this research though it was rather difficult to quantify and analyze this information in the same way.

#### **3.3.4.2 Secondary data**

Literature review was the main source of secondary data and its outcome is the subject of the entire chapter two and some few parts of the other chapters. These included information from text books, government publications, journals, unpublished research thesis and the internet.

#### **3.3.5 Description of the questionnaire**

In primary data collection, a questionnaire (researcher-administered) was used for validity and reliability since the interview-guided questionnaire facilitated help to the respondents in clarifying and comprehending the research questions. The researcher-administration technique also ensured prompt and successful response from the targeted population as well as prompt collection of the questionnaires thus saving time and costs of the research. Two sets of questionnaires, designed in line with the main objectives of this study *“to examine land and wayleave acquisition challenges on infrastructure development in Kenya”*, were administered. One set was administered to project affected persons (PAPs), who in this case are the persons enjoying either primary or secondary rights to private land affected by the power transmission line.

As earlier mentioned, the questionnaires were researcher-administered, with the objective of confronting any difficulties by the respondents in understanding the contents of the questionnaire. All the questions in the questionnaire were kept simple and precise to avoid unnecessary information and to enable respondents to understand the contents. Some details captured in this questionnaire included the name(s) of the respondent (optional), the land/parcel number, age and level of education of the respondent. The questions asked in this questionnaire were structured or close-ended and related to mode of knowledge of the power line project, the processes they encountered with KETRACO officials, challenges they encountered during the wayleave acquisition, the project affected persons' opinions on improving the acquisition processes, impacts of the land and wayleave acquisition, the persons' perception on satisfaction by the process and also what they would consider as satisfactory compensation.

The other set of questionnaire was designed for the project implementation team and in particular the KETRACO officers. It captured questions regarding to the status or progress of the power transmission line, the percentage of completion of the project, challenges behind the status and channels of informing or sensitizing the project affected persons, the wayleave acquisition and compensation procedures by the Kenya Electricity Transmission Company, and all challenges encountered ranging from legal, social, political, economic and environmental. The questionnaire also gives room for respondents to express mitigation measures that would be employed to curb the highlighted challenges faced by the acquiring authorities and how the Kenya Electricity Transmission Company addresses all negative impacts as a result of way leave acquisition process.

### **3.3.6 Data presentation and analysis**

Information gathered was processed continuously during data collection period and after. The data gathered was recorded in summary sheets and notebooks. The data was presented thematically as per the study objectives. Frequency distribution tables were used to present the analyzed descriptive data. The Frequencies were expressed in percentage terms so that data could be easily comparable and inferences easily drawn. To eliminate errors, editing was done after every data collection. Extensive analysis employed entailed review of published works, documents presented, journals, among other materials. Relevant information as far as the findings are concerned were included in tables and analyzed, meaning that both qualitative and quantitative methods were applied.

### **3.4 Summary**

This chapter is an overview of the study area, and an in-depth description of the data collection methodology. The power transmission project of study is Kisii –Awendo Power Transmission Line which is approximately 44Km long. This 132Kv single circuit transmission line has taken off from the existing 132/33kV Kisii substation and expected to terminate at the new proposed 132/33 Awendo substation. The bulk of the data was obtained using questionnaires, which were mainly researcher-administered. The researcher-administered questionnaires were found appropriate and a fast and effective method since it ensured a very good response; and avoided the tussle of having to trace the way back to the specific Project affected Persons (PAPs), issued with the questionnaires.

The sampling technique of the population was anchored on *stratified sampling* where the individuals in the population were divided into Eight (8 No.) Land Registration Sections (Strata). In stratified sampling, it may also be appropriate to choose non-equal sample sizes from each stratum. This was meant to guard against collecting biased data, since one land registration section could differ from another in critical aspects such as land valuation, parcel sizes, cultural aspects of the community, among other features that could have distorted accuracy of the data collected. Stratified sampling is believed to have ensured a more realistic and accurate estimation of the outcomes of Project Affected Persons (PAPs) across the Kisii-Awendo Power Transmission Line, unlike simple random sampling that would over-represent PAPs from say one land registration section. The fact that the sample should be stratified was taken into account at the research design stage. Stratified sampling improves the accuracy and representativeness of the results by reducing sampling bias. Individuals were then selected randomly from each Strata to achieve the sample size allocated to each land registration section.

A total of 68 No. questionnaires were administered and distributed across the 8 No. land registration sections traversed by the Kisii - Awendo power transmission line and on which the study population (project affected persons) lived. The researcher successfully managed to collect 60 questionnaires, which represents 88% of the total questionnaires administered. This high-percent collection was linked to the researcher-administration technique, persistent follow-up and willingness of the project affected persons (PAPs) to participate in this research study.

The subsequent chapter deals with analysis and presentation of the data collected.

## **CHAPTER FOUR**

### **DATA ANALYSIS, PRESENTATION AND INTERPRETATION**

#### **4.1 Introduction**

This investigation sought to document the issues encountered during land and wayleave acquisition for infrastructure developments, project affected person's perceptions on acquisition procedures and compensation principles, as well the impacts of wayleave acquisition on private land rights. It will later recommend on the possible ways of averting any identified challenges encountered by either the acquiring authority or the project affected persons during wayleave acquisition, improving the acquisition procedures and compensation policies and improving tenure security on private land. A total of 68 questionnaires were administered but the researcher successfully managed to collect 60 questionnaires (88% response rate), which is a good response rate for generalization purposes.

#### **4.2 Profile of The Land Owners/Project Affected Persons (Paps)**

The participants were requested to state their age and educational level since these facets or socio characteristics are associated with the challenges encountered in wayleave acquisition process, and also have influence on project affected persons' perceptions and opinions on acquisition and compensation procedures and how they impact on private land rights. A summary of the information that was obtained is shown and discussed below.

##### **4.2.1 Age and level of education of the respondents/project affected persons**

The questionnaires required the respondents to specify their gender, age and highest educational qualification with the aim of ascertaining any relationship between these socio characteristics and the challenges of wayleave acquisition, and also to the respondents' opinions or perceptions in regard to the wayleave acquisition and compensation practices. Age clusters were too created for purposes of this research, while the level of education strata was formed to accommodate each and every respondent's highest level of education. These were categorized as persons who have never attended school at all, those whose uppermost level of education was primary school, secondary school, tertiary training and those who attended university.

**Table 4.1: Age structure of the respondents/project affected persons**

Age bracket	No. of respondents	Percentage (%)
Below 25 yrs.	5	8%
26 – 35	16	27%
36 – 45	14	23%
Over 45 yrs.	25	42%
<b>TOTAL</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 2017

From Table 4.1 above, the cluster of below 25 years had few respondents at 8%, and mostly comprised of male respondents of young families who had inherited land from their fathers or cases where parents were deceased and only the surviving children (orphans) were entitled to compensation as a result of the wayleave acquisition.

More respondents were recorded across the other age clusters with the elderly (over 45 years) recording the highest number of project affected persons at 42%. The gender of respondents across these age clusters was even since compensation was mostly based on the user (secondary) land rights and not necessarily the registered owner of the land mostly due to succession issues in these regions and family disputes.

**Table 4.2: Age and level of education cross-tabulation**

Age bracket	Level of Education					TOTAL
	None	Primary	Secondary	Tertiary	University	
Below 25 years	0	0	1	3	1	<b>5</b>
26-35 years	0	2	3	7	4	<b>16</b>
36-45 years	0	4	6	2	2	<b>14</b>
Above 45 years	0	10	11	3	1	<b>25</b>
<b>TOTAL</b>	<b>3</b>	<b>14</b>	<b>19</b>	<b>19</b>	<b>5</b>	<b>60</b>

Source: Field survey, 2017

From Table 4.2 above, low levels of education are recorded with the older age clusters whereby the cluster of over 45 years has majority of respondents who have only attained primary and secondary education as the highest levels, followed by age cluster of 36 to 45 years of age. The younger clusters (below 35 years) have recorded highest number of respondents who have attained a tertiary training or university education.

Illiteracy levels are presumed to contribute to other legal, economic and social challenges of the wayleave acquisition process and therefore it was necessary to profile the education levels of the respondents for purposes of this research study. All project affected persons were subjected to more or less the same effects of wayleave acquisition irrespective of their background, age or education levels. The literacy levels are seen to be a key determinant in the acquisition process by the acquiring authority, especially where the authority is faced with challenges on their part in implementing the processes due to lack of knowledge or awareness, comprehension of the acquisition laws and procedures by project affected persons and also in regard to land owners' obligations in documentation and co-operation throughout the process.

#### **4.2.2 Data on how Project affected persons get to know about acquisition of their land.**

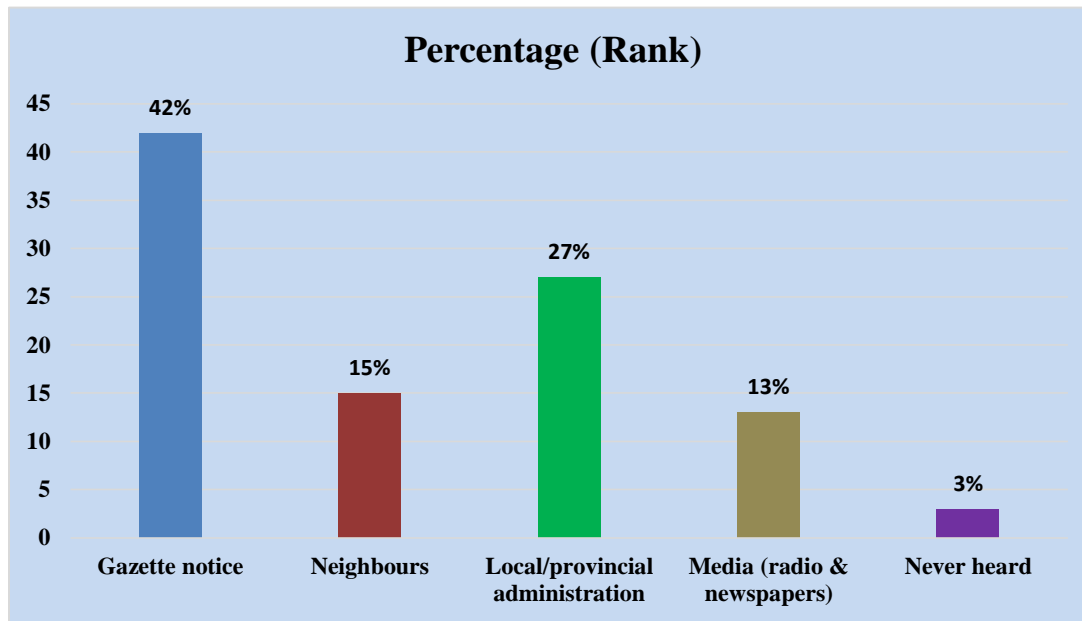
The project affected persons highlighted the avenues through which they managed to get to know about the acquisition of their land for power transmission project. The **Table 4.3** below outlines the responses of the study.

<b>Channel of knowledge</b>	<b>No. of Respondents</b>	<b>Percentage</b>
Gazette notice	25	42%
Neighbours	9	15%
Local/provincial administration	16	27%
Media (Radio/newspapers)	8	13%
Never heard	2	3%
<b>TOTAL</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 2017



**Graph 4.1 Data on Project affected persons and how they get to know about acquisition of their land**



Source: Field survey, 2017

Most (42%) of the respondents (project affected persons) indicated to have learned about the acquisition process through a gazette notice, 27% learnt through the local/provincial administration especially through chiefs' offices and Barazas, 15% learnt the wayleave acquisition through their neighbors while those that learnt through media (radio and newspapers) are 13%.

Surprisingly, 3% of the respondents indicated to have no idea or knowledge of the acquisition yet their names had been gazette for compensations. These (3%) were elderly persons and the research study anticipated to have their kin guide them through the process of acquisition and compensation.

For inclusiveness, mobilization and awareness by use of the local administration and conducting Barazas is a widely- accepted avenue in sensitization on the wayleave acquisition for infrastructure developments. This is because it gives the victims of involuntary resettlement to an opportunity to be guided on the process of acquisition, benefits and challenges expected and how to address them, directly from the representatives of the government or the acquiring authority thereby reducing resistance during project implementation.

### **4.3 Wayleaves acquisition process by Kenya Electricity Transmission Company (Ketraco)**

KETRACO's wayleaves acquisition process is guided by the company's Resettlement Policy Framework (RPF) 2011. This policy framework outlines the process of wayleaves acquisition for the company's transmission lines. The first step in the process of wayleaves acquisition involves way exploration assessment carried out by the KETRACO or appointed experts to locate the route that is short and less expensive observing its effect on the biodiversity.

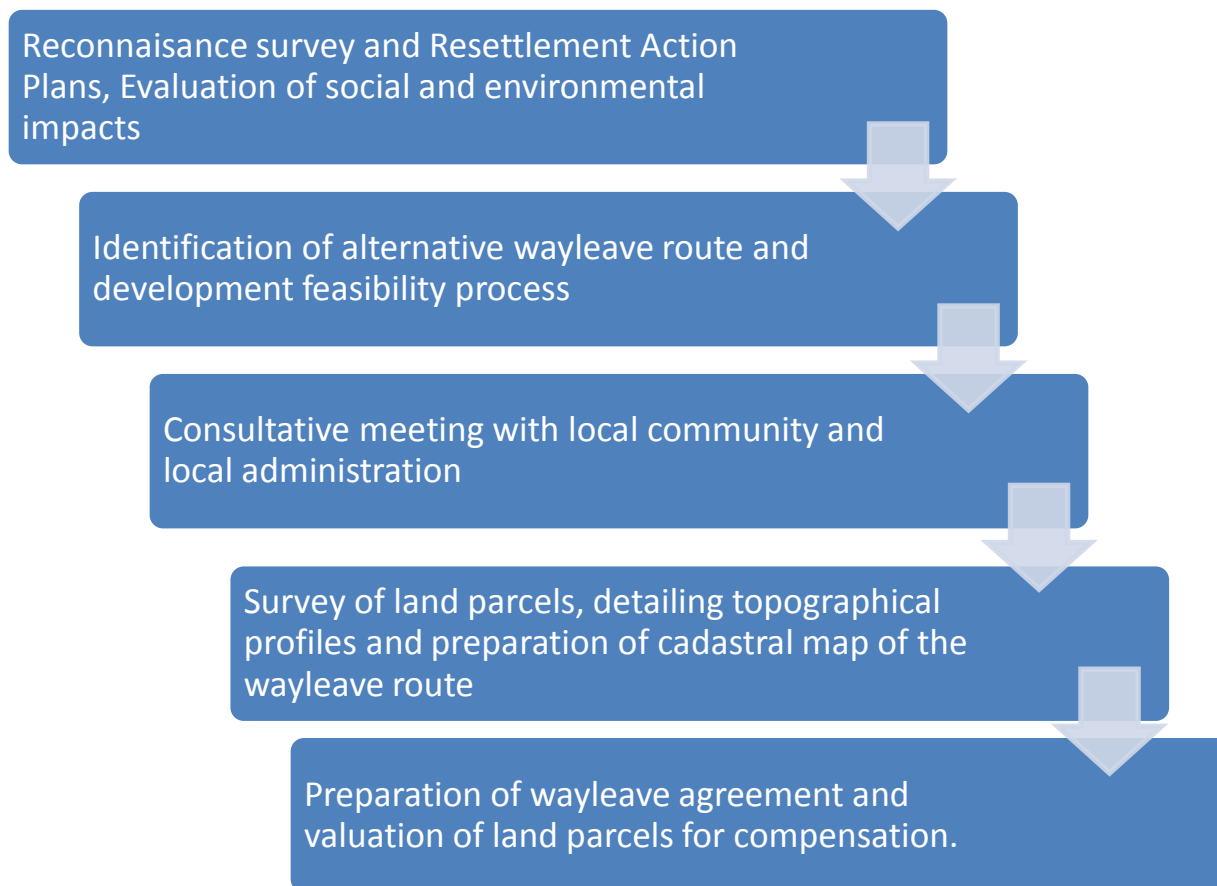
Evaluation of the recognized substitute way leave route aligning on the best route is identified in agreement with company guidelines as well as processes. The developmental viability is carried out with consultation meetings between the KETRACO workers, the resident society and indigenous management. In the meeting the KETRACO appeal for consent to carry out a survey of the area of land and plots that fall inside the wayleave trace. After they have come into an agreement land survey will be approved and surveyors will be sent to take comprehensive geographical conditions of the land and installing pegs where the angle towers will be constructed also take samples of the ground work design. A cadastral map will be drafted by the surveyor indicating the location of the plots using their numbers, proprietorship, size of the land, section of the individual piece of the land to be affected as well as the placement of the towers.

The next step is the preparation of a way leave agreement for the identified parcels of land to be affected by the planned route. Land registry offices are visited by the Surveyors to make analyses of title deeds for the identification of parcels of land held by the registration titles. Parcels of land that are not registered, partitioned, trust lands, leave corridors in existence or well-defined for development as well as natural sensitive habitats will be recognized through the government/district administrative authorities, Clan/-village or settlement chiefs, public announcements in order to be in a position to inform the PAPs dwell in the land that the planned transmission line will pass through their possessions and in the interest of the public development, request access and entry to the land for survey and evaluation by a registered valuer.

The land proprietor after agreement will be reimbursed will give the Kenya Electricity Transmission Company (KETRACO) or its chosen assignees the right of way (RoW) to put towers on or string cables over/under his/her land and promise to abide the encumbrance desires.

The land owners are not supposed to cultivate plants that grow above 12 feet high within the way transmission line trace. KETRACO will not acquire ownership of the land through this right of access/ way leave easement/agreement but only register an encumbrance or easement over each title of the land acquired for power wayleave.

**Chart 4.1 KETRACO’s process of power wayleave acquisition**



Source: Field survey, 2017.

#### **4.3.1 Project Impact Aspect**

The outcomes of project affects indicators to be obtainable as well as assessed including the number and status of land rights authorization making lives better, stakeholders' expectations and interests; benefits expected from the project; job opportunity for the locals; and any other kind of project impact. Primary data on project effects were gathered during the fieldwork through interviews, field observations, as well as from secondary data. On interviewing KETRACO field officers, local administration and the Project affected persons, it emerged that the construction of

the Kisii - Awendo power project created employment opportunities for the local communities who were employed as casual laborers. This improved their socio-economic wellbeing.

From the field observation, the researcher also noted that during the process of wayleave acquisition, some portion or the entire land was taken away for construction of the transmission line. As a result of this acquisition, the remaining portion of the land was either too small to support the residents' livelihood or for any other economic use. The severance or disjointing of the acquired land from the remaining land had adverse economic impacts to the project affected persons. This disjointing of land is diagrammatically illustrated below.



**Photo 4.1 a section of the power wayleave along Kisii - Awendo Transmission Line**

Source: Field survey, 2017.

**Diagram 4.1 How the power transmission line causes severance/disjointing of land parcels**

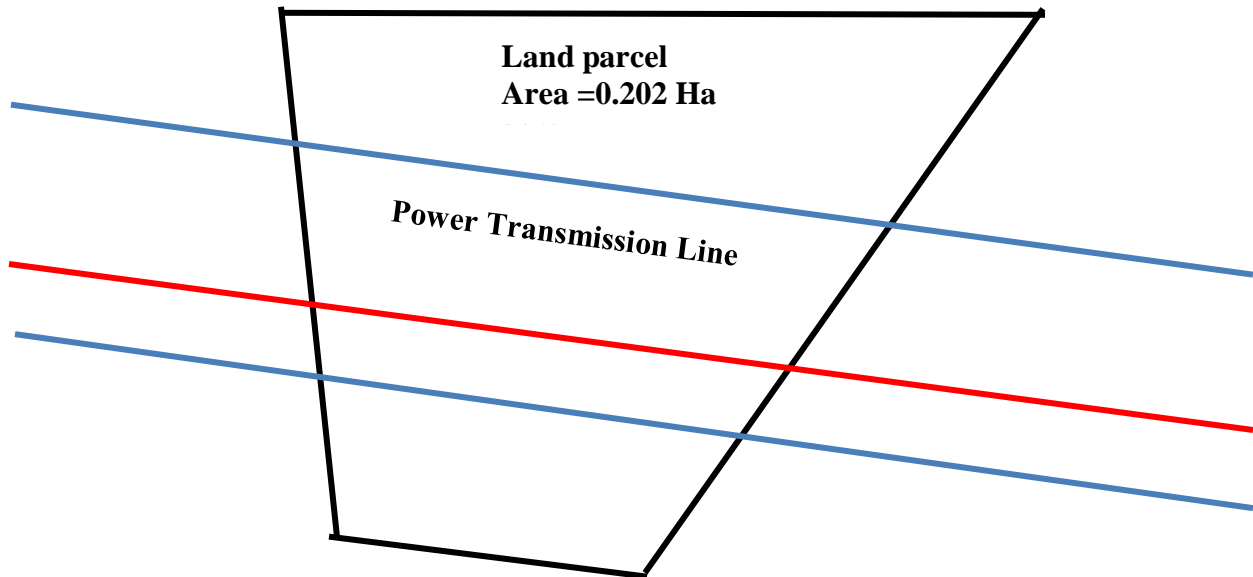


Diagram 4.1 shows how power line traverses through a land parcel of one of the project affected persons with effect of disjointing the parcel into two portions. The use in which the two remaining portions could be put into was dependent on their sizes.

The effect and impact of the power transmission line was dependent on the overall size of the land parcel owned project affected persons. Small parcels were greatly affected compared to large lands.

As described by the affected land owner of the parcel illustrated above (in Diagram 4.1), although he was compensated in cash for the land, the amount was not sufficient since the compensation for land was not 100% compensation for the acquired land. Compensation for lands acquired was at a certain percentage of the trace or site value varying with the size of the land and in accordance with the compensation guidelines for wayleaves used by KETRACO. Land being a scarce commodity within Kisii community, the amount of compensation offered for land was not sufficient to buy an alternative land of same utility and with similar features or services.

On the overall economic significance of the project, the Kisii - Awendo transmission line project being implemented was anticipated to improve the socio-economic status of the residents along the power transmission line. It is expected that upon its completion, the project will significantly

reduce power shortages in Kisii and Migori counties leading to improved economic development of the region. With stable power supply, many potential investors will be attracted to the two counties to set up industries hence employment creation to the local residents. During this research study, some job opportunities had already been created since the project had given priority to the local residents.

#### **4.4 PERCEPTIONS AND OPINIONS OF THE PROJECT AFFECTED PERSONS (PAPs) ON THE WAYLEAVE ACQUISITION AND COMPENSATION PRACTICES**

##### **4.4.1 The extent to which the wayleave acquisition process and compensation practices are termed as “just or fair” and “satisfactory”.**

The findings on the current wayleave acquisition processes as well as activities of the investigation area are accessible grounded on the objectives as presented in chapter one, on the aspects of wayleave acquisition process and procedures as well as detailing the perceptions and opinion of the project affected persons (PAPs) on how the acquisition processes and compensation practices are just, fair and satisfactory.

Private land owners displaced by the project were interviewed on their views concerning the current wayleave acquisition practices conducted by Kenya Electricity Transmission Company (KETRACO). Out of the 60 affected land owners who were interviewed, 46 of them (amounting to 76.7%) expressed their dissatisfaction on the existing wayleave acquisition processes and compensation practices as "unfair" and "unsatisfactory". They gave reasons that the acquisition process was initiated without their consent and that they were not adequately sensitized on the socio-economic and environmental impacts of the project. These dissatisfied persons also indicated that the processes lacked public participation and they received government intimidation into accepting the processes.

From the results of the interviews, it came out clearly that the affected land owners were not satisfied with the amount of compensation for the land and property that were affected by the power wayleaves trace. Majority were of the opinion that they should be paid “whole value” for the wayleaves trace as opposed to the existing practice where KETRACO compensated based on the degree of impact (injury) to the land at a certain percentage of the trace or site value.

This research reveals on interviewing KETRACO wayleaves staff and land economists on the estimation process for reimbursement specified, that the charges were established by independent valuation consultants and availed as the basis for negotiations on compensation amounts depending on the impact of the trace on each land parcel. It was however noted that different valuation consultants gave differing values for the same property. All the land owners interviewed felt that the amount of compensation offered for their land was not “just” since it was based on degree of injury and the size of land. This meant that an individual with bigger land had lower impact hence less compensation compared to an individual with smaller piece even though the affected area (trace acquired) could have been the same in both cases. It was also noted from all respondents that in the process of reimbursement misunderstandings about the amount to be paid emerged but it was solved through negotiations with every affected land owner/project affected person.

The results from secondary and primary data on valuation and compensation procedures used by KETRACO is based on section 148 (1) of the Land Act 2012. This section of the Act points out reimbursement should to all individuals for the utilization of land that the individual owns or occupies with respect with the wayleave in additional to the reimbursement for the utilization of land losses experienced like destruction of tress, plants and structures with respect to the private owner will be quantified by a professional quantity surveyor. The indicators of reimbursement process used in this included payment of private owners impacted by the process, category of reimbursement, impartiality and prompt payments of reimbursement, transparent valuation procedures, techniques used to assess payment, rates, and presentation of the information to the landowners.

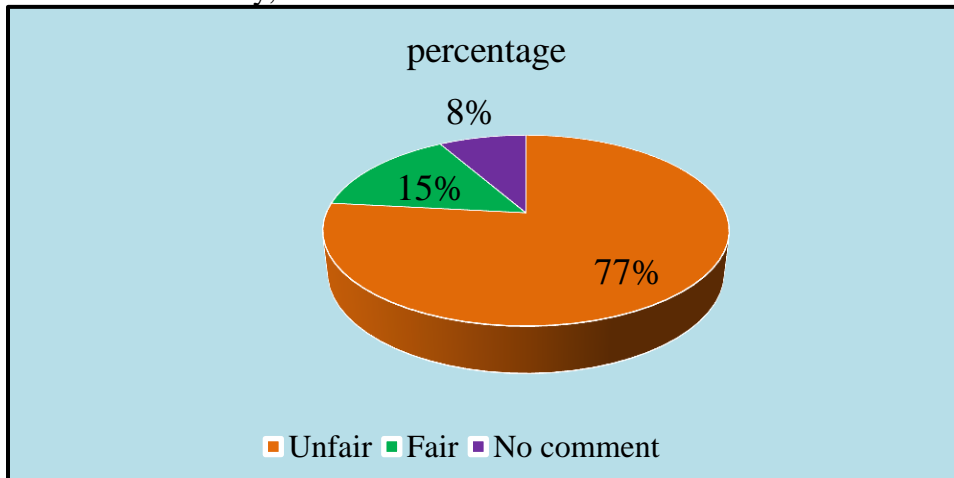
Respondents to this research study also pointed out that the valuation methods and procedures were not transparent to the public. They perceived that the compensations paid to affected persons were assessed based on the judgments of KETRACO staff and land values set by private valuation consultants hired by KETRACO. This being the main source of conflict, it raised suspicion among land owners on the credibility of the data that formed the basis of their compensation.

On the other hand, 9 No. project affected persons (15%) indicated the wayleaves acquisition process and compensation practice as “just, fair” and “satisfactory”. Their justification was based on the reasons that they were informed, consulted and discourses with KETRACO (the acquiring authority) on the issues preceding land acquirement process. They also indicated to have been involved throughout the processes and their compensation rates to have been well informed and undisputed. 5No. land owners (8.3%) had no opinion/comment on whether the process of wayleaves acquisition or compensation practices were welcomed as fair and satisfactory.

**Table 4.4: Project affected persons’ opinion on the fairness of wayleave acquisition process and compensation practices**

<b>Opinion</b>	<b>No. of respondents</b>	<b>Percentage</b>	
Unfair and unsatisfactory	46	76.7%	
Fair and satisfactory	9	15%	
No comment	5	8.3%	
<b>TOTAL</b>	<b>60</b>	<b>100</b>	

Source: Field survey, 2017.



**Chart 4.1 Land owners’ opinion on the fairness of wayleave acquisition process and compensation practices**

Source: Field survey, 2017.



#### 4.4.2 Timeliness of compensation payments versus the project status

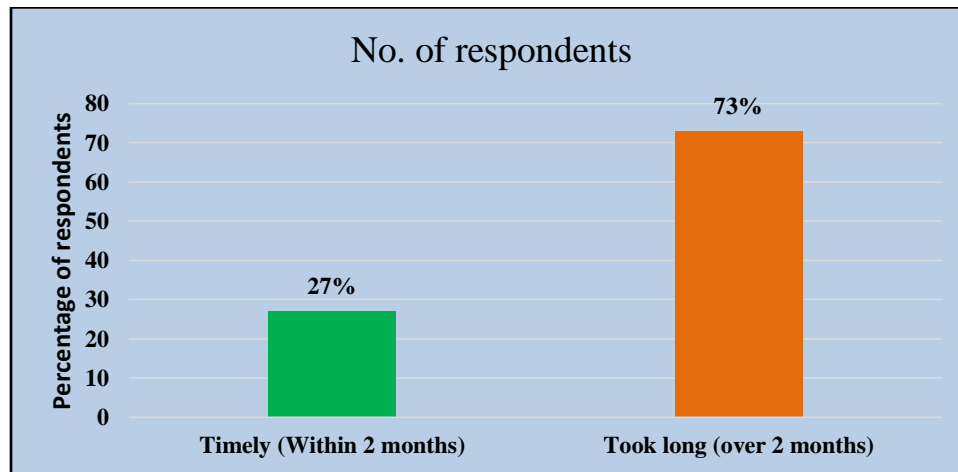
Affected land owners were interviewed on promptness in payment of proposed compensations. On the timeliness of payment of the proposed compensation, only 16 respondents (27%) felt the payments of compensation were timely (collecting their payments within 2 months), while 44 respondents (73%) felt that the compensations took too long (more than 2 months) to be paid.

**Table 4.5 Responses on timeliness of payment of wayleave compensations.**

<b>Time frame</b>	<b>No. of respondents</b>	<b>Percentage</b>
Timely (within 2 months)	16	27%
Too long (over 2 months)	44	73%
<b>TOTAL</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 2017

**Graph 4.2 Responses on timeliness of payment of wayleave compensations.**



Source: Field survey, 2017

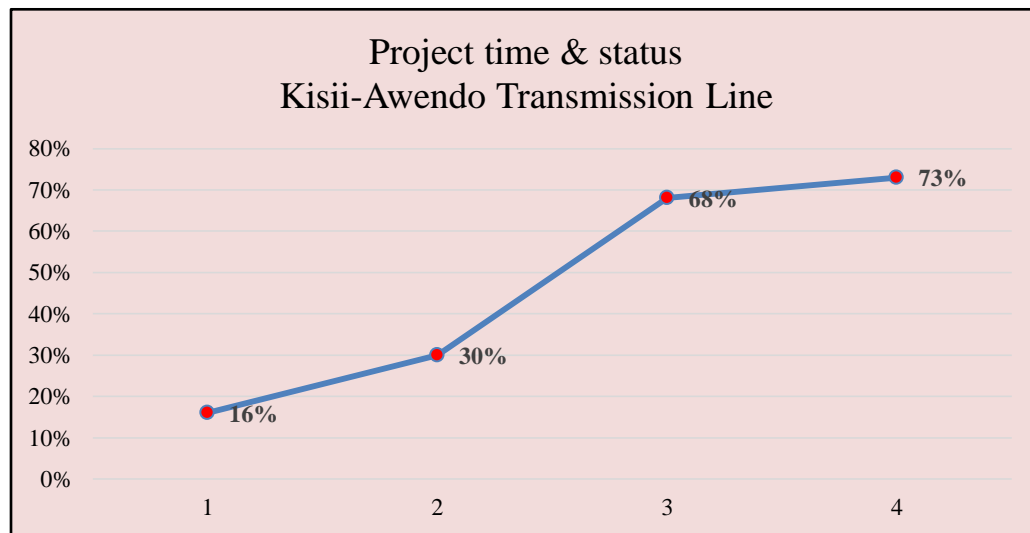
Indeed, many project affected persons (50%) had not yet received information on their compensation amounts at the time of this research study despite waiting for more than two (2) months. This is despite the fact that the project implementation was ongoing.

Project affected persons were also interrogated on any challenges in regard to the amount awarded for payment and on whether they gave complaints to the suitable communal body on the finances awarded for compensation. 35% of the respondents indicated to have appealed or

contested in writing to the acquiring authority, and revisions (where justified) were made on the compensation amount, which still took too long for the amounts to be paid while in other instances complaints would be ignored, or compensation processing stopped as the acquiring authority would first deal with individual land owners who had consented to the compensation awards. They indicated that the evaluation technique was not open to them as well as officers from KETRACO used language that they could not comprehend during their valuation illustrations.

At the time of conducting this research study, the Kisii - Awendo power transmission project was at 73% mark of completion, after 3 years of implementation. Upon interviewing KETRACO project implementation officers, they cited that the project was anticipated to be complete after three (3) years since inception, time which had already lapsed. However, with the anticipated three (3) years of completion down the line the power transmission project was only 73% complete. The project engineers pointed out that the existed project status and inability to meet completion time was due to acquisition challenges encountered during implementation, challenges that made works of the project to stall. He further cited that an extra year was necessary for the project to be 100% complete and only if the challenges were to be addressed within a short period of time. The graph 4.4 below shows progress of the project implementation over 3-year time since inception.

**Graph 4.4 The project implementation status over time**



Source: Field survey, 2017.

#### **4.4.3 Public Participation**

From the research findings, it emerged that public participation was managed by KETRACO staff with the assistance of the provincial administration through public meetings where members of the public (local communities) were sensitized about the project, significance of the project, their obligations in acquisition process and their opinions considered. The respondents (project affected persons) were interrogated on the ways public participation was employed at the different stages of the project. They responded by noting that public participation was managed by inviting the affected land owners through their representatives' in local administration (chiefs and District Officers) for meetings and public forums to reach general consensus about project goals and objectives. The community representatives suggested that the affected persons be given attention and consulted at different stages of the project; where decisions were made by consulting different stakeholders. From the principles of land acquisition process and in best practice, this research study finds this ideal since participatory planning processes should involve all affected parties, including owners and occupants, government and non-governmental organizations. All procedures using this approach appeared transparent, flexible and undertaken in good faith.

Further, the research findings record that all development activities were meant to be transparent to the public to ensure mutual trust between the public and Kenya Electricity Transmission Company (KETRACO) as the acquiring body; as well as to minimize unnecessary conflicts, litigations and project delays resulting from wayleave acquisition and compensation challenges. It was also mentioned that before the beginning of construction, information about the benefits and impacts of the project, wayleave acquisition methods, valuation and compensation procedures and payment timelines were disseminated to the locals or the public.

The same respondents further indicated that public participation and timely accessing of all available information about the project reduced negative attitude of the society towards the project by making negotiations and agreements friendly and effective. It is also pointed out that land related conflicts such as relocation, ownership, boundary conflict, and issues of compensation could be minimized by making development activities transparent to the public on time and when needed.

#### **4.5 Challenges encountered during wayleaves acquisition for power transmission projects**

Challenges emanate from main areas of conflict between the acquiring authority and the affected land owners during wayleave acquisition process, making the process lengthy, protracted, complex and also costly.

##### **4.5.1 Main areas of conflict between acquiring authority (KETRACO in this research study) and Project Affected Persons/affected land owners.**

The main areas of conflict that are evident and subject to wayleave acquisition processes were strictly ranked through interviewing the respondents/project affected persons. The areas of conflict were all pointed out to be an ingredient to the challenges encountered by either party in the wayleave acquisition matrix. These areas of conflict are ranked and discussed as below:

**Table 4.6: Ranking of the main areas of conflict during wayleave acquisition between the acquiring authority and the project affected persons**

<b>Areas of conflict during wayleave acquisition</b>	<b>Score</b>	<b>Proportion (%)</b>	<b>Rank</b>
Surveying and acreage of the parcels	31	21.5%	2
Compensation rationale & rates	48	33.3%	1
Mismanagement of ownership documents by Ketraco	13	9.0%	5
Lack of public participation/poor sensitization process	22	15.3%	4
Government intimidation/fear of the authority	30	20.8%	3
<b>TOTAL SCORE</b>	<b>144</b>	<b>100%</b>	

Source: Field survey, 2017

##### **4.5.1.1 Compensation rationale and rates**

Most of the respondents cited compensation as the main area of conflict during wayleave acquisition for the construction of the Kisii - Awendo transmission line with a weight of 33.3% of the total score. It was cited to be far from good or fair practice criteria. This conflict often led to delays in project timelines and with effect of increasing the cost of the project. Most of the delays emanated from complaints raised by the affected persons, disruption of the project, attacks to the officers by hostile groups as well as negotiation talks that brought the projects to a stall.

#### **4.5.1.2 Surveying and acreage of the parcels**

Discrepancies in acreage of the either the total size of the parcel or the developed affected area by consultants was also seen another major area of conflict with a weight of 21.5% of the total score. The acreage of land significantly determined the amount compensable to each and every affected land owner and hence many of the project affected persons were seen to find the accuracy of this land data.

Discrepancies in land data caused alarm since cases of professional errors were noted and that would adversely affect one compensation amount. Some affected land owners lodged claims, other employed independent land surveyors and lawyers to claim what they deserved and in many cases these ended up in courts of law thereby interrupting the progress of the project.

#### **4.5.1.3 Government intimidation and use of the local administration**

Fear of the authority also recorded a weight of 20.8% of the total score. It was cited as an area of conflict in the wayleave acquisition process whereby officers of the acquiring authority (KETRACO) were alleged to threaten the project affected persons in the name of the government. Some residents claimed to have been forced to accept the amounts compensable to them, otherwise they would risk losing the amounts since the government power project was unstoppable. The local administration was also pointed out to be used by the acquiring authority to intimidate anyone who would lodge complaints or disrupt the project implementation.

#### **4.5.1.4 Lack of public participation or poor sensitization process**

Although not a popular area of conflict with a recorded weight of 15.3% of the total score, some affected land owners felt that poor sensitization process and poorly designed public participation avenues brought the challenges encountered in wayleave acquisition. They indicated that some critical information was not availed to the public for fear by the acquiring authority that the community may be hostile and the project would be disrupted. The respondents pointed out that only a transparent process and one that is all-inclusive will bring effectiveness and efficiency in wayleave acquisition processes. Failure to expose critical information and engage the public fully in all processes since planning led to lags and gaps in mutual trust and the consequences would later be evident through a hostile community against the acquiring authority, with results being project disruption and unnecessary time and cost over-runs.

#### **4.5.1.5 Mismanagement of ownership documents by the acquiring authority**

This was the least popular area of conflict with a recorded weight of 9% of the total score. Respondents, however few they were, indeed agreed to the fact that the acquiring authority mismanaged their documents that were crucial for the compensation process and were forced to redo the procedures for awarding of compensation. It was pointed out that land documents such as title deeds, lease certificates, sale agreements, chief's recommendations, letters of authority to pay a third party, personal documents such as copies of identification cards, KRA certificates and passport photos are some of the vital documents that would be required for compensation to be paid.

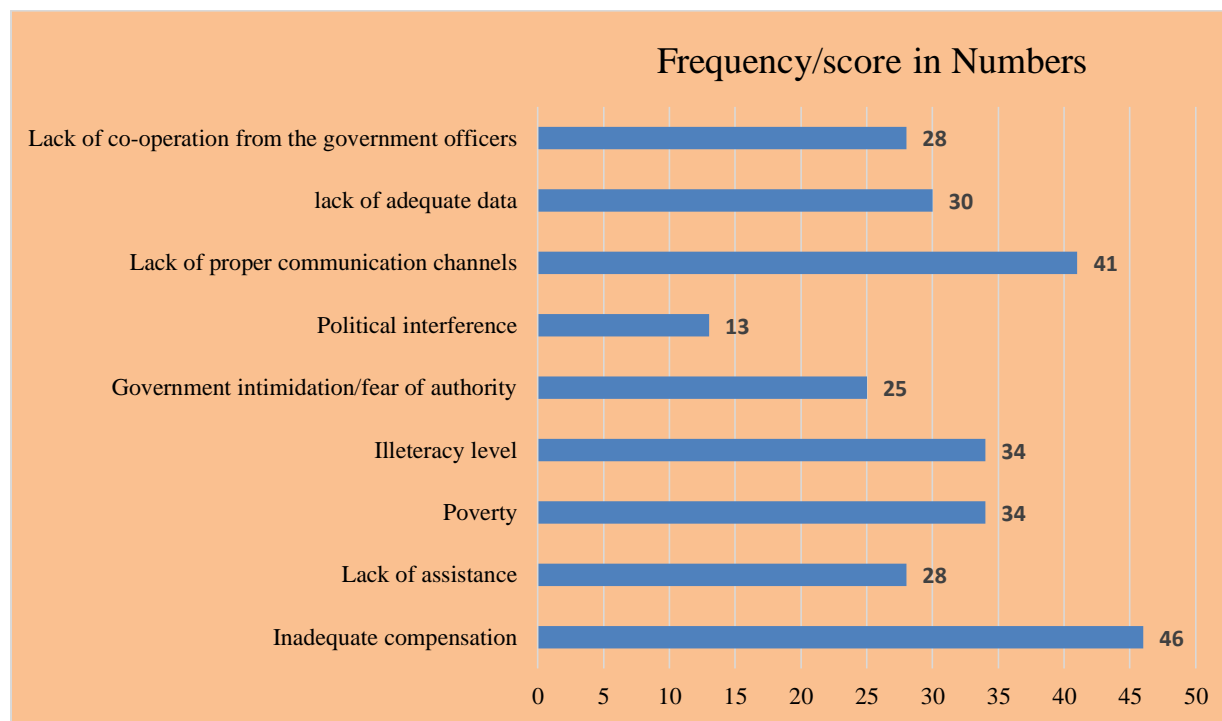
Between the point of receiving the documents in the field and filing or processing of the same, some documents would get misplaced and affected land owners would keep waiting for payments. Eventually months pass until the respondents decide to follow up only to find that the documents were misplaced or they were not in order for further processing.

Based on the results presented under wayleave acquisition aspect and the summary of the assessment results, not all the indicators are in adherence to best practice criteria.

#### **4.5.2 Specific challenges encountered by the Project Affected Persons (PAPs)**

The researcher documented in detail all specific challenges encountered during the wayleave acquisition process, through interviewing the affected land owners (project affected persons). In the interrogation, all respondents were co-operative and willing to cite all difficulties they encountered in the entire process, since inception of the project. The research study is anchored on involuntary resettlement of the affected land owners. In summary, the involuntary resettlement process was pointed out by all respondents to be an inherently disruptive process. This is because even if the procedures are fair and efficient, displacement of people from established homes, businesses and communities was considered to have significant human costs. The following were cited as challenges in the wayleave acquisition process by the land owners (project affected persons) and ranked according to their popularity amongst the respondents.

**Graph 4.5 Ranking of the challenges encountered by project affected persons**



Source: Field survey, 2017

**(i) Inadequate compensation**

This was ranked the most popular challenge (recorded by 46 respondents) amongst the affected land owners. The respondents claimed that although they agreed to be paid the amount awarded, they later realized that when the payment is delayed within a year or so, the value of their land would have normally gone up more than the amount they were compensated.

**(ii) Lack of proper communication channels**

Improper communication avenues were also cited as a major challenge (41 No. respondents) within the wayleave acquisition matrix. This limited the awareness and sensitization in respect to the project and its impacts to the local community. Eventually the results were disruption of the project as the project affected persons lodged complaints to demand a transparent and just process.

**(iii) Poverty and illiteracy**

These were also mentioned by the respondents as challenges and in equal proportion. This was expected especially in the rural areas where income levels are very low. Because of poverty the affected persons were not able to meet the expenses that come with the acquisition process, for instance, transport costs, acquiring of legal documents, hiring of advocates and valuers, filling succession cases and completing subdivision schemes.

**(iv) Illiteracy level**

Illiteracy level makes matters worse because communication during the acquisitions process is normally a problem as the “illiterate” affected landowners have to rely on their relatives, friends and local leaders to read and communicate during this period.

**(v) Lack of adequate data**

Inadequate data to assist the affected landowners to lodge their claims as required by law, was also cited as a major challenge. Respondents claimed that it is very difficult to get sales comparable from their neighbours, as land is normally sold with a lot of secrecy. The matter is made worse by the inability to access sales record in the land registry.

Other challenges cited included lack of assistance from private valuers and advocates because of the costs involved in hiring them. Most of the affected landowners are in rural area where poverty levels are high. Fear of the authority/intimidation by the government was also mentioned with political interference ranked last (13 No. respondents) in this category.

According to the literature review most of these challenges mostly occur in poor countries where education standards are low, high poverty levels and poor land registration systems. In developed countries where education and living standards together with highly developed land registration systems these problems rarely do they occur.

**4.5.2 Challenges encountered by Kenya Electricity Transmission Company (KETRACO)**

According to the respondents (officials from KETRACO) various kinds of challenges were identified and which have been grouped into: - legal, social, economic, political, environmental challenges and others.



**Table 4.7: Percentage of challenges according to the type**

<b>Challenge category</b>	<b>Percentage</b>	<b>Rank</b>
Social challenges	20%	3
Economic Challenges	22%	2
Legal challenges	30%	1
Political Challenges	9%	5
Environmental challenges	12%	4
Others	7%	6

Source: Field survey, 2017

Most of the challenges encountered by the acquiring authority are said to be legal challenges (30% of the total challenges) and in turn lead to cost and time over-runs for the project implementation. Economic challenges that are attributed to wayleave acquisition follow closely at 22%.

#### **(1) Legal challenges**

##### **(a) Succession matters**

Succession matters were ranked the highest at 75.5% as the main legal challenge, this is because most of the land especially in rural areas is still registered under deceased persons, as the beneficiaries do not expedite the succession process when the registered owner passes away. They avoid the process because it is lengthy, costly and complicated.

##### **(b) Lack of proper registration documents**

This was ranked second at 62.5%. This is another legal challenge recorded by the officials since lack of the ownership documents complicated the process of ascertaining the actual beneficiaries of the compensation, and also brought more difficulties since for project affected persons to be compensated, the ownership documents were ought to be surrendered to the acquiring authority for registration of an easement. In some regions in Kenya, land adjudication process has not yet been completed a situation which complicate the matter more. In other instances, landowners because of lack of funds, and lengthy process involved in registration of land, may fail to process the title awaiting to get funds.

##### **(c) Appeals**

Appeals for inadequate compensation was ranked third at 48.0%

#### **(d) Court cases**

These are cases filed in courts of law challenging the wayleave acquisition process by the Project affected persons during the project implementation.

### **(2) Economic challenges**

#### **(a) Poverty**

Most of the respondents cited **poverty** as a major factor affecting the acquisition process at 85.2% in the category of economic challenges. Poverty level is very high in rural areas as a result of minimal economic activities. This formed a challenge to Ketraco since many project affected persons could not facilitate essential services that were precursor to compensation payments such as processing sub-divisions, conducting land searches, getting consultancy services from professionals such as lawyers among other preliminary costs.

#### **(b) Lack of funds by the acquiring authority for compensation**

Lack of adequate funds to compensate the affected landowners even when valuations have been done and awards given was ranked at 40.5%. Lack of funds leads to interested persons having to wait for the money to be sourced elsewhere for compensation to be done.

### **(3) Social Challenges**

#### **(a) Illiteracy level**

Illiteracy level was the most prominent social challenge with a score of 80%. This is because most of the landowners are elderly people who are not educated. This makes communication very difficult throughout the whole process, as most of them have to rely on their children, relatives or local leaders to read and understand notices, awards or communicate during inquiries.

#### **(b) Family disputes**

Family disputes especially in extended families were also found to contribute significantly to social challenges with a total score of 68% of the social challenges. Families in most cases are not able to agree on who is to represent them during inquiries or the entire compensation process as they do not trust one another.

#### **(4) Political Challenges**

##### **(a) Lack of political will**

This is one of the major political challenges recorded with a total score of 48%. This is manifested through incitement of the landowners by politician to reject road projects, and failure to give road project priority when allocating funds.

##### **(b) Ethnicity**

**Ethnicity** was ranked second at 25% in this category, where some residents resist power transmission project just because it does not benefit their community. Ethnicity does not feature prominently in developed states because of good government policies which create equality unlike in developing states where some groups feel marginalized.

The rest (27%) did not note any political challenge in wayleave acquisition and implementation of the project.

#### **(5) Environmental challenges**

Majority of the respondent (55%) cited lack of knowledge to value non-monetary claim such as religious, cultural and historical sites as a major challenge in valuation for compensation. Also cited in this category of challenges is the valuation of burial sites and recreation areas. 45% of the respondents felt that where Environmental Impact Assessment Reports have been carried out, they are not exhaustively done, which leads to inadequate information prior to commencement of the acquisition process. Where they have been done they are not availed to the valuers and finally, most valuers are not trained in EIA.

### **4.6 Responses from other stakeholders in the Acquisition Process**

#### **4.6.1 Officials in the District (County) Land Registry & Survey Offices**

Four officials from the District Land Registries and Survey offices in Kisii and Migori were interrogated on the role they played in the wayleave acquisition process. Since land was the subject of all these processes, the registry would provide details of all owners of the parcels affected for public consumption and use by the acquiring authority. Individual land owners would as well conduct official land searches as requirement for compensation and in ensuring that compensation was made to the rightful land owners.

The land registry would therefore provide any details of the land title when needed by the acquiring authority and also register easement against acquired or compensated land parcels for the high voltage power wayleaves.

It was noted that land disputed would resolved through offices of the land registrars to avoid compensation of the wrong persons. Issues noted by registrars that involved their offices included cases of forged land documents, disputed parcels and acreage, cases of double ownership (two land documents) under one parcel of land among others. The County (District) land surveyors described their role in authenticating all land acreage data, undertaking formal survey issues of the affected land parcels within their jurisdiction. This involved issuance of survey maps (Registry Index Maps), mutations and sub-divisions for consumption by the acquiring authority, as well as processing any pending sub-divisions for transfer and for purposes of wayleave acquisition.

#### **4.6.2 Officials from the National Land Commission (NLC)**

Two officials of the National Land Commission were interviewed in regard to the wayleave acquisition process by Kenya Electricity Transmission Company. They emphasized that the Commission would use they constitutional mandate to acquire the land on behalf of KETRACO, to ensure smooth implementation of the government project and for public use.

In line with Kisii - Awendo transmission line, NLC officials pointed out to have been approached to intervene after the locals turned hostile and the project stalled for nearly 3 months.

#### **4.7 Limitations and challenges faced during the research/field work**

The researcher did experience a number of limiting factors in conducting the study. The main limitation was constraints in time. Very high time management levels were a necessity for the researcher to reach out the Project Affected Persons (the sample size) across the different Land Registration sections of the high voltage power line in Kisii and Migori Counties. This is because the area covered by the power line is quite extensive and far from the researcher's workstation (Nairobi) and therefore time management was a major concern. Research fatigue was therefore a main challenge in making this research study a success. The researcher employed research

assistants to help in undertaking this study with the aim of reducing fatigue and sharing the overwhelming work of questionnaire administration. The data collectors also ensured prompt response and collection of the questionnaires from the respondents.

Suspicion by the area residents was a challenge in that some land owners (project affected persons) did not co-operate due to their fears that the researcher was working with the acquiring authority to intimidate and evict them, before they were convinced that the researcher was in no way linked to government agencies and institutions, in a way that would deprive them of their ancestral land. This initially controlled the response that most land owners were willing to give. Again, an attempt to confirm the amounts of compensation awarded to the project affected persons, from KETRACO finance and land economists' offices was not possible because such information is classified as not being open for public perusal. This was overcome through introduction letter which strictly stated that any information gathered from the acquiring authority on wayleave acquisition would be treated with utmost confidentiality and was to be used for research purposes only. However, such information was limited.

#### **4.8 Research Proposition**

The proposition of this research study was that, *“Compensation rationale and rates is the main source of conflict between project affected persons and the acquiring authorities.*

The research findings on the acquiring authorities and the project affected persons demonstrated that compensation rationale is the main source of conflict during the wayleave acquisition process than any other factor, and this was found to measure and directly inter-relate with how unfair and unsatisfactory the entire land acquisition process is, from the perspective of the project affected persons. Therefore, the research study upholds this proposition as it turned out to be positive.

#### **4.9 Conclusion**

This chapter has dealt basically on the analysis and the presentation of data, which formed the basis on which conclusions and recommendations were made in the subsequent chapter. It began with the examination or evaluation of the wayleaves acquisition process and its impact on private land rights, profiling the project affected persons according to their age, education and marital status while obtaining their perception or opinion on the acquisition and compensation processes,

before embarking on the specific elements that were mainly targeted in this research. Focus was then directed to the challenges encountered in wayleaves acquisition, project status, experts' opinion and consequences of the challenges highlighted. Responses from other stakeholders in regard to the main objectives were delivered, and a brief statement of the challenges faced during the research.

# **CHAPTER FIVE**

## **SUMMARY OF MAIN FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Introduction**

The research sought to document the challenges of wayleave acquisition for infrastructure developments in Kenya (A case study of the wayleave acquisition for Kisii - Awendo High Voltage Power Transmission Line by Kenya Electricity Transmission Company (KETRACO). This segment presents an all-inclusive review of the literature and fieldwork, this section breaks down the data, ties the data gathered in chapter four into investigation results that report to the research objectives. The study specific research objectives were;

1. To evaluate the process of land or wayleave acquisition for electricity transmission and its impact on private land rights.
3. To establish the Project affected Persons (PAPs) perceptions and opinions on the extent to which the compensation practices are “just” and “satisfactory”.
4. To examine the challenges encountered by both the acquiring authorities and the project affected persons (PAPs) in land or wayleave acquisition for electricity transmission.
5. To recommend on the possible ways of addressing the challenges identified in (3) above.

In this chapter, conclusions are drawn from the research findings which inform the recommendations made towards addressing the wayleave acquisition procedures and challenges encountered during wayleave acquisition for power transmission projects in Kenya.

### **5.2 Summary of main findings**

In breakdown of data and analysis and interpretation, the study dealt with data obtained from officials of the acquiring authority (KETRACO) and the affected landowners (Project Affected Persons). The data analysis has shown that there are various challenges which occur during the process of wayleave acquisition for power transmission projects in Kenya. These challenges are legal, social, economic, political or institutional and environmental challenges.

From the Project Affected Persons’ perspective, compensation rationale was found to be the main area of conflict in the course of way leave acquirement for the building of the Kisii - Awendo transmission line. It was cited to be far from good or fair practice criteria. This conflict

often led to delays in project timelines and with effect of increasing the cost of the project. Most of the delays emanated from complaints raised by the affected persons, disruption of the project, attacks to the officers by hostile groups as well as negotiation talks that brought the projects to a stall.

Discrepancies in acreage of either the total size of the parcel of land or the pretentious region was derived by consultants were also seen as another major area of conflict. The acreage of land significantly determined the amount compensable to each and every affected land owner and hence many of the project affected persons were seen to find out the accuracy of this land data. Discrepancies in land data caused alarm since cases of professional errors were noted and that would adversely affect one compensation amount. Some affected land owners lodged claims, other employed independent land surveyors and lawyers to claim what they deserved and in many cases these ended up in courts of law thereby interrupting the progress of the project.

On the other hand, legal and economic challenges were found to be the main challenges faced by the acquiring authority in wayleaves acquisition for infrastructure developments. These included succession matters, lack of ownership or registration documents, court cases, appeals, poverty challenging co-operation of the project affected persons and inadequate funds to pay compensations in time.

From the research findings, it is very clear that the existing procedures and processes of wayleaves acquisition in Kenya are not well designed to eliminate or minimize these challenges. Because of this, the amount of compensation to the affected persons, takes long to be received, and the electricity/power projects contract periods are extended at a cost. This brings a conclusion to my research that the current procedures and process of wayleave acquisition for power transmission projects leads to high costs and delays and the main conflict surrounded around compensations.

The outcomes on reimbursement aspect showed that although affected lands owners due to development of the project the compensation/payment was always “unjust” and inadequate and often greatly delayed against the expectations of majority of the land owners. The valuation method used to assess the price per acre is not clearly understood at the local level by the project affected persons. This has often led to the project affected persons contesting the criteria used by



KETRACO's valuation consultants on arriving at the value per acre. Generally, the phase of reimbursement are not followed in accordance to best preparation principles of just and prompt payment of reimbursement as outlined in the Land Act 2012. The process of way leave or land acquisition should aim at establishing equilibrium the community need for the land utilization, the establishment of land freehold security as well as the fortification of private ownership rights.

Another significant finding of this research is the period taken to complete way leave acquisition for a power transmission task is not necessarily established by size of land acquired and the distance covered by the power line. This is normally determined by the existing procedures of acquisition, number of experts working on the project, number of affected landowners and lastly but most importantly, the challenges faced in the wayleave acquisition of the project.

Valuation of unregistered land was also found to an emerging trend and a critical area. Kenya through the Ministry of Lands and policies should be anchored on the world agreed principles of management of the land. It is not made clear by the Land Act, 2012 on how to do not provide technique for valuation and reimbursement of private land owners affected by mandatory acquirement land for developmental purposes in cases where the land is not officially registered.

### **5.3 Conclusions**

The previous section has presented the outcomes of both secondary and primary data grounded on research objectives and on best practice principles on the diverse facets of the investigation. It must be implicit that the demonstration and the valuation of the outcomes on the diverse characteristics might not be addressed thoroughly due to time and data challenges. Nevertheless, it is anticipated that the valuation of the outcomes has providing awareness on the wayleave acquirement procedures and challenges during the construction of high voltage electricity transmission lines in Kenya at large.

The process of mandatory acquirement of private owned land or power way leaves for public utilization should be an unbiased and transparent method. Proprietors are not supposed to be disadvantaged as a result of their land being taken by the government for public utilization. Fair and transparent techniques are required for economic development; mandatory land acquirement may disrupt the economy of investors that their human rights not effectively protected by the state.

The review of related literature and survey results exposed that adjournment the process of land and wayleaves acquirement is viewed by the participants as one of the factors which hinders the achievement of prompt payment in full of just compensation as obligatory by the new Constitution under the Bill of Rights. The adjournment is as an outcome of economic, social, authorized, environmental and technical characteristics. Legal challenges are litigations either challenging the process or succession cases. The social challenges affecting land proprietors include illiteracy, disputes emanating from the families and barriers in communication. People are not able to understand land acquirement policies. Environmental challenges like absence of expertise by the state officers like the land valuers on how to evaluate the non-economic utilization like forest/vegetation assistances and letdown to conduct Environmental Impact Assessment reports.

#### **5.4 Recommendations**

Based on the related literature review and data analysis it is evident that an ingenious wayleave acquirement procedure for a power transmission project should follow a number of steps. In each phase to reduce the contests point out in the aforementioned chapter this research has made the following commendations

##### **1. Adequate funding for compensation payments by the government**

We noted that improper and inadequate compensations is the main challenge affecting Project affected persons and leading to severe consequences to project implementation by the government through the acquiring authority. The government should invest in making adequate funding for all land and wayleave acquisitions, without delays and transparent procedures put in place to ensure the process is undertaken in good faith. This will reduce the notion that the affected persons are harassed by the government without due consideration of the socio-economic impacts of the involuntary resettlement.

##### **2. Addressing legal gaps in wayleave acquisition procedures**

Within this context, the existing laws should be harmonized to ensure wayleave acquisition does not expose or deprive the land owners of their rights to ancestral lands. The laws should further explain what amounts to “just” compensation rather than leaving this discretion to the acquiring authority. Also mechanisms should be put in place in determining the costs of involuntary

resettlement as adopted from the World Bank report in efforts to give the affected land owners a “fair” compensation. This calls for the need to have clear legislations and policies to mitigate the negative impacts of resettlement and the challenges encountered in the entire process by the acquiring authorities for infrastructure development.

The Kenyan Constitution Article 40(3) points out that reimbursement of public land that is acquired on compulsory basis. According to Article 40 (4) documents the necessities for repayment to the proprietor’s without legitimate title deeds. In the Land Act 2012, segment 5 make out customary land rights as one of the forms of land freehold in the state. Implementation of the rules and regulations that govern the process are not advanced in the mandatory acquirement of private owned land for public utilization. The government has mainly thrived in realizing the proposed enactment of fair and swift reimbursement.

### **3. Alternative dispute resolution mechanisms to handle grievances**

This research study found that the government acquiring authority encountered majorly legal challenges which resulted to delayed or stalled projects and cost over runs. These challenges included court cases, appeals, and succession matters among other. As a remedy, this research recommends alternative dispute resolution mechanisms which may include mediation or establishment of Land Acquisition Tribunals to address grievances. This will reduce the time and costs consumed by court battles, appeals among other issues that both delay the projects while causing distress to the project affected persons.

### **4. Public awareness, sensitization and inclusiveness**

This will aim in reducing resistance from “hostile” land owners during project implementation process. The affected land owners should be taught on the importance of the project, the process of acquisition, compensation procedures, the challenges involved and how the acquiring authority shall co-operate to ensure successful re-settlement of the displaced persons. Knowledge and idea on the broad process will always prepare the land owners and limit the possibilities of resisting to the project. Continued sensitization by the government and other concerned stakeholders will convey a positive attitude to affected land owners. Land owners’ opinions should therefore be promoted to reduce to hostility and create a “friendly” wayleave acquisition process.

## **5. Ensuring accuracy of land data**

Our research unveils the main areas of conflict between the acquiring authority and the project affected persons to be on acreage and compensation rates. Therefore, accurate determination of these two items will reduce the conflict and challenges encountered during the wayleave acquisition process in infrastructure developments in Kenya. Accuracy of the critical data would entail employment of qualified professional in the project such as land economists, land surveyors, design engineers, socio-economists and environmentalists. Inaccurate data would affect compensation payable to project affected persons. Collection of the pertinent data must gather based on the rights for the parcels of the land to be acquired which must also address the issues on the native community. This purpose to address the privileges of susceptible groups that comprise ladies, children, marginalized groups and the old people should be considered. As per now it only the tenure particulars are collected mostly from the land records office. The situation on the ground is different because of the informal partitioning that are carried out and are not recorded officially.

### **(5) Professional engagement, decision making and capacity building**

Professionals and all concerned stakeholders in the wayleave acquisition process should play a mutual role in ensuring that all areas of conflict are well addressed through negotiations and setting up of regulations that would provide a platform for effective and efficient process. Firm actions must be engaged to circumvent influence of data by experts in partnership with proprietors with the intention of manipulating reimbursement rewards.

Agencies participating in acquirement of land are needed to take steps to make sure there enough number of autonomous valuers and lawyers to assist peoples in assess their reimbursement entitlements. This will aim at creating a balance between the interests of the acquiring authority and the interests of the Project affected persons.

### **(6) Benefit sharing by local communities whose land has been set aside for investments.**

Policies to govern how the affected community will benefit from the acquisition should be employed to ensure that project affected persons have a share in the government investments, creating trust and reducing resistance to the project. This will also form part of the rewards that come with land acquisitions besides the legal compensation entitled to each and every victim of the process.

In the Land Act 2012, section 12 provides for benefit sharing by local communities whose land has been set aside for investments. Community benefits may include maintenance and repair of community roads for a given period, construction of new schools or classrooms, provision of hospital equipment's, installation of electricity among others.

#### **(7) Prior infrastructural planning as an alternative to compulsory acquisitions**

Government needs to formulate policies that purposes to protect private land owners and give them adequate reimbursement. Infrastructural planning should be carried out as a substitute method to the mandatory acquirement of private land. Formulation of land reimbursement guide to prevent payment based on hypothetical augmentations and fortification of married people as well as their and children by ensuring reimbursements is given with the permission of the spouse or a trustee.

#### **5.4 Areas of further research**

The information available on these two factors is limited in scope, yet they play a vital role in determining the role of security of land rights vis a vis economic development and social stability, thus this study suggests further research to be done on:

1. The effects of the new land laws on wayleave acquisition in Kenya.
2. A critical look into the relationship between wayleave and land acquisition and how they impact on land values.

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**QUESTIONNAIRE TO THE PROJECT AFFECTED PERSONS (PAPs)**

**A critical examination of Wayleave Acquisition for Infrastructure Development in Kenya**

A Case study of wayleave acquisition for Kisii-Awendo Power Transmission Line by Kenya Electricity Transmission Company Limited.

Dear Respondent,

I am a student at the University of Nairobi pursuing a Master of Arts Degree in Valuation and Property Management. I am conducting a research project on challenges of land acquisition and infrastructure development in Kenya. All information provided will be treated with utmost confidentiality and for research purposes only. **PLEASE RESPOND TO ALL ITEMS IN THE QUESTIONNAIRE.**

**Name of the respondent/Project affected person (Optional).....**

Land/Title Number: ..... Location.....County.....

1. Age of the respondent

Below 25 years

26 – 35 years

36– 45 years

Above 45 years

2. Level of education of the respondent

None

Primary

Secondary

Tertiary

University

3. How did you come to know that you were affected by the power line project?

Have never learnt about it

Gazette notice

Media

Neighbours

Provincial administration

Other (Specify) .....

4. Which of the listed processes by KETRACO were you involved? Please tick.

- Planning of the project
- Public inquiries
- Sensitization meetings
- Negotiation of compensations /signing of acceptance
- Receiving of compensation
- None (Not involved in any)

5. How do you rate the entire wayleave acquisition process as a project affected person?

- Fair
- Unfair
- No comment/I don't know

6. How do you rate the compensation criteria and awards as a project affected person?

- Just/fair
- Unjust
- No comment

7. What are the main areas of conflict between yourself as an affected person and KETRACO as the acquiring authority? Which are the main causes of dispute? (you can tick more than one area that you perceive to be a source of conflict)

- i. Surveying & Acreage of the parcels (affected area and total area)
- ii. Compensation awarded/criteria
- iii. Government intimidation/fear of the authority
- iv. Poor sensitization process/lack of public participation
- v. Mismanagement of ownership records by the acquiring authority

Indicate other areas of conflict that you know.....

.....

8. Have you received compensation for the ongoing power transmission project?

(a) Yes

If yes, within what period after submitting the required documents and complying?

Within 2 months

After 2 months

(b) No, Not yet

If Not, why/any reason?.....

9. Do you consider the following to be challenges you encounter as a project affected person?  
(Please tick all you think are challenges encountered by land owners in the acquisition process)

(a) Fear of authority/government intimidation

(b) Lack of adequate data

(c) Political interference

(d) Inadequate compensation

(e) Lack of technical assistance from government officers

(f) Illiteracy level

(g) Poverty

(h) Lack of proper communication channels

List other challenges that you encounter as a result of wayleave acquisition

.....  
.....

(10) Do you think the following are main negative impacts of wayleave acquisition?

Limited land use  Breach of peaceful enjoyment of land rights

Displacement  Reduced tenure security

Health hazards  Reduced investments

What other impacts do you consider as negative/adverse as a result of wayleave acquisition?

.....  
.....  
.....

(11) What in your opinion should be done (by the government or by the project affected persons) to improve the wayleave acquisition process? (**give suggestions**)

.....  
.....  
.....  
.....  
.....

***-THANK YOU FOR CO-OPERATION-***

**QUESTIONNAIRE/INTERVIEW GUIDE FOR THE ACQUIRING AUTHORITY (KENYA ELECTRICITY TRANSMISSION COMPANY) OFFICIALS OR PROJECT IMPLEMENTATION TEAM.**

**A critical examination of Wayleave Acquisition for Infrastructure Developments in Kenya**

A Case study of wayleave acquisition for Kisii-Awendo High Voltage Power Transmission Line by Kenya Electricity Transmission Company Limited.

Dear Respondent,

I am a student at the University of Nairobi pursuing a Master of Arts Degree in Valuation and Property Management. I am conducting a research project on challenges of Wayleave acquisition for infrastructure developments in Kenya. **All information provided will be treated with utmost confidentiality and for research purposes only. PLEASE RESPOND TO ALL ITEMS IN THE QUESTIONNAIRE.**

10. Profession..... Work station  
(Optional).....

11. How long have you worked for KETRACO?

Less than 2 years  Between 2 years and 5 years  Over 5 years

12. What roles (duties) do you play in the power transmission project?

.....  
.....  
.....

13. What is the current status of the Kisii-Awendo power transmission project?

Stalled

Ongoing & progressing

Completed

If stalled, what reasons have caused stalling of the power line project? Explain

.....  
.....  
.....

14. If the project is ongoing and progressing, what is the current percentage stage of completion?

Below 25% complete

25 – 50% Complete

50 – 75% Complete

75 – 100% Complete

15. Which channels do you use to sensitize and inform the project affected persons?

Gazette notice

Media

Barazas

Provincial administration

Others (Specify)

.....  
.....

16. Are the acquisition and compensation procedures similar in all power line projects handled by the Kenya Electricity Transmission Company throughout the country?

Yes

No

If no, give reasons:.....  
.....

17. What are the wayleave acquisition stages/processes by Kenya Electricity Transmission Company, right from planning to compensation?

.....  
.....  
.....  
.....

18. What challenges do you/or have you encountered in the wayleave acquisition process as the acquiring authority? If any. Please tick. (you can tick more than one challenge)

**Legal**

- vi. Succession issues/cases
- vii. Appeals due to inadequate compensations
- viii. Court cases challenging the acquisition
- ix. Lack of proper registration

**Social**

- i. Family disputes and conflicts
- ii. Illiteracy

**Economic**

- i. Poverty
- ii. Inadequate facilitation
- iii. Lack of adequate funding

**Political**

- i. Political interference
- ii. Ethnicity issues

**Environmental**

- i. Valuation of non-economic uses e.g religious and cultural claims
- ii. Lack of a well-researched environmental impact assessment reports

Others(Specify).....  
.....  
.....

19. What mitigate measures would you suggest to address the above listed challenges in land and way leave acquisition process?



.....  
.....  
.....

20. How do the Kenya electricity transmission company address negative impacts on land and project affected persons (PAPs) as a result of way leave acquisition process?

.....  
.....  
.....

21. What suggestions do you provide that will make wayleave acquisition cost effective and time efficient and more friendly process to project affected persons.

.....  
.....  
.....  
.....

22. In what ways would the challenges identified above (9) be addressed in the future? Please give your recommendations on possible solutions.

.....  
.....  
.....  
.....

***-Thank you for your co-operation-***