

Compulsory Purchase and Land Acquisition in Kenya

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Key words: land acquisition; compulsory purchase; valuation of land; land grabbing; national land policy; compensation; award; good governance; climate change

SUMMARY

Right now as I write, Kenya is experiencing severe drought. Some areas have not had rain for years. Livestock, particularly amongst the pastoralist communities have died and continue to die. Just the other day government decided to buy the livestock so threatened, in order to secure whatever latent value could be salvaged before the animals died from thirst and/or starvation. No pasture. Some of the livestock died in transit, while most died upon arrival at the Kenya Meat Commission Ranch in Athi River. Kenyans (in Turkana, West Pokot, Baringo, Kitui, Samburu, Mwingi, parts of Nyeri Districts) have been reported to eat wild berries. I saw on TV mothers boil the berries; they reckon it takes twelve hours to eliminate harmful aspects. More than ten million Kenyans are at risk. One of the possible explanations is that we have not managed our environment as well as we should have; we have harvested trees everywhere, especially in forests, far beyond what could be considered good forest husbandry. The trees are used for construction, wood fuel and charcoal-burning. As a nation, we adopted a forests management policy commonly referred to as the Shamba system, whereby citizens are allowed to cultivate crops in the forests and in return they are expected to take care of the trees. This system is a failure. There are loopholes for possible collusion to burn charcoal and or fell the trees for other uses. The demand for timber and charcoal in urban areas is insatiable, thus prices are high and tempting. The challenge is that there is no systematic way of replenishing these forests.

As a result natural water sources and whole ecosystems have been ravaged for example Mount Kenya the source of Kenya's biggest river that discharges into the Indian Ocean at the Tana Delta; and the Aberdares Range – largest source of water for Nairobi city, of more five million people. The latest statistic is even more glaring. The Mau Forest, the source of Kenya's largest and most expansive water tower is at risk of being destroyed. Its rivers discharge into Lake Victoria and form part of the Nile River System. In this case Government has decided to do something about the threat, compulsorily acquire the land that had been excised, illegally I might add.

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1. INTRODUCTION: OVERVIEW: WHY I AM INTERESTED

During a previous regime, (1978 – 2002) the then government illegally excised (illegally because there was no formal procedure such as degazettement) portions of the forest. The official position was to settle landless Kenyans. On the ground, the larger parcels so excised were allotted to senior most government functionaries. Government officials, Ministers, Assistant Ministers, Permanent Secretaries and their families, including the then Head of State, got the larger parcels of thousands of hectares. In fact the landless families (all peasants) got between one and three hectares. Curiously in June 2009, the government has decided to take back the forest lands and compensate the “owners” and debate is fever-pitch in parliament why or how these people, especially the senior officials should be compensated at all. Government estimates she will spend about 30 Billion Kenya Shillings to restore the forest and possibly a similar amount to “refund” the owners or get them alternative land. The settlement led to depletion of forest. This affected the ecosystem not just of the region, but of the whole nation and beyond. The Mau is the source of many rivers that discharge into the Lake Victoria, and exits as the River Nile.

This scenario calls to mind the principles and practices of good governance.



2. METHODOLOGY

I will discuss the provisions of the law of the land, then highlight some national land policy challenges in broad strokes and then proffer a few case studies to demonstrate the goings-on on the ground.

3. LAND MATTERS IN KENYA; THE NEED FOR A NATIONAL LAND POLICY

Land is the central part of many Kenyan lives. The majority, about 67 - 72%, lives in rural areas. Despite the reported rural-urban migration, there are still a larger number of citizens living in the countryside, most very poor, and do not know what is happening. So at this moment in time, Kenya does not have a clearly defined or codified National Land Policy. The problems posed by the lack of a policy have been exacerbated by the existence of very many land laws, some are incompatible. The result is a complex land administration system.

(National Land Policy Problem statement). 2005

It was gratifying to read in the papers of Saturday June 27, 2009 that Kenya's Cabinet, the highest policy making body in the Government, had approved the proposed Land Reforms Policy. This move paves the way for Parliament to debate, and hopefully, pass the necessary new laws, preferably just one umbrella one, that relates to land and transactions therein.

3.1 Land Use and Population Distribution in the current system: In the rural areas, the high to medium potential zones are dominated by small farm holdings. *In some cases, insecure land tenure systems have led to low investment in land improvement and productivity.* Many smallholder areas are suffering continuous fragmentation of holdings into uneconomic sizes, and farms are getting smaller in the high rainfall areas and in the drier zones. In addition, many large farms that used to produce seed and breeding stock have been sub-divided and transferred from State to private ownership. The National Development Plan (2002-2008) has proposed the formulation of a National Land Use Policy that would facilitate the preparation and implementation of land use plans for all urban and rural areas.

There are three types of land tenures in Kenya, private land, public land and trust land. Given that Kenya is a developing country, we shall need a lot of land for public benefits, and yet we have little left in terms of land banks for that purpose.

3.2 Vision of the Policy: A National Land Policy that will guide the country towards a sustainable and equitable use of land resources .

3.3 Objectives of the Policy: The overall objective is to prepare a National Land Policy that will provide for sustainable growth and investment and the reduction of poverty in line with Government's overall development objectives. The specific objectives are to develop a framework of policies and laws designed to ensure the maintenance of a system of land administration and management that will provide:

- a) Access and beneficial occupation and use of land for all Kenyans, especially the poor.
- b) Economical, socially equitable and environmentally sustainable allocation and use of land
- c) Efficient, effective and economical operation of the land market.

3.4 Contemporary Manifestations of the Land Question

The land question in Kenya is vexatious, and the following are some of its many manifestations:

- a) Population pressure on land in Central, Eastern parts of Mount Kenya and Western Kenya;
- b) Pressure in agricultural areas leads to encroachment on arid and semi-arid areas; even forest lands
- c) Concentration of land management and administration at the ministry in charge of lands;
- d) Escalation of desertification in the arid and semi-arid areas due to accelerated land degradation and global climate change;
- e) A multiplicity of legal regimes that govern land;
- f) Lack of an effective environmental management;
- g) Land ownership disparities in succession relating to gender, generational discrimination
- h) Inter-ethnic resource conflicts especially in areas originally expropriated for resettlement;
- i) Poor management of essential infrastructure

j) Privatization of public land through wanton and illegal allocation of such land to private individuals and corporations in total disregard of the public interest in the post-independence period, popularly known as land-grabbing.

3.5 Impacts of the Land Question:

The impacts of the foregoing on land have been many, varied and include the following:

- a) Fragmentation and sub-economic parceling of land particularly in the high potential areas
- b) Low land productivity;
- c) Deterioration in land quality as a result of poor land use practices;
- d) Growth of extra-legal land administration processes;
- e) Landlessness and the squatter phenomenon;
- f) Unproductive and speculative land holding especially, by the elite
- g) Disinheritance of women and vulnerable members of the community;
- h) Poor health, malnutrition, and effects of HIV and AIDS and a non-productive labour force leading to low economic growth and productivity;
- i) Uncontrolled urban squalor and environmental pollution;
- j) Severe tenure insecurity due to the existence of overlapping rights;
- k) Wanton destruction of forests, water catchments areas and areas of unique biodiversity;
- l) Severe competition between wildlife's needs and those of human settlements;
- m) Declining land carrying capacity in the arid and semi-arid areas;
- n) A rise in the levels of poverty
- o) Uncontrolled development and a general disregard for planning regulations.

3.6 Land Policy Principles

Land Policy Principles address the essential values, which the society seeks to promote and preserve. The principles have been drawn from various sources including the deliberations of the Constitution of Kenya Review Commission (CKRC), the report on the Commission of Inquiry into the Land Law System in Kenya (the 'Njonjo Commission'), the report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land ('Ndungu Commission') and the proceedings of the National Civil Society Conference on Land Reform and the Land Question. They include:

- a) Equitable access to land;
- b) Secure land ownership;
- c) Effective regulation of land development;
- d) Sustainable land use;
- e) Access to land information;
- f) Efficient land management;
- g) Vibrant land markets; and
- h) Transparent and democratic administration of land.

4. SOME DEFINITIONS: WHAT IS COMPULSORY PURCHASE?

a. In Kenya, Compulsory acquisitions arise when the State or Government decides to take over a property without private negotiations, thus the term "compulsorily" acquire property for public use without the consent of the owner but with a just compensation. The acquisition is done under statutory legislation and the act of acquiring aims at **general benefit of the**

community as a whole. It thus interferes with the owner's property rights. In Kenya the powers to compulsorily acquire land in the Public Interest is embodied in sections 75, 117 and 118 of the Constitution as well as other legislation including the Land Acquisition Act cap 295 Laws of Kenya; The Water Act; The Electric Power Act and the Local Government Act cap 265; The acquisition destroys any private rights/interests in the affected land.

Ruth M. Kiviu in "*Valuation for Compulsory Acquisition*". March 2009 in "Building Digest"

b. 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) is the inherent power of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent. The property is taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development. The most common uses of property taken by eminent domain are for public utilities, highways, and railroads. Some jurisdictions require that the government body offer to purchase the property before resorting to the use of eminent domain.. *Wikipedia, 2009*

c. India: "Land Acquisition" literally means acquiring of land for some public purpose by government/government agency, as authorized by the law, from the individual landowner(s) after paying a fixed compensation in lieu of losses incurred by land owner(s) due to surrendering of his/their land to the concerned government agency. The land acquisition act of 1894 was created with the expressed purpose of facilitating the government's acquisition of privately held land for public purposes. The word "public purpose", as defined in the act, refers to the acquisition of land for putting up educational institutions or schemes such as housing, health or slum clearance, apart from the projects for rural planning or formation of sites. The word "government" refers to the central government if the purpose for acquisition is for the union and for all other purposes it refers to the state government. It is not necessary that all the acquisition has to be initiated by the government alone. Local authorities, societies registered under the societies registration act, 1860 and co-operative societies established under the co-operative societies act can also acquire the land for developmental activities through the government.

5.0 LAW (OF LAND ACQUISITION ACT) CAP 295 OF THE LAWS OF KENYA

5.01 Purpose for Land Acquisition or Compulsory Purchase

5.01 a. Section 3 provides for the preliminary notice by the commissioner of Lands upon instructions by the Minister, who must be satisfied that a needs is likely to arise

5.01 b. Section 4 provides the Power of Entry by the Commissioner of Lands or his authorized agent or officers to survey

- Entry into a building prohibited unless consent is sought/obtained from the occupier
- Failing consent the commissioner has to serve a seven days' notice

5.01 c. Section 5 demands that as soon as practicable, after entry, the Commissioner shall

make good and pay full compensation for any damage resulting from entry.

5.01 d. Section 6 (1) Provides for Notice of Acquisition where the Minister is satisfied that any land is required for purposes of a public body, and that the acquisition is NECESSARY in the Interest of Defence, public Safety, Public order, Public morality, Public health, Town and country planning or the development or utilization of any property in such manner as to ***promote the Public Benefit***.

5.01 e. The NECESSITY must be such that it affords reasonable justification for the causing of any hardship that may result to any person interested in the land.

5.01 f. The Minister must certify that need in writing directing the Commissioner of Lands to acquire the land compulsorily

5.02 Procedures for Compulsory Purchase

- I. Preliminary Notice**
- II. Power of entry**
- III. Payment for damages**
- IV. Notice of acquisition**
- V. Acquisition of land**
- VI. Award of compensation**
- VII. Payment of compensation**
- VIII. Surveying of remaining land**
- IX. Taking possession and Vesting**
- X. Supplemental -**
- XI. Temporary possession of land**

5.03 Other Laws – The Proposed Land Policy

6. SOME CASE STUDIES: ILLUSTRATING HOW COMPULSORY PURCHASE AND LAND ACQUISITION IS APPLIED IN KENYA



- A. **The Thika Highway** is currently a four lane (two each way) highway linking Thika, an industrial city to Nairobi. Because of increase in population and the resultant economic activities in Thika and its hinterland, it was decided to expand the road to six lanes each way, to make it a super highway. There was a long delay, from the time this decision was made to its implementation, and this led to encroachments, on the road reserves, conversions to private/personal use. Even the adjacent legitimate parcels had been developed. ***Some of the road reserves had clear and clean title deeds, issued by the Ministry of Lands.*** The concerns that arise are twofold:
1. Directs costs for the construction escalated, through inflation and other costs drivers
 - The developments have to be demolished after being paid for by exchequer
 - Cost of materials
 - The buildings were demolished without the benefit of relocation *see photo.*
 - The investors' stock and opportunity costs
 2. Indirect costs
 - To government to lose the taxes on revenue accruing
 - Opportunity costs to the economy
 - Properties developed along the road reserves were operating and offered gainful employment to citizens, and now they had to be laid off
 - Consequential losses before turning around these former workers, no safety net
 - Disruption of work

B. THE TIOMIN MINES IN KWALE

I spoke to the chief geologist and Ministry of Environment and Natural Resources, Department of Mines and Geology. He says that they have the lease, but the details of land compensation are with Ministry of Lands, Department of Lands and settlement and surveying. He says that the evaluation was done by Min of Lands, but value given was very low. In many cases Tiomin paid 10 times the value given by the ministry based on humanitarian grounds. He says that the compensation process was a very complicated one as it involved Min of Lands, Min of Finance, Min of Environment, Tiomin, local groups, etc.

1. Titanium Mining in Kenya: The Unresolved Questions

Published Date: 10-07-2003

2. Titanium Mining in Kenya: The Unresolved Questions

Press Release - National Council for NGOs 10th July 2003

3. Abrupt Government Decision

The Council has taken note of the media reports to the effect that the government, through the Ministry of Environment, Natural Resources and Wildlife, has finally decided to grant the mining licence to M/s Tiomin Resources Inc. The sudden decision to issue the licence, without conclusively responding to the objections lodged by the Council and others, is inconsistent with the proclaimed policy of the new government to consult widely before decisions on major governance issues are made.

4. Sustainable Development

From the outset, the Council would like to reiterate that it supports the principle of sustainable development, that is to say, development that meets the needs of today without compromising the ability of future generations to satisfy their needs. The Council is therefore not against exploitation of Kenya's natural resources. Its concern is that such development should be environmentally sound and equitable, and truly benefit the people. For a country trying to emerge from a depressed economy, exploitation of resources such as titanium is one of the engines for the projected growth. However, this should not be attained in a manner that imperils citizens' lives, livelihoods and rights. It should also be done in a manner that ensures the greatest economic value possible for the country. Is KSh. 400 million per year necessarily the best value?

5. Adequate Compensation

In this regard, the Council appreciates that one of the sticking issues that it has sought to address, namely the question of adequate compensation, has received attention. While the latest offer of KSh. 80,000 per acre is a marked improvement on the earlier offer of KSh. 9,000 per acre, we would like to point out that the issue of compensation was just one among many. Nevertheless the process attending decision making in this whole affair poses some

questions of process and detail that still beg for attention.

6. Consultative Process

The first is the inconclusive consultation process. The grant of the licence has come at a time when the government had embraced the civil society as a valuable partner in development in our country. Besides, both the Mining Act and the Environmental Management and Coordination Act require public participation to attend decision making on issues of this nature.

In the course of this working relationship, and in appreciation of the need for the Kenyan people to discuss matters that affect their lives, the Ministry, through the office of the Commissioner of Mines and Geology, published several public notices with the final notice appearing in the Daily Nation of February 5, 2003 requiring any person with any objections to the grant of a special mining lease to M/s Tiomin Resources Inc. to file them with the Ministry within a period of 90 days.

It is regrettable that ever since the submission; no response has been received from the government with regard to the issues that were raised in the objections. We submit that Regulation 33 of the Mining Regulations, under which the notice was published, does not contemplate a mere formality of calling for objections without responding to the issues raised. Seen from the standpoint of the rules of natural justice, the said regulation calls for a proper hearing of all parties concerned prior to decision-making.

7. Access to Information

Furthermore, for public participation of citizens to be useful and meaningful, it must be effective participation. This can only happen if citizens and organisations are provided with all the necessary information to enable them to meaningfully engage in any consultations. This is because information raises the level of debate and influences opinion that might otherwise be compromised by mistrust and bias. We note that on a number of issues, such as the quantity, composition and quality of minerals available in the area, the only information available has been provided by M/s Tiomin Resources Inc. without independent verification by the government. Can we trust Tiomin Resources Inc. to take care of the interests of Kenyans? The government needs to practise transparency and release all the information that the public requires to gauge the fairness and prudence of this process.

8. The South Africa Experience

Additionally, it was expected that the report of the fact-finding mission to South Africa would be released to the public. In the same vein, if there were negotiations between the government and M/s Tiomin Resources Inc. on the one hand and the local farmers on the other, the terms of these negotiations and the full agreements arrived at should have been made known to all stakeholders and the wider public.

9. Vesting of Natural Resources

The natural resources of Kenya belong to the people of Kenya. The government merely holds

them in trust for the people. Indeed, this is the letter and the spirit of the draft Constitution of Kenya that is undergoing debate. For this reason, the government must have a clear position on how it intends to deal with Kenya's vast natural resources. This must certainly mean re-looking at the country's policies and laws on natural resources. Gladly, the government appreciates this fact. In the budget speech, for instance, the government informed Parliament that it intended to draft Kenya's mining policy and come up with appropriate legislation. The review of the Mining Act, a colonial relic, is long overdue. This is also recognized in Kenya's Poverty Reduction Strategy Paper and the recently released Economic Recovery Strategy for Wealth and Employment Creation.

10. The Nigerian Experiences and other Africans

Secondly, while appreciating the potential benefits that may accrue from this venture, we must remember that African history is replete with instances where the discovery and exploitation of mineral resources has not been a blessing but a terrible curse that has haunted its citizenry. Most of the civil wars in African countries are waged over natural resources. The examples of the Democratic Republic of Congo, Angola, Liberia, Sierra Leone, and the Niger Delta in Nigeria immediately come to mind. There is also the prevalent phenomenon of poverty amidst plenty in the same countries, which is evidenced by amongst others, the struggles of the Ogoni people in the Niger Delta. Generally, the most-endowed countries are the most unstable and poor, due to mismanagement of such resources and corruption.

Licence Conditions

Thirdly, there are still a number of unanswered questions, which there is still ample opportunity to resolve prior to the actual grant of a licence and commencement of mining operations. Indeed, some of these constitute conditions that should be on the mining licence. The main ones are as follows

- Guarantees on the exploitation of underground water, which, even under current circumstances, is reflected in the Study on the National Water Master Plan to be dangerously low.
- The Environmental Impact Assessment (EIA) and the Environmental Management Plan (EMP) have been submitted. The Action Plan should also be submitted, and publicly reviewed, prior to the issuance of the EIA licence.
- The EIA and EMP are still the subject of a pending lawsuit, with mandatory orders still in force against the Director-General of the National Environmental Management Authority (NEMA).
- There have still been no attempts to consider alternative loading site to Shimoni and/or ways of mitigating the possible negative environmental impact on the Kisite/Mpunguti Marine Parks. The Council had proposed access through Kilindini by rail.
- Local value addition, which would create more jobs, technology transfers, and more national income, has also not been conclusively discussed. This is at the heart of maximizing economic value to the country.

- There is need to strike a balance between benefits to the national economy and what goes into the local economy. The government intends to revive the Ramisi Sugar factory. Part of the land in which the mineral is found actually belongs to this company. Additionally, official records such as the Kwale District Development Plan show that this area is the bread-basket of Kwale district. The government needs to balance these interests as part of the process of settling the Tiomin issue.
- There are still continuing and yet to be addressed concerns over radioactivity in the area. Clear explanation of mitigating measures, strict licensing conditions and monitoring frameworks would allay these fears.
- It is still not clear where the affected people will be re-settled, with controversy already emerging over possible re-settlement in Kilifi. This begs the question whether a Re-settlement Action Plan (RAP) has been developed.
- The mining of titanium is not governed by the Mining Act alone. The Environmental Management and Coordination Act is the overall legislation in environmental matters and must therefore at all times be complied with. Did the National Environment Council (NEC) and the NEMA deliberate on this matter before the Ministry issued the statement of intent? Have all the requirements under that law been met?

The Council contends that the foregoing issues must not be seen in isolation but as important ingredients to the success of any mining venture in Kenya.

The Council strongly believes that the manner in which the titanium mining issue has been managed raises many questions, not just on the mining of titanium, but how the country wants to exploit other minerals, both existing and under exploration. Yet it is not too late in the day to do take corrective measures. The Council will continue to monitor the situation, in concert with its members, and to call upon the government to manage the issue accountably.

In the meantime, the Council calls upon the government to do the following:

Gichira Kibara

Chairman

The National Council of Non-governmental Organizations

C. KENYA'S WATER TOWERS: PARTICULAR REFERENCE TO THE MAU FOREST: ENVIRONMENTAL CHALLENGES: CLIMATE CHANGE

The Mau Forest – Kenya's largest water tower somehow excised off and allegedly distributed to the landless but now government seeks to get back the land through a process of alienation – take land belonging to government and give it out for private use. Mau Forest is not the only one Karura Forest on the outskirts of Nairobi, was excised and similarly distributed to individuals. Key conservationists led by Prof. Wangari Maathai opposed it.

1. MAU FOREST TASK FORCE (MFTF)

After months of heated debate and intense lobbying over the need to rehabilitate the Mau forest bloc, the government last week moved to instal an Interim Co-ordination Committee to launch the process of reclaiming the East African Region's leading water tower.

Apart from adopting the Mau Forest Task Force (MFTF) report that details the plunder of the forest, the cabinet authorized the establishment of an inter ministerial co-ordination committee to be based at Prime Minister Raila Odinga's office. The team will come up with a rehabilitation schedule for saving the water tower.

The move rests the case of which government department has the mandate over the forest's rehabilitation programme, a puzzle that has sometime seen ministries such as Environment, Wildlife and the prime minister's office issuing conflicting directives on the state's conservation plan. Among its immediate task, the Cabinet wants the co-ordination committee to advise the state on the formation of the Mau Complex Authority, an outfit that will shoulder the responsibility of forestalling future excision of the forest.

With the history of political interference, attention now shifts to the kind of commitment that the government will accord the new committee in its effort to cleanse its past messes. Experts believe that powerful individuals have over the years been using their proximity to power brokers to benefit from settlement schemes that are created in the name of benefiting landless Kenyans.

The MFTF report, tabled in Parliament last week by Mr Odinga, exposes an intricate link between greed at the high echelons of political power and the alarming disappearance of the country's forest cover that has been blamed for the current state of severe water scarcity and food insecurity. It poses a threat to the Mara National Reserve and the Serengeti National Park in Tanzania that share a common border and are fed from the Mara River, which originates in the Mau. Tourism activities, including the world famous annual wildebeest migration is under threat as the rivers dry up. Lake Nakuru National Park, famous for its species of flamingoes pelicans and other birds, is drying up as people upstream divert water to their farms.

"The plunder of Kenya's forests has continued over the years despite pleas to conserve them because of mismanagement, irresponsible and corrupt behaviour of politicians and government officials," said Nobel Laureate Prof Wangari Maathai. "This destruction, she said, has manifested itself in the form of deforestation, the shamba system, human settlements, cultivation, charcoal production and grazing."

Apart from the Mau complex, all the other four water towers among them Mt Kenya, Aberdare Ranges, Mt Elgon, and Cherengani Hills have receded alarmingly. The MFTF identified the period between 1996 and 2005 as the worst decade for the forest cover in the country.

"Undeserving individuals were allocated land, not for development purposes but as political reward and for speculative purposes," says the team's report.

In Parliament, Mr Odinga named former president Daniel arap Moi and people who served in the inner core of his government as beneficiaries of the irregular allocation of Mau forest.

None of the people resides on the said forest land and most of them have denied owning the land. The report indicates that while the Mau Complex straddles seven administrative districts, cases of illegal excisions were particularly concentrated in Nakuru and Narok districts.

"This report indicates that we are actually dealing with a huge mess created by the former regime," Mr Odinga told Parliament last week.

2. MOI OPPOSES MAU EVICTIONS, ASKS STATE TO RESPECT TITLES

Published on 16/08/2009 By Vitalis Kimutai

Former President Moi has opposed eviction of families in the Mau Forest. He said the Government had not consulted him over the resettlement, despite having been in charge when the families moved in. He asked the Government to respect the sanctity of title deeds.

"The Government should not rubbish title deeds which families in the Mau region have as they are legal Government documents and not mere pieces of paper," he warned. Moi also faulted the implementation of the Mau taskforce report.

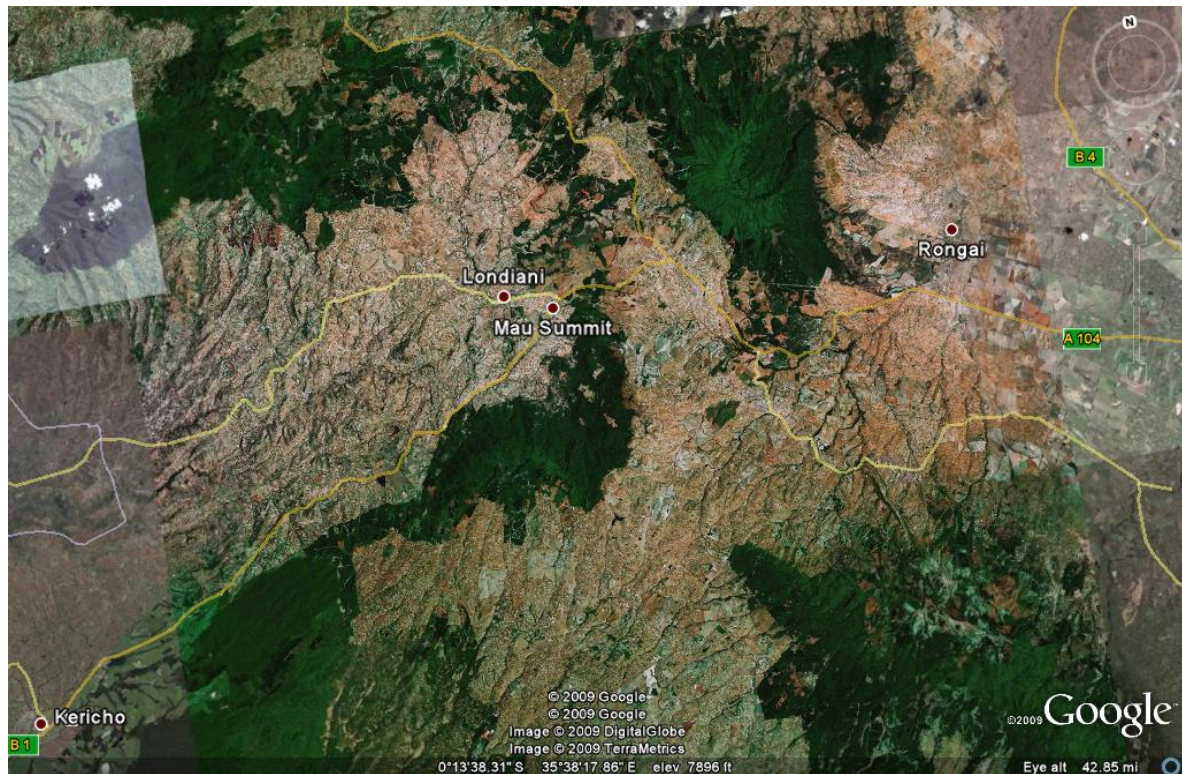
3. HUMANITARIAN CRISIS

"The report is being implemented without the input of the affected families and has the potential of sparking chaos and a humanitarian crisis." "This is a wrong approach and a threat to the existing peace and co-existence in a cosmopolitan zone like Rift Valley, which is still smarting from post election violence." He said the Government should be cautious while executing change. "I do not approve of the method being employed to move the families out forcibly," he said. He refuted claims that families living on the Mau forest in Narok South had encroached on the forest. Moi said the families bought land from group ranches, which was held under trust by the Narok County Council.

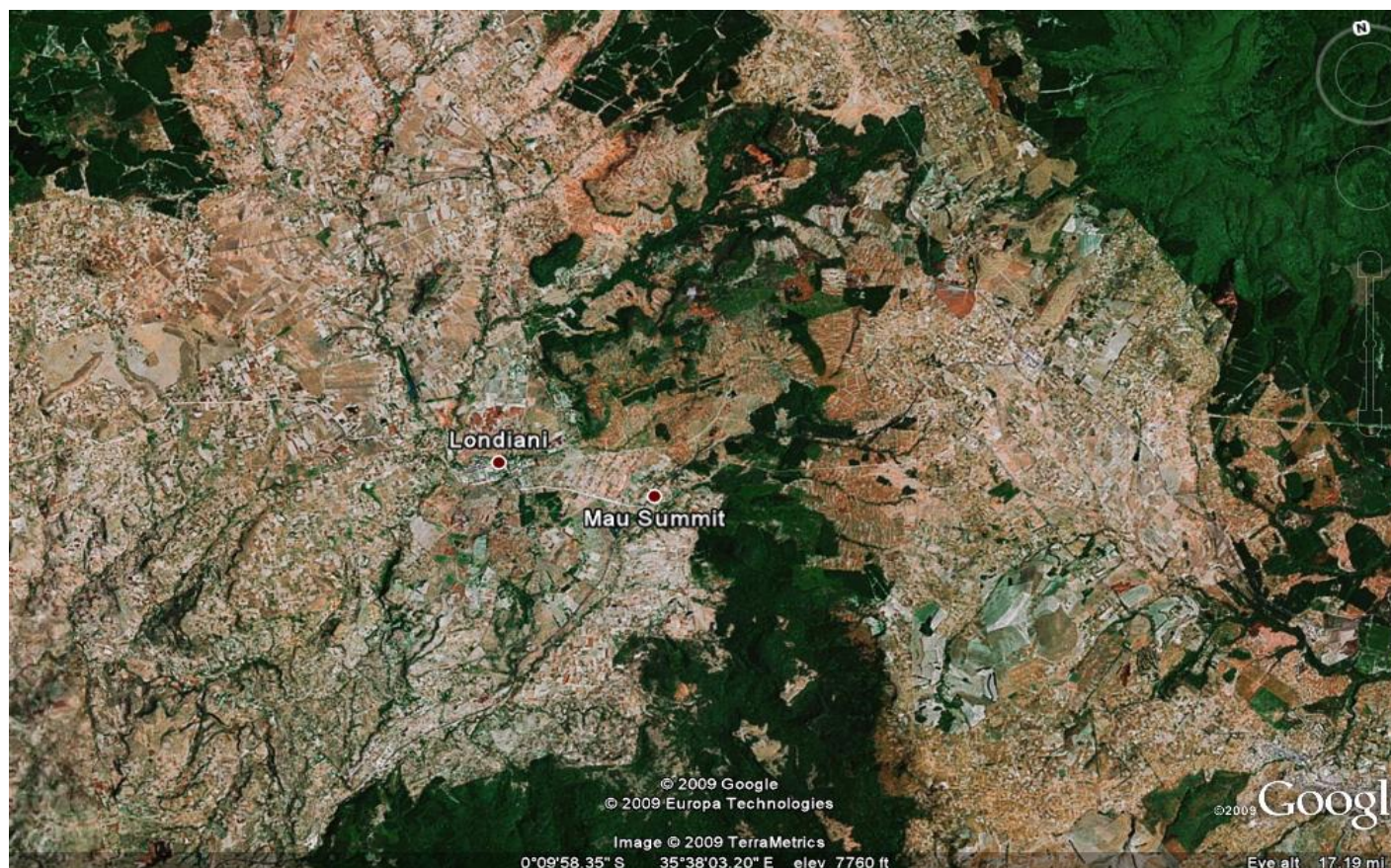
"Let us get this clear that Jackson Angaine in 1978 sub-divided the land to group ranches and the group further subdivided the land and sold it to individual farmers." He said most of the families who had proposed to be moved owned land bordering the forest but were not living in the forest. He also said that there has not been tree planting in parts of the Olenguruone extension since 1972.

4. FOREST GUARDS: INDIGENOUS FOREST PEOPLES: OLGIEK AND THE SENGWER

The former President wondered what forest guards were doing when the families moved into the forest. The Ndung'u Report of 2004 recommended evictions of illegal settlers from the forest. Minority groups such as the Ogiek and Sengwer have stood their ground they are bona fide forest dwellers and have preserved the Mau therefore moving them out will only result in displacing them from their habitat.



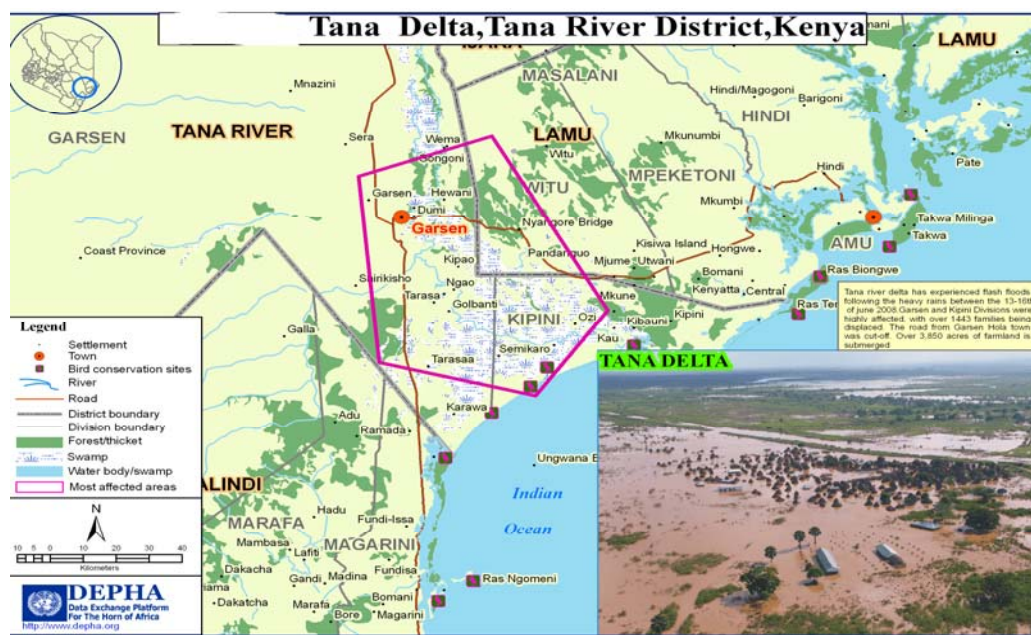




D. CONCESSIONAIRE - THE TANA DELTA – LEASE TO ANOTHER NATION TO PLANT FOOD FOR ITS OWN CONSUMPTION

D1. POPULATION

Division	Garsen	Tarasaa	Kipini	Total
Male	12,623	6389	6001	25013
Female	18,907	7808	4785	31100
Boys	8415	4258	3230	15905
Girls	7931	5204	2050	15185
Total	47476	23659	16066	87203



D.2 Land

Area	Km square			
	Garsen	Tarasaa	Kipini	Total
Total Area	14,460	838	714	16,012
Arable land	2,892 (289,200ha)	502 (50200ha)	428 (42800ha)	3,822 (382200ha)
Water Mass	2,880	168	178	3,226
Range Land	8,688	168	108	8,964
Tana River Length in Km	130	30	60	270

Irrigable Land 764.4Km (square) (76440ha)

The Farming Concessionaires

Early this year 2009, it was announced that Kenya would lease, for a period of 80 years, the Tana Delta, to another country to farm in the Tana Delta and export the produce to its people. There was serious outburst of anger at why the government would consider that option over enabling the Kenyan citizens themselves to farm and export the produce to the other nation.

The River that Changed Its Course

This was just when the people of that area were still recovering from the Tana river changing

its course. It is early days yet but going from past experience of how another landmark property the Grand, held by the Central Bank over a debt, changed hands to foreign investors, the alarm is real. It was indicated that the indigenous peoples would be relocated. In any case they are few and barely utilize the land.

Contrast KWS lodge and luxury tented camps concessions with the Jomo Kenyatta International Airport where we have been told that the foreign investor will take out an 80 year lease, under terms that are unclear but are rumoured to be not in favour of public interest.

“Arguably, Kenya’s is the most unequal society in East Africa. It is not unusual to find the very poor and landless pitching camp outside thousands-acre swathes of land invariably owned by former or serving government bigwigs or politicians.

These landless form a cheap pool of labour for the farms. They can hardly ever afford education for their children who, inevitably, replace them as farm hands upon death. They are tied to an endless circle of poverty. This situation is to be found in the Coast and parts of Eastern, Central and Rift Valley Provinces, where the inequality reigns supreme. In the cities and municipalities, you will find some of the best homes you could find anywhere in the world while packed next door are thousands living in deplorable slum conditions.

This fuels insecurity and political instability. Little wonder that such people were so amenable to political manipulation during Kenya’s 2007 post-election violence. The wealth of most people in Kenya will easily be traced back to the land. The large farms or plots of land in town were allocated for a song, but usually in exchange for a helping hand in the nation’s politics, by either the colonial or post-colonial governments.

Such plots were easily sold back to government institutions at exaggerated prices, while others mortgaged title to government-owned financial institutions to kick off chains of well-paying enterprises. Hardly any of the very rich worked their way through earnings from salary or any exemplary work of art or sports.”

Ibrahim Mwathane, July 2009 in the “*East African*”

7. OBSERVATIONS

At independence in 1963 our Forest cover was a respectable 12.5%. Ideally there ought to have been policies in place to progressively increase this to 50%? Now in 2009 we have less than 2% forest cover. It is ironic that we produced Prof. Wangari Maathai, a world renowned fighter for the environment but politicians rarely listen to her. Luckily she has access to other audiences and that has saved a little bit of the habitat and our ecosystems somewhat..

Many people, even the very educated, a critical mass in Kenya are illiterate and ignorant of the law, unless they are lawyers. They do not know their rights, duties and obligations under the law or any other provisions that would protect them or cater for their needs to enjoy full benefits during such an exercise as compulsory purchase. They are thus vulnerable and exposed to those of ill-will, as was the case in Kwale for the titanium mining license. There is

real danger of being short changed, even by the professionals they are relying on to protect their interests. It is not unheard of to hear that lawyers, as well as my fellow surveyors have colluded to deny people their rightful share of interest in property. The award of prison warders who died in a road accident ended up in a lawyer's pocket.

Government itself stands to lose a lot if it executes only part of the compulsory acquisition arrangements. For example, when, upon a valuation survey the previous owner is paid for the developments on site, only to be allowed to cart away the salvaged materials. Or even worse for the government to then demolish the existing structure.

8. CONCLUSIONS

In my opinion, the laws of compulsory acquisition and land purchase in Kenya were conceived in utmost good faith, adopted, as they were, from India and United Kingdom, where they had been “tested and debugged”. They have served our economy well. The biggest challenge is how so few Kenyans have been empowered to read write and most important, to understand these laws. This leaves room for us professionals to manipulate facts and figures, regrettably, for our benefit. In this regard perhaps the politicians can be excused; after all they are not professionals, in the real sense of the word. The excesses of the Executive (Central Government); Local Governments and others in power has led Kenya to a sorry state of environmental degradation.

Kenya is a developing Nation and she needs all the support she can get from abroad and at home; from the bilateral partners and the private sector. This is not new and has worked well elsewhere Public Private Partnerships (PPP). Somehow despite best effort the laws on PPP are not forthcoming in a way that the private sector can utilize them to best advantage. Moreover the whole matter of other governments coming to work with us should not be shrouded in mystery or mystic. It should be pragmatic and transparent so that it does not leave a feeling of being taken for a ride or fore-granted.

9. RECOMMENDATIONS AND WAY FORWARD

- a. Observe all the laws that govern and safeguard to a clean and healthy environment for the people of Kenyans generally must be observed by all. This should be preceded by a concerted civic education to empower Kenyans to know their rights.
- b. The reverse order of government taking away land from its land banks and forests reserves ostensibly to settle the landless and most of it ends up going to the already haves, is not only politically immoral but outright theft of public assets and those responsible should be held to account.
- c. Open up the flow of information and engage in structured consultations with interested parties in order to conform to the public participation requirements of both the Mining Act and the Environmental Management and Coordination Act, Kenya Forests Service Act.
- d. Develop standard conditions for concessionaire and licensing in a more participatory and

transparent manner in order to provide stakeholders with sufficient information for continuing public participation by way of monitoring compliance with the laws of Kenya.

- e. Expeditionously establish the process of reviewing Kenya's environmental management, forests, mining, and policies in order to provide clear direction on similar land resources exploitation ventures, which should include stakeholder participation and competitive determination of value.
- f. Take all necessary measures to safeguard the rights of affected citizens, beyond the payment of compensation, such as re-settlement, investment education, monitoring and evaluating the environmental degradation and enforcing compliance with the license conditions.
- g. Ensure that citizens are not misled into buying forest lands given that they not allowed to be there in the first place. This can only be achieved through massive civic education as well as general education where we eliminate illiteracy and ignorance.
- h. Notion of long term leases beyond 25 years must be frowned upon and discouraged. There is a standard model set by Kenya Wildlife Service (KWS) when it lets out concessions for development of tourism facilities.
- i. The National Land policy should be fast tracked and enacted into law;

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