



LAND UPDATE

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CHALLENGES FACING THE IMPLEMENTATION OF THE FOREST ACT 2005



INSIDE...

THE FOREST ACT 2005: CHALLENGES FACING ITS IMPLEMENTATION P.3

FOREST EVICTIONS AND EXCISION: VIEWS OF A SECTION OF STAKEHOLDERS P. 10

THE NEW FOREST ACT AND COMMUNITY INVOLVEMENT P. 7

THE MAASAI MAU FOREST: A STORY OF CONFUSION AND DESPERATION P. 13

FACTS...YOUR LETTERS...NEWS...AND MORE



EDITORIAL

The Kenya Land Alliance (KLA) welcomes the new Forest Act 2005 for placing forest resources at the core of sustaining both the local and national economies. Indeed locally forests are a source of food, fodder, wood fuel, construction materials, spiritual and cultural nourishment and traditional medicines among others. The Act, beyond highlighting the environmental and ecological functions of the forest sector, affirms the importance of our forest cover as one of the country's major national assets, and this underscores the need to entrench it.

The Forest Act 2005 in recognition of the fact that forests traditionally belonged to communities like the Ogiek of Mau Forest, the Somek of Mt. Elgon Forest, the Mijikenda of the Kaya Forests, and the Boni of Boni Forest in Lamu and Ijara districts provides for community involvement in the sustainable management of forests. It is conservatively estimated that 2.9 million people in Kenya live next to indigenous forests and directly depend on its resources for their livelihoods. For this reason KLA appreciates the provisions in the new Act that recognizes the role of local communities in conserving and managing forests and forest resources. KLA however cautions that the past may not yet be passed given the long-time management practices that held the position that natural resources i.e. all minerals, water bodies, national gazetted forests were property of the government. Thus, although the new Forest Act devolves their management, it still reflects a loose application of command and control principles instituted by long-term tested bureaucratic habits.

KLA as a land and natural resources civil society network committed to promoting sustainable development and public interest would like to urge the Government to ensure that current forestry bureaucracy championed by the Forest Department is not bequeathed to the new proposed Kenya Forest Service because that shall defeat the commitment to democratizing forest resource management. While the Forest Act 2005 seems to usher in a new order the colonial paradigms of the past, setting apart forests for the benefit of a few political and economic elites, are not yet completely swept aside.

The new law does not offer recognition of past injustices and other ongoing failures in natural resource management which is premised on perpetual evictions of forest inhabitants without alternative resettlement. Till the political will fused with legal mechanisms for implementing democratic reforms in natural resource sector emerge, KLA fears that the unjust and failed pattern of arbitrary state legal control over natural resources will fester and endure.

However, the government stand warned that the people want to own and control their forest resources. This is their new constitutional dispensation which they are not prepared to let go because forests and similar other natural resources are essential to reducing, if not, eradicating poverty.

Another concern about the Forest Act 2005 is that it fails, like many recent reform instruments, to define who the community is an assumption that complicates the ascertainment of tenure security and protection of Community Based Property Rights in

any given forestland. Just in event of hybridization of local communities the state shall lack any credibility or objective capacity to determine who benefits the 'Community' label. Simply, determination of community territorial enclaves within state forests may present problem in ascertaining in a long run.

In this Land Update KLA recommends that beyond the letter of the Forest Act 2005, the spirit of its implementation should be grounded on the notion that natural resources including minerals, water, land, forests, fisheries and wetlands, within our boundaries shall belong to the people of Kenya. And where ownership is expressly vested in other persons or people by the constitution; any such other persons or people shall hold and manage them in trust for the people of Kenya. For this reason KLA expects Parliament to act as the public trustee over natural resources such as forests and shall exercise the overall oversight to ensure protection and sustainable use of our forests by the present and future generations.

As we read the challenges we stand to face in implementing the Forest Act 2005 the primary concern to us all is our level of preparedness to manage our forests sustainably. The sustainable management of forests requires fidelity to a number of values and principles; including and not limited to trans-generational equity and responsibility for and prevention of environmental damage. It is an accepted practice that public participation in decision-making affecting the forest management, including the right to receive information, has become an important principle in environmental governance.

THE FOREST ACT 2005

CHALLENGES FACING ITS IMPLEMENTATION

The Forest Act 2005, finally received approval of parliament in July 2005, followed by a presidential Ascent in November of the same year. The new law that is expected to harness the great potential of the forest sector is set for gazette and implementation early 2007 to replace Cap 385 of the laws of Kenya. But even as we move towards its implementation phase, a number of challenges still stand on the way of its effective functioning. Key among them is the apparent lack of adequate political goodwill due to vested interests, inadequate information flow to the local



The New Act Seeks to Stop Depletion of Indigenous Forest Cover

communities to enhance their awareness, the possibility of having another non-independent body managing forests, weak and disjointed institutional framework, corruption and selective application of the law. The process of formulating rules and regulations governing implementation of specific aspects of the Act is incomplete, and we have non-comprehensive inventories and intelligence from bodies managing forests. There is also the problem of inadequate involvement of local communities and a lack of local capacity to enable community participation among others.

THE LONG JOURNEY TOWARDS ITS PASSAGE

The Forest Act 2005 has come a long way. Born principally out of the 1979 Beijer Institute Report, subsequent initiatives like the establishment of the Kenya Forestry Master Plan of 1992 and adoption of the Kenya National Environment Action Plan of 1994 did not help much. Even political slogans from former President Moi of 'cut one plant two' offered no tangible long-term effect as they were not grounded on enforceable policy hence sporadic populist implementation followed. Critics say, even as he preached such slogans, his government allowed and participated in destruction of gazetted closed canopy forests. Earlier versions of the new Act, namely the Forest Bill 1999 and later Forest Bill 2000 were prepared, but never tabled in

parliament. The Bills were either not a priority to the then government or it was uncomfortable with the provisions contained therein. Under the NARC government a republished version, Forest Act 2004, was rejected in parliament ostensibly due to political differences. It was only after concerted efforts and lobbying from the civil society that the new Forest Act 2005 was passed by parliament.

LACK OF POLITICAL GOODWILL AND VESTED INTERESTS

A major contributing factor to the present condition of forests (where we have forest cover receding at alarming rate and those involved not being held accountable) is lack of political goodwill, vested interests, and inadequate judicial and executive support. Despite the new Forest Act 2005 being just a few months from its scheduled gazette, foundation for its implementation is yet to be completed. We presently have committees established to among others, midwife the transition from Cap 385 to the new Act and ensure required rules and regulations are in place. The committees will be expected to streamline inter-sectoral linkages and partnership procedures and ensure key stakeholder groups are included in the transition process. Works in key committees such as Reform Sector Secretariat and the Forest Sector Reform Committees are ongoing and some donors, including the Food and Agricultural Organization, FAO, and the World Bank have shown interest in sup-

porting this preparatory phase. However, with the present pre-occupation with political realignments and preparations for the 2007 General Elections, the political wing of the government may not offer any tangible support to the process. The political dilemma facing Kenya is indeed worrisome as we do not seem to have a political party in government, so getting the government's position on the Act is difficult. This is further compounded by the so-called Government of National Unity, GNU, recycling politicians from the former regime who supervised and participated in the destruction and plunder of the country's forest resources. With strong vested political interest in the sector, any initiative towards change is bound to be met with resistance. Even with the new government, things have not changed at the ministry in charge of forests. The bureaucracy that has been its hallmark continues, hampering activities of individuals and civil society organizations seeking to be involved in issues concerning the sector. Accessing data meant for public viewing is still difficult with its staff often hesitant to share information with the public and in a number of cases files are reported lost or missing.

INADEQUATE INFORMATION AND LACK OF CAPACITY FOR LOCAL COMMUNITIES' INVOLVEMENT

Not many Forest Communities are aware of the presence of the Forest Act 2005, nor provisions contained in it, hence they cannot be expected to understand the roles they will be expected to play in its implementation. Further to that, a number of discussions and processes have been ongoing preceding implementation of the new Act. There is however, very little evidence of direct community involvement in such discussions, as often they are represented by proxy (civil society organizations) hence they may not at the end of the day totally own the process, and implementation may not adequately take into consideration their interests, but rather focus on what is perceived to be their concerns.

The Forest Act 2005 defines a 'Forest Community' as a group of persons who have either a traditional association with a forest for the purpose of livelihood, culture or religion, or a group of persons who register as an association or other organization engaged in forest conservation. Such an entity may together with other members or persons resident in the same area register a Community Forest Association, CFA, for use and management of the forest. This registration is however to be done by the Registrar of Societies guided by the rules and regulations of the Societies Act Cap 108. Subjecting community associations to follow the same registration procedures as societies would be a frustrating endeavour for them, going by past experiences, and this could further slow down community participation. There is fear that the power of de-registering of societies still held by the Registrar's office could also be misused.

Options such as having special registration desks for Forest Associations at the registrar's office could be used as stop-gap measure before the office operations are fully streamlined. Under the chapter on Joint Management of Forests, the Director of the proposed Forest Service upon approval from the Board may enter into an agreement with any person for Joint Management of a Forest giving the person freedom to 'use' the forest as long as the person ensures conservation of its biodiversity. Months away from the proposed implementation of the Act, not enough information dissemination targeting local communities has taken place, allowing the possibility of them being caught flatfoot when local or even foreign conservation groups rightly registered move in to manage forests in their areas posing a scenario of potential conflict.

INDEPENDENCE OF THE PROPOSED KENYA FOREST SERVICE, KFS, QUESTIONABLE

Although the Forest Policy espouses formation of a semi-autonomous service to be known as the Kenya Forest Service, KFS, its independence from the executive is in question. The Board that will oversee its management has been given lots of authority over it, yet this board doesn't appear independent. Its chairman will be a presidential appointee, so are the three permanent secretaries poised to sit on it, representing the Ministry of Environment and Natural Resources, Finance, and Local Authority. Another eight members sitting on the 15-man Board will be ministerial appointees. The Kenyan experience is that people owe allegiance to appointing authorities, and the government has in numerous occasions demanded this of its appointees even asking them to engage in acts that are not in public interest. In addition, the Kenya Forest Service is largely dependent on the government for its funding further raising doubts over its independence or being allocated enough funds to run its affairs.

CHALLENGE OF HARMONIZING CONFLICTING INTERESTS

The Forest Act 2005 seeks to involve Community Forest Associations, Private Companies, Conservation Committees, Local Authorities and the Kenya Forest Service itself in management of the forests. Though the Act provides for formulation of Joint Management Agreements and development of Management Plans by the Kenya Forest Service or local authority, in practice sharing of responsibilities between the above parties could prove complicated.

A number of functions proposed for the Board and the Kenya Forest Service seem misplaced, an example being the requirement that 'all moneys due to The Kenya Forest Service be collected or received on behalf of the Board by the Director, who will then deposit such funds into a special account.' The Kenya Forest Service could instead enlist expertise from the Kenya Revenue Authority.



Much of Kenya's Indigenous Forests Have been Irregularly Converted into Farmlands and Settlement Areas Threatening the Country's Ecosystems

the Provincial Administration, the area Forest Officer who will double as its secretary, Agricultural and Environmental Officers of the area, and a representative of the timber operators. Whereas the public can attend and take part in deliberations of the Conservation Committees, their roles in it do not go beyond that. Moreover their attendance is only by invitation. It is worth mentioning that as per the Environmental Management and Coordination Act, EMCA 1999, citizens and civil society bodies have an opportunity to lodge their objections to proposals affecting the status of forest areas without necessarily having to demonstrate their 'Locus standi'

EXCISION AND CONVERSION OF FORESTLAND USE

The Forest Act 2005 seems to have made the process of declaration of intent of excising or converting a forest area to alternative use more stringent to avoid situations of unilateralism that has been witnessed in the past from the Executive. However the aspect of powers of the public isn't as clear. According to the new Act, before a forest area is de-gazetted for excision, it will require a resolution from parliament. In addition, publication of such a proposal will only take place after it has been agreed upon by the Forest Conservation Committee of the area of location of the forest. Other factors that will be considered will be to ensure that the intended excision does not prejudice biodiversity, conservation measures are in place, and the process of Public Consultation undertaken. Further the excision proposal will have to be subjected to an Environmental Impact Assessment as per provisions of Environmental Management and Coordination Act, EMCA of 1999. According to the Act, publication will include putting up a notice in the Kenya Gazette, in at least two national newspapers, a regional newspaper circulating in the locality and use of a local radio station. Whereas the public is expected to join in the process of public consultation, there is no guarantee that their views will be taken into consideration. Mode of appointment of the four Forest Community Representatives needs to be made clearer and mitigation measures such as recall of such representatives made possible. According to the Act others in the ten-man committee will comprise of a chairman appointed by the KFS board, a representative of

CORRUPTION AND SELECTIVE APPLICATION OF THE LAW

The present Forest Department is bedeviled with corruption, and scores poorly in Kenya's Bribery Index. In 2002, it was ranked the fourth most corrupt among organizations and government departments (Transparency International, TI Kenya 2002 Bribery Index.) Despite this, under transitional provisions, the Act states that "All persons, being public officers, who, before the commencement of this Act are employed by the Government for the purposes of the activities of the Forest Department, shall at the commencement of this Act be, deemed to be on secondment to the Kenya Forest Service until they are employed by the Kenya Forest Service in accordance with this Act." It will be imperative to note that a change in name from the Forest Department to the Kenya Forest Service, KFS will not necessarily lead to an automatic change of behaviour and attitudes.

Provisions such as of tendering and concessioning have potential for abuse, so are those allowing a private forest owner, farmer, or community associations to receive financial incentives, loans, grants and tax exemptions for participating in forestry. There is need for clear and proper mechanisms for overseeing the use of funds. There is also need to establish benchmarks for success and to ensure adequate monitoring and evaluation of results is done. The Forest Act needs to be implemented impartially, regardless of a person's socio-economic and political class. This will ensure proper utilization, growth

of forest cover and a return of the already grabbed lands that were hitherto forests regardless of the status of the persons who committed such acts or who holds such forestlands.

EVICION OF PEOPLE FROM FORESTS

Presently the issue of forest eviction in Kenya is a commonplace occurrence, affecting tens of thousands of people and it is posing not just a legal question, but a moral one too. The new Act provides for among other things conviction of persons who cultivate or occupy forestland illegally in a court of law, removal of their buildings, huts, or crops at their expense. This presupposes that the persons have alternative resettlement and a means to compensate the state for 'service rendered' of evicting them. This can be a good mitigating measure particularly if it specifically targets those who encroach forestlands for speculative and profiteering purposes. Granted forests are essentially not dwelling places, but forceful eviction is not the solution either.

The government needs to ensure it has alternative settlement for persons it decides to evict from forestlands. This resettlement however should only take place after a careful vetting process so that only genuine cases are resettled to avoid the situation of 'perpetual squatters.'

There are also communities like the Ogiek that still claim forests as their dwelling places. The Act does not seem to recognize rights of this category of persons. It indicates that people registered in forest associations may be allowed partial use of forest as per the Joint Management

Agreements only where such use does not threaten its biodiversity, and the nature of use is not for commerce. The real challenge will however be evicting politically well connected persons within forest boundaries who are today untouchable.

NON-COMPREHENSIVE INVENTORIES AND INTELLIGENCE

Both Local Authorities and the Forest Department lack proper inventory and intelligence on the state of forest resources. Indeed early this year, United Nations Environment Program, UNEP and Kenya Forest Working Group, KFWG took the Acting Head of the Forest Department's Inspection and Protection team and a number of stakeholders on an aerial survey of OI Posimoru and South West Mau Forests to get a first hand experience of the destruction there. This however must not be construed to mean ignorance by the department of the destruction and irregular activities going on in the Kenyan forests, rather there seems to be a tendency by those responsible to await media scrutiny and public pressure before they can act decisively. The department has failed to act on existing satellite data to manage the forests.

A KLA- led fact finding mission to the Maasai Mau, comprising *Chemichemi ya Ukweli*, Catholic Justice and Peace Commission, CJPC, and the Department for International Development learnt among other things that the Narok County Council lacks basic inventory of resources under it, (including parts of the Mau Forest) making management of the same difficult. The new forest policy seeks to among other things enhance capacity of local authorities in forest conservation and management and also support Community Forest Associations and Conservation Committees. It seeks



The Problem of Squatter Evictions is Presently a Common Occurrence

to have the forest officer in charge of a forest in a local authority, make at least two inspection visits per year and make his report to the Director of the Kenya Forest Service on how the forest is being managed. If the report is unfavourable, the Director and his Board may ask the Minister in charge to declare the forest a 'Provisional Forest' thereby inviting joint management of the forest by the Kenya Forest Service and the Local Authority. These provisions though sound good for the purpose of inspection and mitigation, seem lacking in steps at actual capacity building of local authorities to prudently manage the same.

CONCESSION PROCEDURES

The Forest Act 2005 gives the board authority to grant concessions, upon application, subject to an Environmental Impact Assessment. The grantee is expected to operate against a set of agreements that requires guarantees on items like conservation of biodiversity, cultural and recreational use. However, the Procurement Act notwithstanding, there is need to have clear procedures regarding how concessioning of specific forests will be done and how approvals will be granted in the first place, terms of individual concessions and safeguards to eliminate bribes and kickbacks.

HARNESSING POTENTIAL OF ARID LAND FORESTS

Presently Arid Land Forests are not properly recognised and attention seems to be on closed canopy forest. The new forest policy proposes sustainable management, conservation, support of micro-enterprise, research education, and training on dryland forestry. However due to the sheer expanse of the arid lands, harsh climatic conditions, absence of infrastructure and lack of adequate capacity among residents of such areas, management of arid lands forests remains a tall order.

Without a clear and specific action plan, not much success will be forthcoming considering the tendency of successive governments of viewing arid and semi arid lands as a liability to the state yet, these are areas with dryland forests that are important sources of fuelwood, charcoal and offer alternative livestock grazing during droughts. Other untapped products include extracts like resins, gums, aloe and honey. There is however need to introduce rules and regulations covering production, transportation and marketing of charcoal as this is a major cause of degradation of arid land forests.

OTHER ASPECTS REQUIRING CLARIFICATION

A number of other aspects though captured in the Act or under miscellaneous provisions, need to be made clearer especially to persons it will impact. It is important for example to learn rights conferred to an individual, who is not a member of a particular forest association considering that a number of activities are prohibited by the Act unless a person is part of a registered association. The Act outlaws collecting honey, hanging a honey barrel for attracting bees, presence in the forest between 7:00PM and 6:00AM, grazing livestock therein etc., bearing in mind that we have a number of nomadic pastoralist communities that want to graze in such forests during droughts. It would be of interest to learn what happens in situations where two or more user groups simultaneously present a proposal for joint management of the same forest area e.g. a conservation group and a local community.

THE NEW FOREST ACT AND COMMUNITY INVOLVEMENT

DEFINING A FOREST COMMUNITY

The Forest Act 2005 offers no definition of a 'community' but goes ahead to define a 'Forest Community' as a group of persons who have a traditional association with a forest for purposes of livelihood, culture, or religion. It adds that persons registered as an association or other organization engaged in forest conservation qualifies to become a Forest Community.

In Kenya, the concept of Forest Community involvement in forest resource management is a new phenomenon that has hitherto only been in existence in a number of areas on experimental basis. From the first Forest Policy of 1957 to the repealed Forest Act Cap 385, legislations, have tended to ignore the local community participation, leaving forest management to the state and state appointed actors, with results being continued depletion of our forest cover.

The new Forest Act, 2005 intends to reintroduce the aspect of forest community participation in forestry by creating a legal framework for Forest Community involvement by legislating the following: -

- Formation of Community Forest Associations to manage forests.
- Provision of financial incentives and technical support for Forest Community's involvement in forest conservation and management.
- Joint proposals of rules and regulations governing forest management between Forest Communities and relevant government agencies.
- Creation of Regional Conservancies and subsequent formation of local Forest Conservation Committees with Forest Community's representation.
- Greater involvement of local communities in the process of conversion of forestlands to alternatives use, commonly referred to as forest excision.
- Assignment of user and customary rights to local communities.
- Formation of nature reserves

FOREST COMMUNITY PARTICIPATION IN CONSERVATION AND MANAGEMENT

The new Act allows for a member of any forest community together with other persons resident in the same area, to register a Community Forest Association and apply to the Director of the Kenya Forest Service, KFS, or Local Authority for permission to participate in the conservation



Examples of Failed *Shamba* System

'For Effective Management, Local Communities will Receive Technical and Financial Support from the Kenya Forest Service, KFS'

and management of a state or local authority forest. Apart from providing details of membership, constitution and financial regulations, the Act requires that applications presented explicitly details the proposed use of the forest, methods of biodiversity conservation, monitoring and protection of wildlife and plant population. The Association will be expected to present a management plan for approval. In so doing, the Act seeks to devolve management of forests to the community level and to allow the community to directly participate in protection, conservation and management of the forest, formulating and implementing programs consistent with its traditional user rights.

The Associations will assist the Kenya Forest Service in enforcing provisions of this Act, particularly stopping illegal harvesting of forest produce, helping in fire fighting and protecting trees declared as 'protected trees' by the president in accordance with the Act. The association will update the Kenya Forest Service, KFS, of developments, changes and occurrences within the forest that are critical to its biodiversity

conservation. There will also be the establishment of the Forest Management and Conservation Fund to which the local forest associations will have the right to apply to, through the Kenya Forest Service Board, for financial assistance to enable them establish community – based forestry projects.

LINKAGES, PUBLIC CONSULTATION AND USER RIGHTS

The Kenya Forest Service, KFS will confer on the Associations a number of user rights including right to collect medicinal herbs, harvest honey, timber, grass, fuelwood and other forest produce important for community-based industries. The Association may also engage in eco-tourism, recreational, scientific and education activities.

The Association may also establish a plantation through non-resident cultivation. However it is important to note that all the above activities are only allowed as long as they do not conflict with those proposals for conservation of biodiversity. Local communities will be allowed use of the forests and even nature reserves for

socio-cultural and religious practices and will further have the freedom to identify areas that it feels are of cultural or religious significance then apply to the board through their respective Conservation Committees for rights to manage them. The Board will be expected to extend to them extension services to help them improve on their management. Local communities involved in forestry will also have the opportunity to apply for grants, loans, tax exemptions among others from the Forest Management and Conservation Fund.

The Act prescribes creation of Forest Conservancy Areas and Committees. The committees will act as overseers of the implementation of the Forest Act at the local level, and will be expected to act as a link between the local community and the Kenya Forest Service, KFS Board, informing it of the desires of

locals regarding the forests. The committees will assist local communities to benefit from royalties and other rights derived from flora and fauna traditionally used or newly discovered by the community. It will assist in setting charges and collecting revenue and safe keeping of incomes from forest-related initiatives. Local communities will be part of deliberations of the Conservation Committees, and will also have four representatives sitting on the ten-man committee. In instances where the government wishes to convert a forest area into alternative use, the Act provides for modes through which the local communities will be informed of such a desire. The community will then be expected to present their proposals or objections to the move and also take part in the 'Public Consultations' process that will be held in the area.

CHALLENGES: LIMITED AUTHORITY, CONDITIONAL USER RIGHTS AND LENGTHY REGISTRATION PROCESS

Local communities will have limited powers within the local Conservation Committees. Though they will be free to nominate four representatives, it is the minister who will ultimately gazette these representatives expected to be part of the ten-man Conserva-

tion Committees. Curiously, attendance of local communities in the Conservation Committee meetings will only be when they are invited by the committee, the assumption being that their representatives on the committee represents their interests. In addition, their involvement in the committee deliberations does not extend beyond them presenting their views and opinions and this is only when called upon to do so. In the same vein, when it comes to 'Public Consultation,' the local community has little say. Whereas they are allowed to present their views and raise objections, there is no guarantee that this will affect or alter the ultimate decision, which remains largely in the hands of the state.

Section 22 of the Forest Act 2005 gives a conditional freedom for communities to extract forest produce as has been their custom, but subject to terms and conditions as may be prescribed mostly by the minister, and as long as this does not constitute a commercial activity.

The other challenge is that Community Forest Associations, CFAs will have to first register elsewhere (with the registrar of societies) before approaching the Kenya Forest Service for accreditation. This channel can be manipulated to defeat the freedom of such associations to participate in forest management either by delay, denial of registration, or de-registration by the registrar of societies who may not be conversant with their noble role in forest management.

CIVIL SOCIETY ORGANIZATIONS AND THE NEW ACT

LOBBYING AND MONITORING IMPLEMENTATION

Although the Forest Act 2005 does not have any section dealing exclusively with the roles and responsibilities of the Civil Society Organizations, CSOs, as a stakeholder group, it does not outlaw their involvement either. The civil society has a number of openings to work in the forest sector just as they did in lobbying and mobilization for the passing of the Forest Act 2005. CSOs are expected to continue advocating for impartial implementation of the new Act and ensure all concerned parties adhere to its provisions.

Section 6, sub section 2c of the Act allows for the civil society to lobby and have their representative nominated to sit on the Kenya Forest Service, KFS, Board. The Act further allows for them to be co-opted into subcommittees formed by the board to address specific issues. They may also, by invitation, attend and take part in deliberations of the Forest Conservation Committees. Both civil society organizations and neighbourhood associations have a role to ensure that no arboretum, mini forest, or recreational park is converted to any other use. Section 30, under sub

section 5 states that the local authorities cannot convert to any other use parks, mini forest and arboretum, unless it seeks and obtains a popular approval from persons residing in its area of jurisdiction. The Act has a provision whereby any group that wishes to conserve any grove or forest part for cultural, religious, and educational purposes can apply to the board for permission to do so. This provision will assist local communities, with help from civil society, protect sites of their cultural and religious heritage from grabbing and destruction by persons with scant regards for their importance.

NEED FOR SENSITIZATION AND COLLECTIVE RESPONSIBILITY

State agents, especially in areas where individuals or sections of government have vested interests, often view sections of the Civil Society as competitors and inciters rather than collaborators. With the issue of forests and forestlands being one such, there is bound to be resistance to involvement of the Civil Society in the implementation of the Act. Thus there is need for civil society to adopt better approaches that do not allow for their inputs and activities to be watered down into political, regional or tribal duels.

The Civil Society Organizations, CSOs, need to adequately mobilize and empower local communities to speak for themselves and claim their rightful places. This will ensure voices of local communities are heard and the Civil Society Organizations, CSOs, are not isolated and made targets of victimization. They further need to synergize their activities to avoid weak and disjointed efforts that often bear little or no fruits.

“THE CIVIL SOCIETY NEED TO EDUCATE, MOBILIZE AND EMPOWER LOCAL COMMUNITIES IN ANTICIPATION OF IMPLEMENTATION OF THE NEW FOREST ACT ”

As the Forest Act moves towards its implementation phase, Kenya Land Alliance calls upon the Civil Society Organizations, CSOs, to educate local communities in their areas of operation to understand provisions of the Act. They can do this by disseminating crucial provisions of the Act and translating them into local languages and in forms easier to read and understand.

The Civil Society Organizations, CSOs, need to help local communities identify policy questions that will help address their needs, interests, and aspirations, and present such issues to policy makers and implementers for consideration before the Act is put into operation. It is also crucial that Civil Society Organizations, CSOs, help in building of both human and institutional capacities of the communities to participate in policy and implementation dialogues.

FOREST EVICTIONS AND EXCISION VIEWS OF A SECTION OF STAKEHOLDERS

The Forest Act (cap 385) under which forests have been managed since independence has focused more on protection and strong government control and has not recognized the role of other stakeholders in the management of forests. This however is set to dramatically change when the new Forest Act of 2005 is gazetted. Kenya Land Alliance, KLA, interviewed a number of stakeholders and here is what they had to say on the new Forest Act 2005:

MICHAEL GACHANJA, COORDINATOR KENYA FOREST WORKING GROUP (KFWG)

“Unlike the previous legislation, the Forest Act of 2005 has a clear framework for participatory forest management and local communities user rights. It also has clear provisions for the management of all catchment areas with linkages to agriculture and water sectors and for conservation and management of indigenous forests.” Says Michael Gachanja of the Kenya Forest Working Group, KFWG.

“Whereas the previous Act (Cap 385) allowed the minister in charge of environment to de-gazette forest reserves without wide consultation, the new Act requires an environmental impact assessment, public consultation and parliamentary approval, before any de-gazettement is done. Also unlike previously where there was no provision for farm forestry, the new Act seeks to promote commercial tree growing by the private sector, farmers and communities by giving them incentives.”

According to Mr. Gachanja, other pluses for the new Act include emphasis on market prices for forest produce and provisions for stakeholders involvement in consultation with the Kenya Forest Service (KFS). The Act has clear provisions for forest conservation, agreements and licenses in relation to indigenous forests, plantations, private and farm forests and it will establish a forest service, KFS, with powers devolved to forest conservation committees and community forest associations.

He also praises the higher penalties introduced in the Act to deter people who engage in unlicensed and illegal activities including logging and charcoal production. However, he is not all praise for the new Act. In his opinion, implementation of the Act could prove problematic as it is likely to be gazetted before all the required rules and regulations are in place. (N/B: The implementation is scheduled for early 2007, when the Kenya Forest Service is expected to begin operation. So far the necessary rules and regulations haven't been finalised and two committees, the Forest Sector Reform Committee and the Forest Reform Secretariat are working towards laying the groundwork) “The Act will have to be implemented wholesale and once gazetted will replace the current Cap 385, but most of the issues for implementa-

tion require rules and regulations to be made, a process that could take long because of the envisaged consultation. On the other hand if the rules will have been drafted by the time the Act is gazetted, it is likely that comprehensive consultation may not have taken place.”

“INDIVIDUALS ARE ALREADY FORMING FOREST ASSOCIATIONS IN ANTICIPATION OF PARTNERSHIP WITH THE KFS, THOUGH SOME OF THESE ARE DRIVEN BY PERSONAL GREED AS OPPOSED TO COMMUNITY INTERESTS “

He also expresses concern over the mode of appointment of the Director of KFS, which according to the Act, will be done by the KFS Board in consultation with the minister and the KFS Board chairman who will be appointed from among the board members by the president. If the same board that will be charged with the responsibility of appointing the Director to KFS, is composed of ministerial and presidential appointees, the executive will still be possessing too much power over the KFS and this could still perpetrate political interests and influence over the functioning of the KFS.

Another challenge towards implementation, notes Gachanja, is that forest associations are already being formed in anticipation of the partnership with KFS and some of these may be driven by personal greed as opposed to community interests. This phenomenon could still lead to conflicts and misuse of forests for selfish individual commercial interests. There will also be need to re-train foresters to bring out the desired attitude by focusing on participatory forest management as opposed to previously when they focused more on protection.

Mr. Gachanja however believes that the government has the goodwill to implement the provisions of the Act, but emphasizes that state excisions will not cease on its enactment. He reasons that what is needed, is rationalized settlement, by letting the areas that are forests to remain forests, and those that can be re-afforested, be done so. He also calls for broad-based consultations to arrive at viable decisions regarding lands that have already been settled on, in consideration of the prevailing factors such as nature of settlement, vegetation therein among others.

KIBE MUNGAI A NAIROBI LAWYER

A Nairobi lawyer Mr. Kibe Mungai acknowledges that the new Act is much more detailed than the previous one as it acknowledges the role of the communities living next to forests, recognizing their rights to form forest associations, thus creating a sense of ownership which will replace the exploitative mentality people have had when they are alienated from management of the forests. He also notes that the Act entitles forest communities to make use of forest products such as honey, medicinal herbs, gives them rights to harvest grass for their domestic animals among other entitlements. Mr. Mungai is also impressed by the new policing role that has been bestowed onto the community in management of forests, where they will be able to report illegal activities in the forest to the KFS. He argues that some forests are too expansive and the state is not in a position to police them and hence the need for involving locals through the forest associations. He points out that in the previous Act the minister responsible for forests had a lot of powers and could declare any land as forest, alter forest boundaries or de-gazette forests with a simple 28-day notice. In his opinion, such powers were often abused. The new Act has additional conditions laid out that must be met before a forest area can be converted to a different use. Such conditions, he says, are expected to control the 'appetite' of the Executive to dish out forestland and to ensure haphazard excisions ceases.

On evictions of people living in forests, the lawyer takes a non-compromising stand. He is categorical that anyone undertaking any activity in any forest without permission is a trespasser and should be evicted as forests are conservancy areas. Says he, "It is not an excuse to say that since the authorities were lax and allowed settlements in forests, then people build schools



All persons have a right to decent housing and a source of income

there and teachers duly provided by the TSC, the encroachers should be let to stay." He adds, "In the new Act, we have a greater responsibility to protect the interests of many who suffer the consequences of forest degradation than to defend a few who are destroying the forests." Mungai believes the benefits of occupying the forests, are negligible compared to the disadvantages and he declares that evictees have no right even under the Bill of Rights. He explains, "A trespasser has no right even under the Bill of Rights. As such, a person who settled into a forest illegally cannot say his/her rights have been abused when he is removed." In his opinion, such people have no right to invoke court orders and advises that the government should evict them from such forests.

Mungai is categorical that the Bill of Rights recognizes that the interests of an individual is inferior to those of many and so a few people must not be allowed to destroy forests at the expense of many who depend on them for water among other uses. As an example, he says, "When you want water from Mt. Kenya, you cannot have the same mountain as your grazing land."

STEVE OUMA KENYA HUMAN RIGHTS COMMISSION

Mr. Ouma of the Kenya Human Rights Commission says that there are two categories of evictees from forests, firstly, the genuine landless who have been displaced through tribal clashes or through irregular allocation of land and secondly those who went to the forest for speculative purposes. But whatever the category, Ouma reckons, the method the government has used in evicting people from forests has been arbitrary and disrespectful of people's dignity and livelihoods. It is his experience with evictees especially the Ogiek whom KHRC have supported in a court case, that the State is 'ruthless and fast' when dealing with the poor.

He says "Those living in the forest may not have the right to stay there, but when evicted they should be given alternative settlements. The Forest Act of 2005, he says, is a good piece of legislation, which should help Kenya improve its forest cover and he hopes it will be much easier to implement now that politicians have such funds as the Constituency Development Fund, CDF, and Youth Fund to control and they are likely to ease off on the forests as a source of political gifts.

MAINA KIAI, CHAIRMAN**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, KNCHR**

Mr. Maina Kiai, of KNCHR supports evictions from forests but regrets that the government only seems to evict the poor from the forests, leaving areas illegally acquired by the rich intact in the same forests. He says "We have to accept that to have only 1.7 per cent forest cover for a country that should be having at least 15 percent, we have really degraded our forests. However, we should first evict the farmers who do not need the forestland they are occupying." He also claims that often the government does not give adequate warning before evicting people from forests or arrange for their re-settlement as per UN guidelines. He talks of his experience with squatters who were evicted from Mt. Kenya on the Mathira side in early 1990s and to date remain on the roadside, abandoned and forgotten by government and only surviving on handouts from well-wishers. He explains "They (evictees) are a miserable lot living under circumstances not fit for human beings and the government should implement the Ndung'u report recommendations then get value for money from the illegally acquired properties by the big fish and use the money to buy land to settle genuine squatters." The KNCHR chief also calls on the government to come up with a policy of removing people from perpetual land dependence through creation of jobs. He suggests that encroachers need to not only be evicted, but also kept busy by engaging them in alternative income generating activities.

LEONARD BARASA, DIRECTOR**CATHOLIC JUSTICE AND PEACE COMMISSION, CJPC- KITALE**

Mr. Barasa believes the genesis of evictions can be traced to the pre-independence era when the colonial masters forcibly removed Africans from their lands and made them squatters. He reckons the problem was made worse by the regime of Daniel arap Moi, that evicted those who had lived inside forests all their lives and taken care of the forests only to allocate the same land to politically correct people who went ahead to destroy forests without check. Unfortunately, he says, "These lands were not de-gazetted and so the new administration wanted to make right what was wrong by reclaiming them, but did not go to the core of the matter." Barasa says in his experience, the poor evictees depended only on the forestland for their livelihood and when they were denied this, they were basically denied a right to live. "They stay in makeshift camps with no cover in areas where it rains often. They have no food as what they plant is destroyed by those who evict them and in addition, their children do not attend school." That notwithstanding, Barasa acknowledges that people should not encroach on forests, and when they do, should be evicted in a more humane manner not by beatings. He adds that landless people can be settled on lands recovered from the big-time grabbers.

LIKIA FOREST EVICTEES A FORGOTTEN LOT

The History of Likia evictees stretches back to the pre-independence period. The area, located in Mau Narok division of Nakuru district in the Rift Valley province, houses thousands of squatters who claim that they were born and bred in the adjacent forest areas and that their parents had moved into the area during the colonial era, as forest workers. After independence, the area was bought by individuals through a land buying company.

The area is presently occupied by close to 1500 families, most of whom were evicted from the Likia forest in 1997, and to date remain squatters at the Likia farm. The residents claim to have received numerous promises by the government and area politicians, to secure alternative settlement for them, but to no avail. The squatters, housed at derelict rental rooms in Likia trading centre, had over the years begun some farming activities at the nearby forest, which they say was to ensure they did not go hungry. They say that early this year they were forcibly removed from living and engaging in farming activities in the forest, and today they engage in manual labour in exchange for a few shillings or some potatoes in farms owned by the local communities. "We work for others where possible, in exchange for small plots to cultivate our food on," 70-year old Mwai Mbitiru said, in an interview held at the Likia trading center recently.

Another squatter, fifty-year-old Wanjiku Kamau bemoaned her fate as she enumerated the problems squatters of Likia are facing. "Previously, we used to grow enough food in the forest to feed ourselves and sell the surplus." She says, "We would harvest over 50 bags of potatoes, but today we get barely a bag-full." For us to grow our own foods, we need to lease land from locals, but these landowners here prefer to lease them out to large-scale wheat farmers. We are now reduced to getting only one square meal per day." She adds. Presently, the only place nearby where land is available for lease to small time farmers like Wanjiku is at Entian more than 10 kilometres away, a journey many of the squatters of Likia cannot make on foot to tend to their plots. "At times I finish my work late and have to spend the night at Entian, while my children sleep hungry at Likia. Most of the time they do not attend school," says Wanjiku. Wanjiku's colleague Stephen Kereri is more concerned about the social effects of the move to evict them from the forest where they left what they used to call their houses to become beggars at Likia. "All I can afford is one room that I rent for Kshs 300. I have grownup boys and girls, but we all sleep in this room. You can imagine my humiliation but I cannot

afford to rent another room for my children," lamented Kereri. The Forest Act of 2005 (which they have neither seen nor heard of) notwithstanding, most of Likia evictees believe they were in the forest legally as either they themselves or their parents had been employees of the Forest Department hence feel they are entitled to 'a piece of the cake.' Others came in as squatters in the late 1950s and they and their children have never known any other home. Kereri explains, "When our parents were employed in the forest department, they were told to come with their wives and were either given houses or asked to build on their own. My father was one such employee and personally I knew no other home but the forest where I studied from class one at Likia Full Primary School. Later, on a very short notice, we were evicted and not settled elsewhere. My father was given Kshs 3000 on retirement, taken to a retirement village, given a plot for cultivation and a burial site," he claimed. "Even my children have been born in the forest and it is the only home they know of."

The squatters at the Likia trading centre often hear, albeit as second-hand information, of some re-settlement programmes supposed to benefit them. They however remain sceptical since no census was done before they were evicted and many of them have since spread and camped in different directions across the country. They are quick to assert that when they were practising 'Resident Cultivation,' better known as *shamba system*, they never destroyed the forest and always planted new trees as they harvested old ones. They claim that since they left, trees are being illegally harvested with no new ones planted, turning those areas to dry land. They say it no longer rains in those areas as before, and the rivers they used to get their waters from have since dried up. Their wish is to be resettled elsewhere or be employed in the yet to be launched Kenya Forest Service so that they can help in reforestation.

THE MAASAI MAU FOREST A STORY OF CONFUSION AND DESPERATION



Charred Remains of a Town in Maasai Mau Christened 'Sierra Leone'. Its Residents are now Camped in a Nearby Centre with Relatives and Friends with some Living in Roadside Shanties

THE MAASAI MAU FOREST ITS HISTORICAL AND SOCIO-ECONOMIC IMPORTANCE

The Maasai Mau forest is located in Narok District, Rift Valley Province and is covered by dense indigenous woodland, riverine forests and high altitude grasslands. It is on a Trust Land hence managed by the County Council of Narok.

The entire Mau complex is a source of livelihoods for locals who depend on natural resources emanating from it. Institutions like Egerton University, residents of Narok Town, among others depend on its water supply. It is also the source of water for the Mara River that supports the wildlife habitat and thus tourism in the Maasai Mara and Serengeti National Park in Tanzania, as well as the many pastoralist communities living along rivers like Ewaso Nyiro and Mara River. Initially, the Maasai Mau forest cover was 62,000ha, but by 2005, only 51,000ha remained, a quarter of which is still under threat.

One of the groups of people that live in the Maasai Mau forest is the Ogiek, a community that claims historical, economic as well as socio-cultural association with the forests. Members of the community are residents of group ranches in Nkaroni, Nkateta, Enaisomi, Sisami, Ngobenii among others. Some of these ranches, registered earlier in 1970s, have had their boundaries altered thereby encroaching on forestlands. Previous attempts at solving the problem, including formation of a presidential commission of inquiry (the Ntutu Commission) of 1986 failed to resolve the problem. The area has also been 'invaded' by land buyers from neighbouring districts of Bomet, Bureti, Kisii and Kericho. These groups claim to have been either sold the land by the locals or local political elites.

“THE EVICTEES ALLEGE THEIR EVICTION WAS UNJUSTIFIED AND THAT UNDUE FORCE WAS METED ON THEM”

Early 2005, the government began a process of evicting people it said had encroached on forestlands. A small town in Nkaroni ranch, known as ‘Sierra Leone’ was razed to the ground by the council askaris and forest department guards. Its residents fled to the nearby Kebenet shopping centre to seek housing among friends and relatives.

The evictees allege that the eviction was unjustified and undue force was meted on them. A number of women say they were raped and that government forces stole the crops they had harvested.

In July 2005, Kenya Land Alliance led a fact-finding mission that included, Chemichemi ya Ukweli, Department for International Development and a local faith based organization, Catholic Justice and Peace Commission. During its interviews, most of the evictees, claimed that local residents had sold them land and indeed some of them did have title deeds bearing government’s official stamps indicating its approval of the acquisition.

EFFECTS OF FORCEFUL EVICTION: WHAT THE CHURCH SAYS

A social and humanitarian organization, Mulot Catholic Mission, operating in the area estimated that those displaced were 50,000 people, with the council estimating that around 10,000 title-holders were affected.

According to one of the church leaders Fr. Boniface, the evictions that took place were brutal, and it left the people severely vulnerable. A number have since died due to the harsh climatic conditions while others are said to have committed suicide. By the time



Some of them did have title deeds bearing government’s official stamp

of the KLA led fact-finding mission, a man whose school was torched was still hospitalized after suffering an apparent heart attack. The church wasn’t spared either as three of its structures were vandalised during the exercise. Facilities gazetted by the government like schools and polling stations were destroyed. One wonders how they were gazetted in the first place if they were illegal.

The church says that adequate notices were given to the people and it was one of the churches that was approached to notify the people. However, according to the church, it was the politicians, most of whom were involved in the illegal sale, who went around confusing the residents.

The church also believes that over half the land transactions there were not above board, hence restitution for those affected would be difficult. In addition, those who sold the land knew it was illegal hence avoided any official paper trail that would lead back to them.

NO RESETTLEMENT PLANS BY THE GOVERNMENT

The government has been accused of having been selective in evictions, targeting the small fish and leaving the big ones intact. The evictions seem to have been carried out without proper plans as the evictees continue to play hide and seek with the security personnel, dodging them and resettling on already cleared areas. In addition, it appears the eviction exercise only targeted major pathways with the hinterlands largely unaffected. This points to a lack of neither a concrete plan nor clear agenda. The government also did not have a clear plan on alternative resettlement for the evictees.

NEGATIVE POLITICAL INFLUENCE

Powerful political figures were cited as having massively participated in irregular allocation of the forestlands, resettlement as well as evictions. An area councillor who is also an Ogiek elder, two brothers to a sitting Member of Parliament and a son to one of the top most persons leading the Ntutu Presidential Commission of Inquiry of 1986 among others were adversely mentioned.

A number of people read political motives in the pattern of eviction exercise in the area that have been supervised by the past and the present regimes. In addition, family members of area Members of Parliament are being accused of bribing voters with forestland to earn their support. Those immigrating into the area are viewed as wanting to influence management of resources in the area by having a friendly MP to protect their interests. There is also a claim of the forest dwellers being used as pawns in political contests between area leaders and leaders of neighbouring communities. In the midst of all these political shenanigans, it is the poor landless evictees who suffer the most as they have nowhere to go and no one to turn to.

FACTS

LETTERS TO THE EDITOR

Did You Know That...

FOREST CERTIFICATION... IS A PROCESS BY WHICH STAKEHOLDERS AGREE AND COMMIT THEMSELVES TO MAINTAINING DEFINED FOREST MANAGEMENT STANDARDS, AS VERIFIED BY INDEPENDENT CERTIFYING BODIES DULY ACCREDITED NATIONALLY AND INTERNATIONALLY. THE PROCESS INVOLVES INDEPENDENT VERIFICATION OF THE CHAIN OF CUSTODY AND LABELLING OF PRODUCTS FROM CERTIFIED FORESTS, BY AN INDEPENDENT CERTIFYING BODY THAT ALSO ENSURES A FOREST IS MANAGED ACCORDING TO AGREED ECOLOGICAL, ECONOMIC AND SOCIAL CRITERIA.

RAINFORESTS... ONCE COVERED 14% OF THE EARTH'S LAND SURFACE, BUT NOW THEY COVER A MERE 6% AND EXPERTS ESTIMATE THAT THE LAST REMAINING RAINFORESTS COULD BE CONSUMED IN LESS THAN 40 YEARS. AT THE MOMENT BETWEEN 1 AND 1 1/2 ACRES OF RAINFOREST ARE LOST EVERY SECOND WITH TRAGIC CONSEQUENCES FOR BOTH DEVELOPING AND INDUSTRIAL COUNTRIES. THEY ARE DESTROYED BECAUSE THEIR VALUE IS PERCEIVED AS ONLY THE VALUE OF ITS TIMBER BY SHORT-SIGHTED GOVERNMENTS, MULTI-NATIONAL LOGGING COMPANIES, AND LAND OWNERS. EXPERTS ESTIMATE THAT WE ARE LOSING 137 PLANT, ANIMAL AND INSECT SPECIES EVERY SINGLE DAY DUE TO RAINFOREST DEFORESTATION. THAT EQUATES TO 50,000 SPECIES A YEAR. AS THE RAINFOREST SPECIES DISAPPEAR, SO DO MANY POSSIBLE CURES FOR LIFE-THREATENING DISEASES. CURRENTLY, 121 PRESCRIPTION DRUGS SOLD WORLDWIDE COME FROM PLANT-DERIVED SOURCES. WHILE 25% OF WESTERN PHARMACEUTICALS ARE DERIVED FROM RAINFOREST INGREDIENTS, LESS THAN 1% OF THESE TROPICAL TREES AND PLANTS HAVE BEEN TESTED BY SCIENTISTS.

94 MILLION... HECTARES OF FOREST LOST OVER THE LAST TEN-YEAR PERIOD WORLDWIDE, REPRESENTS ABOUT 2% OF THE WORLD'S TOTAL FOREST COVER, OR AN AREA ALMOST THE SIZE OF TANZANIA. PRESENTLY, MOST DEFORESTATION OCCURS IN NATURAL TROPICAL FORESTS, WHICH LOST 14.2 MILLION HECTARES PER YEAR OVER THE LAST DECADE. AFRICA AND SOUTH AMERICA HAVE SUFFERED THE MOST DEFORESTATION. AFRICA, WHICH LOST 5.3 MILLION HECTARES OF FOREST PER YEAR IN THE 1990s, WAS THE REGION WITH THE HIGHEST DEFORESTATION IN THE WORLD.

FORESTS... ARE A MAJOR FACTOR IN CLIMATE CHANGE. FOREST ECOSYSTEMS CONTAIN MORE THAN HALF OF ALL TERRESTRIAL CARBON, AND ACCOUNT FOR ABOUT 80 PER CENT OF THE EXCHANGE OF CARBON BETWEEN TERRESTRIAL ECOSYSTEMS AND THE ATMOSPHERE. DEFORESTATION IN THE 1980s MAY HAVE ACCOUNTED FOR A QUARTER OF ALL HUMAN-INDUCED CARBON EMISSIONS, THE SECOND GREATEST EMITTER AFTER FOSSIL FUELS.

Dear Sir,

As the Chairman of Kipsigis Council of Youth, I thank you for the good work that you have been doing. Our organization, Kipsigis Youth Council was formed to spearhead Kipsigis community issues that were being ignored by both the political and religious leadership. We have now been incorporated into Kipsigis Council of Elders which is leading the community in tracing the origin of our land problems, cultural and social injustices inflicted to our community by the colonial elements.

We are inspired by your advocacy work on land issues in Kenya. My community, among others in Kenya, was forced out of their land to pave way for the multi-national tea companies in Kericho. Sir, we have researched and come up with a comprehensive affirmative action and are looking forward for your incorporation.

Yours

Kiptoo Arap Langat .

**For Chairman,
Kipsigis Council of Youth**

Dear Kenya Land Alliance,

I am most grateful for sending over to me a copy of 'A Survey into the Management and Use of Wetlands in Kenya (Land Update Volume 5 Issue No. 1 2006)

An initial perusal into your publication indicates that it will be a most useful source of information for my work on the Children's Environmental Project that am presently engaging in.

I wish you all the best in your work

Jimmy Makotsi

Publisher

Your Letters



Send your views, opinions or contributions to the Editor, Kenya Land Alliance, P.O Box 2177-20100 Nakuru - KENYA and we will include them in our next issue.

NEWS

EXCISION OF FORESTLANDS BY GOVERNMENT CONTINUES...

The government has yet again signalled its intention to continue excising forestlands. This is in spite of protests from a number of stakeholders and a number of court cases instituted against the same.

In a gazette notice (no. 4114) published on 9th June 2006, the government states that it intends to excise parts of Mau East in Nakuru District, an area measuring over 35,000 hectares, comprising of Likia, Sururu and Elburgon. This area, it says, will be set aside for human settlement activities such as farming, grazing, housing, forestry, recreation, installation of public and commercial utilities.

According to the notice, an Environmental Impact Assessment had been done and the government was now calling on interested parties to submit oral or written comments within 60 days as provided for under the Environmental Management and Coordination Act, EMCA of 1999.

It is intrusive to note that this parcel of land is one of those mentioned in the Report of the Commission of Inquiry into the Illegal / Irregular Allocation of Public Land (the Ndung'u Commission Report, Annexes Volume 2 Page 667), as having been irregularly acquired and allocated to individuals, who have partially occupied the land. This land also falls under the remit of those whose acquisition are subject of a legal challenge (legal notice 142 of 2001).

The Ndung'u Commission Report recommended that subject to the court ruling, the government should have halted further encroachment, and revoked existing titles that had earlier been issued to people adjudged to have encroached into the forestland. Consequently, the government was to follow the revocation up by introducing mechanisms of maintaining the area as a forest catchment. However, the government instead, intends to settle people into the area and allow them to carry out activities such as farming, grazing among others.

At the moment, identity of the persons the government plans to re-settle onto the land is unclear and so is the criteria it intends to use to identify and select such persons.

WHAT IS THE TRUE STATUS OF THE DRAFT NATIONAL LAND POLICY?

Questions are now mounting regarding the true position of the proposed National Land Policy. First, the policy had been reportedly 'shelved' by the government, then came news that it had been 'stolen' from Ministry of Lands headquarters at Ardhi House.

The news of the midnight 'theft' was widely reported in the local media in April (11th and 12th 2006). According to the information, the ministry had lost vital information contained in laptops, several computer hard drives, video camera among others. This information threw a number of stakeholders into panic fearing that the entire process of formulating the policy that has taken over three years may have to be restarted afresh. The minister added to the fears when in an interview with a Daily Nation correspondent (10th April 2006) featured on the Wednesday edition of the paper, he intimated that his office had no back-up for some of the information for the policy that had been reported 'stolen.'

Early July 2006 however, it surfaced that the government was in the process of lobbying the donor community to finance its efforts of developing a 'Roadmap for Implementation of the National Land Policy.' This has fuelled speculation that the policy may have been discretely passed on to the cabinet for its approval and onward transmission to parliament before completing the process of stakeholder dialogue.

As a network of NGOs, KLA is of the opinion that a process of disseminating to the public to help them understand contents of the National Land Policy must first be done before any attempts at its implementation. Moreover, a number of Civil Society Organizations are presently involved in a joint audit process of key sections of the policy. The audit is aimed at ensuring that views, recommendations and aspirations of the public presented to the National Land Policy Formulation Process secretariat were inputted into the proposed National Land Policy. KLA feels that such initiatives could be left to reach their logical conclusions and their reports considered. The organizations leading the audit process are Kenya Human Rights Commission, FIDA - Kenya, Shelter Forum, RECONCILE, Institute of Surveyors of Kenya, ISK, *Hakijamii* and the Kenya Land Alliance.