



Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili
Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili



Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili • Adili

Photo from landcoalition.org



To compensate or not?
- Page 2

Interview - Page 5

Mau List of Shame
- Page 5

Does corruption really force Western
businesses to quit Russia? - Page 7

Quote of the Month

Compensating them (illegal Mau settlers) would be equivalent to paying a thief for stealing from you.

Odenda Lumumba, National Coordinator, Kenya Land Alliance

MAU COMPENSATION: THE CORRUPTION AND LAND POLITICS IN KENYA

By James Makori

The re-settlements of squatters in the Mau forest may have begun in the 1930s when the colonial government cleared parts of the forest to create forest plantation using exotic species. During the same time, millers also obtained licences allowing them to practice logging and the “shamba system” was introduced. This system initially allowed people to practise limited livestock grazing, firewood harvesting and cultivation in the forest under the supervision of forest guards or rangers.

The system was expanded to facilitate plantations’ establishment because the forest department wanted to reduce plantation costs. The only positive attribute to the system is that it provided food security to the landless, this encouraged communities living around the forest area to move in and settled in areas that had been cleared.

Subsequently, the successive governments degazetted a large part of the forest and

.....
Cont. on page 2

TO COMPENSATE OR NOT TO COMPENSATE?

From page 1

allocated them to the “landless”. A number of the said “landless” individuals are senior politicians and other well heeled figures in the current and past government administrations. Some politicians retained the farms, while others sold them to unsuspecting third parties. This process in my view was illegal because there was no impact assessment done, the excisions were done without consultation with stakeholders and most of it was influenced by the political considerations.

Following prolonged drought in 2008-2009, the current government found it necessary to convert the forest and started a process of evicting illegal settlers”. Controversy has erupted on whether or not to compensate the politicians who own land in the forest. The treasury through the minister of finance earlier mentioned that there are no funds allocated for these compensations. The Grand Coalition Government has pulled in different directions on this issue and it is not clear what the Government position is. Various politicians are using the Mau conservation issue for political mileage.

To Compensate or Not To Compensate?

Section 75 (1) of the Constitution provides that no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:

(a) The taking of possession or acquisition is necessary in the interests of defense, public safety, public order, public morality, public health, town and

country planning or the development or utilisation of property so as to promote the public benefit; and

(b) The necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property; and

(c) Provision is made by a law applicable to that taking of possession or acquisition for the *prompt payment of full compensation*.

Kenyans seem to be unanimous that there is need to protect and conserve the Mau Forest urgently. Even those opposing evictions seem to be of the opinion that the evictions should be done “humanely” and alternative land given for re-settlement. Rights and freedoms enshrined in the Constitution are subject to limitations designed to ensure that their enjoyment by any individual does not prejudice the rights and freedoms of others or the public interest.

Reasons not to Compensate

1. The invasions of Mau forest epitomise misuse of power and outright breaking of the law by the ruling elites in all the government regimes that Kenya has had. Powerful politicians and senior government officials in the former and current regimes top the list of individuals who acquired swathes of land in the forest illegally and they are the same reason why the government has taken too long to conserve the forest.

2. The eviction of thousands of people from the Aberdare and Mt Kenya forests in the 1989-1994 was done

when retired President Moi was in power. Many of them had lived in the forests since the 1920s while other individuals moved to the forest after independence. In the late 1980s, the government resolved to evict the families following an abuse of the cultivation System and also for wildlife protection. The forests had never been degazetted.

3. It is estimated that approximately Kshs 38 billion (*Business Daily* newspaper, December 23, 2009) will be adequate to conduct a comprehensive survey, mapping, fencing, reforestation and resettlement of those who deserve to be compensated. Already, the treasury is grappling with a Ksh 195 billion fiscal deficit in the current financial year an equivalent of 6.6 per cent of Kenya’s annual wealth. With the above statistic, it is doubtful that the Ksh 38 billion will be put on proper use especially if the money is to be managed by those who are already beneficiaries of past corruption incidents.

4. The degradation of the Mau Forest is a violation of several treaties on the environment that Kenya is a party to. These include the East Africa Community Treaty, the African Convention on Conservation of Nature and Natural Resources, the Ramsar Convention on Wetlands, the Convention on Biological Diversity, the Convention on Migratory Species and the United Nations Framework Convention on Climate Change. These laws should be followed to the letter.

5. On 22nd April 2002, the High Court in Nairobi issued a ruling in the MISCELLANEOUS CIVIL

APPLICATION NUMBER 421 OF 2002 in which it ruled that the government or any individual should not alienate any or portions of land in the Mau Forest, unless the law had been properly applied to such alienation prior to that date [22nd April 2002]. Degazettement was also prohibited by this order. Therefore, no one could legally issue a title in the Mau after April 2002 and all titles after that date, and those backdated are thus illegal. A nullity cannot give rise to a legitimate claim for compensation. It does not matter in my view that such a title may have been issued by the President.

When the government announced its compensation plan, a group of scavengers moved into the forest so that they would be part of those to be compensated.

stated that most of the public land had been allocated in total disregard of the public interest and in circumstances that fly in the face of the law. This report also states that illegally acquired land is not property falling under the category that is protected by section 75 of the Constitution against state expropriation without compensation.

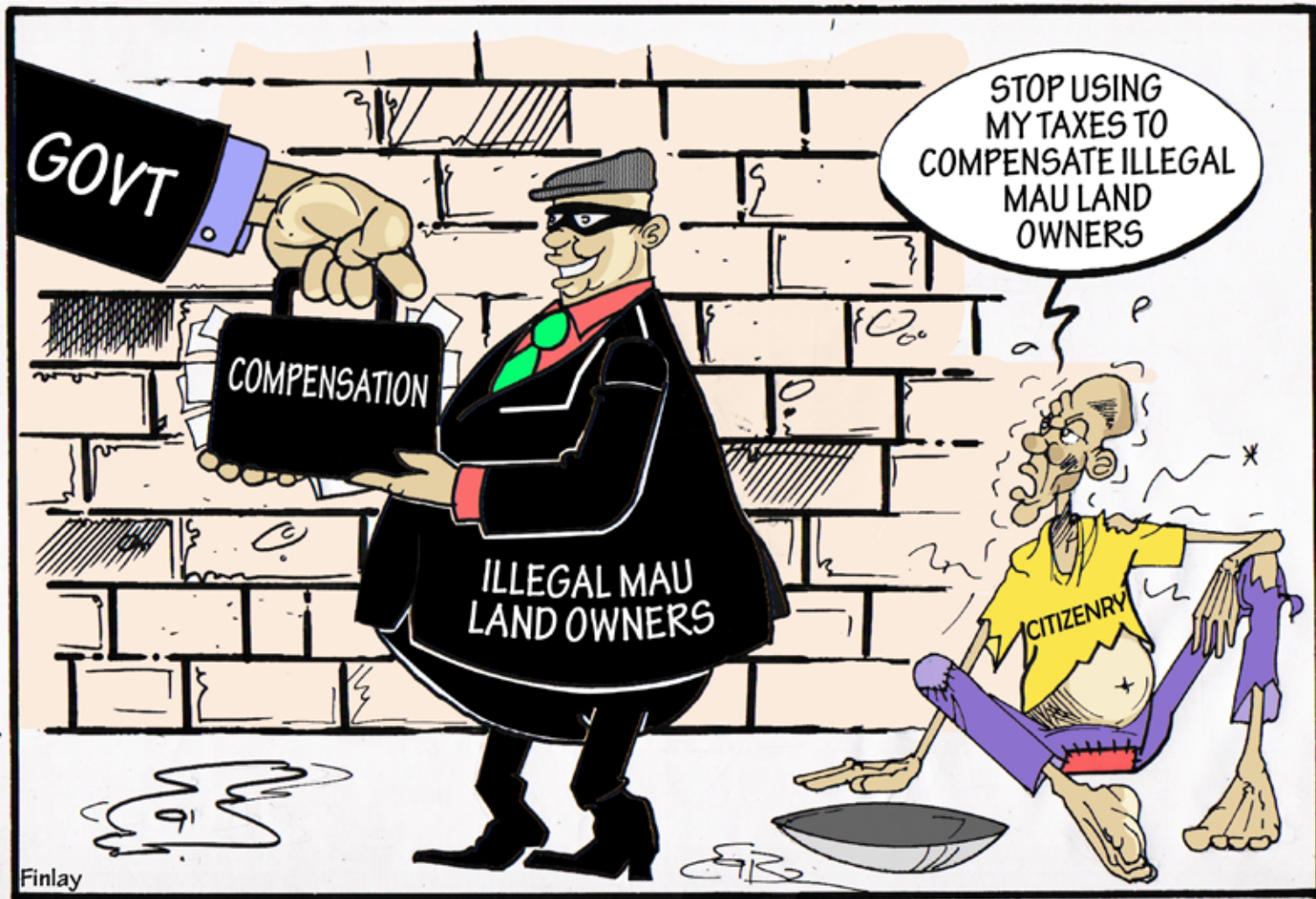
6. The squatters who wrongfully occupied land should not be compensated as this will encourage invasion of more Government land for financial gain.

7. Most of the land owners in the Mau own the land for speculative purposes. This is partly a problem caused by the existing land laws that gives great emphasis to land ownership rather than usage. However this problem has been addressed in the land policy as it will ensure secure *rights over land* [italics supplied] by ensuring efficient and effective utilisation of land and land-based resources and not mere ownership or title.

The Report of the Commission of Inquiry into the Illegal/Irregular allocation of public land [Ndung'u Report] correctly

THE LAND POLICY

The government passed a National Land Policy in 2009 with an intention of addressing land problems in the country. For a long time, Kenya uses many existing land laws, some of which were [and remain] incompatible. These land laws have caused confusion on land management and administration in the country and also contribute to disparities in land ownership and poverty



from page 3

and have resulted in environmental, social, economic and political problems including deterioration in land quality, squatting and landlessness, illegal allocations of forest land, tenure insecurity and conflict.

The Forests Act which was passed in 2005, had major improvements but focussed more on the protection and conservation of forests. This law provides for public participation in forest management through community forest associations which allow participation in conservation and management of forests. It also provides that an environmental impact assessment must be done prior to forest excision. This is expected to make the process of forest elimination more difficult and hence protect forests. The law has mandated the Kenya Forest Service to promote forestry education/training and enforce the conditions and regulations relating to logging, charcoal making and other forest utilisation activities.

The land policy has attempted to *inter alia* address the critical issues of access to land, land use planning, restitution of historical injustices and environmental degradation. It also addresses constitutional issues, such as compulsory acquisition. It recognizes the need for security of tenure for all Kenyans including all socio-economic groups, women, pastoral communities, informal settlement residents and other marginalised groups.

Some of the weaknesses in the land policy are that it is heavily agrarian, and focused more on the need to rectify mistakes made in that sector, to the neglect of matters such as urbanisation. The emphasis on equity is understandable given the

failures of the country in this regard. However, the proposals for restitution and resettlement are not accompanied by thoughtful recognition of the difficulty of maintaining production and growth during the process of reform. There is emphasis on resettlement as part of the solution, which is unsettling, as badly planned and executed settlement schemes have been a large part of the problem. Given the challenges involved in the proposed reforms, it may be that they can best be tackled one by one, and on a local or regional basis. It is easier to reach acceptable rectifications of historical injustices if these are handled in a fashion that at least partially insulates them from national politics.

The Proposed Constitution

The proposed Constitution as revised by the Committee of Experts contains important provisions for the protection of land and environmental resources. The proposed draft provides for a National Land Commission of which under section 67 it will *inter alia* monitor and have oversight responsibilities over land use throughout the country.

The draft obligates the state to work towards achieving a tree cover of at least ten per cent of Kenya's land area. There are also provisions for the protection of genetic resources and biological diversity.

There may, on the flipside, be justification for the compensation and/or resettlement of a limited number of people who meet specific criteria:

- a. Members of the Ogiek community. Many of these lived in the forest long before it was gazetted. They are very useful since they help in conservation through indigenous methods.
- b. The few that have invested

economically into their land and whose investments have contributed positively towards Kenya's economic growth and created employment opportunities. However, it should not be blanket compensation. We must take into account the amount of money recouped from existing economic activities and extent of damage done to the environment.

- c. There is the unique case of innocent purchasers for value, without notice. These are those persons that bought land from the initial allottees and had no way of knowing that the land was part of the forest. They should be compensated or resettled. However, the government should recover the money for this compensation from the initial allottees.

Conclusion

There is need to put strong mechanisms in place to effectively manage and stop further degradation in the Mau and also restore the degraded forests and critical water catchment areas in the Forest. Money should be mobilised for this purpose, not for the compensation of the greedy lot that grabbed the land.

The principle of intra-generational equity requires that we use our resources while showing concern for future generations. The loss of biodiversity associated with the degradation of the Mau should thus be controlled in order to ensure that we leave something for our children to inherit. 🌍

The writer is an advocate of the High Court

Mau list of shame

Raila names and shames top land beneficiaries in key water source

By NIERI RUGENE
and CAROLINE WAFULA

Baringo Central MP Sammy Mwaita and the Catholic Church are among the biggest beneficiaries of land allocations in the Mau Forest, according to a list tabled in Parliament yesterday by Prime Minister Raila Odinga.

Mr Odinga named 49 individuals and companies given land in the forest, whose destruction has caused widespread public alarm as it poses a threat to water security in the country.

Each beneficiary was allocated more than 20 hectares in the Mau in Nakuru and Narok districts.

Mr Odinga tabled the list in response to a challenge by Ikolomani MP Boni Khalwale.

Retired President

Kiptagich Tea Estates, Sian Enterprises and Kelewa Enterprises — all believed to be associated with retired President Daniel arap Moi — were given 80, 118.89 and 28.80 hectares respectively.

Mr Gideon Moi, a former Baringo Central MP, received 44.74 hectares in the same area.

A State House Comptroller in the Moi administration, Mr John Lokorio was listed as having received 23.50 hectares in Nakuru. A Mr ZP Cheryuot received 1,955 hectares. Mr Mwaita, a long-serving Commission-



Mr Gideon Moi



Mr John Lokorio



Mr Sammy Mwaita

Nakuru/Ngongongeri in NAKURU DISTRICT

- Francis Ondieki Rote 20.2 ha
- John K. Lokorio 23.5 ha
- Sammy K. Mwaita 23.5ha
- Ezekiel Rotich 20.2 ha
- Elisheba Kipkebut 20.2 ha
- Kenneth Kiptala Kamuren 20.2ha
- Nakuru/Saino parcels 27.4 ha allocated for a government trading centre.
- Nakuru/Tine/Sotik parcels
- Joseph Kipiele Rorogu 27.85 ha
- Cheryuot Charles 26 ha
- Kipsang Kiel 20 ha
- Swamp 19.4 ha
- Kapkenbu Tea factory 19.06 ha
- Nakuru/Tine/Kabongoi 71.84 ha reserved for government dam.
- Nakuru/Ndoinet 257.10 ha Under PS Treasury, also reserved for dam.
- Nakuru/Keringet/Baraget
- Kelewa Enterprises Ltd 28.8 ha

RAILA'S LIST

- Richard Cheptoo Nyamboi 19.2 ha
- Nakuru/Olunguone/Kiptagich
- Kiptagich Tea Estates 80 ha
- Gideon T Moi 44.74ha
- Sian Enterprises 118.89ha
- An unallocated parcel 27.81ha
- Nakuru/ Kapsita
- Little Sisters of St Francis 2956ha
- Martin M Mwangi 20.2ha
- Nakuru/Karao parcel
- Trading centre, school and dispensary 18.2 ha
- Nakuru/Nessuit parcel
- Joseph Rotich Kipkores 24.28ha
- NAROK DISTRICT
- Ilmotik/Sisian
- Santa Ole Sankei and Rukuti Ole Korata 10.09ha
- Kamaleto Ltd 40.09ha
- Isaac Lelela Partop 20.29ha
- Rechel Chepkemoi Keino 20.38ha
- Willy Kibet Cheres 19.97ha
- Osupuko/Ololuanga/Nkaroni
- Ololarusi Investment Farm 4001 ha
- Korema Ole Surum 2,988ha
- Francis Lemiso Kipturkut 2,653ha
- Z.P. Cheryuot 1,955ha
- Ilngina Contractors 1295.9 ha
- Several 371.77ha and 19.87ha
- Nkobey/Reyio
- Blank 56.60 ha
- Stanley ole Maleto 43.85ha
- Sampele Maleto 43.34ha
- Lesionka ole Maleto 35.09ha
- Looyieyo Ntutu 29.81 ha
- Fredrick K Cheres 30.91 ha
- Blank 25.35 ha
- John M Rotich 23.20 Ha
- Lialo Lorgesa 19.59Ha
- Enosokon
- Joseph K Mutai — Subdivision and transfer—120.57ha
- 17 plots also for Subdivision and transfer 20.3 ha
- Ololunga/Enakishomi
- David Lekuta Sulunye 124.86ha
- David L Sulunye 121.4 ha
- 176 plots 88.00ha

Excerpt from the Daily Nation, July 30th 2010

Why is the proposed compensation of Mau land owners raising eyebrows?

Some insight from Odenda Lumumba, Kenya Land Alliance (KLA) National Coordinator

What is your opinion on the proposed Mau compensations?

The Ndung'u Land Commission report declared that the Mau Forest was acquired illegally and this that was confirmed by the Mau Task Force team. If any property is illegally acquired it does not require compensation. The government would be setting a bad precedent. If it compensates the illegal owners in Mau, will it also compensate the evictees and settlers in Mt Elgon, Cherangany, Mt Kenya, Marmanet, Aberdares and Koboret forests among others? Compensating them would be equivalent to paying a thief for stealing from you.

How much will compensation cost?

I am not able to give the actual cost because one has to take the acreage of the area in question against the market prices in the areas namely Molo, Kuresoi, Nandi, Konoin, Bomet, Kericho, Narok, Kipkelion and Njoro and triangulate. The excision amount to 107,000 hectares of forest land, with a government valuation of Shs 2.47 per acre. About last year, the KLA valued land in Molo to be an average Shs 200, 000 per acre.

What is the impact of this compensation to the economy?

The cost of compensating settlers is forbidding given that the country has massively lost in terms of the environment and income generation to the tune of approximately Kshs 32 billion. This money could be used to improve medical services, education, roads and construction of more hospitals.

Do you think it is noble to compensate the mau settlers?

NO. The government should use the same yardstick when dealing with all its people; what is happening in the Mau Forest is

political arithmetic. Some people within and outside the government are trying a politically play-out with the Mau settlers and that is why they seem to be favoured. If the State pays the occupants of Mau Forest then it should be ready to pay all the rest who have been evicted from state forests throughout Kenya. There should be nothing special about the Mau evictees.

What is the social impact of compensating the Mau settlers?

The compensation will create ethnic animosity between communities living in this region. Majority of those living in the Mau Forest are Kalenjins, while those evicted previously were the Sabao, Marakwets and Kikuyu. Paying the settlers will be unjust enrichment of a certain elite group while the poor majority suffers. The poor people like the Ogieks will also feel deprived because unlike the few elite, they do not have title deeds and therefore are not eligible for compensation.

What are the key challenges impeding the rehabilitation of the Mau?

The Interim Coordinating Secretariat on Mau Restoration (ICS) is facing some teething problems. First, It is claimed that up to 25,000 acres of former forest land in South West Mau has been repossessed, but nothing tangible has been done to restore the forest and the evictees are still huddled in displacement camps. The second phase (which will affect those with big chunks of land) of eviction was supposed to begin in January 2010 but the government has been postponing. You cannot rehabilitate a forest while people are still living there. Secondly, funding is another major challenge since the government estimates it requires about 80 million USD to restore the forest -- only a few partners have so far volunteered.

What solutions can you offer for the challenges mentioned above?

I do not have an answer to that because there is a body in place mandated to handle the issue. I would say that restoring Mau takes common sense as you cannot rehabilitate it with people living inside.

What is the government's responsibility in protecting public land?

Public land is under the government trusteeship and it is therefore duty-bound to protect it. The government sets up land regulating institutions that however lack funds and enacts laws that are never implemented effectively. For example, the Kenya Forest Service cannot satisfactorily protect forests because it lacks sufficient funds and personnel. Many Kenyans also have the mentality that public property belongs to no one and there should be civic education to teach them otherwise.

Do you think the government is committed towards implementing land reforms seeing that some MPs and senior government officials have vested interest in grabbed land?

The government is putting in place half measures. It signed the National Land Policy yet some senior officers in the government are now reneging. There has not been a high profile land case determined yet the government claims commitment to fighting land grabbing. Big land cases take years to resolve as the culprits hold big government offices that enable them to meddle with court processes and new land scandals emerge. Take for instance the Nairobi City Council cemetery scandal and the most recent one of the ICT centre in Ukambani. The government has not dealt with impunity and people will continue to commit such crimes in the future unless it takes a firm stand and prosecute land grabbers. 🙏



International News Roundup

Does corruption really force Western businesses to quit Russia?

In March, *The Moscow Times* ran a piece headlined “Corruption may force Western firms to quit Russia.” It made for pretty grim reading.

The article was spurred by comment from Alexandra Wrage of NGO TRACE International who ran workshops in Russia for Western companies on how to avoid bribery. She lambasted the “rampant, endemic” corruption in Russia, saying it was much worse than in other big emerging economies.

There is no denying corruption is both a big problem in Russia: some economists say that the cost of graft has shaved about two percent off GDP growth rates. Berlin-based NGO Transparency International, which produces the global yardstick for corruption perception, rates Russia at joint 146th on the 180-strong list, and reckons bribe-taking is worth about £200bn a year – or nearly one third of Russia’s entire economic output.

However, while Russia gets the most attention on this score it is not alone. All the countries in the CIS are facing the same challenge. For example, Ukraine, which is arguably the only true democracy in the CIS, scores even worse than Russia.

And Kazakhstan, which is run by president-for-life Nursultan Nazarbayev, whose children control huge swathes of the economy, scores better than Russia (120th in Transparency’s list). At least Russia has a real and functioning private sector and the nepotism is not quite so blatant.

Something needs to be done about corruption in the region. And that is the point: finally, Russia has begun tackle one of the most difficult reforms to make for a transition country. When Vladimir Putin was president he called for a crackdown on corruption in every one of his state-of-the-nation speeches, and absolutely nothing happened. Dmitry Medvedev also regularly talks about corruption, and has started acting on it, too.


The Interior Ministry has set up an anti-corruption unit and the Prosecutor’s Office (Russia’s top policeman) set up an investigative committee last year to examine more than 40,000 cases. The government says it exposed a total of 439,000 crimes in 2009 of which 173,000 were serious and caused a total of 1tr roubles (£23bn) of damage.

You can choose to believe the actual numbers of crimes solved or not, but an attack on the problem has clearly begun. Every week, some high-ranking official from across the spectrum of government has been either sacked or jailed. In all, some 800 members of Russia’s administrative elite were sent to prison in 2009.

Of course, the numbers of those punished are tiny compared to the million-plus strong bureaucratic army, but the strategy is a warning shot across the bows of every branch of government to say “change is coming, mend your ways”.

More recently, Mr Medvedev has taken things up a gear and started to legislate. A police reform bill was passed in February; the interior ministry was given a shake-up in March; a bill to better define blue-collar crimes was passed the same month. More are on their way, although it will take years if not decades to make a real dent in the problem.

“Our task is to create justice of high quality that helps our citizens,” Mr Medvedev said, adding that it would not be an easy process.

Source: <http://www.telegraph.co.uk/sponsored/russianow/business/7564010/Does-corruption-really-force-Western-businesses-to-quit-Russia.html> 





UPCOMING EVENTS

Event: MABDA National Integrity Study launch

Date: 19th May 2010

Organised by: Transparency International

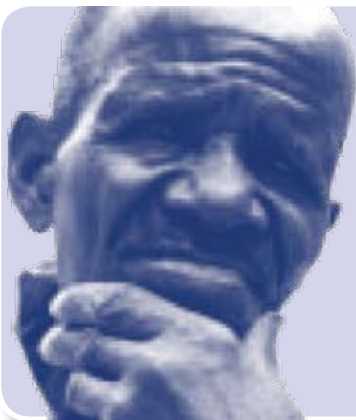
Location: Cairo, Egypt

Event: TI Sawa Sawa festival

Date: 30th May 2010

Location: Kasarani Stadium

Nairobi



TRANSPARENCY
INTERNATIONAL
KENYA

For up-to-date information

visit: <http://www.tikenya.org>

TI-Resource Centre:- you can now view our online catalogue on

<http://www.tikenya.org/knowledge.asp?id=1&ID=7>

Our resource centre is also open to the public

Adili is a news service produced by TI-Kenya's Communications Programme. The views and opinions expressed in this issue are not necessarily those of TI-Kenya. The editor welcomes contributions, suggestions and feedback from readers.

Transparency International, 3rd Floor, Wing D, ACK Garden House, 1st Ngong Avenue. PO Box 198-00200, City Square, Nairobi, Kenya. Tel.: 254-020-2727763/5, 0733-834659, 0722-296589; Fax: 254-020-2729530.