



# POLICY RECOMMENDATIONS ON LAND AND CORRUPTION IN KENYA

## BACKGROUND

Kenya is experiencing a land crisis in which many citizens are being forcibly evicted from their homes<sup>1</sup> while investors encroach on forests, parks and farmlands. The main attempt at resolving the land problem began in 2010 after the country passed a new constitution. By enshrining land management principles and a land management institution, the new constitution intended to strengthen land reforms and ensure public land was protected. Crucial legislation was subsequently enacted to improve the dire state of land affairs and redress historical injustices<sup>2</sup>. Within two years, parliament had passed the Land Act, the Land Registration Act and the National Land Commission Act. The Environment and Land Court Act and the Community Land Act were also passed more recently.

The Land Act, which is the primary land legislation, provides, among other things, for the right to communal ownership of land and the right to resolve land disputes through traditional mechanisms. It also strengthens the position of women by creating statutory rights to land for spouses.

Despite these new laws, implementation remains slow, especially of regulations concerning public land. Significant harm is still being caused by illegal evictions of settlers and irregular tenants in informal settlements. Land scarcity in fertile regions and urban areas leads to encroachment onto public land, especially school compounds and other public institutions. Some public infrastructure projects, such as the Standard Gauge Railway, also recently displaced thousands of people before the government compensated communities.

Displacement has been one of the major issues in land injustice. Even though there are laws in place, there has been no consistency in how they are applied. Not even the courts have been able to come up with a proper system. Displacements, especially those caused by private investment, have been tarred with allegations of corruption, human rights violations and disrespect for the law. For instance, the mass eviction in southwest Nairobi of residents of the Kibera informal settlement to make way for road construction in July 2018 left more than 30,000 people homeless and 2,000 children without schooling<sup>3</sup>.

Transparency International Kenya opened the discussion on “Forced Evictions as a form of Land Corruption” at the Conference for Land Policy in Africa (CLPA) in November 2019<sup>4</sup>.

## BEST PRACTICES AND POSITIVE MODELS

Section 65 of the Anti-Corruption and Economic Crimes Act (Revised Edition 2016) protects informers who may assist the Ethics and Anti-Corruption Commission (EACC) in investigations.

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## GAPS IN LEGAL AND INSTITUTIONAL FRAMEWORKS

The Resettlement Bill has been drafted but not yet passed in parliament. While the Constitution of Kenya prescribes “fair and just” compensation, the Draft Resettlement Bill fails to provide for it. It also lacks an anti-corruption clause.

The current preference for alternative dispute resolution (ADR) is not sufficient. It is marred by impunity for the offender, and the few procedures that do penalise offenders do not result in substantial economic compensation. While ADR was meant to improve citizens’ access to justice, the outcome is often not satisfactory. Land users simply have an opportunity to express their grievances, and injustices become documented and occasionally condemned.

The Legal Aid Act, passed in 2016 to facilitate the provision of legal aid to the poor, has failed to do so. The follow-up National Action Plan on Legal Aid (2017-2022) exists only on paper. Implementation is left to civil society, with legal aid still largely a service offered by volunteers.

A draft Whistleblower Protection Bill has been prepared by civil society, but is stuck in parliamentary procedures, as is the bill for Disclosure of Beneficial Ownership. The EACC has the necessary legal powers to prosecute offenders, but lacks staff and funding, as well as the political backing to do so.

## RECOMMENDATIONS

The Kenyan government should:

- Review compensation programmes for major infrastructure projects, especially the Standard Gauge Railway and Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor project, to identify possibilities of injustice, illegality and corruption, and enforce compensation and rehabilitation of affected residents.
- Introduce offices and procedures for fast-tracking the process of land registration in all cases of Large-Scale Land-Based Investment (LSLBI) and compulsory acquisition. Introduce offices and procedures for fast-tracking at the Land Dispute Tribunal in all cases of LSLBI and compulsory acquisition.
- Enact the Evictions and Resettlement Procedure Bill and related regulations, and establish an agency for implementation, legal aid and public information on eviction threats.
- Prosecute persons and companies that violate international laws and guidelines on evictions, especially those failing to offer adequate notice, community consultations, compensation and alternative housing facilities on time, as stipulated in the constitution. End impunity for those who carry out illegal forced evictions and use crimes like rape, sexual assault and sexual

extortion as tools. This must include, as appropriate, prosecution of security officials who enforce land laws and property claims.

- Establish a legal aid clinic at the Land and Environmental Court to provide citizens seeking justice with legal assistance in filing complaints.
- Establish a legal aid clinic at the EACC to provide citizens with assistance in making legal complaints, in order to increase conviction rates.
- Harmonise anti-corruption legislation (the Leadership and Integrity Act, the Anti-Corruption and Economic Crimes Act and the Public Officer Ethics Act).
- Adopt legislation on whistleblower protection and public interest disclosure.

## ENDNOTES

<sup>1</sup> Forced Evictions as a form of Land Corruption and its Impact on Women’s Land Rights in Kenya and Uganda; <https://landportal.org/comment/3354>

<sup>2</sup> History of Land Conflicts in Kenya, March 2011; <http://www.focusonland.com/countries/kenya-history-of-conflicts/>

<sup>3</sup> Stop forced evictions from Nairobi’s Kibera settlement, UN Office of the High Commissioner for Human Rights (OHCHR), 2/2018; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23410&LangID=E>

<sup>4</sup> Analysis of Alternative Dispute Resolution systems in addressing Land Corruption Cases – the case of Kenya and Ghana, African Union Conference on Land Corruption, Abidjan, November 2019. (Paper available on demand with TI Kenya).