

# Securing Community Land Rights

MARCH, 2015



BUILDING CONSENSUS ON COMMUNITY ENGAGEMENT WITHIN LAND REFORMS AND THE EXTRACTIVE SECTOR IN KENYA



Louise Towon, a participant from Samburu County, shares her views on land reforms and extraction of natural resources during the two-day conference at Sarova Pan Africa Hotel, Nairobi. PHOTO: ODHIAMBO ORLALE

## As extractive industry grows, so must the level of community engagement

BY JOYCE CHIMBI

The Tuvuke Initiative in partnership with RECONCILE recently concluded a two day conference to address the emotive issue of land and natural resources reforms.

Dr Jennifer Riria, Chair of Tuvuke Initiative said that the conference which was geared towards building consensus on community engagement within

land reforms and the extractive sector.

The conference took place at a time when heated discussions are on going regarding the future of the extractive industry and the management of natural resources in general.

### Scope

Dr Riria said that the Initiative consists of 15 Civil Society Organisations that believe

Kenyans can live peacefully and can successfully address issues that can cause conflict, violence and non-development.

“To achieve this objective, there is need to redefine these issues. We need to act now, unless we can deal with issues related to land and natural resources now, 2017 is around the corner and we cannot be agitated as was the case in the past,” she said. **PAGE 3>>**

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## Outlining the way forward for land reforms

BY ANTONIA MUSUNGA

Representatives from National and County governments, Civil Society Organizations, Private Sector, Community Groups, Development Partners and Research Institutions society organizations

who had gathered at the Land and Natural Resources conference reached a consensus on the levels of community engagement within land reforms and extractive sector.

The consensus statement presented during the last day of the two conference was presented

by Dr. Jennifer Riria the chair of Tuvuke Initiative where she urged the stakeholders present to adopt the document and apply as their interventions within their individual organizational strategies.

“We have built consensus over many issues that have been discussed and so all of us can find interventions that suit the challenges specific to our areas of engagement.

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Chairman of the National Land Commission, Mohammad Swazuri, Tuvuke Initiative chairperson, Dr Jennifer Riria, and Ford Foundation's East Africa representative, Maurice Makoloo following proceedings at the land conference. PHOTO: GEORGE NGESA

## Slow land reforms could rob Kenya of her mineral wealth

BY DAVID NJAGI

It has never been Eunice Adhiambo's nature to be noise-maker. But frustration by the government is forcing her to do just that.

For the few years she worked in Kwale County in Coast region, Adhiambo is concerned about the rising number of purported foreign investors who are flocking there, a on a treasure hunt mission.

Seldom, is the community there aware that its land and mineral wealth is under siege, she says.

"The people are not informed the investors will be camping in their villages to explore for wealth," says Adhiambo. "This is why the coast region is recently plagued by sporadic conflicts because the community fears it is being robbed of its heritage."

### Invasion

It is not hard to see why locals are on edge. At the Mlimani shrine, mineral hunters are busy excavating

for precious stones. Yet, Mlimani is gazetted by the national government as a sacred and world heritage site.

When put under pressure, government officials there have tried to justify the activity there as a wealth and job creation opportunity. But Adhiambo's Ujamaa Center, a Non Governmental Organisation, where she works, is not convinced.

"The community settles for informal jobs because they lack specialised skills which are required for technical jobs such as mineral exploration," she says. "Most of the workers are foreigners recruited from South Africa, Democratic Republic of Congo and Nigeria."

The few Kenyan who have landed jobs there, says Adhiambo, are poached from the capital city, Nairobi.

It has not escaped the vigil of Adhiambo that the community is troubled by other social-cultural ills, amid the threat of losing their

land.

"The people complain that food prices have gone up," she says. "Sex work and immorality too are growing concerns expressed by the community there."

Mlimani is not the only spot in Kenya which has continued to attract investors and trouble in equal measure.

### Tension

In Turkana County, tensions are flaring due to what the community fears is the possibility of losing their land to dubious foreign investors.

The recent oil find has attracted traders there from far and wide in search of greener pastures. Appetite for land is soaring, while conflict between communities has peaked, argues like Ika Angelei, an official with Friends of Turkana.

When the vast oil deposits were discovered, she recalls, there was countrywide toasting. But the hangover is closing in, especially among the marginalized

communities of Turkana, she says.

Despite the promise of wealth, conflicts have flared. Angelei's organisation has linked most of the clashes to border disputes, as neighbouring counties attempt to claim a share of Turkana's bounty.

Angelei is sure tensions are likely to get worse if the government does not resolve the community land rights by have clear cut policies and legislation to back them.

"There is growing divisions on who owns the resources because community land rights are not being addressed," she observes.

Those that share Angelei's concerns see Turkana as the beginning of a nationwide problem, as Kenya prepares to harvest her mineral finds in 2017.

Coast has its precious stones, oil and gas. Northern Kenya boasts of oil, gas and underground water resources. Eastern Kenya is drilling for its coal and iron ore. Rift Valley is powering its geothermal might, as Nyanza and Western Kenya stumble over the gold rush.

### Progress

Four crucial Bills are still pending before Parliament; these are the Community Land; Mining Law, Petroleum Exploration, and Revenue Bills. But critics say they are ambiguous about how the community should be engaged within the land reforms and extractive sector context.

"Lack of an implementing legislation is causing clashes between the public and investors because of competing interests," argues Charles Wanguhu, of the Kenya Civil Society Platform on Oil and Gas. "There should be land reforms before Kenya begins mineral extraction."

Still, Kenya has her load of historical injustices on land pulling her weight, says the National Land Commission (NLC), while few people are aware of existing legal instruments.

## As extractive industry grows, so must the level of community engagement



**AMWIK director, Hellen Modura moderating one of the sessions at the conference where land experts, Ibrahim Mwathane, John Pamita Letai and CEO of Kenya Land Alliance, Odenda Lumumba, were panelists. PHOTO: GEORGE NGESA**

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“We now have to do things differently, we have to work with institutions embedded in this communities to address areas that could breed conflict,” said Dr Riria.

Experts such as Eunice Adhiambo of Ujamaa Centre said that as the extractive sector grows, it will be crucial “that community interests are safeguarded and that environmental concerns are addressed.”

Kenya may have in place at least 90 pieces of legislation on how manage its natural resources, but it is a case of where less is more. Experts say the country’s excess of legislations are weak and inadequate to meet the challenge of sustainable management of natural resources.

Kevin Kinusu the Climate and Energy Advocacy Officer at Hivos Nairobi, the Dutch organisation for development, said that the weak

laws have proved ineffective in the face of the country’s capitalist economy, which is yet to embrace the principles of sustainable development.

For instance, Kinusu explains that although there is a Wetlands Atlas and the Master Plan for the Conservation and Management of Water catchment Areas in place “we do not have a comprehensive policy on conservation of wetlands and they are [wetlands] are facing severe pressure despite their importance as a water resource, for agricultural productivity and in sustaining livelihoods.”

### Legislation

“But the policy is in the pipeline in the form of the draft Natural Resources Development and Management Policy, 2012. And many other sectoral policies are already under review to facilitate conservation and management of natural resources,” he said.

According to Ikal Angelei from Friends of Turkana “In

regard to Community land, some of it is going to be registered as we continue to discover more natural resources but does the community understand this?”

“They only know that this land is ours. Taking these conversations to the grassroots and making community understand is very important,” she said.

There has been a lot of tension regarding what is happening in the country and particularly what is going on in Kitui currently, hence the need for a strong legal framework to protect the community.

Duncan Okowa, Programme Officer at Local NGO Institute for Law and Environmental Governance (ILEG) said that although a national policy on management of natural resources does not exist “The Environment Management and Co-ordination Act 1999 -which provides a framework environmental legislation that establishes

appropriate legal and institutional mechanisms for the management of the environment- should have served as the overarching policy.”

“The Act should have ensured that all sectoral laws work towards sustainable management of natural resources. The Act’s main weakness is that it has been over taken by events. For instance, there are demands in the 2010 Constitution that are not covered by the Act. Also, most sectoral laws were enacted after the Act had been developed, for instance we have the Water Act 2002, Forest Act 2005 and the Land Act 2012,” he said.

Okowa says that most of these laws have resulted into an overlap of duties and establishment of institutions with similar mandate.

### Participation

“The Constitution makes specific demands previously ignored by many of the legislation in existence such as the need for community involvement in both management of natural resources and sharing of revenue accruing from the same,” Okowa says.

As a result, under the Forest Act, the Community Forest Associations was established as was the County Wildlife Conservation Committees under the Wild Life Act and the Water Resources Users Association under the Water Act. “But the effectiveness of these community initiatives have been compromised by interference from respective ministries. They behave like appendages of the ministries rather than independent bodies that protect the interests of the community and that defeats the very purpose of having a community initiative in place,” Okowa explains.

Towards meeting Constitutional provisions that demand that communities be at the heart of natural resource management, controversy has continued to brew of the management of the country’s multibillion dollar mining industry.

## Outlining the way forward for land reforms

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“We are also aware of the important role that natural in the form of land, minerals, forests, wetland should play in the social and economic transformation of the Kenyan people. This can be through improving the livelihoods, growth, and development, good democratic governance and peace”, she added

Additionally, the stakeholders acknowledged the incessant institutional conflicts, inadequate political will for land reforms, inadequate budgetary allocations for the implementation of land reforms, bills yet to be finalized to improve communities’ rights over land and natural resources, lack of adequate involvement of communities and other stakeholders across levels in designing and implementing land reforms and the increasing cases of corruption, impunity and hoarding of information from the public/citizens.

### Trend

Considerable progress has been made towards the achievement of what most stakeholders are seeking to achieve by the August 2015 deadline but a lot needs to be done to achieve the better outcomes. This is especially bearing in mind that many Kenyans especially women have suffered over the years due to being sidelined during the crucial civic education empowerment processes that addresses land reform processes.

Riria explained that there was an increase in both locally and the international on and demand for Kenya’s natural resources which provided an opportunity for inclusive development if properly managed within a human rights framework and that the slow pace of land reforms jeopardizing opportunities for development , social transformation.

“We want to fast track the land reforms in the country as the



**Ikal Angelei of Friends of Lake Turkana sharing her views during a session on the status of land reforms and extractive sector in Kenya. PHOTO: GEORGE NGESA**

slow pace has been frustrating and wearing out the faith of communities of the possibility of addressing the land issues through structural solutions.”, she said.

Almost five years since the constitution was promulgated, communities are yet to have enforceable rights over community land. The policy and legislative framework for the management and administration of community land is yet to be finalized and long standing historical land injustices are yet to be addressed to promote reconciliation, healing and integration of communities

Participants in building consensus committed to establishing in the land sector should establish a biannual land and natural resource stakeholders’ dialogue forum with the President and the Cabinet, in order to highlight, share key issues and get immediate feedback.

“The communities’ disenchantment and frustration with the status of land reforms and the future it

portends for them is demonstrated by increased violent land related conflicts in the country for instance: Lamu, Kapedo, and Isiolo among others. To address this situation before it degenerates further, we propose the following interventions,” she said.

Enactment of Bills by August 2015. The government must fasten the finalization of the pending land and natural resource bills. The bills include: Community Land Bill, Mining Bill, Natural Resource (Benefit Sharing) Bill, Eviction and Resettlement Bill and Historical Land Injustices Bill.

“This will provide a key starting point to enable the communities to access the rights that they are entitled to as land owners as well as provide them with a bargaining power and a platform to engage actively during key land processes, she said.

### Resolution

As far as institutional Conflict Resolution is concerned, the government and the stakeholders

in land and natural resource sector should urgently initiate and steer a process to solve and rationalize the working relationships between the Ministry of Land and Urban Development and the National Land Commission.

“By doing this we are encouraging the creation of an enabling environment for all stakeholder as well as community member to benefit”, she explained.

This should be accompanied by The National Land Commission and the Environment and Land Court developing and rolling out a comprehensive strategy in the application of Alternative Dispute Resolution and Traditional Dispute Resolution Mechanisms to resolve land cases and build relations between individuals and conflicting groups over land.

“These conflict resolution mechanisms as part of the judicial system and should adhere to the constitutional requirements by being inclusive and gender sensitive, she explains.

Riria also outlined the importance of documentation of existing Alternative Dispute Resolution currently operational in communities and civic education as they are efficient in resolving potential conflict over land.

The consensus also addressed women land rights as a priority for equitable and sustainable development. Appropriate legal measures to ensure men and women are entitled to equal rights to land and land based resources during marriage upon dissolution of marriage and after death of the spouse as well speeding up cases to land crimes by women to enable non- custodial sentences.

“Women should also be sensitized to be land owners independent from affiliation of males in their environment” she said.

## Laws fail to guarantee women access to land

BY FAITH MUIRURI

Despite the fact that women in Kenya are legally entitled to equality in access to land, they still continue to experience discrimination.

Only a paltry five percent of women hold title deeds. “But even those that hold title deeds, they are continuously read alongside other norms that qualify their holding of that land,” explains Prof Patricia Kameri Mbote -Dean, Faculty of Law, University of Nairobi during a Land and Natural Resource conference in Nairobi.

She says that both the Constitution and the National Land Policy have not translated to access, control and ownership.

She says that time has come for us as a country to interrogate this laws and remove the injustices that have ostensibly been guaranteed under rights and privileges.

### Discrimination

“We need to establish what makes access to land for women insecure even when it seems very secure. Why is it that even after women invest so much on land, their contributions are devalued?” she adds.

She says that the Constitution has robust provisions for equality and has gone ahead to subjugate traditional law which has previously been used to deny women land rights.

“But still women remain marginalized in relation to controlling and profiteering from this critical resource,” she notes.

She says that the situation has been compounded by the fact that land has been colonized by patriarchal norms thus limiting

both access and ownership to women.

She says that engendering land reforms will require an elaborate plan that paves way for research to establish what has curtailed women ownership to land.

“Engendering land reforms goes beyond policy and law. If laws and policies were enough, the rights would be enjoyed. We need to get to the implementation and we need to see what is that has prevented women from owning land if the law allows them to own land,” she notes.

### Framework

She points out that the land laws are conservative and have not guaranteed women direct access to land.

She says while the law provides that you cannot transfer land without spousal consent, it fails to address power dynamics at the household level.

“Laws can either provide a robust mechanism or reinforce social injustices and therefore we need to remove the injustices that have been concealed within a façade of rights and privileges because some laws provide for rights that make it impossible for people to access rights,” she notes.

She says that in most cases laws has been captured by interest groups and status quo beneficiaries who only serve to perpetuate gender inequalities.

Mbote further cites the Matrimonial Property Act which denies women the right to marital property upon divorce or death of the spouse unless they can prove they made a contribution to the acquisition of property during



The Dean of the School of Law, University of Nairobi, Prof Patricia Kameri-Mbote presenting her paper on women and land rights at the conference. PHOTO: GEORGE NGESA

their marriage.

“This is unrealistic because how do you quantify unpaid care work such as cleaning, washing dishes or taking care of the family,” she quips.

She calls for the amendment of such laws to provide for a continuum of rights and ensure that access is guaranteed.

### Equality

“Not all of us can have access but we need to ensure that no gender is disadvantaged,” she affirms.

She at the same time says that women relationship to land has never been direct and thus the need to secure this relationship.

“We need to look at how women relate with land, secure that relationship between women and land so that there is no danger of the owner or controller coming and sweeping them off their feet,” she advises.

She further underscores the need to confront culture which in most cases has been used to deny women rights to land.

“We need to interrogate culture to help chat a way that allows us to deal with gendered aspects especially where property rights

are concerned,” adds Prof Mbote.

She says that there is need to educate people on the substance of the law and show how law can be used innovatively and translated into reality.

Similar sentiments were shared by participants at the conference who underscored the need to sensitize the public on women land rights in order to increase awareness and knowledge, change attitudes and practices and build platforms for advocacy for the advancement of these rights.

Participants at the same time called on the judiciary to speed up cases related to women land rights and ensure that women who commit petty crimes related to land claims receive non-custodial sentences.

### Resolutions

In a statement read by Jennifer Riria who is the chair of Tuvuke Initiative, participants unanimously proposed the adoption of appropriate legal measures that ensures both men and women are entitled to equal rights to land and land based resources during marriage, upon dissolution of marriage and after death of the spouse.



National Land Commission chairman, Mohammad Swazuri, addressing the 100 participants at the forum. PHOTO: GEORGE NGESA

## Few land courts serve to derail access to justice

BY FAITH MUIRURI

Although the judiciary has been mandated by the constitution to be the principal actor in resolving conflicts, serious shortcomings have continued to hamper its work in relation to land matters.

According to Justice Boaz Olao who presides over a land's court in Kerugoya, the country has only 19 land courts which do not correspond to demand by the over 40 million Kenyans.

The High Court Judge cites cases where litigants with small land claims in Garissa have had to travel all the way to Meru which has the nearest court.

He says the vast geographical distances to the nearest court and the high costs of travelling and filing cases have made it nearly impossible for litigants to seek redress through the courts.

"The number of Land Courts are

considerably few and litigants therefore have to travel for longer distances before they can access justice. Sometimes their cases are adjourned because majority of the litigants cannot get to the courts on time," he explains during a Land and Natural Resources Conference in Nairobi dubbed: Building consensus on community engagement within land reforms and the extractive sector in Kenya.

### Barriers

The hardest hit areas include Garissa, Kericho, Naivasha and Murang'a where the courts have yet to be established and therefore litigants in these areas are disfranchised especially in cases where they cannot afford the costs of transport which are necessary in order to attend court.

"It does not make sense for a litigant with a small land claim to travel all the way from Garissa to Meru where we have the nearest

court and by the time they get to the court, their cases have been mentioned and adjourned due to lateness," he says.

The judge says that initially litigants had to travel all the way from Makindu to Machakos to access justice. However residents came together and raised funds towards the construction of a land court in the area.

He says that when the courts became operational, litigants took advantage and brought all manner of cases some dating many years back.

Apart from the physical barriers to access, another issue that inhibits the judicial process is the long duration of cases.

He blames the lengthy period it takes to deliver a judgment to the manual way of recording court proceedings adding that the judiciary is in the process of moving towards embracing the digital platform in its work.

Other shortcomings in the justice sector that hinder the dispensation of justice, he says is the continuous use of legal terminologies which the litigants have little understanding and are difficult to interpret.

He says in Kerugoya, the court continues to register cases where men do not want their sisters to inherit land. "We have opted to using the alternative dispute resolution mechanisms to ensure the cases do not drag too long in the courts.

### Plans

Justice Olao says that the judiciary plans to expand its physical structures to meet the rising demand.

"In addition, we are engaging with the public through the Court Users Committees, judicial matches, visits to schools and other learning institutions and have maintained a robust bar-bench relationship in most of our stations.

The Court Users Committees provide a platform where different agencies meet, brainstorm, pool and direct synergy towards facilitating and improving the courts' administration of justice.

The committees have been found to be extremely useful in terms of improving co-ordination among the different departments and agencies within the system of the administration of justice with results ranging from improving and reorganizing the filing system in the criminal registry, improving communication and interpersonal relationships among judicial officers and other stakeholders and acting as platforms for inter-disciplinary learning.

### Resolutions

During the conference, participants underscored the need to establish and promote the use of Alternative Dispute Resolution Mechanisms alongside the traditional Dispute Resolution Mechanisms.

## Residents of Nairobi slums still fighting for their community land rights



**Congestion in the slums where storied mabati houses are now the order of the day.**  
PHOTO: ODHIAMBO ORLALE

**BY ODHIAMBO ORLALE**

The plight of millions of residents of Nairobi slums was brought to light during the recent land and natural resources conference held in the capital city.

Samuel Njoroge, representing the Nairobi People Settlement Network Association, said they also had issues that must be brought on board just like their colleagues from Turkana County, where multi billion shillings oil drilling projects are being undertaken; Isiolo County, where the proposed Isiolo Resort City is a burning issue; Kitui County and Kwale, where coal mining and Titanium are the big issues.

The official says they are a unique group because they all reside on public land that belongs to the Government and they are rarely consulted. He cited the case of Kibera, where Nubians are laying claim to the land, and Mathare

where slum upgrading projects have been on going but with little participation of the residents.

At the end of the two-day conference, Njoroge, reminded the organisers of the Land and Natural Resource Reforms Conference, Tuvuke Initiative and Reconcile Organisation, that the 165 informal settlements in Nairobi and other urban centres had been left out of the debate.

Njoroge, who is the secretary of the Nairobi People Settlement Network Association, said they too had a say on land matters and must not only be heard but their views must be taken on board.

Said the official: "We now want to know from the organisers of this conference where do we go from here. We have had very many civic education forums on land, but we now want action. Where do we go to from here? Land issues are emotive and are not like HIV/AIDs

where you need public awareness over and over again."

Most of us are living in informal settlements which are public land and we also have rights, as confirmed by a court ruling a decade ago when we sued the then Nairobi City Council and the then Ministry of Local Government for planning to get rid of the slums in a beatification project dubbed: 'washing the city.'

### Resolutions

However, the views were well captured in one of the resolutions at the end of the conference on Promoting Community engagements in land reform process.

It said in part: "For land reforms to succeed in the country, communities must be involved and must be empowered to be the drivers of the reforms. So far, major hindrances to communities' meaningful participation include:

high illiteracy levels, high poverty levels, lack of information, inadequate capacities, and lack of recognized participation structures among others."

Indeed, most of the city slums sit on prime land that is always the envy of land grabbers. The ultra modern Village Market near the United States Embassy and UN headquarters used to sit on a slum before a private developer evicted them over a decade ago.

The Association was started in 2004 after President Mwai Kibaki and his NARC party won the elections and announced that it will have a beatification of the city as one of its elections pledges. All the slums were to be phased out as part of the upgrading and beatification programme, says Njoroge.

Says the official: "There was no consultation with us. Their cleaning was targeting slums to replace them with modern buildings. We thought it was to get rid of us, but they claimed they were out to help us."

Overnight residents living under power lines, sewage, water lines, banks of riverside, and road and/or rail reserves were given eviction orders and their buildings were marked with an 'x' using red pain.

### Platform

It was then that the residences from the 165 slums in Nairobi formed the association to represent their community land interests and use it to speak with one voice.

Some of the areas represented were Kibera, Mathare, Korogocho, Maringo, Mukuru Kwa Njenga, Kiambio, Kuwinda in Karen among others.

The current chairman is Jackson Makokha, who was elected last August; his officials include nine governing council members. It has nine thematic working groups to focus on land and house; education; environment; health; water and sanitation; peace, theatre, arts and culture; food security among others.

## Gender inequality persists in land ownership despite new Constitution

BY CAROLYNE OYUGI

A lands conference was told that the Kenyan Constitution is highly rated internationally.

Among the gains is supporting women empowerment by having a right to access, own, control and inherit land, says Prof Patricia Kameri-Mbote, Dean, Faculty of Law, University of Nairobi

But the dean lamented that its enforcement as far as land reforms is concerned has been a challenge.

The supreme law, which was promulgated in 2010, has brought positive changes and gains to Kenyan citizens and residents and boosted the gender agenda in the country. It embraces affirmative action.

The dean says the Constitution has helped Kenyans to move away from the old land laws that were developed against a customary law system in which women had no rights to own land and only limited rights to access or use of it.

However, negative cultures have persisted in derailing the gains that Kenyans have fought so hard to achieve. The same culture that has put so much importance on land, to an extent that every one wants to have a piece has also made it difficult for women to own the precious asset.

Today, few women own land titles either individually or jointly with their husbands.

Speaking during a Land and Natural Resource conference in Nairobi, the don said that land had been “colonized by patriarchal norms” thus limiting both access and ownership to women.

“Unfortunately the court system is not making it any easier, since the passage of the Marriage Act. The rulings that were progressive after the new Constitution was promulgated are now getting



**A resident of Kitui County, Elizabeth Mutia, where coal mining is causing conflict between the local community and the foreign investors of land laws, accused the authorities of favouring foreign investors. PHOTO: GEORGE NGESA**

fewer.”

She further explained that women were known to do most things out of love. Most were disenfranchised because of the cultures and religion of their parents and/or their faith, as far as land issues were concerned.

The Matrimonial Act requires couples to quantify their contributions towards family wealth yet it is impossible for most women to do that.

### Contribution

The dean cited a case of a house wife who cleans cooks and ensures that the family members have a conducive environment to contribute financially towards their wealth.

“Such a woman can not quantify those contributions even though she did it for decades,” Prof Kameri-Mbote said.

Apart from the common requirements to own or inherit land, women have extra barriers like their gender, marital status and citizenship.

Some women end up not belonging anywhere once their husbands die because their parents did not give her a piece of land and the inlaws also think she does not deserve it.

This injustice also worsens women’s economic status and undermines their social status. Land is a basic source of livelihood providing employment, the key agricultural inputs, and a major

determination of a farmer’s access to other productive resources and services.

The professor who has been writing about women’s land rights for almost 20 years said that she is disappointed that gender inequality is still an issue as far as land rights are concerned.

“Sadly, some people who are slowing down achievements of these rights are very educated.” She said adding that some people support the land reforms in public but in their private spaces they are against it.

The don urged women to fight on saying: “do not to give up because nothing good is achieved easily.”



## Experts say Kenya still lacks policies to guard its rich mineral resources

BY HENRY OWINO

**D**emand for community land has never been higher, especially for areas where natural resources have been discovered.

It is behind the sudden rush by local and foreign investors to lay claim to the vital documents called title deeds.

But the need for ownership is brewing conflicts between communities, governments and investors as they all have vested interests.

Currently Arid and Semi-Arid Lands (ASALs), which were previously neglected, are in high demand because of discovery of precious minerals. The once neglected Turkana, Samburu, Isiolo, Lamu, and Machakos counties are today the envy of speculators as the national government announces discovery of oil, titanium, coal, gold, and ore among others.

### Gaps

Communities living in these areas are constitutionally entitled to a piece of the cake from the revenue generated from the disposal of the natural resources. However, they are not allowed to extract mineral resources as this mandate is reserved for the national government.

But because of lack of skills, the national government has given foreign firms and experts the green light to extract the minerals.

Unfortunately, all these are usually done in secrecy as consultations with the local communities and the County Government are minimal. Unfortunately most investor disregards existing legal land

framework to have things their way.

As a result, communities resist such the extraction from going on believing that community land rights and use are in their ownership.

This then becomes commencement of land conflicts between community and stakeholders.

In such condition compensation normally depends on gentleman's agreement in disregard to the current financial market value, with local communities feeling short changed.

According to Dr. Jennifer Riria, the chairperson, Tuvuke Initiative, stakeholders must work with communities and organizations embedded to those communities hand in hand for peace and benefit to all.

"Africa is currently at cross roads due to the rich natural resources it has as the list of interested investors continue to increase. I urge policy makers and governments to work incorporate communities in all the deals signed," Riria urges.

With the gaps in land legal policies and framework in Kenya, powerful and influential individuals take advantage of this to allocate themselves huge chunks of land. This is due to impunity that has been entrenched and is frustrating land reforms efforts.

### Hurdles

According to Mohamed Swazuri, chairman, National Land Commission, the existing land policies are not being implemented because politicians have erected barriers.



**Houghton Irungu, of Society for International Development, outside the conference hall after moderating a session on land reforms that support extractive sector and protects communities..** PHOTO: GEORGE NGESA

Swazuri blames the Ministry of Lands for most hurdles towards land reforms in Kenya that was part of Agenda Four of National Accord 2008 of Coalition Government.

"The Land Commission is the only office recognised by the Constitution to resolve any land disputes, issuing of title deeds as well as revoking them and demarcation of boundaries," Swazuri explains.

He alludes that refusing to follow laws has become Kenya's style of operation. Here people know the law but they don't care as long as they are well connected to powerful individuals regardless of community complaint.

On his part, the chief executive of the Kenya Land Alliance, Odemba Lumumba, differs with Swazuri saying he has all powers mandated by the citizens through the Constitution to spearhead land reforms.

"Now Swazuri is lamenting yet we gave his Commission powers

which are recognized by the Constitution on land reforms. He should stop these lamentations and use the citizens' mandate to act," Lumumba says.

### Way forward

These are in line with some of the resolutions passed during the two-day land reforms conference at a Nairobi hotel. The two are: implementation of findings on land injustices by the National Land Commission by putting in place mechanism for addressing land issues identified in the previous land inquiry commissions in order to build confidence and trust among citizens that the commission is discharging its responsibilities; the other is set up dialogue forums where stakeholders in the land sector should establish a biannual land and natural resource stakeholders' dialogue forum with the President and the Cabinet, in order to highlight, share key issues and get immediate feedback.



Participants follow the proceedings of the land conference at Sarova Pan-Afric Hotel, in Nairobi.  
PHOTO: GEORGE NGESA

## Impunity slowing down land reform process

BY MARY MWENDWA

Promises to voters on how natural resources conflicts will be resolved during political campaigns continue to slow down the land reform processes, community based organization have complained.

It is viewed that during high political seasons, politicians take advantage of ignorance on resources and land matters to woo voters.

This has slowed down land reforms initiatives because communities usually have little or no clear understanding of their natural resources history in areas such as Kitui, Kwale, Pokot and Lamu Counties, among others.

During a forum on land reforms in Nairobi recently, speaker after speaker complained of lack of political will in land reforms says Eunice Adhiambo of Ujamaa Centre, Kwale County. Kwale is now a hub for the extraction industry of minerals and has generated a lot of controversy.

This comes in the backdrop of an announcement by the Cabinet

Secretary for Mining, Najib Balala, saying that royalties from minerals had increased dramatically in the past one year.

### Statistics

The new figures from the Mining ministry released by the national government after the CS had ordered an overhaul of the sector reveals that the exchequer has received a staggering Shs845 million since July last year, compared to Shs21 million raised during the 2011/12 financial year.

Indeed, projection by the ministry shows that the figure could surpass the Shs1.2 billion target by the close of the current financial year on June 30.

In her brief speech, Adhiambo quoted some Government officials claiming that the extraction of minerals would not interfere with the ecological status of the Kaya forest. For a long time the forest has been managed by the communities because of its cultural attachments which help in conservation of its status.

This forest is a home to an array of bird and other animal species, if this forest goes then we are guaranteed of a dry ecosystem without organisms living within.

David Barisa of Action Aid observes that communities have their own ways of managing resources.

“Individualization of land tenure rights continues to be a huge challenge in the land reforms as investors come in and start polluting water as government bodies mandated to regulate the same watch on. The Violation of human rights on access to basic commodities are on the rise hence calling for urgent attention,” he adds.

### Inequality

“Women voices in my community are not heard, we are not supposed to own land in any way, and most of the population in the region have not gone to school hence denying the community of important information, says a women from Samburu County in northern

Kenya.

The National policy on gender and development 2000 which is under review seeks to institutionalize gender as a key concept in development. This is supposed to trickle down to women in grassroots at their level.

Ms. Jennifer Riria, the chairperson of Tuvuke initiative, says Africa is in crossroads as a result of scrambling for natural resources.

“Some investors claim they have met communities while this is often not true going by the way they misuse the said communities over time,” he adds.

### Illiteracy

Shadrack Omondi, the Chief Executive Director of Reconcile lamented at lack of legal framework to guide land management in Kenya blaming this on lack of political will on land reform.

“People need more education on land, as you know many Kenyans living in both rural and urban still do not fully understand land related issues and where they can settle some disputes,” he notes.

The Chairman of National LAND Commission (NLC) Dr. Mohammad Swazuri reveals that the commission faces a hard task in settling some disputes but they are slowly succeeding in solving decade old cases mainly from the coastal region.

He notes that some people do not obey law hence leading to prolonged delay in solving the disputes.

Professor Patricia Kameri Mbote, Dean, Faculty of law, University of Nairobi expressed concern on women rights in land ownership saying that they are still not in a position to own land.

“Women’s reproductive roles cut across the society and therefore denying them a right to own land is just unfair as they are the majority of farmers,” she adds.

## Gaps in land legal policies cited as major setback to reforms in the sector

BY HENRY OWINO

Lack of constitutional framework and legal policies governing land use and acquisition are the major hindrance to land reforms in Kenya.

It is now five years since the promulgation of the Constitution, yet there is no legal policy governing land administration and its use.

Investors are moving to areas where natural resources are situated without involving local communities. This movement therefore causes anxiety and restlessness as it breeds disputes in such areas where there already is animosity.

According to Ibrahim Mwachane, from Lands Development and Governance Institute, Kenya's policy on land is very clear, but that is different in other sectors like mining and forestry which are shrouded in confusion.

### Procedures

Mwachane pointed out that all those resources lie in community land whose acquisition is well defined in Chapter five of the Constitution 2010.

"Unfortunately, there has never been a provision for community objection or community pre-consultation when invading their resources," the expert lamented.

Mwachane says all community land owners must give consent for compensation first to ensure that the rates used match the market price value.

But he revealed that the law was not clear on compensation whether within local market price rates or elsewhere in rural areas like

Turkana County and Kitui where oil and coal have been discovered.

"There is need to seal some of the pending gaps in the legal framework in land issues at in Parliament and The Senate," he added.

Participants at the conference observed that conflicts between communities, investors, and national government and county governments were on the rise as a result of the news about mineral resources in the affected areas.

They noted that with the existing loopholes in land policy, especially with natural resources, individuals with vested interest were being left out.

They recommended that the citizens be informed to equip themselves with knowledge to enable them make informed decisions on land matters and avoid manipulation by crafty and greedy middlemen and individuals.

John Letai, a consultant on arid lands, affirmed that lack of policies have contributed to loss of ancestral land to communities in Arid and Semi-Arid Lands (ASALs).

He disclosed that heightened conflicts in ASALs were escalating due to discovery of natural resources that are being excavated and extracted.

### Intervention

Letai said conflicts at Kapedo in Turkana County are an upshot of mineral resources that puts the two communities at loggerheads.

"A well-defined legal framework of land policy on extraction of natural resources in any community would help create harmony between potential investors and the



**Mining engineer, Duncan Maina, appealed to communities where natural resources have been discovered to work closely with technical and legal experts before committing themselves in land deals..** PHOTO: GEORGE NGESA

communities and create sustainable developments of ASALs residents," Letai stressed.

He cited as an example the proposed site for the Isiolo City Resort has been a dry season grazing area for pastoralists over the years and their future is bleak.

"The residents living there are wondering what would happen to them and their livestock, even if they will be compensated," Letai said.

### Resolutions

It is view on those concerns that the over 100 participants to the two-day forum came up with several resolutions as a way forward.

Said the report: "The communities' disenchantment and frustration with the status of land reforms and the future it portends for them is demonstrated by increased violent land related conflicts in the country for instance: Lamu, Kapedo, and Isiolo among others. To address this situation before it degenerates further, we propose the following interventions:"

They are the enactment of Bills by August 2015: The government

must fast track the finalisation of the pending land and natural resource bills. The bills include: Community Land Bill, Mining Bill, Natural Resource (Benefit Sharing) Bill, Eviction and Resettlement Bill and Historical Land Injustices Bill.

They also want an institutional conflict resolution mechanism to be set up. The government and the stakeholders in land and natural resource sector should urgently initiate and steer a process to solve and rationalize the working relationships between the Ministry of Land and Urban Development and the National Land Commission.

Another recommendation is on the implementation of findings on land injustices. They are calling on the National Land Commission to in place mechanism for addressing land issues identified in the previous land inquiry commissions in order to build confidence and trust among citizens that the commission is discharging its responsibilities. The implementation should also address the rising cases of corruption and impunity in the land sector.

## Knowledge is power, Judge asks civil society organisation to invest in research



**Meeting of the minds: High court judges, Justice Nathan Olao and Justice Joseph Onguko together with Janet Munywoki of the Legal Resource Centre, at the conference where they spoke about land governance and the justice system** PHOTO: GEORGE NGESA

**Dispute Resolution framework:** The judiciary should speed up the development of an Alternative Dispute Resolution framework; **documentation:** Document existing Alternative Dispute Resolution Mechanisms currently operational in the communities; and **recognition:** Recognize Alternative Dispute Resolution Mechanisms as part of the judicial system.”

In his speech, the judge had said: “Land issues are not emotive, it is the way we handle them that make them emotive,” he said adding that most people fail to avail necessary defence information while others fail to appear in court on scheduled dates.

“It is the duty of Parliament to ensure that land reform agenda succeeds in favour of the citizens, as is contained in the new Constitution,” the judge added.

Bills that are currently pending in the august House like the Community Land Bill, the Natural Resources Bill and the Petroleum Bill need to be fast-racked in favour of the citizens, Justice Onguko said.

### Cautionary

However, he cautioned CSOs to ensure that what they do is constitutional adding that according to the supreme law promulgated in 2010, minerals and oil belonged to all Kenyans and not to any community.

He noted that some actions may not yield much fruit if found to be contrary to the constitution that serves as a reference point in all cases.

### BY DUNCAN MBOYAH

Civil Society Organisations must move from activism to conduct research in advance to help pre-empt conflicts associated with the discovery of minerals and oil.

Justice Joseph Onguko, a judge of the High Court, is urging CSOs to agitate for fairness in the process of extracting the commodities by being armed and availing research findings.

“Many countries in Africa where minerals have been discovered have experienced conflicts due to lack of social cohesion,” Onguko, said while closing a two-day conference on land and natural resources.

### Cases

The judge named countries like Angola and Democratic Republic of Congo that were experiencing problems because the discovery of

natural resources and its extractors was top heavy without involving the ordinary people and communities on the ground.

He told CSOs to engage the government and corporations that are involved in the extraction of the minerals, on behalf of the communities, to ensure fairness existed once extraction exercise begins.

Justice Onguko, who represented Chief Justice Willy Mutunga, observed that contrary to belief that land matters were emotive, land matters depends on how they are handled as is enshrined in the Constitution.

The judge’s views were shared by most of the 100 participants who attended the two-day forum and came up with the following resolutions touching on the laws

and Constitution.

**The conference recommended that there was an urgent need to establish and promote the use of Alternative Dispute Resolution Mechanisms and Traditional Dispute Resolution Mechanisms**

They also noted that land matters were complicated and entail layers of relationships. To speed up justice for communities, it was important to apply Alternative Dispute Resolution mechanisms such as negotiations, mediation and arbitration, traditional dispute resolution mechanisms which are consistent with the constitution.

Said the report: “The judicial mechanism should be utilised after these other alternative mechanisms are exhausted. In this respect, we proffer the following: **Alternative**

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