



## A Critical Look at the Environmental Management and Co-ordination Act (EMCA), 1999

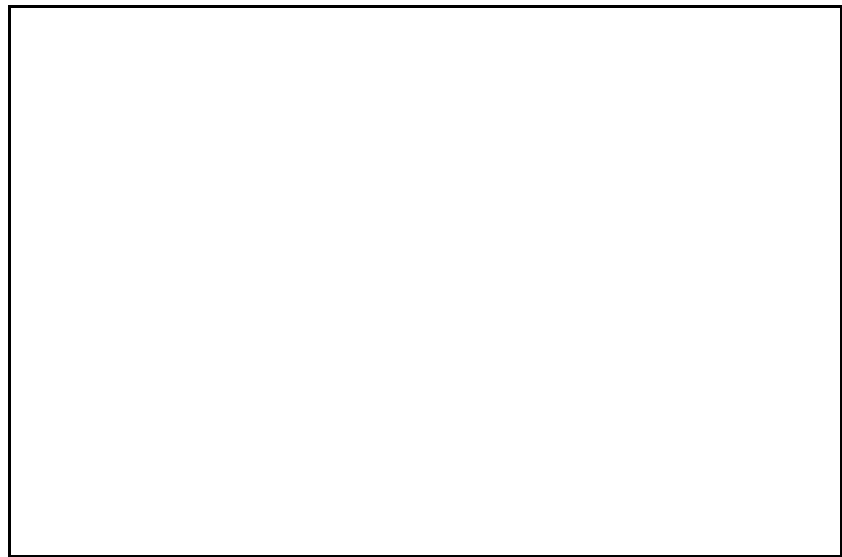
As the Government of Kenya treads the path to economic recovery, every Kenyan should be at home with the fact that many forms of economic development activities damage the natural resources upon which the economies are based. Nationally and internationally, a major environmental and development challenge is how to maintain the equilibrium between population, ecosystems and development.

Like many developing countries, Kenya is facing the challenge of sustainable development especially as regards environmental management. Until January 2000 when EMCA came into force, Kenya lacked a comprehensive environmental framework from which holistic and integrated strategy for sustainable use of natural resources could be generated. Environmental laws lay scattered in numerous Acts and the problem was further compounded by lack of an institutional framework that could effectively co-ordinate the enforcement of these environmental laws.

The Environmental Management and Co-ordination Act (EMCA) was passed by Parliament in 1999 and became operational on 14th January, 2000. This law is in line with the International Environmental Law which came into force through various International Conferences on Environment. The first major conference was the United Nations Stockholm Conference on Human Environment held in 1972 that adopted the Declaration that:

*“Every person has the fundamental right to freedom, equity and adequate conditions of life in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and the future generations.”*

The Stockholm Conference Report gave birth to the concept of Sustainable Development and Inter-generational Equity. Sustainable Development revolves around



### Environmental Management is a Pre-requisite for Economic Growth

“continued development to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.” (*Environmental Law Handbook for Businesses in Tanzania*)

The next major conference was the United Nations Conference on Environment and Development (UNCED) that was held in Rio de Janeiro, Brazil in 1992. The Conference came up with the Declaration that:

*“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is widely held by the public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”*

States were encouraged to develop effective National Environmental Legislation. A RIO + 10 Conference was held in Johannesburg, South Africa under the title “*World Summit on Sustainable Development*” to provide for an opportunity for strengthening environmental governance.

Kenya, being a member of the United Nations, participated in these and other several International Conventions and Agreements. The Government of Kenya came up with the National Environmental Action Plan (NEAP) report in 1994 as a policy document on the protection and management of the national environment and natural resources on long-term basis. A National Environment Secretariat (NES) was established. Despite having NEAP and NES, problems still continued leading to the drafting of EMCA. Some of these problems include:

- Lack of inter-sectoral co-ordination, sometimes leading to overlaps.
- Control-oriented nature of laws.
- Non-conformity with international trends and framework.

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# The Technical Committee on Land, Other Natural Resources, Property and Environment at Bomas III

The Bomas III finally reconvened on January 12, 2004, despite the protracted politics clouding its reconvening as was long planned. In Tent J, the delegates in the Technical Working Committee on Land, Other Natural Resources, Property and Environment, with exception of two to three MPs, deliberated continuously and diligently from the very first day.

Among Bomas III hottest items in the agenda were land, property, environment and other natural resources. Perhaps, the reason the aforementioned Committee worked tirelessly on their deliberations to iron out contentious issues within schedule.

By end of January, 2004, the Committee had thoroughly gone through their articles of the Draft Constitution Bill and agreed on the following:

- Land policy framework principles
- Ownership of land
- Classification of land
- Land tenure
- Land use regulation
- Protection of rights in land and property
- Use of other natural resources besides land
- Establishment of the National Land Commission and its functions as a constitutional commission
- Definition of environment
- The role of the State in sustainable management of the environment
- Environmental rights
- Environmental protection
- Establishment of the National Environment Commission and its functions
- Mechanisms of enforcement of environmental rights

The past two phases of the National Constitutional Conference left the delegates with divided views regarding land and natural resources such as whether to impose ceilings on private ownership of land, settlement of

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squatters, land re-distribution, repossession of grabbed public land, human-wildlife conflicts, forests management and conservation of water catchment areas, among others. For instance, during Bomas I, some delegates proposed a ceiling on land ownership for the privately owned land while others differed. A section of them felt that limit per se should not exist, but all idle land should be taxed to discourage absentee landlords and speculative landholders.

All these contentious issues were passed on to the Technical Working Committees stage for resolution. Despite the politics and sideshows that took centre stage during the discussions at Bomas III, as reflected at numerous Press Conferences, the Technical Working Committee on Land, Other Natural Resources, Property and Environment, made tremendous progress in their deliberations that apart from ironing out all contentious issues, culminated into passing of new clauses such as:

*“community land includes land currently held as government forest occupied by hunter-gatherer communities as their habitat and ancestral dwelling under Article 234(3) (e) and Article 234(3)(f) reading “All natural resources under local authorities and communities should be managed by them for the benefit of the communities and future generations”*

Article 235(4)(a)(xi) *“setting of maximum and minimum land holding in arable areas bearing in mind the productive potential and ecological location of the land”*

Article 236(3)(b) *“regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every ten years in consultation with devolved government”*

The Committee debated on the issues of land, other natural resources, property and environment, bearing in mind that they are emotive and sensitive, just as they are pivotal to the country's economy and many people's livelihood. Their main focus was to have the fundamental land policies enshrined in the Constitution and made part and parcel of human rights.

The Committee did not lose sight of the need for reforms in the institutional framework for land and natural resources administration, hence, their consensus on the establishment of a National Land Commission and a National Environment Commission.

The debate was timely as it coincided with the Government's efforts to restructure the country for economic recovery. The economy is based on land and other natural resources and the exploitation of these resources will definitely have an impact on the environment. On the other hand, the way these resources are distributed among Kenyans will have an impact on the long-term development of the whole country, hence, affect livelihoods of the current and future generations.

Kenya Land Alliance (KLA) monitored the whole process and can vouchsafe that the plenary session would have no problem endorsing the consensus arrived at by the Committee. Indeed, Mr. Odenda Lumumba, Delegate Number 458 and the National Coordinator for Kenya Land Alliance is a member of this Committee.

In light of the foregoing, KLA encourages the general citizenry that as the country embarks on national land policy formulation, the constitutional principles shall go a long way in guiding the process. KLA calls upon the public and all stakeholders to acquaint themselves with the constitutional principles so that they can actively contribute to the development of a National Land Policy.

### Acknowledgement

Fr. Gabriel Dolan, The Director, Catholic Justice and Peace Commission (CJPC), Kitale  
 Mr. Moses Masibo, Western Provincial Geology and Mines Officer  
 Mr. Barnabas Bargarua, Kimwarer Ancestral Land Owners (KALO), Kerio Valley  
 Mr. Evans Ngaira, Kimingini Gold Mines, Kakamega  
 Mr. Walter Barasa  
 Mr. Staford Nyauma

# The Environmental Management and Co-ordination Act (EMCA), 1999

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EMCA does not override or replace the existing environmental laws. It aims at providing an appropriate legal and institutional framework for the management of the environment and the sustainable use of natural resources.

Specifically, the passing of EMCA

- Provides for the establishment of institutions from district to national levels that will be responsible for implementing the Act.
- Accords every Kenyan the legal right to take environmental cases to court and also to participate in the development of plans and management strategies for managing the environment.

Previously, Kenya had only Section 75 of the Constitution on the protection against deprivation of private property to cater for citizens' right to clean and healthy environment and on management of the environment and natural resources.

## EMCA at Close Scrutiny

In light of the Stockholm Declaration of 1972 and the Rio Declaration of 1992, EMCA is guided by the general principle that *every person in Kenya is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment*. Further, Kenyans are empowered with the capacity to bring legal action on environmental matters. Considering that the environment constitutes the foundation of national economic, social, cultural and spiritual advancement, the right to a clean and healthy environment includes the access by any person in Kenya to the various elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.

### Administration of the Act

Part III of the Act sets out the necessary institutional framework to give effect to the provisions of the law. The composition, powers and functions of these institutions are defined. These institutions include:

#### The National Environment Council (NEC)

The tasks of the NEC are:

- Policy formulation and directions for purposes of EMCA.
- Setting national goals and objectives and

determining policies and priorities for the protection of the environment.

- Promotion of co-operation among public departments, local authorities, NGOs, private sector and such other organisations engaged in environmental protection programmes.
- Perform other functions as will be assigned under EMCA.

All the members of NEC are either appointed by the Minister or the President. This means the Council is fully politicized leading to poor, unfair and unequal delivery of its services. This also gives leeway for the appointment of unqualified staff to the Council, as was the case with former regimes where only the 'politically correct' held high positions in crucial public offices. The poor Kenyans such as small scale farmers, pastoralists and urban slum dwellers, who are most affected by environmental degradation are not represented in this Council. Apart from the oil companies, other environmental polluters are not represented. This lack of representation may lead to poor policy formulation.

#### The National Environment Management Authority (NEMA)

This shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of suing and being sued; taking, purchasing, charging and disposing of movable and immovable property; borrowing money; and entering into contracts.

NEMA is established to exercise general supervision and co-ordination over all matters relating to the environment, and the principle instrument of Government in the implementation of all policies relating to the environment.

Considering that NEMA will be running all the matters that concern the environment, it is essential for it to be accountable and transparent, not only to the Government but also to the general public. Although the Act specifies the qualification of the Board Members, the appointments still remain political without any censuring from either the public or the Parliament. Consequently, members of the Board are likely to come from the affluent who are likely to have no experience in environmental matters.

#### The National Environment Trust Fund

This Trust Fund shall be vested in the Authority, and subject to EMCA, shall be administered by a Board of five Trustees to be

appointed by the Minister by a notice in the Gazette on such terms and conditions as he/she deems fit.

The object of the Trust Fund will be to facilitate research intended to further the requirements of environmental management, capacity building environmental awards, environmental publications, scholarships and grants.

Though the appointments to the Trust Fund are likely to be politicized, the criteria of selection is on the right footing as only post-graduate degree holders from recognised universities are recommended. Under the Act, the Minister is bestowed with exclusive powers to appoint, hence, he/she may err as he/she is likely to do this without consultations.

#### The National Environment Restoration Fund

The Restoration Fund shall be vested in the Authority and, subject to EMCA, it shall be administered by the Director-General.

The object of the Restoration Fund shall be to act as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.

#### Provincial and District Environment Committees

The Minister shall by notice in the Gazette, appoint Provincial and District Environment Committees of the Authority in respect of every province and District respectively.

These Committees shall be responsible for the proper management of the environment within the province or district in respect of which they are appointed. They shall also perform such additional functions as prescribed by EMCA or as may be assigned by the Minister via Gazette Notice.

The local community and the people most affected by environmental degradation seem to be well represented. However, the Minister appoints their representatives. The locals should be given a chance to appoint their own representatives without the interference of the politically inclined Minister. The functions of these committees are too generalized in the Act. One thing that prominently lacks in the Act is the financing of these committees and their working guidelines despite their grassroots representation.

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## The Public Complaints Committee (PCC)

The PCC shall be established to investigate any allegations or complaints against any person or against the authority in relation to the condition of the environment in Kenya. It shall also investigate on its own motion, any suspected case of environmental degradation and make a report of its findings and recommendations to the Council.

The Committee has the power to call upon anyone to appear and give true information before it, failure to which he/she may be prosecuted. A Committee member must disclose any interest in a matter and should not vote on it. However, no member can be sued for carrying out his/her duties in good faith.

Once again, the farmers and the pastoralists are not represented in the PCC. However, the business community seems to be represented everywhere although they are less affected by environmental degradation than the farmers and the pastoralists. The Committee has a wide representation from the legal fraternity, but there is doubt whether an expert on environment is part of it although there is a representative from non-governmental organisations. Kenya Land Alliance (KLA) plays an agency role within PCC to receive complaints and forward them accordingly.

## Environmental Planning

This involves establishment of institutions that will be involved in environmental planning. These institutions include National Environment Action Plan (NEAP) Committee, Provincial Environment Action Plans and District Environment Action Plans. NEAP shall be binding on all Government organs upon adoption by Parliament, and shall contain an analysis of the natural resources of Kenya with an indication as to a pattern of change in their distribution and quantity over time.

Each province and district will prepare relevant plans for incorporation into NEAP. NEAP will be dealing with reports from the Province and District Committees, although these Committees fail to incorporate the communities adequately in their running.

## Protection and Conservation of the Environment

This section of the Act specifies measures that will be undertaken to protect different types of natural resources and ecosystems. This revolves around protection of rivers, lakes and wetlands, protection of traditional

interests, protection of hill tops, hill sides, mountain areas and forests, conservation of energy and planting of trees, conservation of biological diversity, access to genetic resources of Kenya, protection of the coastal zone, protection of the Ozone layer and fiscal incentives.

Under this section, one cannot undertake certain activities without prior written approval of the Director General which is given after an Environmental Impact Assessment. Failure to comply is an offence. Activities that require the Director General's approval include protection of rivers, lakes, and wetlands.

One should not carry out any alteration, erection of structures, drilling, introduction of alien or indigenous animals or plant specimens, or direct/block a river from a natural source, among others.

The Minister has more power in determining the protection of the environment than the locals, and this contravenes the first Principle of the Act.

## Environmental Impact Assessment(EIA)

This section lays down the procedure to be used for conducting Environmental Impact Assessments. This entails application for an EIA licence, register of EIA experts, publication of the EIA report and procedures for commenting on the EIA report.

The environmental impact assessment study is done at the expense of the proponent of a project. The report is prepared and submitted to the Authority in the prescribed form, giving the prescribed information and is normally accompanied by the prescribed fee.

The EIA is conducted in accordance with the environmental impact assessment regulations, guidelines and procedures issued under EMCA.

If the applicant has not received any communication from the Director General three months after submitting the EIA report, he/she may start his/her undertaking.

The Authority maintains a register of all EIA licenses and this register is a public document that may be inspected at reasonable hours by any person on the payment of a prescribed fee.

## Environmental Audit and Monitoring

This lays down the procedures for inspecting premises and for continuous assessment of changes in the environment.

An appointed environmental inspector determines the extent to which the activities of a licensed project conforms to the statements made in the environmental impact assessment study report. The inspector may enter any land or premises for the purposes of monitoring the effects upon the environment of any activities carried out on that land or premises. However, he/she may not make entry into any private dwelling house except with a court warrant.

The owner of the premises or the operator of a project is required to take reasonable measures to mitigate any undesirable effects not contemplated in the EIA study report. He/she is supposed to prepare and submit an environmental audit report on the aforementioned measures to the Authority annually or as the Authority may, in writing, require.

## Environmental Quality Standards

This section establishes the Standards and Enforcement Review Committee and lays down the procedures to be used in discharging effluents and emissions. This Committee is established to advise the Authority on the criteria and procedures for the measurement of water quality. It also recommends to the Authority minimum water quality standards for all the waters of Kenya and for different uses and areas of research on the effects of water pollution on the environment, people, flora and fauna

The proponent or owner of a trade or an industrial undertaking who wishes to discharge any effluents or such other pollutants originating from the trade or industrial undertaking is required to obtain an effluent discharge licence. He/she will be granted this licence only after installing an appropriate plant for the treatment of effluents before they are discharged into the environment. Every application for an effluent discharge licence is in a prescribed form and accompanied by the prescribed fee.

For the purposes of this part of the Act, the Minister, may on the advice of the Authority, declare any area to be a controlled area by Gazette Notice. This contravenes Section 75 of the Constitution that caters for the protection against deprivation of private property as some of the land that may be declared as controlled area may not be public land. The Act does not indicate any level of consultation between the Minister and the people living within or around the affected areas.

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# Fluorspar Mining in Kerio Valley: The Impact on the Environment and Livelihoods of the Resident Communities

About 100 KMs away from Eldoret town in Keiyo South district, residents have despaired in life. They have fought what looks like a losing battle with the mighty in the society for over a decade in desperate attempts to reclaim the status of their environment that is under depletion through deliberate pollution by the works of a Fluorspar Mining Company. Forty Kilometres down Kerio River, that stretches along Baringo to Marakwet districts, marine life has never been spared as raw effluent from the company's overflowing depository dams, flows steadily into the river. Downstream, the lives of fish, crocodiles and different amphibian species have neither been spared.

Human beings who depend on the river have had mysterious deaths and skin diseases after bathing downstream. Expectant cows, goats and sheep have ended up experiencing abortions after drinking highly contaminated water at certain times of the year. The vegetation around the loosely fenced dumping site has dried up and with the toxic chemicals used in separating fluorspar from soil gradually spilling and drifting away unchecked, there is a likelihood of the worst in the offing.

The local community has formed a lobby group called Kimwarer Ancestral Land Owners (KALO) to fight for their rights that are being violated by the company management, among them, lack of compensation. Displaced families say they were forced to settle along the loosely hanging escarpments where agricultural activities are next to impossible. So far, over 4,000 affected families have petitioned the Government to intervene and force the company management to consider their health plight including that of their animals that are being wiped out.

Kenya Land Alliance (KLA), in its endeavours to ascertain the truth and assess the impact of the damages, toured Kerio Valley and talked with one victim, Barnabas Bargarora, who spoke on behalf of other lobby group members.

**Question:** When did mining of Fluorspar start in your purported ancestral land?

**Bargarora:** Prospecting of minerals commenced in the area in the late 60s. In 1969, prospecting companies discovered fluoride and started mining in small scale. Raw fluoride was shipped to Japan and Korea for milling.

**Question:** Which company was involved by then, and were people whose land was affected compensated?

**Bargarora:** The Government was sort of directly involved because the management of the then Fluorspar Mining Company was Government-owned and operated like a subsidiary of ICDC, which owned more shares. Over 2,000 families were displaced from 9,000 acres. The then Kenyatta Government promised to compensate those who were affected to the tune of Kshs. 400 per acre, but nothing yielded.

**Question:** Where specifically were those affected settled temporarily while waiting for the way forward as had been promised by the Government?

**Bargarora:** It was an initiative of individual families. Some settled along the mosquito prone Kerio River, some along the steep escarpments while some settled next to the mining fields, but were gradually moved towards the steep escarpments where agricultural activities could not be practiced with ease.

**Question:** What was the extent of pollution during early days when the raw material was shipped to Japan and Korea for milling?

**Bargarora:** It was minimal though I suspected Environmental Impact Assessment (EIA) was not done because locals were not involved in the exercise. The level of pollution is quite high currently as the mineral is milled locally.

**Question:** When did the real trouble start?

**Bargarora:** Trouble started between 1996 and 1997 when the Kenyan Government gave in to pressure from donor countries to privatize some of its Government-owned sectors. Large-scale mining of fluorspar commenced with the onset of a milling machine when the then powerful Cabinet Minister, Nicholas Biwott, bought the factory and renamed it Fluorspar Export Processing Zone (FEPZ). Our expectations that the new management would meet our quest for compensation were dashed away. We were told to pursue the demand with the Government. Outsiders were employed at the expense of the local community. Sheer pollution of the environment kicked off. The loosely open dumping sites started affecting the surrounding vegetation. The nearby trees are drying up gradually as a result of the effect of the toxic substance still active in the waste.

**Question:** During my visit, I saw four dams purposely constructed by the company to purify toxic effluent before discharging in Kerio River, just like what happens in Webuye Paper Mill in Western Kenya. What happens with the dams?

**Bargarora:** The dams are full due to silting. The toxic effluent from the company overflows and sometimes towards the river. When the company realised that there was a potential big problem to the nearby land, it constructed trenches leading to Kerio River. At one time, this effluent killed a number of fish downstream. Crocodiles in the river were neither spared. People who took bath in the same period developed itching that resulted into skin problem. Expectant livestock that drank the water when the concentration was still high aborted, and later, the affected animals gradually died.

**Question:** Did the victims report back to the company and was any action taken in regards to compensation?

**Bargarora:** The local community rose up against the company demanding to be compensated. However, all was in vain prompting the formation of Kimwarer Ancestral Land Owners (KALO). The local provincial administration and police were used to harass and disperse our meeting whenever we came together with a view of having audience with the company management.

**Question:** How is the community planning to address the problem, and if the management refuses to give in, what cause of action are you contemplating?

**Bargarora:** We have already written to the NARC Government petitioning it to investigate and show cause why the company should not be compelled to operate in an environment-friendly manner. We are really not for the ugly action, but if the worst comes to the worst, the community will defend itself by all means. Already, the community feels that the company should be barred from carrying out further mining activities.

**Question:** As an official of the lobby group, what is your general opinion?

**Bargarora:** I feel the situation should not degenerate into ugly incidents. The operation in the area is a noble investment, which should be supported by all, but the problem is the sour relationship with the locals. The Government should not be denied revenue from the proceeds of mining. The investors should also reap benefits, but a way should be sought to involve the local community.

**Question:** EMCA stipulates that in case of activities such as mining, the contingent community should reap some benefits accruing from the proceeds. What is your comment in relation to Fluorspar mining in Kerio Valley?

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# The Grabbed Kitale Prison Farm and the Cruel Arrest of With Fr. Gabriel Dolan, Director of Catholic Justice and

As the country warms up for the development of a National Land Policy after several years of injustices on matters concerning land, Non-Governmental Organizations (NGOs), Community-Based Organizations (CBOs), the Government and individuals committed to land reforms are working round the clock to ensure that the document is all-inclusive, hence, should address all issues at stake.

Land legislations in the country seem to have lost meaning or have alternatively been abused with impunity by leaders of the day, who will stop at nothing to either grab or illegally allocate public utility land to influential people in the society.

When Narc Government assumed leadership of the country a year ago after dislodging KANU – believed by many to be the cause of the breakdown in the country's economic fibre since looters and grabbers were given a field day - from power, President Mwai Kibaki reiterated that all public utility land grabbed or illegally acquired would be repossessed.

That was the genesis of the appointment of a Commission of Inquiry into irregular and Illegal Allocation of Public Land by the Head of State to identify all illegally and irregularly allocated public utility plots/farms in the country with an aim of repossessing them. He issued a stern warning to the beneficiaries to hand over such land or face action.

In November 2003, Fr. Gabriel Dolan, the Director of Catholic Justice and Peace Commission (CJPC) in Kitale Diocese was roughed up and frog-marched to the police station by the then Kitale Officer Commanding Station (OCS) and locked in police cells for one night. The move was to bar him from handing over a document to the Vice President, Moody Awori, with details on how a senior prisons officer has grabbed part of the Kitale G.K Prisons farm. The V-P was on a fact-finding mission to the Kitale G.K Prisons.

Days later, after the ugly incident that was reminiscent of KANU old days, Fr. Dolan talked to the Kenya Land Alliance (KLA) and in the interview, he reiterated his stand on grabbed public utility land in the district besides other land injustices, warning that nothing will stop him from pursuing what majority of Kenyans think should be part and parcel in the reclamation process.

**Question:** What is the stand of the Catholic Justice and Peace Commission (CJPC) on grabbed public utility plots in the country?

**Fr. Dolan:** The stand of CJPC on grabbed public land is very clear. We believe that all land should be returned because no individual can justify that his/her needs are greater than the needs of the larger community meant to benefit from the same farms, either in research or settlement of the landless in the society.

**Question:** How would you describe the grabbing of public parcels of land in Trans Nzoia District?

**Fr. Dolan:** The quality of land in Trans Nzoia district is good such that it has tempted and attracted grabbers from all over the country. We have witnessed irregular allocation of Agricultural Development Corporation (ADC) farms, forests, Kitale airstrip, farms meant for research, prison land, school land and water catchment areas, as well as corruption in settlement schemes. Very little action has been taken over the years, because Trans Nzoia district is seen as a cosmopolitan district where everybody views him/herself as a visitor; hence, lack commitment to defend the farms like other areas occupied by one community.

**Question:** CJPC is a national church-based Commission with representatives dotted in all dioceses. It however appears like you are the only vocal priest in the country focused on land issues course. What are you up to and why not also your counterparts countrywide?

**Fr. Dolan:** A number of CJPC personnel do not have the capacity to carry on with pressing land issues and human rights monitoring. They

are involved in civic education and election monitoring. Another reason is that the last regime beneficiaries included even church organizations, a move I believe was meant to silence them in case of a would-be uprising. Church officials will automatically feel embarrassed to expose themselves as having been part of the wrong deals during the former regime. I agree that the church has not actively responded to land grabbing in the country, but that cannot cow me from pursuing land issues tirelessly in endeavour to fight for the rights of the voiceless.

**Question:** Late last year, you were involved in a scuffle with Kitale police where you were arrested and locked in the police cells on grounds that you wanted to block the Vice President, Moody Awori's convoy headed to Kitale G.K Prisons. What information did you have for the V-P in relation to the alleged grabbed Kitale G.K Prisons farm?

**Fr. Dolan:** The Vice President apologized for what happened to me saying that he was committed to ensuring that all grabbed public land in Trans Nzoia district should be reverted to the rightful use. The document contained report on the extent to which the Kitale G.K prisons farm has been grabbed.

**Question:** Why did you decide to pick the issue with the Vice President while the Presidential Commission to probe into grabbed public land was operational?

**Fr. Dolan:** I had already given out the same report to the Commission of Inquiry. On that particular day, I had mobilized the local community to be involved in the exercise as I had realised that the Government had not

given the issue adequate attention. I thought it wise since the Minister in whose docket covers G.K prisons was around and had earlier talked to me over the same. Handing over the document to him was just a follow-up of our talks. I also thought the exercise would serve as a pointer to the public on how we are committed to addressing anomalies on allocation of public utility land in the district.

**Question:** When the Commission of Inquiry visited Kitale, one striking report that appeared in the press was that the Catholic Church should apologize to the Commissioner of Prisons, Abraham Kamakil, for connecting him to the grabbed Kitale G.K prisons farm. Did your church apologize?

**Fr. Dolan:** When the commissioners visited the district, they were asked all sorts of questions such as 'was the name of the Commissioner of Prisons, Abraham Kamakil, in the list?' One of the commissioners, Odenda Lumumba, responded by saying NO!, but added that the job of the Commission is not to give an individual a clean bill of health because in some cases beneficiaries have used names of their relatives like family names, sisters, cousins or even company names, while they operate from the periphery. I think the press in Kitale must have had their personal interests, hence, they did not bother to clarify with the commissioners over the same and ended up portraying the Catholic Church as having messed. We shall not apologize because we never mentioned Kamakil's name, but our report indicated our suspicion of that part of land having been allocated to a senior official.

Another complication arose from the fact that the Commission was only given a list of

# a Non-Land Grabbing Crusader : An Exclusive Interview Peace Commission (CJPC), Kitale

beneficiaries of prison land accounting for only 2,000 grabbed pieces of land, but they were not given the latest information which entails some 1,000 acres of grabbed land. When I compare the map with the yet-to-be made public 1,000 acres, part of the prisons farm on which the beneficiary has constructed a two-storeyed building is on it. We suspected it must have ended in the hands of a senior prisons officer because efforts to get response from Kamakil and the Minister for Lands and Settlement over the same have landed on deaf ears.

**Question:** What measures have you or CJPC put in place to ensure that the grabbed public land in Trans Nzoia district is restored?

**Fr. Dolan:** Let us be realistic and say that the beneficiaries are Kabarak leases. The issuance of the title deeds was illegal because the right procedure was not followed, neither were the locals consulted over the same issue. Since this was done during the former regime, I believe their time expired with the exit of KANU from power and now they should be given back or reposessed by force. However, there is a problem because the title deeds were used as collateral to secure loans from banks. A classical example is Kitale Labour Office that was grabbed and the title deed was used to secure loan from Barclays Bank to the tune of Kshs. 1 million. I believe the banks are going to resist the move in fear of losing the money they have lent out. Further, the wealthy in the country are the main opposition to the land reforms.

**Question:** Word has it that beneficiaries of huge chunks of public utility plots in Trans Nzoia are prominent personalities and that some are in Narc Government. Is there any possibility that the NARC Government is likely to take them head-on?

**Fr. Dolan:** There is a real possibility that the Narc Government will effect changes. However, I am particularly at the moment concerned that the NARC Government, following slight misunderstanding with LDP MPs over contentious Memorandum of Understanding (MoU) they entered into with NAK, may have to do some private arrangements with the former ruling party, KANU, over the Constitution and other matters. I am afraid that in such a situation, the Government might relax its stand on efforts aimed at correcting past injustices because they may lose KANU support in Parliament in case of a vote of no confidence.

**Question:** What is your general view of the Commission of Inquiry to probe into grabbed public land in the country?

**Fr. Dolan:** It was the first bold step towards covering a distance of 1,000 miles! However, Kenyans should not just sit and watch expecting that the Government will come out with what they expect. We should of course support the existing structures, but make sure we exert pressure on the Government because the citizens and the civil society are the watch-dogs. If the Government realises that we are just watching, it might not do anything tangible in seeking a remedy to the past injustices.

**Question:** Do you think the Commission of Inquiry into Grabbed Public Land is going to come up with tangible solution to the public land problem or might end up, like during KANU days, as a public relations exercise?

**Fr. Dolan:** The Commission entails a capable team comprising of, among others, heads of NGOs involved in land issues. I believe they will do the best for the Kenyans. I have a feeling that the Commission should be given more time so that they can visit the grassroots more so if they have to make proper recommendations. It will be unfair to rush them at this stage. This will also enlighten Kenyans more especially those with pressing land issues such as the squatters. The sensitized Kenyan public will not let the process to end up in a manner reminiscent of KANU old days. If in any case the Government hijacks the entire process, then the civil society should intervene for the sake of the Kenyan communities.

**Question:** Recently, you issued a press statement accusing some Parliamentarians for not showing commitment to the quest for the repossession of grabbed public utility land in the country. Can you expound on that?

**Fr. Dolan:** The statement was in response to the press reports from Mt. Elgon and Kwanza Constituencies to the effect that Mt. Elgon MP, John Serut, had been reported as having commended the Commission for its work, but cautioned it from poking its nose into ADC farms. That was tantamount to saying that he is not fully in support of the Commission. The remark at the same time confirmed to us reports that he is a likely beneficiary of 75 acres of ADC Zea farm.

In Kwanza, the MP, Dr. Noah Wekesa, was reported as having wondered why the Commission was focused on Trans Nzoia district. I was shocked because he is an MP and he should have known why Trans Nzoia district was among the targeted areas. For him not to support the Government's policy of repossession grabbed public land could be taken to mean that he is a beneficiary.

**Question:** Besides public land, you have been tirelessly championing the plight of the landless and squatters in Trans Nzoia. What hurdles have you encountered in the struggle

**Fr. Dolan:** Corruption and irregularities in settlement schemes has been a major hindrance. The move has caused the number of landless in the society to surpass the would-be settlement areas because poverty circle in the affected families has remained the order of the day. To help solve the problem, the Government should reposess grabbed ADC farms and find a way of allocating it to the genuine landless people.

**Question:** Majority of landless people in Trans Nzoia district once worked for the white settlers and lived on respective farms as squatters. Reports are that there were written agreements in which such people would have benefited come the day for the white settlers to hand over the farm to the Government. However, ugly reports indicate that influential people in the society swung in with huge sums of money, bought all farms and later declared squatters on the farms persona-non-grata. How are you determined to address such injustices?

**Fr. Dolan:** It is true that many squatters were deceived and asked to stay in clusters elsewhere as plans to have them settled were being worked out. In the process, they lost their status and were challenged to vacate the area. To address the problem, the Government should move in and reposess huge chunks of land in settlement schemes that was illegally allocated to army officers, rich politicians and other senior personalities and settle such victims on them.

**Question:** The Minister for Lands and Settlement, Hon. Amos Kimunya, has promised to have an effective National Land Policy formulated. In brief, what would you wish it should entail?

**Fr. Dolan:** First I beg to say that the Minister for Lands and Settlement has delayed the issue of the National Land Policy formulation. He should have been the one on the forefront to champion for the quick formulation of such an essential policy. Once done, it should cater for the interest of all Kenyans from all walks of life. The civil society such as the Kenya Land Alliance (KLA) and its affiliate members are well placed to provide policy principles that can lead to the formulation of an effective land policy. So I urge the civil society not to relent in their efforts to guide the Government towards the formulation of a fair and just land policy. It should not be left to a few individuals who might have been part of the grabbing mania.

*FACTS! FACTS! FACTS! FACTS! FACTS! FACTS! FACTS!*

## Landlessness is a Political Issue: The Squatters of Taita Taveta

**T**aveta Division, of Kenya's Taita Taveta District, is an incredibly diverse 645 square kilometres of semi-arid but highly fertile land. There are seven tribes living in this division including the indigenous Taveta, Kamba, Taita, Luo, Kikuyu and Maasai, creating a veritable 'Mecca' for tribal politics.

68 per cent of the land is privately owned by two very powerful individuals, making squatters of approximately 30, 000 of the division's 55, 880 residents. That's more than half the total population living on land owned by the Kenyatta family and ex-MP Basil Criticos.

The irony of Taveta, and in fact the irony of the entire Kenya in the former regimes, is that the very same individuals who are responsible for the welfare of the country are the same people whose massive land holdings and management policies are directly responsible for impoverishing tens of thousands of people.

Squatting is a life of impermanence and uncertainty. Indeed, the landless farmers of Taveta are squatting on their heels waiting for either the Government to find a solution to their problem or for the land owners to evict them. They cannot build permanent homes, plant long-term crops or invest in development of their land. In the recent past, it was the common practice of the land owners to routinely burn the squatters' houses and bulldoze their crops. Pitifully, without title deeds to offer as collateral for loans, the squatters of Taveta have no access to credit facilities, thus, little prospects for investment in their land especially when crop yields are negligible due to chronic shortage of water and absence of large irrigation schemes.

Originally alienated by the colonial Government, Taveta Division in its totality was initially owned by the infamous Cape to Cairo Colonel Grogan. More than 100,000 acres of already inhabited land were given to him as a retirement reward for his service in the Second World War. By 1959, the farm had been bought by Basil Criticos' father, George, who began a massive sisal plantation and founded the Agro Development Company.

In the 1980s, more people started to migrate in search of land due to overcrowding in their ancestral homes. In many cases, those who migrated were invited by Criticos in exchange for votes during election time. Of course, after he became a Member of Parliament, such promises were never honoured. When 1992 and 1997, Criticos used land as a campaign bait, thus, landlessness is a campaign issue where the Government says I will settle all of you and after elections forgets everything.

The squatters of Taveta claimed that when they moved to Taveta, land was undeveloped and uncultivated. Many did not even know they were squatters until years later when they saw houses being razed and farms bulldozed. On the contrary, ask the land owners and they will tell you that the majority of the squatters are merely land speculators.

In Taveta, although most of the private land remain uncultivated, the structural problems of being a squatter are putting enormous strain on the environment and tribal relations in the district. Criticos monopolizes 75 per cent of water from the only spring and the only irrigation canal, the Njoro Kubwa, although a legal agreement that pre-dates Criticos states that at least 30 per cent of the water belongs to the community. Gicheha controls four of the six springs in Njukini sub-location. These are the only sources of irrigation water currently serving the squatter populations, and in both cases, the water left over from private use is seldom enough for even the small irrigation schemes. Water reaches only one of nine squatting villages in Kimorigho location and one of four squatting villages in Sir Ramson.

Those squatters who rely on rain-fed agriculture have not harvested since 1997, and both owners refuse to allow the squatters to build bore holes and tap the vast underground water resources.

The Taveta squatters have however not lost hope. Many of the communities have been incredibly mobilized to help themselves as regards land ownership. In Kacheru, the landless farmers were successful in negotiating for 3,000 acres just before Criticos left the country. However, since his disappearance, nothing has been done about this section of land, although the plots have been demarcated. In Sir Ramson, the farmers formed a Community Squatter Committee that presented their complaints and pleas to the Kenyatta family in Nairobi. The Sir Ramson Squatter Committee also presented a statement to the Presidential Commission of Inquiry into the Land Law System of Kenya ('Njonjo Commission').

On the Criticos farm, a land-buying group was formed to gather money from the community with an aim of collectively buying a considerable chunk of Basil Criticos' land. Criticos had agreed to this sale, and the Jipe Multi-purpose Co-operative Society succeeded in raising approximately Kshs. 3 million. Despite payment, the 3, 000 acres negotiated for sale were not handed over due to the collapse of the society. This is the final and perhaps the biggest scandal in the politics of Taveta.

The squatters of Taveta now have hope in the Criticos' land that is held in receivership by the National Bank of Kenya. When Criticos left the country he had accrued massive debt, having defaulted on loans he had secured from the National Bank of Kenya. More than 15, 000 acres of land is waiting to be parceled out and resold. The squatters have their fingers crossed hoping they will be given the first priority.

The Taveta land problem is a time bomb waiting to explode. Before tribal conflict, environmental degradation and poverty spill out of control, it is in the best interests of the Government of Kenya to intervene. Land ownership is the main barrier to development in Taveta, and unless this primary problem is addressed, the Government's plans for poverty reduction, economic recovery and creation of wealth and employment may be useless.

It is unlikely for Kenya to match the global economy when its industrialisation is repeatedly stunted by the actions of its own politicians.

While the Taveta problem reads like a text book of corruption and neglect, it is indicative of a much larger problem. There is enough land in Taveta for those currently living there, but there are many other places in Kenya where this is not the case. Settling the squatters must be the first step in dealing with the primary problem of land ownership. It is essential that the Government policies start educating the public, industrializing, and making employment not only a reality, but a desired option. Currently, the Kenyan Government is caught in an irony it must realize if it is to move forward. Jobs cannot be created without industrialization, industrialization can only be sustained with a healthy economy, a healthy economy can only be achieved when the country's citizens and land are productive. A productive citizenry means that the squatter problem must be solved before it grows out of proportion.

The destructive results of squatting to both the lives of the squatters and the environment attracts an urgent call for the Government to act. It could not have come at the right time for the Technical Committee on Land and Environment at Bomas III to ensure entrenchment of resolutions in the current Constitution under debate.

The issue of land for all Kenyans cannot be ignored because land is fundamental, both as a basic resource for ensuring livelihoods and a cornerstone for political and civil empowerment of all the Kenyans. As such, it tops the priority list of every Kenyan.



# The Environmental Management and Co-ordination Act (EMCA) 1999

(Continued from page 4)

## Environmental Restoration Orders, Environmental Conservation Orders and Environmental Easements

This section outlines the measures that will be used to restore areas and resources that have been degraded. Specifically, it deals with orders that will be given by NEMA requiring a person to restore the environment following degradation or pollution. It further delves into environmental easements and conservation orders that are issued to facilitate the recovery of areas that have been degraded.

## Inspection, Analysis and Records

This section deals with the procedures to be used for inspection of premises, analysis, record keeping and dissemination.

The environmental inspector who is appointed by the Director General takes charge of monitoring compliance with the environmental standards established under EMCA, monitors the activities of other sector-specific environmental inspectorates, monitors the pattern of use of environmental resources and conducts environmental audits.

With powers conferred to him/her by this Act and with a written approval of the Director General, the environmental inspector may order the immediate closure of any manufacturing plant or other establishment or undertaking which pollutes or is likely to pollute the environment contrary to the provisions of EMCA. In such incidences, the owner or operator of such an establishment or undertaking will be required to implement remedial measures that the environmental inspector may direct in the notice closing down the establishment or undertaking.

In exercising his powers under EMCA, the environmental inspector is required to identify him/herself suitably.

This section broadly deals with procedures for laboratory analysis of samples, submission of records to NEMA and the criteria of access to these records by the public.

## International Treaties, Conventions and Agreements

This section outlines procedures for domesticating and implementing international conventions and treaties on the environment.

## National Environment Tribunal

Under this section, members of the Tribunal are appointed at different times so that the respective expiry dates of their terms of office (usually three years) fall at different times.

The Tribunal comes in handy when any matter to be determined by the Authority under EMCA appears to involve a point of law or to be of unusual importance or complexity. Such a matter is referred to the Tribunal for direction after the concerned parties are given a notice.

The Government should come up with an all-inclusive legal framework that integrates all projects into environment.

## Environmental Offences

This section lists all the environmental offences and penalties. It dwells on any person who commits an offence against any provision of EMCA. It specifies the criteria of picking culprits within a corporate body or a partnership. When an offence against EMCA is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge of the commission of the offence

and did not exercise due diligence, efficiency and economy to ensure compliance with EMCA is guilty of an offence. The same applies to every partner or officer of a partnership.

In strict terms, a person is personally liable for an offence against EMCA, whether committed by him/her on his/her own account or as an agent or servant of another person.

## Regulations

This section gives the Minister the power to make regulations that are specified in EMCA. He/she will make regulations prescribing for matters that are required or permitted by EMCA on the recommendation of the Authority and upon consultation with the relevant lead agencies.

According to Kenya Land Alliance (KLA), a comprehensive Environmental Act is not an end in itself. It must be backed up by commitment that should be representative of all stakeholders in the matter, since a decision arrived at with the involvement of citizens has greater legitimacy and more chances of being successfully implemented. The Government should come up with an all-inclusive legal

framework that integrates all projects into environment. A comprehensive National Land Policy will form an essential guideline to lead all institutions and legal frameworks bordering on land and natural resources.

The foregoing is informed by the fact that a long-term approach to restoring and protecting natural resources can lead to new livelihood opportunities and renewed social vitality, the status that Kenya is currently searching for.

## Environmental Impact of Fluorspar Mining in Kerio Valley

(Continued from page 5)

**Bargoria:** Since it appears we are fighting a losing battle, the Government should intervene to ensure that the interests of all are catered for. The local community should be allowed to own shares in the company, and the company compelled to adhere to the environmental standards as stipulated by EMCA. Pollution of Kerio River should cease and measures put in place to curb further degradation.

An official of Fluorspar Export Processing Zone (FEPZ), who sought anonymity, defended the

company but was rather quick in admitting some faults. He confessed that, for sometime, the company has been contemplating cleaning its dams and restoring the initial system of cleaning water. However, the exercise requires huge sums of money for purchasing of water-propelling machines and purifying chemicals. As such, the exercise could not take place immediately.

Asked how the company has been managing the toxic effluent from the factory, the official divulged that high temperatures in the area have greatly

helped them. The high temperatures cause high evaporation from the dams, which slightly checks the overflow. However, during rainy seasons, the dams overflow spilling effluent directly into the nearby Kerio River.

The official revealed that, following mounting pressure from the public, the proprietor of the company recently hinted that he would call a meeting soon to discuss means of streamlining the operations of the company and find a way of addressing problems facing the local community.

NEWS! NEWS! NEWS! NEWS! NEWS! NEWS! NEWS!

## Recent Developments

### *Twelve Private Companies Form a Corporate Club to Protect the Environment!*

As the Kenyan economy struggles back on its feet, a substantial number of Kenyans are becoming more sensitized on the need for sustainable development. The road to economic recovery is often fragile as it involves degradable natural resources that have to be used sustainably if the objectives of poverty reduction are to be achieved.

With Kenya gradually moving towards participatory approach in essential Governmental processes, some private companies have realised the need to enhance the Government capacity for environmental management.

On Wednesday, January 14, 2004, a Corporate Club was launched to help the Government of Kenya in its conservation efforts.

The Club comprises of twelve private companies that will deal with threatened species and environmental education. Formed with the help from World-Wide Fund for Nature (WWF), the Corporate Club will initiate land, air and marine conservation projects.

The Club's first project will be to raise funds for the re-forestation and conservation of the Mau Forest. The priority is given to Mau Forest because it is a major catchment area for millions of people living in the western half of Kenya and the wider E. African region.

The members of this wonderful Club are:

1. Safaricom
2. Bamburi Cement
3. Coca Cola
4. Unilever
5. Nestlé
6. Brooke Bond
7. Basecamp Explorer
8. Express Travel Group
9. Club Sun 'N Sand
10. Sher Agencies
11. Hotel Inter-Continental
12. Ogilvy PR Worldwide

The Chairman of the Corporate Club is Didier Tresarrieu, who is also the Managing Director of Bamburi Cement.

### *The Government Undertakes to Give Legal Training to the Officials in the Land Control Boards and Land Dispute Tribunals Countrywide!*

In response to the public call for the Government to strengthen the institutional and legal framework on land and natural resources, the Government has for the first time in history organised for the training of officials in the Land Control Boards and the Land Dispute Tribunals.

The officials who will serve in the restructured Boards and Tribunals, that were constituted late last year, will undertake a paralegal course at the Kenya School of Law. The curriculum for this legal training will among other things, enable these officials to do proper documentation of their work.

Furthering the campaign of participatory process, the newly formed Boards and Tribunals will be served by people from all sections of Kenya, unlike in the past where only civil servants were mandated to solve land problems.

Kenya Land Alliance (KLA) sits in the Technical Committee that is in charge of Capacity Building Programme that intends to train about 7,000 members of the Land Control Boards and the Land Dispute Tribunals in the Provinces and the Districts.

The process of identifying Trainers who shall be trained and sent to the divisions to train the newly recruited and gazetted members of the Boards and Tribunals is still going on. The potential trainers will be from and not limited to Land Registrars, Land Valuers, Retired Government Officers with experience at district level issues, Community-Based Organisations and other Civil Society Organisations officials/members dealing with land issues. The minimum requirements for the Trainers are:

- Form 4 education level or above
- Ability to communicate in English, Kiswahili and vernacular languages of the areas they intend to be posted
- Familiar with training at the community levels and training of adults
- Trained in Participatory Training Tools/Skills or training of adults
- Appreciative of cultural traits of various communities and are able to recognise and respect them.

### *A New Forest Bill is to be Presented in Parliament When the House Reconvenes!*

In many occasions, the buck has landed on the Government's door regarding the rapidly vanishing forest cover of Kenya. The Kenyan forest cover is disappearing at an alarming rate, with reports from statisticians indicating that it currently stands at 1.7 %, dangerously below the recommended level of 10%.

Among many causes, political influence has been singled out as having contributed greatly to the devastation of Kenyan forests through illegal allocations. In mid January this year, the Government organised a workshop for Members of Parliament on forest management. During the workshop, the legislators regretted that lack of proper legislation in forestry had led to grabbing of prime areas, encroachment through human settlement, charcoal burning and illegal logging.

The participants unanimously agreed that a new Forest Bill designed to reclaim forests will be tabled in Parliament when the house reconvenes. Spelling it out as a responsibility of every Kenyan to conserve forests, there was a consensus that Constituency Committees will be established and women groups and schools will be given incentives to enhance aggressive tree planting.

The newly found Government commitment to forest conservation has come up with many promises. Among them, His Excellency the President is expected to launch a Kshs. 1.25 billion re-forestation programme. The programme to be launched this year is expected to run for the next seven years.

The re-forestation programme is expected to increase the forest cover to the internationally accepted standards of 10%. Word has it that the programme will enable for the planting of 80 million seedlings per year and hire labour for the next seven years.

As a responsibility of every Kenyan, the British American Tobacco (BAT) is working on a plan to help with the programme in fifty (50) constituencies.

# Desperate Locals Continue to Lose their Loved ones in Endeavours to Eke a Living Deep Inside Dangerous Gaping Holes and Tunnels of Kakamega Gold Mines

Forty one years down the line since an international mining firm, Roasterman Mining Company, wound its operations in Kakamega district, locals still shed tears of agony and despair from deaths caused by abandoned tunnels and subsequent deterioration of fertility of their farms. The increasingly dangerous open wide holes and tunnels have continued to haunt parents whose children, driven by widespread poverty in the region, sneak into them with high hopes of getting a catch of gold remains as vast square kilometers of once arable farms turned infertile due to dry soils from underneath the ground that was left to spread all over.

In what can be termed as deliberate negligence by the then Government, which would have put in place possible measures to protect the locals from the ghostly deep holes, over 15 people have died either as a result of suffocation from the toxic chemical, Sodium Cyanide, used to mill gold or covered alive by falling soil. Three people, two from one family, aged between 24 and 28 years suffocated in one of the abandoned holes at Masiyenze village in Ikolomani in 2001, while eight other people were buried alive in a similar hole/tunnel at Kichutu Mines in Vihiga.

According to the Western Provincial Geology and Mines Officer, Moses Masibo, Kakamega goldfields and other areas where vein-gold can be prospected include Roasterman, Sigalagala, Bushiangala, Bukura, Kimingini, Malinya, Vyallo, Emalingi and Kaimosi, among others. Alluvial gold is also panned along the Yala, Isiukhu, Lunyerere and Edzava rivers and in numerous respective tributaries.

In a fact-finding mission in Kakamega District, **The Land Update** visited Kimingini Gold Mines and captured the voices of agony of four elderly villagers, Naftali Mutsotso, Wendo Mang'ong'o, Partrick Ngaira and Obedi Aluvala, through Evans Ngaira.

**Question:** When the activity of prospecting and subsequent milling and processing of gold for export commenced during colonial days, in the early 1930s, how many families were affected and were they compensated?

**E. Ngaira:** We cannot be specific, but over 500 families were displaced by the colonial Government from various gold mine sites in the district. As regards compensation, we just overheard later, when Kenya attained independence, that we were supposed to be paid something otherwise we were just forcefully moved away from the affected areas with impunity and told to settle elsewhere.

**Question:** Did you have appropriate places to relocate to?

**E. Ngaira:** No! We immediately built makeshift houses next to the mining sites since many of us were promised jobs in the gold mines.

**Question:** For over 15 years that Roasterman Milling Company (RMC) milled and processed gold, how did the local community benefit?

**E. Ngaira:** Probably, only those who worked in gold mines benefited, but not to an extent of appreciation because they were paid peanuts despite working hard from cockcrow to sunset.

**Question:** What transpired in regards to the mining activities after RMC left?

**E. Ngaira:** The exercise did not stop as it was expected. Locals took advantage of the abandoned holes and tunnels, scooping and

sifting through the soil with a hope of getting some gold stones. This has been going on to-date with some hardworking people earning between Kshs. 400 and Kshs. 800 a day from the gold proceeds. The locally ready market has made the operation possible.

**Question:** You did mention abandoned open holes and tunnels. Were they not covered by the outgoing mining company since a provision in the Mining Act clearly stipulates that such areas, after the exercise, should be covered and any machinery used removed from the site?

**E. Ngaira:** Only a few holes that were very deep to over 50 metres were partially covered in isolated areas, but many were left open and some machinery used were left at the sites and are still lying there. For instance, in Ikolomani, children used to play along a one-kilometre tunnel until recently when soils started falling and blocked the path in it.

**Question:** Are your fellow residents aware that sifting through soils in such holes and tunnels is prohibited by the Government and extremely dangerous?

**E. Ngaira:** In the recent years, the Government outlawed the exercise after the press highlighted several fatal incidents, such as the one three years ago at Masiyenze village in Ikolomani, where three people, two family members, suffocated and died after inhaling toxic gas from the remnants of Sodium Cyanide. Many such incidents have occurred in other areas where such illegal unskilled activity is going on.

**Question:** What are the features of other dormant abandoned sites that we have not visited and what dangers do they pose?

**E. Ngaira:** Some have grown scanty bushes such that they cannot be noticed. Farmers have lost many cows and other livestock into the gaping holes. more badly, A body of a middle-aged man was recovered from an abandoned gold mine hole at Masiyenze in 2001 after a nine -month search.

**Question:** What was the general negative impact on the environment in the area?

**E. Ngaira:** We can no longer reap anything from farming. The soils that were scooped from beneath the earth and left to spread on the farms have rendered affected areas infertile. The current soils on our farms cannot sustain the growth of crops.

**Question:** Recently, the Government announced that local and international firms are to embark on prospecting of minerals and their subsequent mining in parts of the country. What are your views and expectations?

**E. Ngaira:** The Government should let in experts to carry on with the exercise, and if minerals are found, the local community should benefit from their proceeds. Prompt and adequate compensation of those affected should be effected immediately. The Government should ensure that the local community gets a share of the proceeds, which can be passed on to them through building of schools and assisting parents to pay school fees, improving infrastructure and building hospitals.

The agony in the voices of the elderly villagers from Kimingini compelled **The Land Update** team to seek for a neutralizer. This came by way of the Western Provincial Geology and Mines Officer, Mr. Moses Masibo, who in a rejoinder had the following to say:

*(Continued on page 12)*



# Gold Mining in Kakamega District Leaves the Locals a Frustrated Lot!

(Continued from page 11)

**Question:** When exactly did prospecting and subsequent milling of gold start and end in Kakamega District?

**Masibo:** Prospecting of gold and other minerals by various potential mining companies started in the early 1930s in western Kenya. One of the companies was Roasterman Mining Company which was incorporated in January 1935 with an authorized capital of 400,000 in five shillings share. The company wound up its operations in June 1952 at a place currently known as Roasterman area, 3 KMs southwest of Kakamega town. This was occasioned by the realisation that its operations were increasingly becoming uneconomical.

**Question:** How many worthy tons of gold were milled at the time?

**Masibo:** By the time the company was closing down, about 655,000 tons had been milled. That produced 259,142 oz of fine gold from the 700 metres deep characterized with several gold veins. The fine gold for export as compared to the current market value was worthy Kshs. 4 billion.

**Question:** Are there records indicating whether members of the local community who were displaced as a result of the mining activities were compensated?

**Masibo:** I cannot be specific because I have not come across any records to that effect. However, the Mining Act stipulates that in case of such an activity, the victims should be compensated adequately and assisted to move to safer grounds elsewhere.

**Question:** There are complaints from the residents that over 500 families were forcefully ejected from their homesteads by the then colonial Government without any compensation. What are you people doing to address such complaints?

**Masibo:** So far, I have not received any official complaints from the victims besides what I sometimes read in the press. However, the Commissioner of Mines and Geology, Mr. L.K. Biwott, is mandated to arbitrate and find a lasting solution if the complaints are made official and thorough investigations carried out to ascertain the truth.

**Question:** There are more complaints that Roasterman Milling Company abandoned a

number of deep open holes and tunnels in the gold mines. So far, over 15 people have been reported to have died in such holes in one way or the other. What is your comment?

**Masibo:** According to the Mining Act, when a mining company winds up its business, it should take the responsibility to rehabilitate the affected area. All open holes should be covered, suspected poisonous wastes dumped and buried and machinery used moved away. It is unfortunate that in some parts of Kakamega gold mines, deep open grounds and some abandoned heavy machinery can still be seen at the sites, and this poses a great danger to the local community. The local community has worsened the situation as they illegally search for gold in the dangerous gaping holes. They have dug more holes and enhanced the already existing holes that were abandoned.

**Question:** How does the local community manage the activity of scooping sand without the appropriate mining tools and skills?

**Masibo:** In the early 1990s, a group of people who once worked with Roasterman Mining Company, thus, had knowledge of sifting through sand, ganged up and started sneaking into the abandoned gold pits. Fortunately, they managed to scoop some gold, hence, carried on with the exercise to-date. However, the exercise is very dangerous and efforts by the Government to curb it have been futile. Fatal isolated cases have been reported with the worst one being at Kichutu gold fields where eight people were buried alive by falling soils. Three others suffocated at Masiyenze area as a result of the remnants of the poisonous chemical, Sodium Cyanide, that was used during extraction of gold.

**Question:** Following the recent announcement that the Government is licensing mining companies to prospect for minerals in the country, what measures has the Government put in place to avoid environmental degradation?

**Masibo:** The Department of Mines and Geology has set up an Environmental Geology Unity (EGU) to assess the potential negative impact of a mining activity in an area. The Unit is supposed to generate reports detailing whether the chemicals to be used during mining are harmful. We have heard cases of animals dying after grazing in some specific spots around the affected areas. In Kakamega, we are much focused on the effects of Sodium Cyanide, which was used during gold mining in

the colonial days. However, reports indicate that all waste was dumped and buried before the company wound its work.

**Question:** In which parts of Kakamega district are the locals actively involved in the dangerous search for gold, and how is the Department of Mines and Geology assisting them?

**Masibo:** Besides Roasterman, the local community in Sigalagala, Bushiangala, Bukura, Kimingini, Malinya, Vyalo, Emalingi and Kaimosi are still very busy searching for gold. Following futile attempts by the Government to curb the illegal and rather dangerous exercise, we have made a decision to regulate mining activities in the district. The Department of Mines and Geology is encouraging the local community to form associations. Through these associations, the locals can be guided to mine gold without endangering their lives.

**Question:** What is your view of the 1940 Mining Act that was prepared by colonialists?

**Masibo:** Some parts of this Act are flawed since they served the interest of the white man. There is need for the Government to urgently enact a law that caters for the interest of all Kenyans. At the same time, the Act should make provision for investors bearing in mind that mining involves huge sums of money.

In Kenya Land Alliance's view, there is need for an all-inclusive legal and institutional framework to deal with matters pertinent to land and natural resources. It is the time for the Kenyan Government to reform land administration and management systems as set out in the Draft Constitution Bill and the Njonjo Land Review Report.

Environmental matters and sustainable natural resource use should top the list of concerns as the Government attempts to jump-start the country's economy. A slight mistake in administering various natural resources to rebuild the torn economy will have a devastating impact to the current and future generations. The answer to these concerns lies in a Comprehensive National Land Policy that is yet to be formulated.

All in all, sustainable development projects can only be achieved if beneficiaries of such projects are involved in the planning and decision-making process, all the way from the inception of the project to the monitoring and evaluation stage. Leave the process to the 'experts' and all the projects crumbles on your face.

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