

Unjust Enrichment

The Making of land Grabbing Millionaires



The Plunder of Kenya's State Corporations
and Protected Lands
Vol.2



Kenya National Commission on Human Rights

Kenya Land Alliance

Table of Contents

1.0 Introduction.....	4
Corruption and Human Rights.....	5
2.0 The Grabbing of Parastatals Land	6
3.0 The Findings.....	7
4.0 Agricultural Development Corporation (ADC) Farms.....	9
5.0 Kenya Agricultural Research Institute (KARI).....	13
6.0 Kenya Industrial Estates (KIE)	16
7.0 Kenya Railways Corporation	18
8.0 National Social Security Fund (NSSF).....	19
9.0 Kenya Food and Chemical Corporation Limited	23
10.0 State House and Military Land	24
11.0 Conclusion and Recommendations	27

Foreword

Illegal and irregular allocations of public land were a common feature of the Moi regime and perhaps its most pervasive corrupt practice. The Ndung'u Report as well as various reports of the Public Investment Committee details numerous cases of public land illegally allocated to individuals and companies in total disregard of the law and public interest.

Most allocations were made to politically correct individuals without justification and resulted in individuals being unjustly enriched at great cost to the people of Kenya. Many allottees proceeded to sell the land to state corporations or other parties at colossal amounts of money far in excess of the prevailing market value.

In order to detail the cost and other human rights dimensions of this theft, the Kenya National Commission on Human Rights and the Kenya Land Alliance have partnered to produce this series of publications.

The broad aims of the series is to enhance the protection of public resources, give voice to those who are most hurt by the illegal diversion of resources, empower the general public to demand accountability and transparency, and serve as a check on unscrupulous leadership.

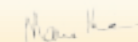
We hope that the series will increase awareness of corruption as a human rights issue, enhance an understanding of the cost of corruption, and to demand their fundamental rights.

Maina Kiai



KNCHR

Odenda Lumumba



KLA

1.0 Introduction

The story of corruption in Kenya as told in the Report of the Commission of Inquiry into the Illegal and Irregular Allocation of Public Land, (more popularly known as the Ndungu Report) provides a graphic example of the abyss that greed, abuse of office and betrayal of public trust can make a country sink into.

The figures of public resources estimated to have been channeled into private pockets are so high one hopes, obviously against hope, that they would turn out to be typographical errors.

Our estimates covering only part of the reports findings show that within a short period of about ten years, a few thousand Kenyans were unjustly enriched by as much as Ksh 53 billion through grabbing of public land at three forests, parastatals and protected areas.

Three years since the Report was released, there is little to show in terms of adoption and implementation of the Report's recommendations.. In its annual report for the year 2005-2006, the Kenya Anti- Corruption Commission, for example, reported having so far issued more than 450 Demand Notices to concerned persons requiring surrender of the properties and that thirty-seven Title Deeds and eleven Deed Plans totalling 223 acres and estimated value of Ksh 144 million have been recovered.

At this rate, given that the Ndungu Report recommended the revocation of over 200,000 title deeds among other things, public land lost may not be recovered in our lifetime. As the KACC and other wheels of justice grind slowly, it is imperative that other avenues to fast track recovery of public land be exploited.

On other fronts, the war against corruption is not getting any easier. On 6th September 2007, parliament passed a bill to amend the Anti- Corruption and Economic Crimes Act 2003 which would have halted investigations into corruption prior to May 2003. The main excuse given by those who supported the move was that Kenya Anti- Corruption Commission had not used the vast powers it has.

Perhaps a more plausible reason was to give themselves and others involved in corruption networks a blanket amnesty for various acts of plunder. The Ndungu Report names scores of current and former Members of Parliament and senior government officials who would be very keen to have that part of the country's history go away. They have loudly rubbished the reports findings. Events such as electoral contests present an opportunity to call those seeking our votes to account on corruption matters; To remind them that they owe the public. To put an end to the culture of impunity. To demand that public land illegally and irregularly allocated reverts back to the public.

As Kenyans work to turn the tide in dealing with the corruption dragon, it is important that we keep an eye on where we came from, lest we forget. This publication is the second in a series that continues to make that call.

The previous Issue of Unjust Enrichment estimated the value of land lost at three forests to be Ksh.18.4 billion This Issue focuses on land grabbing in parastatals and protected areas and reveals loss of public land valued at ksh34.5 billion. When combined the cumulative estimate of the value of land grabbed is an astounding Ksh 53 billion .

¹The President did not assent to the bill

Corruption and Human Rights

Corruption is a human rights issue. Its human rights dimensions are today widely acknowledged among human rights defenders who have even called for its classification as a crime against humanity. At its worst, corruption can lead to the violation of the right to life.

When a building collapses because corners were cut, when public funds are siphoned away from providing life saving health care, people die. Where this happens on a grand scale there is not much difference between corruption and genocide.

By diverting resources away from public use, corruption seriously inhibits the realization of economic, social, and cultural rights. Besides creating sudden and extreme income inequalities, the diversion of these kinds of resources causes massive human deprivations.

Corruption also introduces uncertainties into the economic environment that discourages investments which are so critical for economic growth and poverty alleviation.

Corruption leads to the infringement of numerous civil and political rights. It perpetuates discrimination by conferring privileges to those with means- where corruption thrives, people are not equal in dignity and rights, they may not, for example, enjoy equal protection before the law as is provided for in the International Convention on Civil and Political Rights .

Public land belongs to all Kenyans- when it is corruptly allocated to a privileged few such preferential treatment constitutes discrimination.

When corruption is used to finance political contests as it has in Kenya and electoral outcomes are determined through bribes of public land to political clients ; citizens' choices are distorted and they do not get the leadership they deserve.

Kenya today is one of the most unequal countries in the world. We believe that the unjust enrichment of a few people through land grabbing has greatly contributed to this inequality.

2.0 The Grabbing of Parastatal Land

Public lands were widely used by **Former president Moi's regime** as a patronage resource and an instrument to maintain control particularly in the 1990s. This was a period during which the country experienced intense political competition at a time when international scrutiny on alternative forms of corruption was high.

Public land was an attractive patronage asset because it was very accessible, with the president illegally converting his constitutional powers as trustee of public lands (on behalf of the public) to de facto ownership powers¹.

Land was also less encumbered by international conditionalities and scrutiny compared to other lootable assets. During this period of political uncertainty, public officials fearful that a change in government would end their privileged access to public resources and knowing that the allocations were illegal and/or irregular, engaged in a frenzy of accumulation and disposal of land and associated rent seeking activities.

The State then owned over 140 enterprises originally established to bridge some gap in the development of the country. Besides being captive markets for predatory agents, they also held land which was easily accessible to the ruling elite. Evidence in the Ndung'u Report demonstrate that they went about looting it with reckless abandon.

The Ndungu Commission found that rather than serve the noble purpose for which they were established, many parastatals suffered widespread and blatant abuse of office through schemes aimed at illegally and irregularly allocating vast amounts of public land to politically correct individuals and companies. In the reports' own words :

"A corporation has its core business... stated in the legislation under which it was established. It is not the business of state corporations to buy and sell land... state corporations are not land buying companies... the purchase and disposition of land by a state corporation is simply incidental to its core business... Yet many corporations acted as if they were set-up to deal in land.. State corporations were used as conduits for land grabbing schemes through which the public lost colossal amounts of money"

State corporations are legal entities created by a government usually through an Act of Parliament in order to undertake a specific public purpose with public funds or public property. The amount of land required or held by a parastatal depends on its mandate- some require just enough for office space and basic infrastructure while others such as those involved in agricultural research require much more.

All land held by any State corporations is public land. It could have been acquired through excising of un – alienated government land, set aside from trust land, compulsorily acquired by government or purchased through allocation of funds from the exchequer.

The corporation holds such land in trust for the people of Kenya and it therefore cannot be legally allocated to an individual or company because it is reserved for the use of the corporation. In flagrant disregard of these legal provisions, those entrusted with protecting public land plundered with impunity.

¹The president has powers to make grants of freehold and leasehold of un-alienated government land to companies and individuals for the public good.

3.0 The Findings

The Ndungu Commission sent summons to all the 140 or so state owned corporations and also sought information from the Investment Secretary. It received information from 95 of them which turned out to be largely incomplete or irrelevant.

No doubt the extensive networks of the Moi Administration still wielded immense influence at the time. This ensured that the Commission did not get all the information it needed. Nonetheless, the Commission was able to establish massive theft of public land.

The schemes usually unfolded as follows :

- The Commissioner of Lands would, in some cases even without the knowledge of the parastatal management, simply allocate parastatal land and issue title deeds to favoured individuals. *"The corporation management would wake up to the rude fact that their land had been acquired and title issued without their knowledge or consent"*².
- In other attempts at sanitizing the theft, a state corporation would irregularly surrender its land through a letter to the Commissioner of Lands alleging it no longer needed the land. In the blink of an eye, and in what clearly was a choreographed move, some smart alec would apply to be allocated the surrendered land to which the Commissioner of Lands would oblige
- Other methods were more brazen. Some state corporations were simply run down to the ground ending-up in receivership/liquidation. Their land and other assets would then be sold at throw away prices. Such is the fate that befell the Kenya Food and Chemical Corporation Limited.
- Some corporations appear to have been set-up for the sole purpose of facilitating the theft of public land - as soon as they were incorporated and allocated public land they proceeded to sell it.
- Other corporations "requested" for surveys to "establish the extent of their land"- the resulting survey would under- estimate the corporations land conveniently omitting land that rightfully belonged to a corporation.
- Some state corporations sold some of their prime land to individuals and companies at scandalously low prices- this happened at Kenya Railways, Agricultural Development Corporation and others.
- Other corporations lost land following legal splits - land which ought to have been transferred to the new entities was illegally allocated to individuals and companies
- In what the Ndungu report describes as some of the most bizarre abuses of corporation land, private cartels would invade corporation land, fence it off and claim it as theirs.

These allocations paved way for some individuals to unjustly enrich themselves at great expense to the people of Kenya. Once corporation land was in private hands it would in most cases be sold to other state corporations for colossal amounts of money often far in excess of prevailing market value.

²The Ndungu Report pp 90

The haste with which these schemes were effected leave no doubt that their purpose was to defraud the public. **Kenya Railways Corporation** for example sold its prime plot on Ojijo Road (L.R. No. 209/6439) on 31st January 1996 to Guardian International Ltd for Ksh 77 million. One week later (on 8th Feb 1996) Guardian sold the plot to the **National Social Security Fund** for Kshs. 178 m resulting in an undeserved 'profit' of Ksh one hundred million in a weeks "work" .

Records at the Company registry show the directors of Guardian International Ltd are **Dr Sally Kosgei** and **Sophia Chepkoech Nzibo**.

“ In a space of say three months, a civil servant, a politician, a political operative etc would transform from an ordinary Kenyan.... Into a multi- millionaire.”

In addition to the loss of the land, perhaps the greater loss lies in the fact that the development objectives for which corporation land had been set aside were severely compromised.

Kenyans continue to pay a heavy price for this. Isn't it time Kenyans demanded to know : who were the Commissioners of Lands and directors of parastatals during the times in question?

Who were the beneficiaries of this theft ? *“Wako wapi sasa”*³ and what are they up to ?

In the sections that follow we attempt to provide an account of the human rights dimensions, social costs and consequences of land grabbing at specific corporations . We also attempt to unmask those who did particularly well out of this plunder.

We highlight the Ndungu Report's key findings which include how key public officials including Ministers, state house and provincial administration officials abused their offices and how these officials benefited unjustly from illegal allocations.



³Swahili phrase translated into English as “where are they presently?”

4.0 Agricultural Development Corporation (ADC) Farms

The Agricultural Development Corporation (ADC) was established in 1965 with the goal of promoting sustainable development and reconstruction of agriculture in Kenya by initiating, assisting and expanding agricultural undertakings and enterprises. Currently ADC was the largest single seed maize producer, contributing about 40% of Kenya Seed Company's seeds.⁴ The Corporation's core function is



to undertake and sustain the production of a variety of high quality agricultural inputs and produce so as to help the country attain self sufficiency in food and effectively compete in the export market. ADC was famous for producing pedigree and high grade livestock as well as hybrid maize seed, cereal seed, potato seed, sheep, goats, pigs, poultry and bees.

ADC was able to discharge its mandate for nearly 26 years before predatory state agents descended upon it in what must be the largest single land grab in independent Kenya.

It all started when in the late 1980s, supervisory authority previously vested in the Ministry of Agriculture was taken over by the Office of the President. This was followed by the amendment of the ADC Act in 1991 to give ADC a more general mandate – a step the Ndung'u Commission suspected was a prelude to the grabbing of the Corporation's land.

First, various ADC farms covering over 58,000 acres were sold for peppercorn payments to individuals as illustrated in table 1 below . Our estimate of the public loss occasioned by this illegal “sale” is a staggering Ksh 11.7 billion⁵.

⁵The estimates of values of land in this publication are based on an average computed from several prices of land in a particular locality as published in Newspapers and Real estate agents websites.

Table 1. ADC Farms sold irregularly

Sold To	Farm	Locality	LR.No.	Acres	Sold for Ksh	Sale price per acre (Ksh)	Estimated Market Value (Ksh)
Prof. Mbithi	Astra	Machakos	9917/9	5518	3,310,920	600	1,103,600,000
Charles Mbindyo	Astra	Machakos	9917/9	5516	3,309,720	600	1,103,200,000
AIC Church	Astra	Machakos	9917/8	3851	-	-	770,200,000
Mwisho	Edge	Trans Nzoia	7581.1/2	2490	286,000	115	498,000,000
Karuna Units	Edge	Uasin Gishu	8466	893	240,000	269	178,600,000
Summer Hills	Edge	Nakuru	8324/3	2315	526,290	227	463,000,000
Ndeffo	Lusiru	Nakuru	9955	2820	405,000	144	564,000,000
Kimoso PG Mogero	Lusiru	Uasin Gishu		1000	324,400	324	200,000,000
V. arap Too	Waterfalls	Trans Nzoia	4486	795	96,000	121	159,000,000
Nyakiambi	S& B	Nakuru		961	290,770	303	192,200,000
Arnagherry	S& B	Trans Nzoia	6136 5712	1756	620,800	354	351,200,000
Abdul Aziz Kanji	Quintin	Trans Nzoia	1/2/76	787	866,800	1,101	157,400,000
Ndoinet	Quintin	Nakuru	8323	1127	248,683	220	225,400,000
Subukia	Avondale	Nakuru	10480	3712	2,655,320	715	742,400,000
Njenga Karume	Avondale	Nakuru	9069 9062	149.33	397,000	2,658	29,866,000
Baringo Farmers	Fensbo	Nakuru	13217 2/3	1221	401,841	329	244,200,000
G.K. Kariithi	Tarkwet	Nakuru	10372,11286, 9370,	1238	1,700,000	1,373	247,600,000
Kimiti Farmers	Kiboko	Nakuru	9674	800	188,680	235	160,000,000
Haraka Farmers	Lelechwet	Nakuru	8020	1895	516,286	272	379,000,000
Elijah Minot	Pele	Nakuru	7606	358	125,000	349	71,600,000
Bridge	Murten	Nakuru	9242	242	142,000	587	48,400,000
Belsoi E.K.	High Over	Nakuru	11369	741	500,000	674	148,200,000
Njenga	Garbutt	Nakuru	10829	737	310,000	421	147,400,000
Catholic Church	Baraka	Nakuru	9867	1040	13,000	13	208,000,000
B.N. Hinga	Broatich	Nakuru	9216, 11420	1112	640,000	575	222,400,000
Ngao	Broatich	Trans Nzoia	6991, 6992/1	6899	340,000	49	1,379,800,000
Boma	Broatich	Trans Nzoia	5558/2	1380	310,000	225	276,000,000
Naisabu & Kibomet	Kibomet	Trans Nzoia	1839, 3709	5053	2,451,000	485	1,010,600,000
Gitwamba	Kaboya	Trans Nzoia	6439/4	1235	327,000	265	247,000,000
Mutwot	Kaboya	Uasin Gishu	8409/2	1031	300,000	291	206,200,000
		Total		58,672	21,842,510		11,734,466,000



Hon. Njenga Karume E.G.H, M.P., Minister of State for Defence during the 9th Parliament is reported to have sold about 1000 acres of land in Molo, Nakuru district to the government at Ksh 186 million.⁶ The government bought the land ostensibly for the purpose of re-settling squatters.

If the land in question is the same one cited in the Ndungu report, then the most that Hon. Karume paid for it as far as we can tell is , Ksh 2.7 million. He therefore probably made over Ksh183 million without breaking a sweat. This is assured at by computing the value of 1000 acres using the highest price per acre in the above table (Ksh 2,655)

In 1994 an order was issued directing the allocation of 8 ADC farms to individuals under the guise of settlement scheme. Two years later, over 60,000 acres of public land belonging to the corporation at Nyota, Sirikwa, Tall Trees, Ol Jorrai, Moi Ndabi, Jabali Chepchoina, and Zea farms was transferred to Settlement Fund Trustee allegedly to settle the landless. Instead the land was largely allocated to individuals and companies in what appears to be political reward for patronage. Our estimate of the value of this land is Ksh 6.8 billion.

Who benefited most from allocations of these ADC farms ?

The average allocation in these farms was 5 acres, but certain people got more. Among those who received above average allocations, some individuals received the lions share eg :

- Of the 427 acres above average illegall allocations at ADC Tall Trees farm in Nakuru, 85 or 20% was allocated to the late **Justice Tuiyot**.
- At Nyota Complex farm, 72% of the 2827 acres was illegally allocated to five people- **Elisha Chesyna** (602 acres), **G.K. Saitoti** (596 acres), **Kipng'eno Ngeny** (388 acres), a **Mr. Rotich** (224 acres) and **W. Kikwai** (233 acres).
- In ADC Sirikwa, **Hon Kipkalya Kones** was the beneficiary of 360 acres of about 2500 acres illegally allocated.

⁶The Nation. October 4, 2006. "Self Defence Bid by Karume flops". Article by Bernard Namunane

- At Moi Ndabi Scheme 57% (233 acres) of the above average allocations totaling 407 acres went to **Maj. Gen N.L. Leshan**. Other beneficiaries included **Hon. Ole Ntimama** (34acres) **F.K . Sang** (28acres) **Thomas Kiprop** (23 acres) **Hon. G.G. Mokku** (23acres).
- Over 80 people received above average allocations at ADC Zea. Among them, 13 prominent individuals took the lions share : **Simon Mbugua** (125acres),**Edward Lokopoyit** (90 acres), **Henry T. Ole Ndiema** (50 acres) **Justice Mbito** (50 acres), **Margaret Chemngetich** (50acres) **Stephen Loyatum** (50 acres) **John Serut** (45 acres), **Juliet Barmassai**(40 acres), **Kiplagat J. Sigey** (40 acres) **Anyara Emukule** (30 acres) **Hon. J.N. Kimkung** (30acres) **James Mwalo**(30acres) and **Simon Mbugua Thungu** (30 acres).

The fifteen individuals who benefited most from the illegal allocations of the eight ADC farms are :

	Allottee	Position held in Previous Regime	Farm	Ref	Acres	Value
1	Elisha Chesyna		NYOTA	Various	243.6	48,720,000
2	G.K. Saitoti	Vice President	NYOTA	Various	241	48,200,000
3	Stanley Manyinya		JABALI	L.R.No.118/1/21	130	45,500,000
4	Simon Mbugua		ZEA	L.R.No.118/1/21	125	43,750,000
5	Rebecca J. Cheron		Zea/Jabali	Various	93	32,550,000
6	Edward Lokopoyit	Commissioner of Prisons	ZEA	L.R.No.118/1/21	90	31,500,000
7	Ishmael Chelanga	District Commissioner	JABALI	L.R.No.118/1/20	90	31,500,000
8	Kipngeno Ngeny	Minister	NYOTA	LR327/139	157	31,400,000
9	Hon. Kipkalia Kones	Minister	SIRIKWA	L.R.No.118/1/21	145	29,000,000
10	W.K.K. Kimalat	Permanent Secretary	JABALI	L.R.No.118/1/21	80	28,000,000
11	William Tuiyot	Judge	TALL TREES-	L.R.No.118/1/20	85	25,500,000
12	Hon. Cheserek	Minister	JABALI	L.R.No.118/1/21	72.5	25,375,000
13	Dr. & Mrs. J. Liatamoi		JABALI	L.R.No.118/1/20	58	20,300,000
14	Charles Pius Chemuttut		MILIMANI	L.R.No.118/1/20	50	20,000,000
15	Hon Boaz Kipchumba	MP	MILIMANI	L.R.No.118/1/20	50	20,000,000
			Total			481,295,000

A complete list the beneficiaries who received above average allocations in the 8 ADC farms compiled from the Ndungu report can be found at <http://www.knchr.org/>

Given the central role of ADC in working towards self- sufficiency in food production, the greatest casualty of these illegal allocations was the country's ability to realize the right to food.

5.0 Kenya Agricultural Research Institute (KARI)

Established in 1979, The Kenya Agricultural Research Institute (KARI) was meant to be a premier national institution bringing together research programmes in food crops, horticultural and industrial crops, livestock, range, land and water management. It was meant to promote sound agricultural research, technology generation and dissemination to ensure food security through improved productivity and environmental conservation. (<http://www.kari.org>)

The Moi regime did not quite share this view – It illegally allocated over 3550 acres of KARI land worth over Ksh 1.3 billion as illustrated in the table below

Area	Size(ha)	Size(Acres)	Estimated Value
KARI-Kisii	26	63	18,910,563
KARI-Kitale,L.Station	138	340	102,062,184
Kwale	111	273	81,986,668
KARI-Naivasha	460	1,136	340,701,480
KARI-Nakuru	616	1,522	608,824,748
KARI-Tigoni Kiambu	90	223	178,168,984
Total	1,439	3,557	1,330,654,627

The allocation of this land adversely affected the Institutions research activities. The Director of the National Potato Research Centre (NPRC) in Tigoni Kiambu for example is on record protesting that while the Centre has developed 14 high yielding and disease resistant potato varieties , it has no land for their multiplication. The Center is only able to produce 800 bags of certified seed while farmers countrywide need about 30,000 bags⁷

The land was lost through a land grab- 223 acres of NPRC land was corruptly allocated to 4 individuals and one company as shown in the table below. The immediate former Member of Parliament for Limuru ,**Hon. Kuria Kanyingi** was allocated a total of 111 acres- 60 acres directly and 51 acres indirectly through a company associated with him. In the process the honourable member was unjustly enriched by over Ksh. 88 million.

Allottee	ha	Acres	Value
Mrs.R. Karanja	10	25	19,768,000
Renege P. Project Ltd	20.5	51	40,524,400
Dr.J. Kiano	23.2	57	45,861,760
Rtd.Maj.Gen D.N.Gichuru	12.14	30	23,998,352
Kuria Kanyingi	24.29	60	48,016,472
Total	90.13	223	178,168,984

According to press reports, following a suit filed by KACC to recover the land, Hon Kanyingi is willing to surrender 60 acres, but is unwilling to surrender the rest⁸.

⁷Dr.J.N. Kabira, Daily Nation July 5, 2005

⁸Daily Nation March 1, 2007- Firm agrees to return part of KARI Land.

The main beneficiaries of the illegal allocation of KARI land are listed in the table below :

Allottee	Area	Ref	Size(ha)	Size(Acres)	Value
Wazazi Farmers Ltd	KARI-Naivasha	NAHRC-Naivasha,5211/2,5211/3-6, & 5211/7-8	459.6	1136	340,701,480
Kuria Kanyingi	KARI-Tigoni Kiambu		44.79	111	88,540,872
Moi Forces Academy	KARI-Nakuru	BRC-LANET	230	568	227,332,000
Mr. T. Kiragu	KARI-Nakuru	Nakuru, Lanet	274.79	679	271,602,436
Dr.J. Kiano	KARI-Tigoni Kiambu	LR.14703,Tigoni Kiambu	23.2	57	45,861,760
Mr. S. Mburu	KARI-Nakuru	Nakuru, Lanet	109.3	270	108,032,120
Ext Armed Forces	KARI-Nakuru	BRC-LANET	93	230	91,921,200
Rtd.Maj.Gen D.N.Gichuru	KARI-Tigoni Kiambu	LR.22008/1,Tigoni Kiambu	12.14	30	23,998,352
Mrs.R. Karanja	KARI-Tigoni Kiambu	LR.14919,Tigoni Kiambu	10	25	19,768,000
A.K. Cherwon	KARI-Kitale,L.Station	LR.10/94/42/13	20.24	50	15,003,912
T.K. Tuwei	KARI-Kitale,L.Station	LR.10/94/42/12	20.24	50	15,003,912
Total			1,297	3,206	1,247,766,044

The theft of KARI land has featured in various Public Investment Committee reports .On the KARI land in Kitale Top Station for example, The Eleventh Report observed that government officials and individuals used their positions to illegally acquire KARI and KEPHIS land and singled out the following individuals for particular censure :

- **Mr. Ben Mogaka**, then District Commissioner, Trans Nzoia who initiated and presided over the planning, sub division and allocation of the land and acquired a substantial amount under the names of his son **Mr. George Ombaso**, wife **Mrs Grace Omwambia** and several relatives.
- **Mr. R.C. Butaki**, the then Center Director who colluded with the DC and illegally surrendered land for subsequent allocation to himself and others
- **Rev. Silas Yego Bishop** of African Inland Church (Kenya) who under pretext of applying for land for church use, acquired land for himself and others.

The allocations at KARI Kitale Lower Station provide another illustration of abuse of office as the table below illustrates .

The allocations were made purportedly following circulars from the then Head of Civil Service and Secretary to the Cabinet, **Mr. Joseph arap Leting** and then Rift Valley PC **Mr. Ishmael Chelan'ga**.

Allottee	Position	Ref.	Acres	Value
A.K. Cherwon	Former Director of Land Adjudication	LR.10/94/42/13	50	15,003,912.00
T.K. Tuwei	Former Director of Agriculture	LR.10/94/42/12	50	15,003,912.00
Wilfred Ndolo	Former DC	LR.10/94/42/10	20	6,004,530.00
David K. Muthoka	CEO, EPZ	LR.10/94/42/9	20	6,004,530.00
J.K. Soi	Former OCPD Kitale	LR.10/94/42/8	20	6,004,530.00
Samuel Moiben	Former Nominated MP	LR.10/94/42/7	20	6,004,530.00
Nicholas K. Mberia	Former PC, Eastern	LR.10/94/42/6	20	6,004,530.00
D.D Afande	Former Ambassador and PS	LR.10/94/42/5	20	6,004,530.00
Francis Polis Lotondo	Former MP	LR.10/94/42/4	20	6,004,530.00
Silas Misoi Yego	Bishop, AIC Kenya	LR.10/94/42/3	20	6,004,530.00
Japheth Lotukoi Ekidor	Former MP	LR.10/94/42/2	20	6,004,530.00
Francis Ewaton Achuka	Former MP	LR.10/94/42/1	20	6,004,530.00
Joseph Koech Juma		LR.10/94/42/14	20	6,004,530.00
Lawrence Sambai Rotich		LR.10/94/42/11	20	6,004,530.00

The full list of beneficiaries of the allocations of KARI land can be found at <http://www.knchr.org/>. table2.



6.0 Kenya Industrial Estates (KIE)

The promotion of small scale industries has for a long time been an important part of Kenya's development strategy. Small businesses contribute 18 per cent of the country's Gross National Product and 72 per cent of employment.⁹

It is for this reason that Kenya Industrial Estates (KIE) Limited was established in 1967 with a major role of promoting indigenous entrepreneurship by financing and developing small scale and micro enterprises.

KIE Limited was established to facilitate development and incubation of micro, small and medium enterprises countrywide by establishing industrial parks, providing credit and business development services in a sustainable manner. KIE is mandated to put up sheds; cluster enterprises together; offer technical services and training; and provide financial support to local small upcoming entrepreneurs¹⁰.

A former director of KIE, recently wrote how during its hey days, KIE was the hub of micro-enterprises. It initiated jua kali programmes in the 1980s with the help of the World Bank, International Labour Organisation, Norad and Unido among others.

At its peak the organisation employed 700 people and had 32 branches all over the country. Apart from the head office in Nairobi's Industrial Area, it had regional offices in Mombasa, Kisumu, Nakuru, Eldoret, Nyeri and Embu.¹¹



⁹<http://statehousekenya.go.ke/speeches/kibaki/oct05/2005201001.htm>- speech by His Excellency Hon. Mwai Kibaki, president of the republic of Kenya during the kenyatta day celebrations at nyayo national stadium, nairobi, 20th october, 2005

¹⁰<http://www.kie.co.ke>

¹¹Indiasi Nasibi- *The Standard* Wednesday February 21, 2001

Today, KIE is a pale shadow of what it was having been brought down on its knees through corruption in the 1990s- it has only 180 employees, 21 operating centres and only Sh300 million in good loans.

A large part of this decay can be explained by the fact that more than 361 of its plots in 19 towns were illegally and irregularly allocated to private individuals and companies. This is illustrated in the table below.

Town	No.of Plots	Acreage	Value
Nairobi	5	17.33	69,313,527
Nakuru	17	5.29	5,285,889
Kakamega	38	6.59	3,295,203
Eldoret	31	6.08	2,126,839
Nyeri	30	3.56	1,778,502
Kericho	36	5.57	1,669,852
Kitale	24	3.96	1,384,538
Kitui	28	4.48	1,342,568
Sultan Hamud	31	5.32	1,063,914
Kabarnet	34	4.10	1,024,230
Siaya	16	3.06	918,248
Bungoma	5	1.38	691,880
Malindi	8	1.25	623,928
Kisii	13	1.19	595,758
Tala	26	1.30	390,813
Kisumu	3	0.64	320,365
Homabay	8	0.58	174,042
Karatina	5	0.33	167,299
Machakos	3	0.17	82,902
Total	361	72	92,250,297

The plots may have been small in size, their value may appear meagre, but the set back in terms of stunting the development of small scale enterprises and enhancing the realization of economic rights following their illegal allocation is enormous.

Who benefited most from the illegal allocations of KIE land?

The single largest beneficiary of the allocations was **Viscount Holdings**. While the average allocation was 0.2 acres, this one company received 14.66 acres valued at 58.6 million in Nairobi LR 209/9469-9478. The directors of Viscount Holdings are **Kiran Kotecha** and **Jayesh Morjario**. Past directors include **Monarch Insurance Company**.

Other "luminaries" as they are referred to in Kenya's political lexicon were: **Benjamin Kipkulei** who was allocated 10 of the 31 plots in Eldoret; **Hosea Kiplgat** was allocated 5 plots of the 34 plots in Kabarnet in addition to 2 plots in Eldoret. Other prominent beneficiaries include- **John Lokorio** (Kabarnet), **Lawrence Masaviru** (2 plots in Kakamega), **Joshua Angatia** (Kakamega), **Noah arap Too** (Kericho), **Japhet k Muasya** (2 plots in Kitui), **Francis Nyenze** (2 plots in Kitui), **Prof Raphael K Munavu** (Tala- 1plot), **John Sambu** (3 plots in Eldoret)

The full list of allottees can be found at <http://www.knchr.org/ndungu/table3>

7.0 Kenya Railways Corporation

The Ndungu Report recommended that thorough investigations be conducted into the affairs relating to land and houses belonging to Kenya Railways Corporation and for good reason. Once upon a time Kenya Railways Corporations owned huge amounts of prime land in all of the country's main urban centres- in Mombasa for example ,the corporation is said to have owned about half of the Industrial area. On some of this land stood the corporation housing units with "picturesque compounds, neat hedges and well tended flower beds - at one point some of the most sought after living quarters in the country"¹².

The Corporation had even constructed cottages in Mombasa for the use of its employees families on vacation. The Ndungu report provides details of 109 such properties in Nairobi, Mombasa, Nakuru, Eldoret, Kitale and Kisumu which were suspected to have been sold for a song to politically connected individuals since 1994. Our estimate of the value of these properties is Ksh 1.49 billion.

The following are the ten individuals and companies who benefited most from this theft :

	Purchaser	Plot No.	Location	Acres	Development		Est. Value (Kshs)
1	Vulpine Investments	Unsurveyed	Nairobi	8.13	16	houses	112,780,000
2	Gapco (K) Ltd	Various	Mombasa	11	3	houses	72,000,000
3	Ping Investments	209/6629	Nairobi	2.7	12	houses	64,200,000
4	Crockery & Utensils	209/6438	Nairobi	4.66	9	houses	63,960,000
6	Guardian International	209/6439	Nairobi	3.49	7	houses	48,940,000
7	Garissa Apartments	209/5990/1	Nairobi	4.85	4	houses	45,100,000
8	Total (K) Ltd	1209/6522	Nairobi	4.13	5	houses	44,780,000
9	Mint Holdings	209/12938	Nairobi	4.022	4	houses	40,132,000
10	Allan Holdings	209/6437	Nairobi	2.56	6	houses	39,360,000
	Total.						531,252,000

Other notable beneficiaries of these sales include Signon Freight, Embassy of Japan, British High Commission, Lima Ltd, Bawazir & Co., Bishop Birech, Wison Chepkwony, Brig Kuto, Mwachazi Mwachofi, John Mark Moi, Sam Mwamburi, Redeemed Gospel Church, S.D.A Church, Mrs Sumbeiyi and Pius Gumo. A complete list of these and other beneficiaries can be found at : <http://www.knchr.org/ndungu/table4>.



¹²The Standard : December 17 2006- Kenya Railways houses fall from glory to near ruins.

8. National Social Security Fund (NSSF)

The Purchases of Illegally acquired Public Land by State corporations

Illegal allocations of public land were the first step in the making of land grabbing millionaires. The next step in the scheme involved the abuse of certain State corporations to buy the land at exorbitant prices.

"State corporations became captive buyers of land from politically connected allottees".

The dubious honour of the corporation that most facilitated this plunder goes to National Social Security Fund. Within a short period of 5 years (1990 to 1995), NSSF spent up to Ksh 30 billion purchasing both developed and undeveloped plots and other land of little or no value in various parts of the country.

Rather than protect the interest of workers, the Funds Trustees main pre- occupation become buying land in what the Ndung'u Report says were highly suspect circumstances. Here are two examples of just how suspect these transactions were.

Remember the Nyayo car? The **Numerical Machining Complex** was incorporated in 1994 to take over the business, property and liabilities of Nyayo Motor Corporation.

On 24th June 1994 the company was allocated 839.7 ha of land in Mavoko municipality (part of the Kenya Meat Commission holding ground) for "industrial research purposes". Why the company needed so much land is unclear.

Within a few weeks, the then Head of Civil Service and Secretary to the Cabinet **Professor Philip Mbiti**, an ex- officio director of the company, wrote to **Samuel Muindi** , then Managing trustee of NSSF informing him that the President had suggested that the NSSF be requested to purchase the land at market value. In February 1995, NSSF bought 136.07 ha of the land at a cost of Ksh 268 million.

This price was 8.5 times more than the professionally assessed value. The land remains idle to date. Where did the money go?

A similar fraud was perpetrated at the **Kenya Veterinary Vaccines Production Institute KEVEVAPI**. Sometime in 1990s, 63 out of 93 hectares of land belonging to the parastatal in industrial area was subdivided and systematically allocated to a number of companies.

The 63 hectares or 155.7 acres of land at an estimated cost of Kshs. 4m per acre were worth about Ksh 622,692,000. The three primary beneficiaries of this illegal allocation were:

Allottee	Area (acres)	Value
Sharjah Trading Co.Ltd	22.15	88,600,176
Rielco Co. Ltd	7.01	28,048,815
Samu Ltd	15.00	59,995,880
Total	44.16	176,644,871

In May 1995, Sharjah Trading Company sold two of the plots for Ksh 500million to- unbelievably- NSSF.

Some of the politically correct individuals who sold land at exorbitant prices to NSSF had acquired prime land from other State corporations for a song. The example was given earlier of **Guardian International Ltd** which bought land from **Kenya Railways Corporation** at Ksh.77 million and sold it one week later to NSSF for Ksh178 m.

The Ndung'u report provides a list of some of these dubious purchases totaling Ksh 7.52 billion. We examined the list for reasonableness by estimating the price the corporation should have paid for a number of the properties. Even using rather generous price estimates, indications are that property bought for Ksh 6 billion was worth less than Ksh 1.25 billion. On these transactions alone, a few individuals were unjustly enriched by as much as Ksh.4.75 billion.

The table below shows the ten most outrageous purchases.

A complete list of these purchases can be found at <http://www.knchr.org/ndungu/table5>.

Vendor	Paid by NSSF	Acres	Location	Purchase Price per acre	Estimated Market Price	Estimated Market Value	Loss
Nokin Holdings Ltd.	975,275,000	224.91	Nairobi	4,336,282	1,000,000	224,910,420	750,364,580
North Field International Ltd	752,000,000	40.05	Nairobi	18,774,228	1,000,000	40,054,910	711,945,090
Kenya Cargo Handling Services Ltd (Trustees)	576,028,000	49.42	Athi River	11,655,767	300,000	14,826,000	561,202,000
Gamu Ltd.	382,385,133	20.26	Nairobi	18,871,847	4,000,000	81,048,800	301,336,333
Not Identified	320,000,000	120.72	Mavoko	2,650,747	300,000	36,216,212	283,783,789
Corum Ltd	543,492,466	2.96	Nairobi	183,749,697	100,000,000	295,778,700	247,713,766
Tetete Company	223,000,000	9.86	Mavoko	22,612,594	200,000	1,972,352	221,027,648
Newman Investment Ltd	225,518,937	1.99	Nairobi	113,149,347	4,000,000	7,972,434	217,546,503
Numerica Machining Ltd.	272,909,235	336.06	Mavoko	812,095	300,000	100,816,800	172,092,435
Sun Trap Beach Hotel Ltd	229,248,176	21.64	Mombasa	10,593,225	3,000,000	64,923,054	164,325,122
Sea View Investment Ltd.	219,444,836	21.63	Mombasa	10,144,860	3,000,000	64,893,402	154,551,434
Reality Brokers Ltd.	150,000,000	15.00	Nairobi	10,000,687	2,500,000	37,497,425	112,502,575
Winfred Nyiva	91,410,000	9.88	Mavoko	9,248,280	200,000	1,976,800	89,433,200
Multi Purpose Co-op. Development Centre Ltd	126,949,750	11.12	Nairobi	11,416,858	3,500,000	38,918,250	88,031,500
Mandarin Beach Hotel Ltd.	79,000,000	3.80	Mombasa	20,787,296	3,000,000	11,401,194	67,598,806
Total	5,166,661,533	889	-	448,803,810	-	1,023,206,753	4,143,454,780

Unfortunately, NSSF was not the only corporation abused in this manner. Other corporations involved in similar schemes include:

- **Kenya Pipeline Company** – Sometime in 2001, part of land reserved as Ngong Road was illegally excised and irregularly allocated to 13 companies. Between 28th and 29th August of the same year, all the 32 plots were sold to Kenya Pipeline Company for Ksh 262.388 million. The companies and individuals who were unjustly enriched through this fraud are shown in the table below.

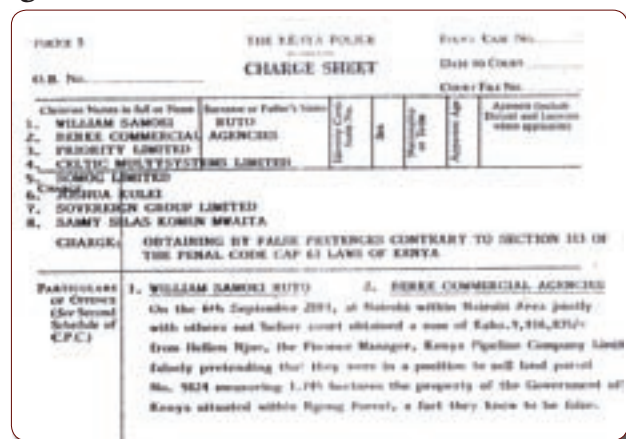
Beneficiary Company	Directors	Ref	Acres	Value
Linto Limited	1. Patrick Mungasia 2. Jane Nduku	7 plots	30.54	137,437,020
Tairo Investment Limited	1. Dan Wekesa 2. Peter Wafula	7 plots	19.20	86,398,515
Redate Investment Limited	1. David Kutwa 2. Daniel Karoki	6 plots	15.50	69,763,743
Priority Ltd	1. Paul Chirchir 2. Mathew Otieno	1 plot	12.57	56,553,777
Rama Ltd	n/a	1 plot	9.88	44,478,000
Grevsoil Investments	n/a	1 plot	8.47	38,095,407
Roseko Investment Ltd	1. Fredrick Onyango 2. William Mtinda	2 plots	5.94	26,731,278
Tanabell Enterprises Ltd	n/a	2 plots	4.94	22,239,000
Somog Ltd	n/a	1 plot	4.85	21,805,340
Berke Commercial Agencies Ltd	1. William Ruto Kipchirchir 2. David Kemei Kibet 3. Willy Bett Kipkorir 4. James Bett Kiprop	1 plot	4.31	19,403,528
Velvet Safaris Ltd	1. Gordon Okumu Wayumba 2. Alice Achieng Okumu	2 plots	3.40	15,319,335
Makori Investment Ltd	n/a	1 plot	2.47	11,119,500
Celtic Multisystems Ltd	1. Catherine Chepchumba 2. Silas Simatwo	1 plot	1.46	6,576,072
Total			124	555,920,514

It turns out, (from reports of court proceedings) , that four of the thirteen companies (**Berke Commercial Agencies, Priority Limited, Celtic Multisystems Limited and Somog Limited**) are associated with **Eldoret North MP William Ruto**, a former Cabinet minister.

Ruto together with **Joshua Kulei** (Retired president Moisi personal aide) have been facing charges for allegedly falsely pretending they were in a position to sell Government land situated in Ngong forest to Kenya Pipeline Company.

The consolidated charges also include **Sammy Mwaita** (former Commissioner of Lands) who faces charges for alleged abuse of his office for consenting to transfer pieces of Government land within the forest- disregarding the fact that Ngong forest had not been degazetted.¹³

Police Charge Sheet



- Kenya Ports Authority which bought land from the following politically connected individuals:

Seller	Location	Size (ha)	Sale Value
Harry Mutuma Kathurima	Malindi- Kilifi	7	12,000,000
Ali Korane through Rahole Enterprises	Shimoni Kwale	2.516	8,000,000
Shariff Nassir	Mainland South, Mtongwe Creek	2.78	10,000,000
Shariff Nassir	Mainland North, Kimbarani		6,000,000
Winworld Ltd	Mainland North Kilifi/ Takaungu	173.3	150,000,000
Micah Cheserem	Bellevue, Nairobi	1.6	2,600,000
Joshua Kulei			
David Komen			
Kayumali Abbashis Anjarwalla	Mainland South	11.4	9,000,000
Erastus Muthamia Kiara	Mainland North.		1,200,000

In addition, about 11 acres of KPA land in Mombasa worth an estimated Ksh 32.78 million was illegally allocated to several individuals and companies.

The details can be found at <http://www.knchr.org/ndungu/table5>.

- Central Bank of Kenya** - purchased a plot reserved as a public parking off Haile Selassie avenue for Ksh300million . The plot had earlier been illegally allocated to a company associated with **Fred Gumo**- the sitting MP for Westlands and former assistant minister .

¹³East African Standard, Tuesday June 29, 2004 (Ruto now charged with Sh 96m fraud)

9. Kenya Food and Chemical Corporation Limited

The Kenya Food and Chemical Corporation Limited of Kisumu, more commonly known as the **Kisumu Molasses Project** was conceived in the 1970s and was intended to manufacture gasohol from sugar cane molasses produced by sugar factories in Nyanza and Western provinces.

This controversial project was cited in the Ndung'u Report as an example of how State corporations were mismanaged , and ended up in receivership or liquidation which then paved the way for land and other assets to be sold at throw away prices or simply be allocated to favoured individuals.

According to the Report, land for the project was compulsorily acquired by the government in 1976 at Ksh 4m. The project then stalled in 1980 after hundreds of millions of shillings had been sunk into it. In 2001, the then Commissioner of Lands, **S.S.K. Mwaita**, illegally allocated the 112 hectares of the land meant for the corporation to a private company for Ksh.3.7 Million or Ksh. 33,000 per hectare. The Company, **Spectre International Limited** is associated with the **Odinga family**.

At a conservative price of Ksh. 300,000 per acre, the land would have been worth Ksh. 83 million. The beneficiaries of this allocation may therefore have been unjustly enriched by Ksh 80 million.

Other parastatals which lost land in similar dubious circumstances were :

- Teleposta Pension Scheme**- Various properties (plots , some with buildings) worth Ksh 247 million which had been vested in Teleposta Pension Scheme were illegally allocated to individuals. These properties were vested in the Pension scheme through legal notices at the time when Kenya Posts and Telecommunications Corporation was split. The report does not name the beneficiaries. Additionally, twelve plots in various towns of Kenya valued at Ksh 4.22 million were illegally /irregularly allocated to several individuals
- Cotton Board of Kenya**- 4 acres with an estimated value of over Ksh 17million was illegally allocated to **Metropolitan Tea Brokers Ltd** .
- Kenya Dairy Board**- half an acre of land with an estimated value of Ksh 2.3 million was illegally allocated to **Margaret Alividva**.
- Kenya Broadcasting Corporation**- 100 acres reserved for KBC headquarters at Jamhuri Park (L.R. 15090), as well as 75 acres planned for the corporations expansion in Nakuru (L.R. 451/12264) were illegally allocated to individuals. Our estimate of the value of the two is Ksh. 599 million. Similar land for expansion in Mombasa was also illegally allocated.
- Kenya Revenue Authority**- in Mombasa 8 plots set aside for extension of customs and excise extension, training institute, staff houses and car park were illegally allocated. The sizes of some of the plots are unfortunately not available from the Ndungu report. Our estimate of their value based on the average size for those provided is Ksh 60 million.
- Kenya Ferry Services**- 2 acres of land reserved for use as ferry approach and ramps on both the island and mainland side were allocated to **Comen Ltd** and **Samuya Investments**.
- Kenya Power and Lighting Company** is reported to have sold its prime properties at low prices.

10. State House and Military Land

The grounds and facilities reserved for use by the armed forces, the police, as well as State House is protected for strategic and public security reasons. This land cannot be allocated to private individuals and companies- they must remain in the public domain and any purported allocation of such lands are illegal.

The illegal allocation of these protected areas illustrates just how insatiable the greed of the ruling elite was. One would have thought that certain areas would be out of bounds for grabbers but it would appear that the ruling elite in the Moi era never saw a piece of public land that they did not want to grab. As incredulous as it may sound, part of State house land was among those illegally allocated.



Information available is scanty, but the Ndung'u Commission was able to establish that :

- At State house Nairobi, 22.5 acres of land were illegally excised and allocated. The Commission was unable to obtain the names of beneficiaries.
- Malindi State House - land amounting to 6 acres was illegally allocated to **Yusuf Haji**, a former Provincial Commissioners and immediate former MP for Ijara.
- The title to the land at Rumuruti State Lodge is in the name of an individual, even though its acquisition and construction was by public funds.
- In Kitale, 297 hectares had been reserved for State House. When the land was surveyed however, it was reduced to 143.5 hectares. The logical conclusion is that the 379 acres were left out to benefit certain individuals.

Our conservative estimate of the monetary values of this land is Ksh.152 million.

The audacity grows- even military land was not spared. The Ndung'u Commission experienced great difficulty in obtaining information from official sources regarding illegal allocations of military land but was able to identify the following as some of the allottees:

Allottee	Area	Comments
Mr. Maina Rwingo, Mr. Mutua	Diani Maritime Surveillance Radar	The two are registered public surveyors
Mr. Darman	Malindi (Masura)	Sold it to Mr. Mohamed
Noon Works and Supplies Ltd	Embakasi	Main gate irregularly allocated, titles given
Sololo Outlets	Embakasi Area	Allocated 400 ha- Associated with Cyrus Jirongo
Torino Company Limited	Embakasi Area	Allocated 87 ha
Brigadier Sitienei	Air House- Riara Road	officially meant for AirForce Commander

Even though the Commission was unable to ascertain the identity of all allottees, from the incomplete information available, it was able to establish that :

- 2 parcels of land were allocated to a private developer inside Kenya Navy Mtongwe base¹⁴.
- 50 acres of land located at sea front at Forward Operation Base ,Port Reitz Harbour was illegally allocated
- 10 acres of land at Moi Air Base was irregularly left out at time of fencing and is now a slum
- Part of Kenya Army Headquarters was systematically illegally allocated
- Gatharani Ammunition Sub Depot was to be allocated 673.5 acres but got 533.9 acres
- 350 hectares of land at Thika Garrison was demarcated and illegally allocated to private developers
- Land adjacent to Lion Hill Range was illegally allocated to individuals thereby exposing residents to flying bullets and other safety risks
- Massive encroachment by squatters on 10,000 acres at Moi Barracks Eldoret
- Area surrounding Gathiuru Ammunition Sub Depot has been illegally allocated to private developers thus exposing the allottees to danger given the presence of highly explosive ordnance stores.
- Kwambuzi area at Nanyuki Barracks was subdivided and allocated to individuals¹⁵
- At Laikipia Air Base the area surrounding a watering point was illegally excised and allocated to a private developer
- At Garissa Barracks which is co-located with Garissa Airstrip, the Air area was illegally allocated to a private developer who has constructed houses.

¹⁴The allottee was denied access and has claimed compensation of Ksh 8.5m

In the few cases where the Commission was able to establish the size of land illegally allocated, our estimate of the value is Ksh 5.1 billion as illustrated below. In addition to the monetary loss, these illegal allocations endangered the rights to life and security of citizens, in addition to compromising the country's sovereignty.

Area	Allottees	Size (Acres)	Estimated Value
Forward Operation Base- Port Reitz Harbour	Not disclosed	50	100,000,000
Moi Air Base- Nairobi		10	40,000,000
Embakasi Area	Sololo Outlets	988.4	2,965,200,000
Embakasi Area	Torino Company Limited	214.977	644,931,000
Air House- Riara Road, Nairobi	Brigadier Sitienei	2.9	17,400,000
Gatharani Ammunition Sub Depot- Nairobi	Not disclosed	139.6	418,800,000
Thika Garrison	Not disclosed	864.85	864,850,000
Total			5,051,181,000



11. Conclusions and Recommendations

The information provided to the Ndung'u Report was largely incomplete and there is need for further investigations to establish if more public land that was reported was lost.

The Commission also faced serious challenges in ascertaining the identities of the directors and beneficial owners of some companies. Despite several visits and searches the files remained inexplicably unavailable while others had missing information. The use of proxies to conceal beneficial ownership was evident. While there has been improvement at the Company registry through efforts such as computerization and the introduction of open plan offices, there is still need for measures to avail information more readily and expeditiously.

The loss of public land occurred through connivance and active participation of successive Commissioners of Lands, Ministry of Lands officials and other government officers. The management of state corporations either abdicated or abused their responsibilities as custodians and trustees of public land. They should be identified and appropriately charged

In situations where State Corporations were pressurized to purchase land the titles so acquired are illegal and should be revoked. Where such land had been reserved for public purposes, it should not be capable of allocation and should revert back to the government for the use it had been set aside for. The relevant state corporations should be able to sue the original allottees for the purchase price it paid.

All state corporations lands which were illegally allocated should be repossessed by the government and the titles acquired thereof revoked. Even where the land has been substantially developed, the titles thereto should still be revoked, given their inherent illegality.

The Ndung'u Report had recommended the issue of new titles to the current registered proprietor upon new terms and conditions in some cases where the lands have been substantially developed. In anticipation of this, some grabbers have been developing their plots to avoid recovery.

Where a State corporation sold land at below market value or purchased land at exorbitant prices, the prime movers of such sale (directors of the corporation, original allottees, other public officials or brokers and professionals) should be investigated and prosecuted. The money lost by the State corporation as a result of such purchase should be recovered from those who were unjustly enriched.

Concerning the land purportedly set aside for settlement of the landless, allocations made to people who were public officers, Members of Parliament, area councilors, political operatives and other undeserving people at the expense of the landless should be revoked.

All allocations of land classified as security areas should be cancelled and titles thereto revoked without exception. The pieces of land in question should revert to their original purpose.

Establishment of a land titles tribunal and other amendments to legislation that would enable the process of recovery of land should to be expedited. Land matters take many years to resolve through the court system. Even with the establishment of a land and environmental division of the High Court, the likelihood that the recovery will be effected through the courts is very doubtful. The people of Kenya therefore need to explore alternative ways to recover the land.

More importantly, the people of Kenya should seize opportunities such as elections to hold those seeking elective office to account. When they come seeking votes, we should examine their record and involvement in graft. Those implicated in plundering public land should be told – Rejasha ardhi ya umma !



Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road,
P.O Box 74359 - 00200, Nairobi - Kenya
Tel: 254-20-2716160
Website: www.knchr.org

Kenya Land Alliance
C.K Patel Building, 6th Floor, Kenyatta Avenue
P.O. Box 2177-20100 Nakuru
Tel: 254-051-2210398
Fax: 254-051-2215982
Website: www.kenyalandalliance.or.ke