

Unjust Enrichment



The Making of Land Grabbing Millionaires

Abetting impunity: The other side of the
Ndung'u Report on Illegal and Irregular allocations of Public Land.

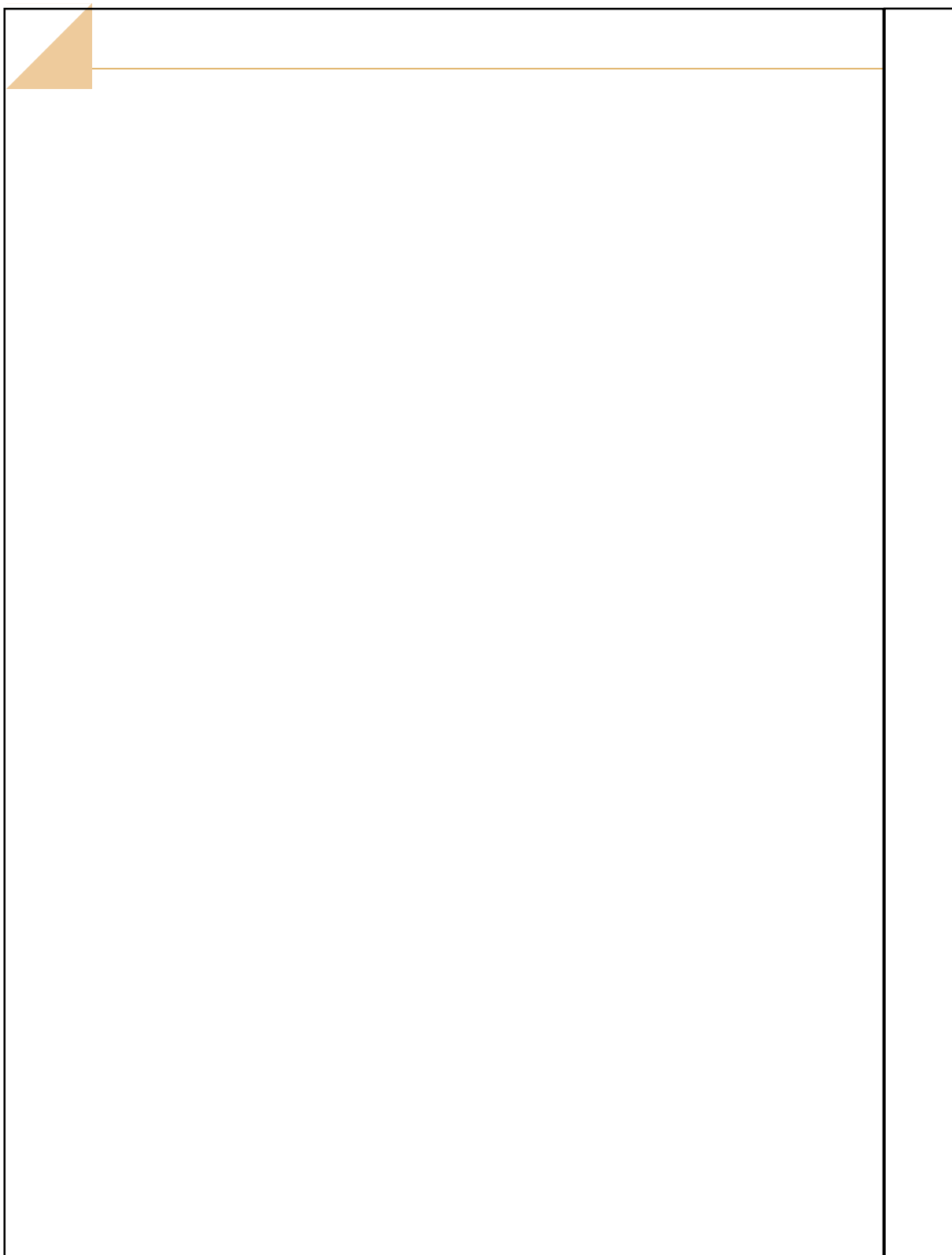


Kenya National Commission on Human Rights

Living Large Series
Vol. 2



Kenya Land Alliance



Unjust Enrichment

*The Making of
Land Grabbing Millionaires*

*Living Large Series Vol.2 No.1 - The Plunder of Karura, Ngong Road
and Kiptagich Forests*



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Foreword

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

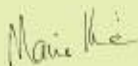
Most allocations were made to politically correct individuals without justification and resulted in individuals being unjustly enriched at great cost to the people of Kenya. Many allottees proceeded to sell the land to state corporations or other parties at colossal amounts of money far in excess of 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, increase the capacity of citizens to resist corruption, and to demand their fundamental rights.

Maina Kiai



KNCHR

Odenda Lumumba



KLA

1.0 Introduction


The illegal and irregular allocations of public land as chronicled in the Ndungu Report amount to a rip-off that dwarfs the Goldenberg and Anglo-Leasing scandals. Our analysis in this first issue in the series covers Karura, Ngong Road and Kiptagich forests and suggests a loss of public resources in excess of Ksh. 18.4 billion. The Ndungu Report covers ten other forests as well as other public land, ranging from road reserves to cemeteries to public toilets and even State House land. As we cover these in future issues of the series, the cumulative loss will certainly be astounding.

Land grabbing has its genesis in pre-independence Kenya when a small group of white settlers were allocated 20 percent of Kenya's landmass consisting of the best agricultural land.

The post colonial government of Jomo Kenyatta used the land formerly held by settlers for patronage purposes-to solidify support and build alliances. This trend continued and intensified in the successive Moi regime. The Ndungu Report demonstrates how illegal land allocations regularly increased around the time of competitive elections under former President Moi.

Jacqueline M. Klopp¹ has argued that when faced with declining patronage resources, Moi and his clique increasingly turned to public lands, which are less fettered by international scrutiny, as a patronage resource and instrument to maintain control. The aid freeze in the late 1980s and through the 1990s

¹ Piffing the Public: The Problem of Land Grabbing in Contemporary Kenya: *Africa Today* Volume 47, Number 1



led to a decline in traditional sources of patronage. The period also witnessed greater international scrutiny of some forms of corruption amid intense political competition. Public land was an attractive patronage asset because it was accessible, with the president illegally converting his constitutional powers as trustee of public lands (on behalf of the public) to *de facto* ownership powers². It was also less encumbered by international conditionalities and scrutiny compared to private property. At the same time, 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.

In this series, the Kenya National Commission on Human Rights and the Kenya Land Alliance attempts to provide an account of the human rights dimensions, social costs and consequences of land grabbing. 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 officials and the provincial administration abused their offices and how these officials benefited unjustly from the illegal allocations.

The story of the Ndungu Report is one of systematic perversion of established procedures meant to protect public interest for political gain and the unjust enrichment of a few. It needs to be told.


² The president has powers to make grants of freehold and leasehold of unalienated government land to companies and individuals for the **public good**.

Corruption and Human Rights

Corruption is of concern to human rights defenders because we believe it to be the single most critical impediment to the realization of human rights and further democratization in most countries of Africa. It has aptly been described as a cancer festering within society, enriching a few and impoverishing many. Kenya's former Minister for Justice and Constitutional Affairs called for corruption to be classified as a crime against humanity for its debilitating effects in almost every sphere of public life.

Corruption causes massive violations of fundamental human rights in several ways. **Firstly**, corruption worsens poverty and inequality within societies thereby seriously inhibiting the realization of economic, social, and cultural rights. Land and other natural resources occupy a central place in the livelihoods of the majority - corruption diverts these resources from the intended public use in realization of rights to decent livelihoods into private bank accounts. 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. Illegal and irregular allocations of public land are particularly harmful to the poor because they are more dependent on public amenities.

Secondly, corruption perpetuates discrimination. Whereas the Universal Declaration of Human Rights for example provides that all human beings are born free and equal in dignity and rights, and the International



Convention on Civil and Political Rights provides for equality as well as equal protection before the law, corruption makes a mockery of these entitlements. Public land belongs to all Kenyans- when it is corruptly allocated to a privileged few, such preferential treatment constitutes discrimination.

Thirdly, corruption leads to the infringement of numerous civil and political rights. When corruption permeates politics for example, 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. The consequences include generation of leaders beholden to narrow interests, sycophancy and the erosion of democratic principles.

2.0 Illegal and irregular allocations of forestland

This first issue in the series focuses on three forests-Karura, Ngong and Kiptagich. We chose to first focus on forests because of their importance, but also because they were some of the most affected by illegal and irregular allocations.

Gazetted and protected forestland belong to that category of special lands which due to their ecological, cultural and strategic value, should never be allocated to private individuals unless public interest dictates otherwise. Close canopy indigenous forests are among the country's most important natural resources as they have important consequences for water conservation, flood control, rainfall, food and medicine, grazing lands, tourism development and biodiversity conservation.

About 70 percent of the country's electric power is hydro-generated and therefore relies on the existence of well protected forests which house water catchments. Forests conserve water and soil and are reservoirs of biological diversity. They provide a variety of products –including building materials, fodder, fruits and honey in addition to meeting 90 percent of household energy requirements. Forestry and wood processing industries are estimated to provide direct employment to between 35,000 and 50,000 people.³

³ Gachanja M. K. Public perception of forest as a motor for change <http://www.fao.org/ld/ocrep/005/y9882e/y9882e16.htm>

In 1895, when Kenya was declared a British Protectorate, forestland was estimated at 30% of total landmass. At independence, only 3% of total territorial landmass was under closed canopy gazetted forests. The result of illegal and irregular excisions have reduced this to 1.7% against the internationally recommended minimum of 10%.



2.1 The legal provisions governing the allocation of forestland

At the time the allocations took place, forests were protected under the Forests Act (Cap 385)⁴. To allocate protected forested areas, the law requires that it be de-gazetted and only so for public interest purposes⁵. Even after such actions have been taken, the provisions of the Government Lands Act and other planning and environmental legislation would have to be strictly followed.

⁴ The Forest Act 2005 that is awaiting implementation, makes the process of conversion of a forest area into alternative use more stringent

⁵ The Ndu ngu Report defines the doctrine of public interest as revolving around matters touching upon public safety, security, health, defense, morality, town and country planning, infrastructure and general development imperatives.

The Minister in charge of forests is empowered to alter forest boundaries by publishing the intention to do so in the Kenya gazette providing 28 days notice. The area intended for excision must be surveyed and a boundary plan drawn and approved by the Chief Conservator of Forests before it is excised. The forest is deemed excised after the expiry of the 28 days notice through the issuance of a legal notice by the Minister.

The procedure of degazettement is designed to present an opportunity to members of the public to challenge the proposals and prevent forest destruction. It must also be pointed out that the power conferred on the Minister is not absolute and must be exercised in the public interest.

Most excisions however were done without technical considerations of social, economic and ecological implications. In a number of cases, boundary plans were not prepared, while in others, gazette and/or legal notices were not issued. Some excisions went on even after the enactment of Environmental Management and Coordination Act of 1999 which subjects any major changes in land use to an Environmental Impact Assessment.

In some cases forest areas were left out of title. The belated issuance of selective title deeds to Karura and Ngong Forests for example deliberately excluded a total area of 1125.5 ha from titled areas. The areas left out were then illegally and irregularly allocated to “private developers”⁶.

⁶ In the Kenyan context, this term is used as a euphemism for those lauding illegally acquired wealth in projects



The negative impact of forest excisions on the environment and economy is evident from the following;

- Destruction of critical water catchment areas resulting in water shortages
- Siltation of the major hydro electric dams, lakes and coral reef
- Lowering water tables- leading to drying up of water springs and boreholes.
- Destruction of micro and macro ecosystems - biodiversity once lost is not easily recoverable through afforestation/reforestation.
- Scarcity of raw materials for wood based industries leading for example to closure of saw mills
- Scarce foreign exchange being used to import timber
- Adverse effects on tourism - e.g. Lake Nakuru-the second most visited national park in Kenya is threatened by siltation and drying of rivers due to clearance in Eastern Mau forest complex.

3.0 Karura Forest

At the time it was gazetted as a forest in 1932, Karura Forest covered an area of 1062.7 ha. According to the Ndungu Report, various excisions took place between the time it was declared a central forest in 1964 and 1996. These are:

Period	Allotee/ Beneficiaries	Size (ha)	Value	Comments
1980	Tumaini School	26.251	441,090,303	no legal notice was published
1989	Hon. J.J. Kamotho	2668	44,829,870	exchange for land purportedly allocated to Kenya Technical Teachers College
1990s	Hezekiah Karanja Kogo (0.756 ha) Samson Muriithi Nduhiu (0.2179 ha) Sardu Singh Virdi and Gusharan Kaur (.8651 ha)	1.838	30,883,546	Forest department not consulted
1994	Pelican Engineering and Construction	18.41	309,339,548	Area still forestland but NSSF claims to have bought it from Pelican
1994	ICRAF, Private Developers	8.1	136,102,680	In 2003, an American Developer who had purchased the balance of 5.1 ha attempted to put up a five star hotel, efforts thwarted.

The plunder of Karura occurred between 1996 and 1998 when half of what remained of Karura Forest was illegally and irregularly allocated to private developers in circumstances that, according to the Ndungu Report, clearly constitute fraud.



The Forest



Grabbed part of Karura Forest

In 1996, a freehold title for Karura Forest was issued. It covered 564.1 ha and left out an area of 477 ha from the total forest area of 1041 ha then. A legal notice excising an area of 85 ha was published in 1997 but was signed one year earlier. No gazette notice was published.

3.1 The Value of allocations at Karura Forest

Karura Forest is one of the last remaining indigenous forests that provide a vital carbon sink for the Nairobi's industrial activity. It also serves as an important area for water catchment and is of great potential value for the relaxation and recreation for the people of Nairobi.

Our research based on adverts on land for sale (double checked with professionals involved in conveyancing) suggest a conservative value of one acre of land in the area around Karura of Ksh. 6.8 million⁷.

Redevelopment Land for Sale
Aug 15 2006 07:20h GMT
Runda (Evergreen)
Prime land of approximately 7.86 acres on a built up area offering panoramic view of Karura forest. Red soil. Close to all ...
7.86 acre(s) KES 52 M

Advert on a real estate agent's website

⁷ The prices ranged from Ksh 2.5 million to Ksh 12 million per acre.

Using this valuation, the 477 ha which are equivalent to 1179 acres, the current market value of the land illegally allocated is Ksh. 8.015 billion. In other words, 8.015 billion shillings worth of the public resources were transferred to a few individuals. If these individuals opted to sell the property as some did, this is the amount they would receive today.

Were the government to implement the recommendation of the Ndungu Commission regarding restitution i.e. recovery of all monies unjustly obtained through illegal allocation of public land, a substantial amount of this would be available to enhance Kenya's social development and welfare.

One of the most serious impediments to economic growth and poverty alleviation in Kenya is the dilapidated state of the transport system. Here is what Ksh 8.015 billion can do to improve the country's roads.

On the 21st of February 2006, His Excellency the President formally opened the 130 km Sultan Hamud- Mito Andei section of the Mombasa - Nairobi Road. The rehabilitation of the section is reported to have cost Ksh. 6.3 billion. The recovery of the money lost through illegal and irregular allocations at Karura Forest could have provided these funds. The balance of Ksh 1.72 is more than the loan extended to Kenya by the OPEC Fund for International Development of Ksh 1.06 billion to meet part of the costs of rehabilitating the 105 km Emali- Oloitokitok road⁸.

⁸ Press Release- http://www.opecfund.org/news_press/2005/pr43_2005.aspx

As the table below illustrates, Ksh 8.015 billion could also have been sufficient to fund the rehabilitation of Miritini to Maji ya Chumvi section of the Northern Corridor project (awarded at a cost of 2.3 billion shillings), Sultan Hamud to Ulu section, Uhuru Highway and Westlands- Limuru road all at a cost of Ksh 6.052 billion. There would be enough left for the purchase of road maintenance equipment to ensure the effective implementation of the roads maintenance programme for which the government signed a loan of Ksh 2 billion⁹.

Road	Km	Estimated cost (US\$)	
		US\$	Ksh
Uhuru Highway	8	40,000,000	2,920,000,000
Westlands - Limuru	32	8,600,000	627,600,000
Sultan Hamud- Ulu	35	2,800,000	204,400,000
Miritini -Maji ya Chumvi	-	-	2,300,000,000
Total		48,600,000	6,052,200,000

3.2 In whose hands is the wealth of the Karura Forest?

The following are the top ten individuals and companies that raked in the most from these allocations. Between them, they received Ksh 2.87 billion worth of prime land.



⁹ Government to Speed up Infrastructure Projects- Office of the Government Spokesperson. <http://www.communication.go.ke>

Allottee	Directors	LR.No.	FileNo.	Hs	Hs	Value (Sh)	Value (Sh)
1 Intercell Holdings Ltd	Lataj Mahorai Surendra Lalj Shah Anil Galaiya Dilip Shah	209/12703/1	LR 72844	4		67,211,200	
		209/12703/10		4		67,211,200	
		209/12703/11	LR 72854	4		67,211,200	
		209/12703/12	LR 72855	4		67,211,200	
		209/12703/13	LR 72856	4		67,211,200	
		209/12703/14	LR 72857	4		67,211,200	
		209/12703/15	LR 72858	4		67,211,200	
		209/12703/16	LR 72859	4		67,211,200	
		209/12703/17	LR 72859	4		67,211,200	
		209/12703/8	LR 72851	4		67,211,200	
		209/12703/18	LR 72842	4		67,211,200	
		209/12703/19	LR 72841	4		67,211,200	
		209/12703/2	LR 72841	4		67,211,200	
		209/12703/20	LR 72843	4		67,211,200	
		209/12703/3	LR 72846	4		67,211,200	
		209/12703/4	LR 72847	4		67,211,200	
		209/12703/5	LR 72848	4		67,211,200	
		209/12703/6	LR 72849	4		67,211,200	
		209/12703/7	LR 72850	4		67,211,200	
		209/12703/9	LR 72852	4		67,211,200	
209/12704	LR 66893	4		67,211,200			
209/12703	LR 66895	4	85	67,211,200	1,478,616,100		
2 Allottee of LR 22802	Details not available	22802		20.24	20.24	340,088,672	340,088,672
3 Kitusuru Limited	Mke Maina Geoffrey Chege Kirundi	209/12274	IR61195	18.41	18.41	309,339,548	309,339,548
4 Kiaruhi Investment Ltd		209/12099	LR 66899	4		67,211,200	
		209/12705	LR 66896	4	B	67,211,200	134,422,400
5 Malan Limited	Francis Ngok Alfred Rop	22605		0.9764		16,406,254	
		22606		0.7964		13,381,750	
		21345	IR 69906	2.941		19,417,035	
		21344	IR 69905	2.9	13.4548	18,728,120	127,933,159
6 Mtaa Holdings Ltd	Harbans Singh Amrit Mrs Kamal Parkash Amrit	21289/10	IR76076	0.211		3,545,391	
		21289/11	IR76077	0.224		3,763,827	
		21289/12	IR76078	0.2966		5,034,119	
		21289/2	IR76068	0.224		3,763,827	
		21289/3	IR76069	0.226		3,797,433	
		21289/4	IR76070	0.2904		4,711,505	
		21289/5	IR76071	0.2048		3,441,213	
		21289/6	IR76072	0.2268		3,810,875	
		21289/7	IR76073	0.1945		3,268,145	
		21289/8	IR76074	0.199		3,343,757	
		21289/9	IR76075	0.2268		3,810,875	
		21290/10	IR76067	0.3072		5,161,820	
		21290/2	IR76069	0.251		4,217,503	
		21290/3	IR76060	0.2478		4,163,734	
		21290/4	IR76061	0.2194		3,685,534	
		21290/5	IR76062	0.2194		3,685,534	
21290/6	IR76063	0.3072		5,161,820			
21290/7	IR76064	0.2011		3,379,043			
21290/8	IR76065	0.214		3,595,799			
21290/9	IR76066	0.2108		3,542,030			
21289	IR 67609	2.75	15.0465	16,207,700	125,093,185		
7 Silk Investments Ltd	Rajendra Ratilal Sangani Pradeep Karamshi Shah	21343	IR 68353	2		33,605,600	
		21342		2		33,605,600	
		21243	IR 68353	1.994	5.994	33,504,783	100,715,983
8 Allottee of LR 22801	Details not available	22801		5.64		94,767,792	94,767,792
9 Allottee of LR 21290	Details not available	21290		5		84,014,000	84,014,000
10 Frank Way Ltd & Another	Details not available	21095		4.236		71,176,661	71,176,661
				Total	170.5786	2,866,196,100	2,866,196,100

4.0 Ngong Road Forest

Ngong Road Forest is located between Jamhuri Park, St. Francis Church, Karen and Langata Roads, Bomas of Kenya, Langata Women's Prison and Kibera. It was gazetted as forest reserve in 1932 at a time when it covered an area of 2,926.6 ha. Various excisions have taken place over the years for public and private development. They include:

- Lenana School,
- Extelcoms,
- St. Francis Anglican Church,
- PCEA Mugumoini,
- Langata Cemetery,
- The War Cemetery,
- Kenya Science Teachers College,
- Meteorological Department.
- Agricultural Society of Kenya Showground.

By 1978, the forest covered 1,328.2 ha.

As was the case in Karura Forest, the bulk of illegal and irregular allocations of Ngong Road Forest occurred in the late 1990's and involved similar fraudulent transactions.

In 1996, a title deed Grant no. I.R 70244 for the forest was issued to Permanent Secretary, Treasury to hold in trust for the Permanent Secretary, Ministry of Environment and Natural

Resources. The title left out an area covering 339.8 ha from the 1978 forest area of 1,328.2 ha.

In 1999, the title was surrendered to the Commissioner of Lands and a leasehold title deed for an area of 538.2 ha issued to the Permanent Secretary, Treasury to hold in trust for Ngong Road Sanctuary. This time around, another area of 450 ha was left out from the title issued in 1996.

In total, an area of 789.8 ha was left outside the boundaries of Ngong Road Forest in the issue of title deeds. The land so excluded from the title was allocated to private developers -some of whom have transferred it to third parties.

The allocations of Ngong Road Forest provide a sad example of how public resources have been used to unjustly enrich a few and how state corporations were used to perpetuate grand corruption. State corporations did not just lose land entrusted to them but they were also pressurized to purchase illegally acquired public land at exorbitant prices. Many became captive buyers of land from politically connected allottees.

In 2001, for example, land which was part of Ngong Road Forest was illegally excised, subdivided into 32 plots and allocated to 13 companies. Between 28th and 29th August of the same year, these thirteen companies sold the plots to Kenya Pipeline Company for Ksh 262,388,478. The list of the companies, their directors and proceeds are listed below.

	Vendor	Directors	Size(ha)	Ksh
1	Linto Ltd	1. Patrick Mungasia 2. Jane Nduku	11.1	61,257,057
2	Redate Investment Limited	1. David Kutwa 2. Daniel Karoki	5.29	29,984,000
3	Tairo Investment Ltd	1. Dan Wekessa 2.Peter Wafula	5.18	29,552,234
4	Priority Ltd	1. Paul Chirchir 2. Mathew Otieno	5.086	28,903,738
5	Rama Ltd		4	22,732,000
6	Greysoil Investments Ltd		3.426	19,400,000
7	Roseco Investment Ltd	1. Fredrick Onyango 2. William Minda	2.35	13,661,932
8	Makori Investment Ltd		2.341	13,303,903
9	Tanabell Ent. Co. Ltd	File Missing	2	11,366,000
10	Berke Commercial Agencies	1. William Ruto Kipchirchir 2. David Kemei Kibat 3. Willy Bett Kipkorir 4. James Bett Kiproop	1.75	9,916,855
11	Velvet Safaris Ltd	1. Gordon Okumu Wayumba 2. Alice Achieng Okumu	0.5683	7,829,468
12	Celtic Multi-System Ltd	1. Catherine Chepchumba, 2. Silas Simatwo	0.5914	3,360,926
13	Somog Ltd	Records missing		

Source- Ndungu Report

Other illegally allocated land parcels include:

- 8.8 ha allocated for expansion of Langata Women’s Prison but later a big portion allocated to private developers who have constructed residential houses.
- 15.09 ha allocated in exchange with a prime plot in Industrial Area belonging to Department of Prisons but later allocated to private developers. At the time the Ndungu Report was written, on the land stood a modern hospital, a residential complex owned by the Kenya Medical Resuscitation Centre and other residential houses owned by illegal allottees.

- 53.68 ha allocated to a private developer in 1998. Unconfirmed information indicates the land has been sold to parastatals.
- 82 ha excised in 1997 – the legal notice was signed by John Sambu - Minister for Energy and Natural Resources one year earlier.



Part of Ngong Road Forest



“Developments” on grabbed part of Ngong Road Forest

4.1 What did the Kenyan public loose from the allocations?

Ngong Road Forest houses indigenous trees as well as some tree plantations interspersed with grassy patches. It provides a source of income from the harvesting of various products including firewood, poles and medicinal plants. The forests' flora and fauna include over 120 bird species, over 35 mammals and numerous insects, reptiles, amphibians and fish. Like Karura Forest, it serves vital water catchment, environmental and recreational uses. It provides oxygenation which helps ease the high levels of pollution in Nairobi and stabilizes the water table over a large area.

Our research based on adverts of land for sale (double checked with professionals involved in conveyancing) indicate that an acre of land in the area around Ngong Road Forest goes for an average of Ksh 4.7 million¹⁰.

Property Listing

Property Types > Commercial land (sale) > Ngong Road, Nairobi,
 Status: Available
 Type: Commercial land (sale)
 Description:
 25 acres Ngong Road near Jamhuri Exchange at 140 million.

Advert on a real estate agent's website

Using this valuation, the 789.8 ha or 1,951.6 acres left outside the boundaries of Ngong Road Forest and allocated to private developers have a current market value of Ksh. 9.173 billion. In other words, Ksh.9.173 billion worth of the public resources were transferred to a few individuals. If these individuals opted to sell the property as some did, this is the amount they would receive today.

Staying with the illustration of what the funds could do to improve roads, the computation below shows that Ksh 9.173 billion falls just Ksh 297million short of the funds required to rehabilitate the Mombasa to Bachuma Gate section of the Northern Corridor, widen both Airport North Road and section between Machakos turn-off and Jomo Kenyatta International Airport into dual carriage ways and rehabilitate the Mai Mahiu to Lanet road.

Road	Km	Estimated cost (US\$)	
		US\$	Ksh
Mombasa- Bachuma Gate	105	55,000,000	4,015,000,000
Airport North Road (Dual Carriage way)	8	11,300,000	824,900,000
Machakos Turn-off- JKIA (Dual carriage way)	33	38,420,000	2,804,660,000
Mai Mahiu- Naivasha - Lanet	97	25,000,000	1,825,000,000
Total		104,720,000	9,469,560,000

Source- Adapted from- East African Community Regional Road Network Project

¹⁰ The prices ranged from Ksh 2million to Ksh 7.8million

Ngong Road Forest neighbours Kibera- Africa's largest informal settlement with an estimated population of over 700,000 people. It originated as a settlement for Nubian soldiers in the 1920s. The name Kibera is in fact derived from a Nubian word 'Kibra' which means forest or jungle. Ksh 9.173 billion would completely change the face of Kibera as the following examples illustrate.

Provision of proper sanitation has been one of the greatest challenges in Kibera. In 1998, for example, Laini Saba (one of Kibera's nine official villages) had 10 latrines serving 40,000 people¹¹. Going by the Constituency Development Fund allocations for Langata, one pit latrine costs about Ksh 35,000 to construct. At this level of costs, Ksh.9.173 billion would provide over 267,000 pit latrines, more than enough to wipe out the flying toilet menace¹².

Overcrowding is another huge problem in Kibera - most homes are single roomed, mud walled often with leaking roofs. Assuming construction costs Ksh500,000 per unit of a low cost house, the money would put-up over 18,345 low cost housing units. Assuming further that each housing unit accommodates 5 people, this would ensure that the right to housing for over 91,000 people would be realized.

If these funds were used to provide loans averaging Ksh 50,000 to micro enterprises, over 183,000 people would benefit. Assuming an average household size of five, this would contribute significantly towards supporting over 917,000 livelihoods.

¹¹ Nairobi's 'Flying Toilets' – Tip of an Iceberg -<http://www.ipsnews.net/>

¹² Owing to the severe shortage of toilet facilities in Kibera, many residents go for long calls at night, put the waste in polythene bags and throw it out- hence the term "flying toilets"

4.2 Who benefited most from allocations of Ngong Road Forest?

An analysis of the allottees of Ngong Road forest reveals the following ten individuals and companies as having done particularly well from this scam. Between them, they received Ksh 920 million worth of prime land.

	Allottee	Directors	LR.No.	Ha	Ha	Value(Ksh)	Value(Ksh)	
1	Linto Limited	Patrick Mungasia Jane Nduku	22511 IR71048	2.87		33,331,319		
			22510 IR71045	1.14		13,239,618		
			22509 IR71019	2		23,227,400		
			22508 IR.71019	2		23,227,400		
			22507 IR71017	1.71		19,859,427		
			22506 IR71040	1.67		19,394,679		
			22505 IR71039	2.09		24,272,633		
			22504 IR71005	1	14.48	11,613,700	168,166,376	
2	Arila Investments Ltd	Not available	21283 175064	10	10	116,137,000	116,137,000	
3	Tairo Investment Limited	Dan Wekesa Peter Wafula	22500 IR71092	1.59		18,465,783		
			2244 IR71237	1		11,613,700		
			22455 IR71035	1.31		15,213,947		
			22454 IR71036	1.001		11,625,314		
			22453 IR71034	1		11,613,700		
			22452 IR71038	1		11,613,700		
			22450 IR71037	1		11,613,700		
			22449 IR71020	1	8.901	11,613,700	103,373,544	
4	Kerio Farms Ltd	Not available	20840 174052	4		46,454,800		
			20841 174052	4	8	46,454,800	92,909,600	
5	Zipporah Wangithi		21284 175067	8	8	92,909,600	92,909,600	
6	O. K. Ngunjiri		18581	7.353	7.383	85,743,947	85,743,947	
7	Redate Investment Limited	David Kutwa Daniel Karoki	22503 IR71007	1		11,613,700		
			22502 IR71006	1		11,613,700		
			22499 IR.71009	1.29		14,981,673		
			22481 IR71010	1		11,613,700		
			22475 IR71041	0.4		4,645,480		
			22474 IR71098	1		11,613,700		
			22473 IR71011	1	6.69	11,613,700	77,695,653	
			21344 177039	2.9		33,679,730		
8	MALAN LIMITED	Not available	21245 177040	2.941	5.841	34,155,892	67,836,622	
			22515 IR71249	0.714		8,292,182		
9	Makori Investmentlimited	Not available	22514 IR71099	0.7614		8,842,671		
			22513 IR71248	1.114		12,937,662		
			22512 IR71051	2.341	4.9304	27,187,672	57,260,196	
10	Inland Agencies Ltd	Not available	Uns666	4.961	4.961	57,615,566	57,615,566	
				Total	79.19	79.19	919,647,094	919,647,094

5.0 Kiptagich Forest

In 1997, (again an election year) the government decided to establish a settlement scheme in the Nakuru/Olenguruone/ Kiptagich extension forest area to resettle the Ogiek. 1,812 ha of forest land was ostensibly set aside for this purpose. However, the requisite de-gazettement of the forest was not carried out by the Minister as required by law.

The area was then surveyed, sub-divided and allocated. The shocking revelation of the Ndungu Report is that the primary beneficiaries of these allocations were prominent individuals and companies in Moi's government with only a small number of Ogiek receiving any land.

The Ndungu Commission reported that from interviews with a former Commissioner of Lands, it was established that the real reason for hiving off this land was in fact to establish an out grower tea zone for the Kiptagich Tea Estates Limited on land within Transmara Forest Reserve. Kiptagich Tea Estates Limited is owned by former President Moi.



Kiptagich Tea Estates Ltd.

The list below gives the wealthy and prominent individuals who were the primary beneficiaries of this land grab. It provides a disturbing illustration of how public officers used their position to unjustly enrich themselves their relatives, and cronies.

Alottee	Status/Position held at time of Allocation	Plot No.	Acres	Value
Kiptagich Tea Estates Ltd	Owned by former President Moi	1	197.68	39,536,000
Jane Cherotich Chepkwony	Wife to Wilson Chepkwony, former state house comptroller	2	20.04	4,007,962.00
John Kipchumba Lokorio	State House Comptroller	3	21.00	4,200,700.00
		552	10.40	2,080,582.00
		553	10.40	2,080,582.00
Col. Jonathan Kipkemai Rono	Aide de Camp to Moi	4	20.81	4,161,164.00
Samon Cherambos	GSU Commandant	5	18.21	3,642,254.00
Hosea Kiplagat	Cooperative Bank Chairman	6	20.81	4,161,164.00
Mark A Too	Chairman, Lonrho	7	20.81	4,161,164.00
Zakayo K. Chenuyot	PS, Internal Security	8	20.81	4,161,164.00
Lee Njiru	Director, Presidential Press Service	12	25.92	5,184,158.00
Joshua Kulei	Personal Secretary to Moi	13	24.22	4,843,160.00
Director and Shareholder of Sian Enterprises		14	24.71	4,942,000.00
		15	19.52	3,904,180.00
		16	19.52	3,904,180.00
		17	19.52	3,904,180.00
		18	19.99	3,998,078.00
		19	19.52	3,904,180.00
		20	19.77	3,953,600.00
		21	20.81	4,161,164.00
		22	20.81	4,161,164.00
		23	20.81	4,161,164.00
		59	19.97	3,993,136.00
		617	234.00	46,800,740.00
Joseph G. Halake	Senior Assistant Director of Survey, Ministry of Lands and Settlement	14	24.71	4,942,000.00
		15	19.52	3,904,180.00
Francis Kasung Baya	PS, Ministry of Lands and Settlement, PC Rift Valley	16	19.52	3,904,180.00
Alfred K. Cherwon	Director of Land Adjudication and Settlement	17	19.52	3,904,180.00
Samsom Kimanu Birir	General Manager, Kiptagich Tea Estates Ltd	237	5.21	1,042,762.00
		170	5.21	1,042,762.00
		171	5.21	1,042,762.00
		20	19.77	3,953,600.00
		74	18.53	3,706,500.00
		75	19.15	3,830,050.00
		76	19.25	3,849,818.00
		825	10.40	2,080,582.00
Joseph Dallidosso Lotodo	MP, Baringo East	24	16.90	3,380,328.00
Phillip Kibireh Ngelich	KETEPA General Manager	26	19.52	3,904,180.00
Major Wilson Koitaba Lalabur	Managing Director, National Cereals Board	27	18.21	3,642,254.00
Musa Sirna	MP, Eldama Ravine	28	20.81	4,161,164.00
		866	10.40	2,080,582.00
		867	10.40	2,080,582.00
		867	10.40	2,080,582.00
Samuel Bundolich	Director, EPZA	29	20.81	4,161,164.00
William Chenuyot Morogo	Minister, Public Works and Housing	30	20.81	4,161,164.00
Reuben Kipkemai Yegon	Director, Brook Bond	32	19.52	3,904,180.00

Allottee	Status/Position held	Plot No.	Acres	Value (Kshs)
Francis Sang	Director, CID	35	20.81	4,161,164
Augustine K Cheserem	Managing Director, KPTC	37	20.81	4,161,164
Sammy Silas Mwala Komen	Commissioner of Lands	38	20.81	4,161,164
		81	10.40	2,080,582
		76	19.25	3,849,818
		46	110.55	22,110,508
Gideon T. Moi Owner of Kongoy Farm	Son to former President Moi	879	10.40	2,080,582
		880	10.40	2,080,582
		882	10.40	2,080,582
		49	17.42	3,484,110
Edward Sambili	Deputy Governor, Central Bank of Kenya	61	17.30	3,459,400
Margaret Rotich	Deputy Director, Presidential Press Service	429	9.12	1,823,598
		288	5.21	1,042,762
		291	5.21	1,042,762
		62	18.21	3,642,254
Dr. Nehemiah Ngeno	Permanent Secretary, Lands	63	18.21	3,642,254
Dr. Julius Rotich	Anti- Corruption Unit	64	18.21	3,642,254
Paul Chemngoren	Managing Director- Kenya Wine Agencies Ltd	888	10.40	2,080,582
Samuel Kipchumba Kandie	PC, Coast	72	20.81	4,161,164
Limo		447	8.90	1,779,120
Peter Lagat	DC, Kitui	92	10.40	2,080,582
Margaret Japkoach Kamar	MP, East African Legislative Council, Wife to Nicholas Biwott	100	10.40	2,080,582
Joshua Terer	Ambassador and PS	101	10.40	2,080,582
		103	10.40	2,080,582
Mark Bor	PS, Local Government	104	10.40	2,080,582
		113	10.40	2,080,582
Doris Choge	Daughter to former President Moi	115	10.40	2,080,582
Wilson Leitch	councillor, Nakuru	119	10.40	2,080,582
Joseph Kipkemai Rotich	Deputy Director, Presidential Press Service	120	10.40	2,080,582
James Koskei	MP, Kuresoi	121	10.40	2,080,582
Harun Bomet	MP, Rongai	122	10.40	2,080,582
Jones Kaleli	Chaplain, Kabarak High School	123	10.40	2,080,582
Paul Kipkorir Marising arap Sang	MP, Buret	124	10.40	2,080,582
Isaac Ruto	Minister, Vocational Training	127	10.40	2,080,582
David Kimaiyo	Deputy Commissioner of Police	131	10.40	2,080,582
Benjamin Sogomo	PS, Cooperatives, Former secretary, Teachers Service Commission	133	10.40	2,080,582
Solomon Boit	Secretary, Public Service Commission	138	10.40	2,080,582
Stephen Kipkebut	DC, Kwale, Under Secretary Public Works	145	10.40	2,080,582
William Kiplumbi Boit	MP Baringo	148	10.40	2,080,582
Mary Muthoni Mugo	Rtd Senior Magistrate	154	10.40	2,080,582
Isaac Kipchumba Rotich Lelikutwa	Provincial Settlement Officer, Rift Valley	38	16.90	3,380,328
David Kipkemai Konr	Provincial Police Officer , Nyanza	156	10.40	2,080,582
Reuben Rotich	Deputy Secretary, Ministry of Local Government	158	10.40	2,080,582
Francis Kipyegon Arap Sigel	Provincial Commissioner, Nairobi	678	10.40	2,080,582
		738	10.40	2,080,582
Simon Ole Kirgotty	Director, Motor Licensing Board	175	10.40	2,080,582
Paul Goto Gene	Director, Kenya Commercial Bank	184	6.50	1,299,746
Abdulahi Dabaso Wadera	Under Secretary, Ministry of Local Government	185	6.50	1,299,746
Philemon Chelagat	Mayor, Kabamet	304	7.81	1,561,672
Philip K. Toroitich	Son of former president Moi	454	10.40	2,080,582

Allottee	Status/Position held	Plot No.	Acres	Value (Kshs)
Harry Hagga Nyapola	Director of Survey	476	5.21	1,042,762
		828	10.40	2,080,582
		829	10.40	2,080,582
		830	10.40	2,080,582
		831	10.40	2,080,582
Shukri Baramade	Senior National Intelligence Services Official	543	10.40	2,080,582
		811	10.40	2,080,582
Henry T. Ole Ndiema	Principal Immigration Officer	549	10.40	2,080,582
William Changole	DC	550	10.40	2,080,582
Josiah Kipkurui Sang	PS, Lands	568	5.21	1,042,762
Zablon Mabea Agwala	Senior Assistant Commissioner of Lands	679	10.40	2,080,582
David Mbuto	Provincial Surveyor, Nakuru	693	10.40	2,080,582
Justice William Tuiyot	Late Judge of the High Court	737	10.40	2,080,582
Benjamin Rotich	Deputy PC, Rift Valley	788	10.40	2,080,582
Aggrey Mudinyu	PC, Nyanza	789	10.40	2,080,582
Tom Owuor	Executive Director, Kenya Federation of Employers	834	10.40	2,080,582
Peter Otieno Raburu	PC, Central Province	872	10.40	2,080,582
		904	10.40	2,080,582
John Mark Moi	Son of former President-Moi	901	10.40	2,080,582
		903	10.40	2,080,582

Adapted from- Ndungu Report

5.1 What the public lost from the allocations at Kiptagich

Kiptagich Forest is part of the Mau Forest Complex which is one of Kenya's five water towers and represents the largest remaining near continuous blocks of mountain of indigenous forest in East Africa. It is a catchment area for rivers and streams that drain into Lakes Nakuru, Bogoria, Baringo, Victoria and Natron. The Mau Complex is home to some rare and endangered animals such as the Bongo antelope and the Colobus monkey. The water from Mau Forests serves more than 4 million people in Kenya and Northern Tanzania. It is also the home of the Ogiek Community - one of the very few remaining forest dwelling communities in Kenya.

Our analysis of the Ndungu Report shows that 2,588 hectares or 6,397 acres were illegally and irregularly allocated under the Nakuru/Olenguru one/Kiptagich extension. This is way above the 1,812 ha earmarked for excision.

Conservative valuations of the land in Olenguruone Division of Nakuru District place the current value of an acre of land at Ksh 200,000. Our computation of the value of the allocated land using this information gives a value of Ksh. 1.3 billion.

Were this amount to be recovered from the beneficiaries of the allocations, it would be sufficient to rehabilitate any of the following roads:

Road	km	estimated cost (US\$)	Ex Rate	estimated cost (ksh)
Lanet- Mau Summit	61	18,000,000	73	1,168,000,000
Mau Summit - Timboroa	54	18,000,000	73	1,314,000,000
Timboroa-Eldoret - Malaba	163	15,500,000	73	1,131,500,000

Source- East African Community Regional Road Network Project

As the table below illustrates, the money would also have been more than sufficient to undertake work planned under the Nakuru District Development Plan 2002-2008 on the following roads:

Road	Nature of work	Cost (ksh)
Nakuru- Mogotio	parching and resealing	555,000,000
Mdo South - Kuresoi	re-gravelling	130,600,000
Elburgon- Rongai- Machenge	re-gravelling	133,000,000
Moi South Lake	re-gravelling	98,000,000
Solai- Subukia	re-gravelling	210,000,000
Elburgon- Rongai- Machenge	grading	86,000,000
Kaptembwa Githima- Baruti	gravelling	50,000,000
Total		1, 262,600,000

Adapted from-Nakuru District Development Plan 2002-2008

Landlessness is one of the primary causes of poverty in Nakuru. The average farm size in the district is 2.5 acres. Had the 6,397 acres been allocated to needy landless people, about 2,596 households would have benefited.

Using information from the District Development Plan 2002-2008, we list below other individual projects whose resource requirements would make-up a mere 22% of the 1.3 billion. Put differently, these projects would have been scaled-up by about five times to exhaust a 1.3 billion budget!

Project	Cost (ksh)
Bahati Chania Water Supply	8,000,000
Kerma Water Supply	35,000,000
Creater Stream	5,000,000
Keringet Water Supply	4,000,000
Ngata Water Supply	3,000,000
Ndabibi Water Supply	8,000,000
Kiambogo Water Supply	3,000,000
Kirengero Water Supply	35,000,000
West Acre Water Supply	15,000,000
Veterinary projects-disease and pest control/Vaccination-	1,884,920
Dairy Development Project	4,000,000
Construction of Horticultural production centres	15,000,000
Potato Storage Project	6,000,000
Lari Wendani Irrigation Scheme	2,000,000
Chemasis Irrigation Project	2,000,000
Dairy- Cooling Plant	20,000,000
Development of Landing beaches in Lake Naivasha	1,200,000
Training of Jua Kali Artisans	1,650,000
Nakuru District Hospital Kapkures- Construction	20,000,000
Essential Drug Supply	50,000,000
Renovation of District Headquarters	10,000,000
Construction of DO's headquarters- Lare Division	5,000,000
Maii- Mahiu Police Station- building offices	20,000,000
Total	274,734,920

5.2 Who benefited most from the Kiptagich allocations?

The following are the ten individuals and companies that did particularly well from this land grab. Between them, they were allocated 1090 acres of prime agricultural land worth Ksh 223 million.

Allottee	Directors/Owners	LR.No.	Ha	Ha	Value (\$h)	Value (\$h)
1 Sian Enterprises	Joshua Kulei Ngai Pavit William Sambu Kipchumba Image Trustees	13	9.8		4,843,160	
		21	8.42		4,161,164	
		22	8.42		4,161,164	
		23	8.42		4,161,164	
		617	94.7	129.76	46,900,740	64,127,392
2 Kiptagich Tea Ltd	Daniel Arap Moi	1	80	80	39,536,000	39,536,000
3 Kongoy Farm	Gideon Towett Mui Zahra Salim Mohamed Bahlewa	46	44.74		22,110,508	
		879	4.21		2,080,582	
		880	4.21		2,080,582	
		882	4.21	57.37	2,080,582	28,352,264
4 Thomas Kiprop		42	8.42		4,161,164	
		47	10		4,942,000	
		551	4.21		2,080,582	
		68	8.42	31.05	4,161,164	15,344,910
5 Samson Kimaru Birir		20	8		3,953,600	
		74	7.5		3,706,500	
		75	7.75		3,830,090	
		825	4.21	27.46	2,080,582	13,570,732
		826	4.21		2,080,582	
6 Tolosho Ltd	Mart Properties Dinah Chelal Jelimo	654	4.21		2,080,582	
		655	4.21		2,080,582	
		656	4.21		2,080,582	
		657	4.21		2,080,582	
		659	4.21		2,080,582	
		669	4.21	25.26	2,080,582	12,483,492
		50	8.42		4,161,164	
6 Tim Tim Holdings	Dinal Jelimo Chelal Mart Holdings Ltd Tiwai Holdings Sammy Mwaita,	51	8.42		4,161,164	
		53	3.16		1,561,872	
		147	4.21	24.21	2,080,582	11,964,582
		28	8.42		4,161,164	
7 Musa Sirna		866	4.21		2,080,582	
		867	4.21		2,080,582	
		867	4.21	21.05	2,080,582	10,402,910
		867	4.21		2,080,582	
8 Silas Sammy Komen Mwaita		38	8.42		4,161,164	
		81	4.21		2,080,582	
		76	7.79	20.42	3,849,818	10,091,564
9 Joseph G. Halake		14	10		4,942,000	
		15	7.9	17.9	3,904,180	8,846,180
10 Harry Haggai		828	4.21		2,080,582	
		829	4.21		2,080,582	
		830	4.21		2,080,582	
		831	4.21	16.84	2,080,582	8,322,328
Total			451.32	451.32	223,042,344	223,042,344

6.0 The role of corporate bodies

The Ndungu Report contains many cases of illegal and irregular allocations made to corporate bodies. The records of many of these companies were not available at Registrar of Companies. Our own efforts to establish the individuals behind these companies have so far been unsuccessful.

While the limited company form of business organization serves many important and legitimate roles in a commercial set up, it sometimes provide a cloak with which it can be misused for illicit purposes including corruption, and in the process hide from the law.

Some individuals went to great lengths to conceal their identity, forming intricate webs of inter-related companies that remind one of a spaghetti bowl. Take Tim Tim Holdings and Tolosho Ltd, both among the top beneficiaries of illegal and irregular allocations at Kiptagich Forest for example.

According to the Ndungu Report, Tim Tim Holdings is owned by Dinal Jelimo Chelal (of P.O Box 16379 Nairobi) and Mart Properties Ltd. The shareholders of Mart Properties Ltd are Tiwai Holdings Ltd. The directors and shareholders of Tiwai Ltd are Sammy Mwita, Silas Komen and Dinah Chelal Jelimo. (The first two names bear a striking resemblance to the names of a former Commissioner of lands- Sammy Silas Komen Mwaita).

Tolosho Ltd is owned by Taiwai Holdings Ltd (of P.O Box 16379 Nairobi!). Its shareholders are Mart Properties and Dinah

Chelal Jelimo, this time of P.O.Box 27794 Nairobi. Mart Properties' shareholders according to the information above regarding Tim Tim Holdings are Tiwai holdings. The web can be further extended from this cue but clearly these are the same individuals wearing different company veils.

Evidence also points to the use of proxies such as nominee directors to front for prominent people in these illegal deals. A case in point is Ankhan Holding Limited, which sold land illegally allocated from Ngong Road Forest to the NSSF. The company was sued for fraud by NSSF for having sold land which was an integral part of Ngong Road Forest upon which no residential or other development could be undertaken or entertained. The companies "directors" are Sammy Boit arap Kogo and Hubert Nyambu Mwakiwa. Information arising from the case however identifies the real owner as Jonathan K. Toroitich Arap Moi, a son of former President Moi.¹³

The practise of beneficiaries of corruption hiding their identity behind companies whose directors and shareholders cannot be traced is a common way in which the high and mighty defeat the cause of justice. In our view, these companies are not different from the phantom companies involved in the Anglo- leasing type contracts.

¹³ National Social Security Fund Board of Trustees Vs Ankhan Holding Limited and 2 others(2006)
<http://www.kenyalaw.org>

7.0 Conclusions and Recommendations

The combined value of the illegal and irregular allocations in the three forests is a staggering Ksh 18.47 billion. This is more than half of the Ksh 32.69 billion that the Ministry of Roads and Public Works plans to spend on improving roads and other infrastructure in the 2006/7 financial year. It is also more than the development budget allocations (gross estimates) for the following 4 ministries combined as the table below illustrates:

	Gross Estimates (Ksh) 2005/2006
Ministry of Transport	1,935,500,000
Ministry of Health	11,716,294,206
Ministry of Cooperative Development and Marketing	188,094,750
Ministry of Agriculture	4,431,142,579
Total	18,271,031,535

Source: 2006/2007 Estimates of Development Expenditure of the Government of Kenya

For these reasons, we wholly support the recommendations of the Ndungu Commission and in particular urge for recovery of all monies unjustly gotten through illegal allocation of public land (Restitution) and the prosecution of individuals, officials, companies and professionals involved in illegal allocations.

For all those alienations done in disregard of the requirements of the Forest Act, the Ministers responsible should be charged under Section 130 of the Penal Code for disregard of statutory duty. Section 130 states:


“Everyone who wilfully disobeys any written law by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public, or any part of the public, is guilty of a misdemeanour and is liable, unless it appears from the written law that it was the intention of parliament to provide some other penalty for the disobedience, to imprisonment for two years.”

Further, charges should be brought under Section 46 of the Anti-Corruption and Economic Crimes Act which states that:

“A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.”

We call upon professional bodies whose members have been involved in the theft of public resources to take action. We also call for lustration of public officers involved in grabbing of public land ie those involved in the theft should be disqualified from holding public office whether elected or bureaucratic.





We support the recommendations of the Ndungu Report specifically regarding forest lands which include the cancellation of excisions made contrary to Forest Act, Government Lands Act, and all resultant titles, revocation of all allocations to individuals for personal benefit and the withdrawal of all 2001 gazette and legal notices of intention to excise forest which have been challenged in court.

Regarding corporate bodies, there is need for changes in laws and regulations to require extensive disclosure of beneficial ownership and control information to the authorities at the formation stage and an obligation to update such information when changes occur. Intermediaries involved in the formation and management of companies should be required to obtain, verify, and retain records on beneficial ownership and control and to grant authorities access to such records for the purpose of investigating illicit activities.



Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lanana Rd,
P.O Box 74359 - 00200, Nairobi - Kenya
Tel: 254 -20-2717908/2717928
Fax: 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: 254-051-2215932
Website: www.kenyalandalliance.or.ke