



Rights Violations in Isiolo International Airport Land Expropriation

By Fatuma Huka



Legally recognised and secure land and resource rights are fundamental to advancing peace, prosperity, and sustainability. Security of tenure underpins a society's fabric and its relationship to the natural environment, shaping its cultural development and the realisation of democracy. In Kenya, the land question remains politically sensitive and culturally complex, a function of historical injustice, land ownership disparities, and tenure insecurity.

Most land disputes in Kenya arise from how the land has been allocated. This is because access to land and land use in Kenya is a distributive game that creates winners and losers. From 1965 to the late 80s, land appropriation and allocation programmes were clearly biased in favour of the elites and the ruling class and as a result, vast swathes of land were concentrated in the hands of a wealthy few. This led to land inequality and exacerbated other forms of inequality, affecting the common man's livelihood and prospects for prosperity.

With rising land inequality and with the citizens unable to question or control this imbalance, the likelihood of violent conflict over land increased. A push for people-centred land reforms culminated in the Land Policy of 2009 and the promulgation of the Constitution of Kenya (CoK) 2010. The land reforms foreseen in the CoK 2010 and other substantive laws rest on the principles of equitable access to land, security of land rights, sustainable and productive management of land resources,

and the transparent and cost-effective administration of land. But despite the passing of laws governing land reform, the transparent and effective administration of land remains elusive.

Compulsory land acquisition

The government occasionally needs to acquire land for public projects like roads, power plants, water reservoirs and even schools or hospitals. In such cases, the rights of the government override individual rights of ownership; the government can take possession of privately or communally-owned land through compulsory acquisition.

Article 40 (3) of the [constitution](#) and the [Land Act, 2012](#) allow for acquisition only where the land is required for a public purpose or in the public interest. Upon acquisition, the law provides for prompt payment of just compensation. However, compulsory land acquisition can lead to human rights violations and the Isiolo International Airport case is a classic example.

The expansion of the Isiolo airstrip into an international airport is part of the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) development project. LAPSSET is a component of the Kenya Vision 2030 Programme whose aim is to transform Kenya into a newly industrialising, middle-income country providing a high quality life to all its citizens in a clean and secure environment by the year 2030. The Isiolo International Airport is one of the projects expected to spur economic growth in the region.

The expansion of the Isiolo airstrip was carried out on land that is in both Meru and Isiolo counties. Landowners living in Meru County who were expropriated received their compensation on time, while some landowners in Isiolo County were yet to be compensated by the time the airport opened in 2017. This is because land ownership in Meru is well documented whereas most of the land in Isiolo is owned by communities under customary law without formal title deeds. This has made the compensation process slow, unfair, and unjust.

This disparity in the tenure system has disadvantaged the people of Isiolo who find themselves in this situation due to historical marginalisation. In effect, land in Isiolo County has been considered to be of low potential since colonial times, a perception that has been perpetuated by successive governments which have continued to invest highly in the areas that were identified as having a “high potential” — with abundant natural resources, rainfall, and productive land among other factors — for the development of the economy. This systemic marginalisation, together with insurgency wars and banditry in the region, has meant that land in Isiolo County has remained invisible to investors. That is, until the LAPSSET Corridor project took off.

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Coupled with the disparity in land tenure systems, the failure to establish communication channels with the affected communities was a major cause of the chaotic compensation process, and efforts to identify the legitimate landowners entitled to compensation were fraught with difficulties. In effect, undocumented landowners were not the only ones to rush to Ardhi House for allotment letters; as soon as the project was proposed, land grabbers conspired to obtain Part Development Plan (PDPs) which would enable them to claim compensation from the LAPSSET project.

This led to double or even triple issuance of letters of allotment for the same piece of land, undermining the security of tenure of the original owners of the land. Community elders in Isiolo County have brought this issue to the attention of the relevant authorities but the county

government has been lethargic in moving to resolve this matter, mainly due to the poor land records and management system it inherited from the defunct Isiolo County Council.

Confusion

Article 40(4) of the Constitution of Kenya 2010 provides for compensation to be paid to occupants in good faith for expropriated land which has no title. This provision is supported by various other legislations. For example, Section 5 of the Land Act of 2012 recognises customary land rights, whether documented or not, as one of the forms of land tenure in Kenya.

Further, Section 5(3) of the Community Land Act of 2016 recognises customary land rights to be equal in law with freehold and leasehold interests in land while the [Land Value Index Laws](#) provide comprehensive guidelines for the calculation of the value of such land. However, critics of the land value index claim that sections of the Act can cause suffering to landowners as the Act gives the government up to a year to compensate landowners based on the value index and not on the prevailing market rates.

The Land Value (Amendment) Act 2019 provides for additional forms of compensation apart from monetary compensation, including allocation of alternative land of equivalent value and land use. In the case of the Isiolo Airport project, the displaced residents were allocated alternative land at Mwangaza, Kiwanjani, and Chechelesi but as it turned out this land was already occupied. Lack of public participation in the compensation scheme was the underlying cause of the confusion. Had the Ministry of Lands, the Kenya Airports Authority (KAA) and the project contractor engaged the local leaders, elders and the host community at the outset, this problem could have been avoided. Instead, the compensation process has pitted the resettled community against the original occupants, leading to tension and suffering.

In the particular case of the drylands, there is no clear matrix that guides compensation as the parameters to be applied are not provided for in law. In effect, the Land Value (amendment) Act of 2019 does not cover communal land, the most common type of tenure in the dryland areas which make up more than 50 per cent of Kenya's land mass. The national and county governments were to jointly develop a land value index map within six months of the adoption of the Act on 19 August 2019 but to date there is no evidence of any consolidated value index of all lands in Kenya, rendering the process of land compensation in drylands a difficult task.

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The compensation value for a piece of land in the urban and high potential areas is determined by proximity or access to social infrastructure such as tarmacked and paved roads, access to electricity, schools, hospitals, serenity, and aesthetic beauty. This is not possible in the drylands, which have different characteristics but where the land is of equally great social-economic value to the community, yet the Land Value (Amendment) Act of 2019 does not make provision for the valuation of communal land in a manner that reflects the social-economic practices of the communities such as pastoralism.

A 2017 report by Hakijamii titled [Tension Between Human Right and Development - The Case of LAPSSET in Isiolo County](#), finds that the project failed to "uphold human rights to information, housing, employment, education and provision of water". A review by the [Environmental Justice Atlas](#) (EJATLAS) concludes that the Isiolo Airport project is not an "Environmental Justice Success" as by the time the expanded airport commenced operations, some of the affected residents had not

yet been compensated. The Compulsory Land Acquisition Act, The Constitution of Kenya 2010, the Land Act, 2012 are among the many laws that have been passed to prevent such outcomes, yet the affected communities find themselves at a loss as they were not even informed about the impact that the expanded Isiolo Airport and the other large-scale projects would have on their lives.

Impact on pastoralism

Ideally, the population of a country must benefit equally from government policy regardless of age, class, ethnicity, population size and location. Yet, rather than gaining, the marginalised people of Isiolo are losing from these flagship projects because of lack of proper compensation since the land is perceived to be unoccupied or underutilised. Indeed, pundits argue that infrastructure projects such as LAPSSET and Isiolo resort city are being implemented in pastoral areas because there is not enough space in higher potential areas whereas the rangelands are perceived to be idle land.

The assumption that land in the arid and semi-arid areas (ASALs) is idle and of lesser value leads to the flouting of compensation guidelines when projects are undertaken in ASALs. It also explains why the communities that were affected by the Mombasa-Nairobi Standard Gauge Railway have been compensated while those affected by the LAPSSET project — which will hive off approximately half a million acres of land in Lamu, Garissa, Isiolo, Marsabit, Samburu and Turkana — are yet to be compensated.

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The airport is just one component of the LAPSSET Corridor project which also comprises the Lamu Port, a resort city, a Standard Gauge Railway (SGR), and an oil refinery and pipeline. While these infrastructure projects will undoubtedly attract investors and other populations to Isiolo, this will also lead to cultural shocks as people from different backgrounds with different beliefs, behaviours, languages and values come into a community largely made up of people who hold comparable values. Changes in social-economic activities will also lead to loss of local cultures as dominant cultures are introduced. Finally, as ancestral lands are lost and grazing land diminishes, cultural livelihoods such as nomadic pastoralism will be affected, undermining the resilience of pastoral communities.

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