

Historical Land Injustice and Poor Planning in Kenya: A Major Predicament on Eco -Tourism- A Conspectus

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Abstract

Land in Kenya has been and ruins a politically vulnerable and culturally assorted issue. Kenya's account with hold to the land subject is characterized by hint of a collapse in land management, discrepancy in land possession, tenure apprehensiveness and conflict. Of which without the predicament of land being solved, eco-tourism cannot be achieved. Eco-tourism which involves travelling to the pristine undisturbed places with the aim of preserving the environment, educating both the host and also the tourist. Further it aims in improving the welfare of the local community. Historical land injustice and poor planning has been the major constraint for the development of eco-tourism in Kenya since independence though the issue of land injustice has been addressed in the Kenyan new constitution 2010¹ and other existing laws. Therefore this paper tries to seek reasons behind land injustices, the legal framework to tackles the issues of both prejudice and poor planning a key delay for sustainable development of eco-tourism in Kenya.

KEYWORDS: Historical Land Injustice, Planning, Ecotourism.

Introduction

The British colonial master in Kenya placed land in a high level of magnitude than before. It is not an inimitable state of affairs for Kenya. Wars have been fought in Kenya over the possession of land and other wealth allied with it being at the core of disagreement. When the British stepped in Kenya, scores of populace were dislodged from their original homes. Following the Second World War,² aboriginal Kenyans discovered that their land had been steadily taken away from them. This saw the commencement of ferocious war amid the native

Kenyans and the regal government. After self-government in 1963³ it was felt that the mayhem unswerving against aboriginal Kenyans whom their livelihood depended on eco-tourism as far as land was concerned would be remedied. Eco-tourism further extends respect and benefits to the Natural environment as sound as the people therein fur this purpose, eco-tourism focuses on minimizing the environmental and cultural impact, causative to conservation, community development and environmental awareness. Therefore by all means the denizens have been using all the legal mechanism to have their back if not seeking for compensation.

¹ The constitution of Kenya, 2010

² Brands H (2005). "Wartime Recruiting Practices, Martial Identity and Post-World War II Demobilization in Colonial Kenya". *J. Afr. Hist.* **46** (1): 103–125. JSTOR 4100831.

available at https://en.wikipedia.org/wiki/History_of_Kenya accessed on 10/03/2019

³ Conley R. "Joyful Kenya Gets Independence from Britain". *The New York Times*.

available at [available at https://en.wikipedia.org/wiki/History_of_Kenya](https://en.wikipedia.org/wiki/History_of_Kenya) accessed on 10/03/2019

The escalation of eco-tourism in Kenya is conversely is guarded by a weak policy, poor planning , legal and regulatory framework, inadequate level of community participation, market incursion and product expansion; partial monetary incentives from the government and escalating environmental dilapidation due to mega project in forest areas are the major challenges of eco tourism .

Unquestionably, still after independence the problem of land continued to exist till the scenery in land reform was acknowledged as an indispensable factor of Kenya's National Dialogue and Reconciliation (KNDR) in 2008 ⁴ after Kenyan post election violence where by thousands lost their lives and others were displaced. Under the national dialogue the main agendas which were set to resolve historical injustices include⁵

- i. The founding of the Truth, Justice and Reconciliation Commission (TJRC) which among other things looked into historical land injustices. It completed with a report that enclosed an inclusive chapter on Land and Conflict in Kenya.⁶
- ii. The embracing of the National Land Policy as Sessional Paper No. 3 of 2009.⁷
- iii. The proliferation of the Constitution of Kenya in 2010; which has re-conceptualized the loom to land use and administration on the basis of fairness, effectiveness, output and sustainability.
- iv. The assessment and synchronization of Kenya's land legal regime through the ratification of the Land Act (2012), Land Registration Act (2012), and the National Land Commission Act (2012). Legislation on Community Land.⁸
- v. The founding of the National Land Commission (NLC); as the administrator of public land, articulator of the National Land Policy and canvasser of historical land injustices among other errands⁹

Cause of land injustices and poor planning in Kenya

- a) Land allied injustices took countless forms such as unlawful conquest of personage and community land by municipal and personal institutions and also seize by government authorities.
- b) Some took taken gain of existing land-related injustices, when addressing other social tribulations such as political divergence.
- c) Strained expulsion of original inhabitant private developers through the cartel from the government

Impact of poor land planning and eco-tourism.

⁴ <https://peacemaker.un.org/kenya-truthcommission2008>

⁵ Kenya human rights commission "redressal of historical land injustice in Kenya " available at <https://www.khrc.or.ke/mobile-publications/civil-political-rights/114-redress-for-historical-land-injustices-in-kenya/file.html> accessed on 12/03/2019

⁶ ibid

⁷ ibid

⁸ ibid

⁹ national council for law reporting library "national land commission act (no. 5 of 2012)" available at <http://extwprlegs1.fao.org/docs/pdf/ken170717.pdf>

- i. most of the Kenyan wildlife and game reserves they occupy community These locale are in the scorched and partially arid savannah occupied by pastoral population and therefore the government hardly involves the local communities hence there's little or rather no benefits for them
- ii. Local communities are attacked by wildlife hence human –wildlife conflict which leads to poaching and at times lose of human lives and property. This is because the government and other stake holder have not put the appropriate protection measures in place.
- iii. Local communities are the owners and users of the vast environmental and natural resources. Unfortunately they have been left out in decision making. Most of them have lost their land without compensation and if there's just a handful. To resolve this, they must be involved for eco-tourism to be sustainable. Local people have the greatest knowledge of their ecosystems which when intermingle with contemporary practice to give out best output. Locals have incontrovertible rights to their inherited lands and the possessions that they have preserved and used for cohort.

Steering values for Kenya's land policy

A. Kenyan constitution

The current Constitution 2010 chapter five from article 60 to 72 deals with land and environmental resources.¹⁰ Further under the said Constitution there are others institutions which provides and a prospect to fully address land related injustices. Article 60 spot the following main doctrine informing Kenya's land guidelines:

- i. Reasonable access to land.
- ii. Security of land rights.
- iii. Sustainable and prolific administration of land possessions.
- iv. Transparent and asking price effectual management of land.
- v. Resonance preservation and fortification of ecologically susceptible areas.
- vi. Purging of gender favoritism in law, customs and performance linked to land and Property in land.
- vii. Encouragement of communities to resolve land quarrel through renowned local Community programs dependable with the Constitution.

B. The national land commission Act (no. 5 of 2012)¹¹

its main aim is to investigation of historical land injustices which occurred between the 15th June, 1895 and the 27th August, 2010.¹² Further the commission under section 4¹³ has the powers as provided in article 67(2)¹⁴ of the Kenyan constitution 2010¹⁵ to initiate investigation on historical land injustice and

¹⁰ article 60-72 chapter five the constitution of Kenya, 2010

¹¹ national council for law reporting library "national land commission act (no. 5 of 2012)" available at <http://extwprlegs1.fao.org/docs/pdf/ken170717.pdf>

¹² section 2 national land commission Kenya

¹³ power of the commission to commence investigation

¹⁴ functions of the land commission Kenyan constitution 2010

¹⁵ ibid

monitoring use of the land in the counties though this Act was crafted properly, still they're loop holes and failure of implementation.

C. Land registration Act 2012¹⁶

It's also an important piece of legislation in its definition on "community" means a clearly distinct group of users of land acknowledged on the root of ethnicity, culture or comparable community of significance as granted under Article 63(1)¹⁷ of the Constitution, which clutch's a set of noticeably distinct rights and responsibility over land and land-based resources.¹⁸ Thus giving room to inoculation eco-tourism activities. Further in section 8 it provides for the registration of the community land for the purpose of the user of the land, identifying members registered. Hence once all the needful requirements have been fulfilled they are issued with the certificate.¹⁹

D. the land Act, 2012no. 6 of 2012 (amendment) act 2016)²⁰

This Act also works with the guiding principles in section 4 on issues concerning ²¹

- a) Unbiased access to land
- b) Security of land rights
- c) Storing up and protection of ecologically receptive areas.
- d) Saving of land on grounds of natural resources.

Further in section 19 The Commission on land shall formulate rules and policy for the sustainable preservation of land based natural resources. Devoid of restrictive what the Commission may lay down the following rules.²²

- a) Measures to protect vital ecosystems and environment.
- b) incentives for communities and folks to endow in income spawn natural resource protection programmes
- c) Actions to make achievable the access, exploit and supervision of forests, water and additional resources by local communities.
- d) procedures for the registration of natural resources in an appropriate register;
- e) Measures on the participation of stakeholders in the running and operation of land- based natural resources.
- f) Actions to guarantee benefit distribution to the pretentious communities.

¹⁶An Act of Parliament to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes available <http://extwprlegs1.fao.org/docs/pdf/ken112133a.pdf> accessed on 12/02/2019

¹⁷ ibid

¹⁸ ibid

¹⁹ ibid

²⁰An Act of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land

laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes

available at <http://www.parliament.go.ke/sites/default/files/2017-05/LandAct2012.pdf> accessed on 12/03/2019

²¹ section 4 guiding principle Kenyan land Act 2012

²² section 19 conservation of land based on natural recourse Kenyan land Act 2012

For that reason through these measures eco-tourism can be achieved if the said measures can be implemented

Challenges of eco- tourism in Kenya

The growth of eco- tourism has been countenance by pitiable setting up and administration from the wildlife parks and reserves has led to environmental ruin arising from habitat obliteration and animal aggravation.²³

a) Deficient in of capital.

Money is an essential factor of production. Without money eco-tourism cannot be achieved. To initiate the whole exercise funding is required and majority of people in the remote areas lives below poverty line. Hence it's one of the most challenging factors facing the development of eco-tourism in Kenya.

b) Pitiable government shore up.

The governments both the national and county government at times they don't respond in support of eco-tourism. Human wildlife conflict has been on the rise. Thus little support comes from the government. Land grabbing being also the major challenge the governments of the day have failed to address the issue.

c) Stumpy level of technology.

Squat level of technology is also one of the major predicaments of eco-tourism. At 21st century, technology must be embraced to preserve the environment and also benefit the host and he visitors

d) Deprived Infrastructure.

Connectivity to remote areas still remains a big challenge. Road network and other means of communication remains a night mare to the host and also the visitors. Government should involve the local community in making roads as they also earn their living from there.

e) Poor implementation of the existing law of environment

Kenya after the 2010 constitution²⁴ has crafted the best provisions on environmental. However it's unfortunate to note that the executing bodies are not into the task of implementing them properly

f) Land Tenure

A predominantly vital issue in Kenya is the necessitate to spot land tenure. It is intricate or unfeasible for aboriginal populace to widen land or ability based eco-tourism if they

²³ Yazan Ahmed Mohamed elhadi "challenges of ecotourism in Kenya"

https://www.academia.edu/3199534/challenges_facing_ecotourism_in_kenya

²⁴ ibid

cannot institute rights to the land. Legal mechanisms require being in set for land rights to be confirmed and reputable.

Conclusion

In spite of remarkable drafted laws in Kenya, eco-tourism has clued-up a with number of constraints and confines. In Kenya elections are associated with war hence it leads to the displacement of populace which has destabilized eco-tourism growth course and latent. Pitiabile infrastructure has turn into many eco spot unreachable, distressing eco-tourism budding. Institutional and human aptitude has been a momentous hindrance to effectual administration of eco-tourism in Kenya. Competence confines have delayed the knack of players in Kenya to efficiently keep an eye on and alleviate probable unenthusiastic impacts of eco-tourism. Deficiency of monetary resources and entrepreneurship skills amid the local communities synchronized with human- wildlife conflict .Corruption has been also one of the major setbacks in governance. Land injustice has never been solved since backlog of cases are derailed in court. Therefore it becomes difficult to achieve eco-tourism .Kenya requires environmental experts to deal with sensitive matters and also educate the public on environmental protection especially at this era of global warming.

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