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REPUBLIC OF KENYA

Forensic Investigation Report of the Auditor-General on the 2011 Evictions and Demolitions in Three Airport Locations Around Nairobi

21 June 2012

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1. Executive Summary

1.1. Introduction

Pursuant to the Clerk of National Assembly letter dated 19 March 2012, my Office has conducted a forensic investigation into the evictions and demolitions that were undertaken in various environs of Nairobi in October and November 2011. This investigation was carried out on the recommendation of the Joint Parliamentary Committee on Administration & National Security, Lands & Natural Resources, Local Authorities, Transport, Public Works and Housing (the "Joint Parliamentary Committee"). The investigation was conducted over a 13 week period from 19 March 2012 to 20 June 2012. This Report sets out the work done and key findings from the investigation and is aimed at assisting the Joint Parliamentary Committee in their review of the evictions and demolitions, and the various land ownership disputes related thereto.

Our terms of reference as per the Joint Parliamentary Committee were to:

- Establish ownership of land in the affected areas;
- Authenticate the documentation therein;
- Look into the demolitions and evictions carried out in the affected areas;
- Assess other matters that may arise;
- Write a forensic audit report; and
- Propose viable restitution options to the affected persons.

We were required to conduct a forensic investigation into the evictions and demolitions in and around the following aerodrome locations:

1. Jomo Kenyatta International Airport ("JKIA"):- (i) Syokimau area, (ii) Kyang'ombe village, and (iii) KPA Village & Maasai Village.
2. Wilson Airport:- (i) Mitumba Village.
3. Moi Air Base ("MAB"):- (i) Eastleigh Section III and Biafra, (ii) Kyambiu Village, and (iii) Kitui Village.

For each of the areas above, our aim was to :

- Understand what happened, how it happened, and what it implies.
- Assess who may be responsible and/or culpable, lessons learnt, and what might be done to remediate.

The team consisted of various individuals with skills and expertise in different fields as follows:

- Office of the Auditor-General (OAG);
- PWC- public sector and forensic investigation expertise ;
- Coulson Harney Advocates & Sichangi Partners Advocates – legal expertise;
- Knight Frank Kenya Limited – survey, land management & valuation expertise;
- Trailstar Investigations – handwriting and document examination expertise

Our findings must be considered in light of the various constraints and limitations we have faced in conducting this assignment. The challenges that we faced, although substantial in some parts , did not prevent or deter us from carrying out our work as set out under the terms of reference.

We set out some of the difficulties we faced below:

- In certain cases, it was difficult to gain audience with senior Government officials resulting in delays to our work;

- Due to the time that has elapsed since some of the events in question took place we faced challenges in accessing information, documentation and individuals who were involved. In some cases, these individuals had passed away while in other cases individuals we met were unable to remember important events or details that underlay some key decisions or actions. In addition, some documentation was not readily available or at all;
- Owing to the voluminous nature of the documentation, it took time to collect, consolidate and analyse facts;
- At the outset, it was envisaged that we would meet a certain number of people and representative groups of people. However, as the assignment progressed, there was an unexpected proliferation of representative groups and claimants, more so, in relation to the informal settlement areas, all of whom claimed to represent affected villagers;
- There was a proliferation of what appeared to be duplicate or forged documents, some of which were brought to us towards the end of the assignment. This necessarily meant that more analysis and investigation was required in latter stages of the assignment;
- We were also unable to access or find certain key documentation at the MoL which have a bearing to this investigation;
- Certain key individuals did not respond to our invitation for an interview. Those who did not respond to our invitation include inter alia:
    - Head of Civil Service Mr Francis Kimemia;
    - Former Kenya Airports Authority ("KAA") MDs Mr Muriithi and Mr Muhoho;
    - Former Commissioners of Land Mr Wilson Gacanja and Mr JR Njenga;
    - Officials of Foster Trading Company Limited ("Foster"),
    - Officials of Ungani Enterprises Limited ("Ungani Enterprises").

This summary of our findings, which should be read in conjunction with the full report and the caveats and restrictions set out therein, comprises the following sections:-

1.1 Introduction
1.2 Ownership of land
1.3 Evictions and demolitions
1.4 Impact on affected persons
1.5 Responsibility and culpability
1.6 Possible claims by affected individuals and Government
1.7 Recommendations

1.2. Ownership of land

We summarise below our findings with respect to ownership of the affected parcels of land in each of the three aerodrome locations as outlined above (JKIA, Wilson Airport and MAB). These three locations had specific areas within and around them that were affected by the evictions and demolitions exercise that took place between October and November 2011. We assess the claims to ownership by various parties over the affected land. Our review relies on documentation obtained from the various Government ministries and bodies involved in land administration processes, and documents and oral submissions from the various claimants.

1.2.1. JKIA

1.2.1.1. Introduction

We traced the history of the parcel of land on which JKIA stands to enable us to understand the extent of the parcel of land under investigation and to assess whether land on which evictions and demolitions took place is linked to the airport in any way. The history of JKIA (the erstwhile Nairobi Airport) can be traced back to 1953 when Parliament enacted the Aerodromes (Control of Obstructions) Act 1953 , which delineated the area and acreage of the Nairobi Airport. Over the subsequent thirty year period to 1982 the Government acquired land for airport use through compulsory acquisition, possibly reaching an extent in excess of 6,000 Ha. However, part of the land acquired and reserved for the airport has over the years been allocated and title issued to private persons resulting in a "shrinkage" of around 444 Ha of the land demarcated as JKIA land in a 1991 Physical Development Plan compared to what is supported by title documentation today.

Below is a summary of the evolution of JKIA land. The matter of shrinkage is discussed further in section 1.2.4 below.

	Description	Area in Acres	Hectares (Ha)	Shrinkage in Ha
1	Land held by Nairobi Airport as at 1953 in accordance with the Aerodromes (Control of Obstructions) Act	4,380.00	1,773.3	N/A
2	Land compulsory acquired in 1971 vide gazette notices 1105 and 1106 of 1971	6,658.54	2,695.80	N/A
3	Land possibly compulsory acquired in 1982 vide gazette notice no. 439 and 440 of 1982*	3,937.00	1,593.90	N/A
	Total as at 1982*	**14,975.54**	**6,063.00**	**N/A**
4	Size of airport land as per Nairobi Airport boundary plan NBI/C/108 drawn up by the Department of Aerodromes in 1991	**12,597**	**5,098**	**965 from total acquired**
5	Size of airport land as at 1996 when title over LR No 21919 was issued to KAA	**11,500**	**4,654**	**444 from 1991 plan**
6	Size of airport land on subsequent survey and issuance of title LR 24937 in 2003	**11,018**	**4,459**	**195 from the 1996 title**
7	Size of airport land on reversion back to present title over LR 21919	**11,500**	**4,654**	-

** We were unable to confirm whether this acquisition was finalised due to lack of relevant files at MoL and KAA.*

1.2.1.2. Syokimau

We have established that the parcel of land in the area known as Syokimau which was affected by the evictions and demolitions exercise is part of the parcel of land owned and registered in the name of KAA. KAA holds a valid title issued in 1996 and which is registered as IR No 70118 over LR No 21919. KAA is therefore entitled to protection of the law as the holders of a valid title over this parcel of land. We have not seen any other valid title deed which has been issued over this land in the Syokimau area in competition with the title that KAA holds.

However, there is a history of surveys that created opportunities to excise KAA land and which have been used by various claimants as evidence of ownership over the area that was demolished in Syokimau. We summarise below the various surveys and the apparent reasons underlying the surveys.

Date of survey	Land Reference	Remarks
1931	LR No 3864	LR No 3864 represents the area under investigation known as Syokimau. This land reference number was created pursuant to a survey conducted in 1931 for purposes of allocation of this parcel of land to Andrew Macrae Watson. This parcel of land was later compulsorily acquired by the Government in 1971 for airport use. This parcel is now part of LR 21919 over which KAA holds a valid title.
1985	LR No 13512	LR 13512 is part of the land known as LR 3864 above. LR No 13512 was created pursuant to a survey done by a Government surveyor on the authority of the Commissioner of Lands ("CoL"). Available records indicate that the purpose of the survey was for issuance of a new grant. However, it appears that no new title was issued as there is no valid title registered over this parcel of land known as LR No 13512. Despite a title having been issued over LR No 21919 in 1996 as below, the survey that created LR No 13512 has still not been cancelled as at today. A group called Mulolongo Brothers Association ("Mulolongo Brothers") base their claim over the parcel of land on this survey.
1987	LR No 14231	LR 14231 is part of the land known as LR No 3864 above. LR No 14231 was created pursuant to a survey done by a surveyor in order to harmonize the coordinate system within the region. It was not meant for title issuance. Despite a title having been issued over LR No 21919 in 1996, the 1985 survey that created LR 13512 has to date not been cancelled. Uungani Settlement Scheme Self Help Group ("Uungani"), Jumbo Self Help Group ("Jumbo") and Foster all base their claims over the parcel of land on this survey.
1996	LR No 21919	LR No 21919 was created through a survey requested by the CoL for purposes of issuing a title to KAA. This survey encompassed the land known as LR No 3864 above. A Grant was subsequently issued and registered as IR No 70118 in favour of KAA. Previous surveys were not cross referenced or cancelled in accordance with the prescribed process.
2001	LR No 24937	LR No 24937 was created through a survey requested by the CoL for purposes of excising public roads that had been captured as part of KAA's 1996 title. This survey encompassed the land known as LR No 3864 above. A title was subsequently issued in favour of KAA but was later revoked when KAA realised that that the land that was excised in this title included more than just the roads. Further there were apparent errors on the face of this title. KAA rejected the title and reverted back to the 1996 title registered as IR No 70118 over LR No 21919 since its surrender was never finalized and registered. The area known as Syokimau was still part of KAA land even under this defective title that was later revoked i.e. in 2008.
2008	LR No 14231/1 and LR No.	LR No 14231/1 and LR No. 14231/R were created through a survey conducted by a private surveyor. This survey was a subdivision of the

Date of survey	Land Reference	Remarks
	14231/R	parcel LR No 14231 created in 1987 as described above. Uungani base their claim on this survey. Jumbo and Foster base their claims to ownership on a purported survey that created LR No 14231/2 which we have established was not actually undertaken by the surveyor they claim had carried out the survey. At this time, KAA had commenced proceedings to restrain Mulolongo Brothers and Uungani from all further dealings in this parcel of land and injunctions had been granted in KAA's favour.
2009	LR Nos 14231/3-63	Notwithstanding the fact that the purported survey creating LR No 14231/2 in 2008 was never done, the parcel LR No 14231/2 was subdivided into 61 plots i.e. LR Nos 14231/3-63 in a survey carried out in 2009 for the benefit of Foster. As we note above, at this time, KAA had gone to court and there was an injunction restraining all further dealings in this parcel of land.

We have examined the claims by various groups (Mulolongo Brothers, Uungani Jumbo, Foster, Ungani Enterprises and their affiliates) over the parcel of land known as Syokimau. None of these groups were able to produce valid titles issued by Ministry of Lands ("MoL") over this parcel of land. Mulolongo Brothers and Foster produced title documents which we have established to be forgeries. All the other groups have Letters of Allotment("LoAs") which have either been certified as forged by a handwriting expert advising us on this assignment, or appear to have been obtained fraudulently. These groups also claim that because surveys carried out had created the LR numbers listed above, it meant that the parcels of land were available for allocation. This claim by these groups is not valid because:

- A LoA or a survey does not confer title over land in law; and
- This parcel of land was already held by KAA under title registered as Grant No. I.R 70118.

We have also obtained information which indicates that certain members of these groups may have attempted to access Government departments through collusion with public officials with the intention of falsifying Government documents and records which they in turn used to obtain funds from the unsuspecting public by false pretence or misrepresentation. Our findings in this regard and the implications on culpability are summarised in section 1.4below.

1.2.1.3. Kyang'ombe Village

We have established that the parcels of land comprising the entire area known as Kyang'ombe Village was acquired compulsorily by the Government for Nairobi Airport use, but was later allotted and title issued to private individuals. This area was thereafter infiltrated by squatters who put up informal dwelling structures which posed a threat to aircraft safety and security. The squatters indicated that at the time of the evictions and demolitions there were approximately 50,000 residents in the village. We have not verified the accuracy of this information.

From the submissions of the groups affected by the evictions and demolitions in the Kyang'ombe area (Kyang'ombe Settlement Scheme/ Mwangaza Community Based Organisation, Kyang'ombe Juhudi Self Help Group, Vigilant Self Help Group), there is no documentary evidence to support their claims to ownership of the land. The records at MoL indicate that the land has its legally registered private owners. However as explained in section 1.2.4 below, this area is part of the land that had been compulsorily acquired by the Government in 1971 and set aside for airport use. Consequently KAA may have a claim over this land. This matter is considered in our recommendations in section 1.5 below.

1.2.1.4. KPA and Maasai Villages

We have established that the parcels of land for the areas known as KPA Village and Maasai Village are private parcels of land which have been infiltrated by squatters who put up informal dwelling structures in the area. The squatters indicated that at the time of the evictions and demolitions there were approximately 113,000 residents in the village. We have not verified the accuracy of this information.

Parts of the land in this area fall on the JKIA flight path and other parts are adjacent to the flight path. In our assessment of the registered owners as per the records at the MoL, these groups have no legal claim over the parcels of land on which they were squatting. The records indicate that the land belongs to other private persons. However, we cannot rule out that as for KPA and Maasai Villages, this land could have been formerly reserved for other public entities, and we suggest that further work is carried out to establish the history of ownership of this land.

1.2.2. Wilson Airport

1.2.2.1. Mitumba Village

We have established that the parcel of land for the area known as Mitumba Village is registered in the name of KAA as Grant IR No 70522 and referred to as LR No 209/13080. The title was issued to KAA on 18 September 1996. The squatters indicated that at the time of the evictions and demolitions there were approximately 14,000 residents in the village. We have not verified the accuracy of this information.

1.2.3. MAB

1.2.3.1. Eastleigh Section III and Biafra

Other than in two cases where plots are said to partially encroach on MAB land, there is no dispute over the ownership of the land in the area between the Military and the occupants of the land. However we understand that a buffer zone that was designated as a public road around MAB has been allocated to private parties..

The demolitions that occurred were carried out to enforce planning and zoning regulations under the Physical Planning Act. The buildings had been constructed in violation of approved building plans. These buildings also contravened height restrictions required by aviation laws and regulations for buildings next to aerodromes. The demolished buildings were therefore a threat to aviation security and safety.

1.2.3.2. Kitui Village

The village is situated to the south west of MAB on the flight funnel and within the 50 foot buffer zone that should remain vacant as per aviation laws and regulation. The squatters indicated that there were approximately 40,000 residents in the village. We have not verified the accuracy of this information. The villagers also admit that they do not own the land.

The military was concerned with the encroachment and close proximity of Kitui Village to the undershoot area of the flight funnel. This undershoot area is highly restricted and aviation laws and regulations indicate that there should be no developments in this area for aviation safety.

1.2.3.3. Kyambiu Village

Kyambiu Village is located on the south eastern side of the MAB extending to the Nairobi River. The area currently occupied by the village sits precariously next to MAB's bomb dump and other military installations within MAB land. We understand that the land currently occupied by Kyambiu Village was intentionally left

undeveloped to mitigate loss of life and property in the unfortunate event of bomb explosions. The squatters indicated that there were approximately 12,000 residents in the village. We have not verified the accuracy of this information.

The land ownership is disputed between the military and individuals who either settled in the area or who hold LoAs issued by the City Council of Nairobi ("CCN"), to portions of the land. There were no demolitions conducted at Kyambiu Village, although we are advised the village is earmarked for demolition. We understand the planned demolitions and evictions in the area were as a result of both encroachment to military land and for reasons of aviation safety and security.

The occupants of the informal village in Kyambiu do not have any documents conferring title to the land. They base their claim solely on an allegation that the issue of their settlement in the area was discussed in a full council meeting of the CCN. The minutes of the meeting were not availed to us and we were also unable to verify whether the matter was discussed by the CCN. Our assessment from their submissions is that the residents of the village have no valid claim to ownership to the land which belongs to the airbase.

1.2.4. The "shrinkage" of KAA and MAB land

In the course of our work, we noted that the land previously earmarked or reserved for JKIA, Wilson and MAB has reduced over the years. The shrinkage can broadly be categorised into two:

1. Shrinkage that happened in cases where there was no title over the land
2. Attempted shrinkage in cases where there is a title i.e. double allocations.

We discuss the shrinkage in each of the three aerodromes in turn.

1.2.4.1. JKIA

In respect of JKIA, we noted that there was shrinkage falling under both categories noted above as follows:

1. possibly irregular allocations prior to the issuance of the 1996 Grant, and
2. post 1996 double allocations of JKIA land.

Possibly irregular allocations prior to the issuance of the 1996 Grant

In the introduction to section 1.2.1, we have briefly explained the shrinkage of JKIA land prior to 1996. We note that in addition to the land that existed as Nairobi Airport land in 1953, the Government compulsorily acquired land in 1971 and designated the land as airport land for use by JKIA. There is also possibility that the Government acquired more land in 1982 for the purposes of JKIA. Assuming that the 1982 acquisition took place, JKIA should have had circa 6,063 Ha of land in 1982 i.e. the sum of the land that existed as at 1953, the land acquired in 1971 and the land acquired in 1982.

However we note that as at 1991, the Department of Physical Planning in Plan NBI/C/108 indicated the size of JKIA to be 5,098 Ha. This 1991 plan does not include the land earmarked for compulsory acquisition in 1982. The size of JKIA had however reduced to 4,654 Ha by the time KAA obtained a Grant over JKIA.

We note that due to the lack of a perimeter survey of or title over JKIA prior to 1996, it is difficult to conclude on the legality of this shrinkage.

Post 1996 double allocations of JKIA land

As indicated in section 1.2.1 above, in the course of our investigation we noted that there exists double allocation of land within the parcel of land at JKIA registered in favour of KAA. This occurred after KAA had obtained its title in 1996 and was brought about by a subsequent survey carried out in 2001 as shown in the

table in section 1.2.1. We understand that the CoL sought to excise some roads as well as other parcels which were apparently granted to private persons and titles issued but were part of the land covered in the KAA title. KAA therefore commissioned a survey in 2001 which created LR No 24937 and a deed plan was issued for an area measuring 4,398.7 Ha. A title was created and registered as Grant IR No 90243 in favour of KAA in the process of the surrender of the title over LR No 21919 to the CoL. There were however apparent defects on the new title issued to KAA. This Grant was registered in 2002, whereas it was signed by the CoL in 2003. In law, all Grants are registered after the CoL has signed the title.

KAA also realized that that its land had substantially shrunk in the new title i.e. over LR No 24937. In addition to the roads, there were additional parcels of land that were excised from the KAA land which were part of the 1996 Grant. In total, JKIA land as indicated in the 2001 survey was less by 195 Ha compared to the land surveyed in 1996. KAA subsequently rejected the title over LR No 24937 and wrote to the CoL voicing its complaints and intention to revert to the old title. The CoL advised KAA to return the title over LR No 24937 and to revert to the original title i.e. title over LR No 21919 which was still valid since its surrender had not been registered at MoL. Since the CoL had already issued titles to some of the parcels excised in the 2001 survey, the reversion by KAA back to the 1996 Grant meant that there are double allocated parcels of land within JKIA.

There are at least 67 parcels of land that were created within KAA land after 1996 and titles issued over them irregularly. These titles, that were issued to private persons have not been revoked to date. We understand that some of these persons (or persons who have purchased the plots from the initial allotees) have constructed on this land. These developments were not demolished, unlike in the Syokimau area.

We established that KAA has put in place a framework process to allow these persons to surrender these titles and obtain long term leases from KAA. However, only two persons have responded to this offer. KAA should therefore seek legal measures to reclaim this land by having the CoL revoke the double allocations.

1.2.4.2. Wilson

Like in JKIA, the title over Wilson was issued to KAA in 1996. Again as in JKIA, it appears that private persons were issued with title over land which was previously designated as Wilson land before 1996. Moreover, it appears that there are also double allocations within Wilson. The main difference between Wilson and JKIA is that unlike in JKIA where there was an attempted surrender of the 1996 KAA's Grant, we did not find any evidence to suggest any attempt to surrender the 1996 KAA's Grant over Wilson.

1.2.4.3. MAB

The Department of Defence ("DoD") does not have a title over MAB to date. In the course of our investigations, we noted that the land earmarked for MAB has in varied occasions been allocated to public officers, private persons and public institutions.

We noted that in the 33 year period from 1965 to 1998, there have been various surveys and excisions of land previously reserved as belonging to MAB and declared as a protected area under the Protected Areas Act. These include:

- 1965-1966 – Part of MAB land was excised for a primary school.
- 1975-1985 – several parcels abutting the western side of MAB were surveyed with some of these altering or encroaching on the MAB land.
- 1996-1998 – more plots were alienated and surveyed within the southern side MAB i.e. in the Kyambiu area.

We note that the lack of a title over MAB continues to expose MAB to the threat of encroachment and illegal excisions of its land.

1.3. Evictions and demolitions

1.3.1. Rationale and implementation

Based on our investigations, we established that the evictions and demolitions exercise was carried out pursuant to a Cabinet Directive dated 14 April 2010. The Cabinet Directive was issued in response to widespread concerns over threats to aviation safety and security arising out of:

- encroachment into the aerodromes in the affected areas;
- the growth of informal settlements within and around aerodromes in the affected areas; and,
- the violation of zoning regulations in the areas around the aerodromes.

Noting that the evictions and demolitions were carried out in October and November 2011 i.e. approximately one and half years after the said Cabinet Directive was issued, it appears that the timing of the exercise was triggered by the involvement of the Kenya Defence Forces in the war in Somalia which heightened security concerns in the aerodrome areas and the Country in general.

Below we set out in summary, our findings on the manner in which the evictions and demolitions were carried out.

1.3.2. Implementation

There is no single statute that guides the process for carrying out evictions and demolitions. However, a number of statutes give various bodies e.g. CCN, KAA and KCAA the authority to evict persons and demolish structures. These statutes include:-

No.	Statute	Body with powers to control
1	Trespass Act	Land owner (KAA)
2	Physical Planning Act	CCN
3	KAA Act	KAA
4	CA Act	KCAA

The CA Act and KAA Act also give KCAA and KAA respectively the power to control and restrict developments in areas adjacent to or in the vicinity of an aerodrome. These bodies have powers of enforcement in the event that such laws are breached. The UN General Comment No 7 of 1997 on *'The Right to Adequate Housing (Article 11.1): Forced Evictions"* provides that procedural protection should be applied in relation to forced evictions which affect the right to accessible and adequate housing.

Section 66 of the Constitution permits the Government to control and regulate the use of any land *inter alia* in the interest of defence, public order, security and safety.

1.3.3. Our assessment of the evictions and demolitions

In Syokimau, we have established that the buildings that were demolished had been constructed on KAA land. Accordingly, the persons who erected buildings in this area did not have valid title documents and were ignorant, negligent or reckless (or a combination thereof) considering they had been aware (or should have been aware) of the court cases between KAA and their respective groups over the ownership dispute. The affected persons had also been served severally with notices by KAA regarding the encroachment onto JKIA

land. Encroachment into KAA land was also a security and safety concern for the airport and the start of Operation Linda Inchi meant that the concern had to be dealt with immediately.

We have also established that the informal settlements (Kyang'ombe Village, Maasai Village and KPA Village, Mitumba Village and Kitui Village in Eastleigh), were:- encroachments on airport land (aerodromes); within flight paths; or within buffer zones adjacent to the flight paths. The occupants of these areas had greatly exposed their lives to risks in the event of an air crash. Moreover, the mushrooming of dwelling structures within these areas without any approvals or regulations posed a great threat to aircraft safety and security. In addition, we established that in light of the war in Somalia, the Government had to take measures to secure the airports hence the evictions and demolitions in these areas. The developments in these areas also did not have CCN approvals and were thus illegal.

It became apparent that the developments and encroachments on KAA land at JKIA and Wilson Airport and on or adjacent to the flight paths of JKIA, Wilson and MAB or buffer zone at MAB would have greatly affected the operations of the aerodromes. We understand that some airlines which threatened to pull out of JKIA, and that others have refused to fly to Kenya due to aircraft safety and security issues posed by the encroachments.

In Eastleigh Section III and Biafra, we have established that the demolitions were carried to enforce the planning and zoning regulations under the Physical Planning Act. The demolitions affected seven properties owned by six private landlords. We established that for all seven properties that were demolished none complied with building approvals. The failure to comply with building approvals, which take into consideration zoning requirements in areas around aerodromes, also threatened the aviation safety and security at MAB which triggered the demolitions in the area.

Further, we established that the evictions and demolitions exercise was coordinated by the Provincial Security and Intelligence Committee ("PSIC") chaired by the Provincial Commissioner ("PC"). According to the PC, during the planning of the evictions and demolitions, the affected persons and stakeholders, through their various representatives, were invited to participate in this committee and were afforded genuine consultation before the evictions and demolitions were carried out. Further, in all the areas where evictions and demolitions were carried out, we established that several notices to vacate were issued to the affected persons by either KAA or CCN. The last notices issued prior to the demolitions were not less than one month's notice. It is our assessment therefore that there was reasonable notice issued to the affected persons prior to the evictions and demolitions in all the areas and a need to carry out the evictions and demolitions urgently.

We have also examined whether there were any violations of human rights in the evictions and demolitions exercise. Human rights are only subject to limitations contemplated in the Constitution. Section 24(1) of the Constitution provides that a right or fundamental freedom.... *"shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including; (b) the importance of the purpose of the limitation and (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others".* In this regard, the Government took necessary precaution to preserve and respect human rights in conducting the evictions. We have however noted that there are certain individuals who may have been left homeless or destitute after the evictions and demolition and should be given due protection by Government.

In conclusion, we note that the order for the demolition and eviction exercise appears to have been issued by the Cabinet on 14 April 2010 in the interest of aviation security. The PSIC then discussed the execution of the Cabinet Directive for about 18 months in which time it consulted various stakeholders. The start of Operation Linda Inchi and the consequent heighted security concerns, led the PSIC to resolve that the evictions and demolitions had to be carried out as a matter of urgency. The execution was consequently carried out by PSIC supported by various other bodies including CCN, KAA and MAB. The evictions and demolitions appear to have happened after relevant enforcement notices were duly issued.

1.4. Impact on affected individuals

Given our findings on land ownership and the evictions and demolitions exercise, it is apparent that in relation to the formal settlement areas large numbers of people appear to be at risk of financial loss as a result of the investments they have made with the representative groups. Some of these also developed properties and made payments to public bodies in respect of buildings they have erected. A small number have suffered financial loss in respect of buildings erected irregularly on private land at MAB.

In respect of informal settlements, although the affected individuals may not have made payments for title to land, their demolished buildings would have some value which has now been lost.

In this section we provide broad figures for illustrative purposes of:-

- The numbers of people affected in the formal and informal settlements
- An approximation of the scale of financial losses some of the affected individuals could be facing

1.4.1. Numbers of people affected

It is not possible to obtain a reliable estimate of the number of affected individuals in view of the underlying uncertainties resulting from the lack of documentary evidence (particularly in relation to the informal settlements), and the number of assumptions that therefore need to be made in any such exercise.

However, if we take as read the information provided to us by the representative groups and make some assumptions on average household size, it appears that as many as **250,000** people may have been affected directly or indirectly by the land disputes and the evictions and demolitions exercise. We stress that this figure is a broad guesstimate that is not based on authoritative data.

Category of settlement	Location	Number affected directly	Estimate of possible total individuals affected including dependents	Comments
Formal	JKIA (Syokimau)	3,800	19,000	Six representative groups came forward. Of these, four purport to hold title documents and claim to have members numbers as follows:- Uungani (1300); Jumbo (1,200); Mulolongo Brothers (1,300); and Ungani Enterprises Limited (did not provide member numbers). We have not verified these figures. Guesstimate assumes the figures presented by the representative group are correct and a household is 5 people
	MAB	6	1,100	Six landlords privately held 7 properties. These were all rented out. Guesstimate of total affected persons assumes that each building had 30 units and each unit had 5 family members.
Informal	JKIA Kyamg'ombe Maasai/ KPA Wilson Airport - Mitumba MAB Kyambiu Kitu	 50,000 113,000 14,000 12,000 40,000	 50,000 113,000 14,000 12,000 40,000	All figures provided by victim representatives. Total of 229,000. We have not verified any of these figures.

1.4.2. Possible losses facing affected individuals

Affected individuals in the formal settlement areas are facing losses resulting from their land investments with the representative groups and related expenditure. In the table below we capture guesstimates of the various categories of expenditure that we are aware of and the basis of these figures.

Given the necessary caveats, our guesstimate computations suggest that the representative groups may have handled substantial sums that may be in excess of **KSh 180m**:- Uungani (KSh73m); Jumbo (KSh65m); and Mulolongo Brothers (KSh 42m).

In addition, Mavoko Council benefitted from land related payments totalling around KSh 54m.

The single largest expense incurred by affected individuals is likey to be the sums spend on putting up properties. Given the extent of the inherent underlying uncertainties involved we have not computed guesstimates for these potential losses.

Similarly, we have not computed guesstimates for the losses incurred by those in informal settlements whose structures were demolished.

Category of settlement	Location	Category of expense and/or loss	Monies paid to	Guesstimate of amounts involved KSh	Comments
Formal	JKIA (Syokimau)	Land	Representative group or previous "owner"	More than KShs 160 million	Uungani (KSh73m); Jumbo (KSh65m); Mulolongo Brothers (KSh24m). Guesstimate based primarily on interview evidence and on evidence provided by some of the representative groups (Uungani and Mulolongo Brothers)
	JKIA (Syokimau)	Transfer fees	Mulolongo Brothers and Mavoko Council	More than KShs 50 million	Mulolongo Brothers (KSh 18m); Mavoko Council (KSh 36m). Guesstimate based primarily on interview evidence
	JKIA (Soykimau) MAB properties on private land which was demolished (7 structures)	Development (building the property) – either demolished or still standing	Various 3rd parties – architects, brick layers, builders etc etc	Not known but significant	Not possible to estimate based on information made available to us. Likely to be the highest category of individual cost for affected persons.
	JKIA (Soykimau)	Building plan approval fees, Rates, plot rent, plot registration fee etc	Mavoko Council and Machakos District Lands Office	More than KShs 20 million	Mavoko Council (KSh18m); Guesstimate based primarily on interview evidence plus on documentation provided by Mavoko Council Machakos District Lands Office (KSh1m)
Informal	JKIA (Kyamg'ombe, Maasai, KPA) Wilson Airport (Mitumba) MAB (Kyambiu, Kitui)	Putting up informal structures	N/a	Not known	Not possible to estimate based on information made available to us

We set out in section 1.6 below how the affected groups might proceed to help mitigate their potential losses.

1.5. Responsibility and culpability

We have established that various individuals, Government agencies, institutions and departments mayhave been compromised and/or participated in potentially criminal activities which have led to the loss and suffering of the affected persons occasioned by the evictions and demolitions. The table below sets out the particulars of the wrongdoings and/or irregularities observed in the course of our work, the likely persons responsible and the possible remedial legal sanction.

Parties	Findings on wrongdoing and/or irregularities	Conclusion and next steps
Officials of Mulolongo Brothers	• Were in possession of forged documents of title. • Occupied part of KAA land without valid title documents. • Made fraudulent misrepresentations about ownership of the affected land in Syokimau to Mavoko Council, their members and the general public. • Obtained monies from the affected persons through false pretences. • Used forged documents of title to aid their members obtain irregular building approvals from Mavoko Council. • Irregularly obtained subdivision approvals from Mavoko Council in contravention of the Physical Planning Act. • Attempted to convert forged title documents from the Registration of Titles Act to the Registered Lands Act	• The Director of Public Prosecutions should direct the CID to conduct further investigations with a view of obtaining further evidence and where appropriate prefer criminal charges • The Ethics and Anti Corruption Commission should liaise with the CID and if appropriate move as a matter of urgency to identify and freeze the assets of group officials.
Former Town Clerk of the Mavoko Council	• Assisted officials of Mulolongo Brothers to irregularly obtain sub-division approvals on the basis of forged documents of title and in contravention of the requirements of the Physical Planning Act by illegally issuing a Certificate of Clearance of Rates . • Irregularly levied and collected charges from the affected persons in respect of proposed dealings in, and developments on their plots. This appears to have legitimised the scheme that had been hatched by the officials of Mulolongo Brothers. We cannot rule out collusion between the Town Clerk and the officials of Mulolongo Brothers.	• The Town Clerk should be further investigated by the CID and the Ethics and Anti-Corruption Commission and charged with various offences including abuse of office.
District Lands Officer and the Physical Planning Officer at the Department of Lands in Machakos	• Both officials negligently endorsed their approvals of the sub-division plan presented to them by officials of Mulolongo Brothers without making the requisite verification of the ownership and use of the affected land. • We also cannot rule out collusion of these officers with Mulolongo Brothers.	• The officers should be further investigated to assess whether there are grounds to bring charges in relation to negligence in the performance of official duties.
Officials of Uungani	• Were in possession of forged documents including LoAs • Occupied part of KAA land without valid title documents. • Obtained monies from the affected persons through false pretences. • Made fraudulent misrepresentations about ownership of the affected land in Syokimau to their members and the general public. • Used forged documents to subdivide part of KAA land for which they did not have valid title without the requisite approval of Mavoko Council and in contravention of the Physical Planning Act.	• The Director of Public Prosecutions should direct the CID to conduct further investigations with a view of obtaining further evidence and where appropriate prefer criminal charges • The Ethics and Anti Corruption Commission should liaise with the CID and if appropriate move as a matter of urgency to identify and freeze the assets of group officials.

Officials of Jumbo and/or directors and shareholders of Foster	• Were in possession of forged documents including LoAs. • Occupied part of KAA land without valid title documents. • Obtained monies from the affected persons through false pretences. • Made fraudulent misrepresentations about ownership of the affected land in Syokimau to their members and the general public. • Used forged documents to subdivide part of KAA land for which they did not have valid title without the requisite approval of Mavoko Council and in contravention of the Physical Planning Act. • May have colluded with officers at the Department of Surveys to alter official records thereby creating LR No.14231/2 whose survey had not been commissioned or carried out.	• The Director of Public Prosecutions should direct the CID to conduct further investigations with a view of obtaining further evidence and where appropriate prefer criminal charges • The Ethics and Anti Corruption Commission should liaise with the CID and if appropriate move as a matter of urgency to identify and freeze the assets of group officials.
Former Commissioner of Lands in office in 2001	• Irregularly requested the KAA to surrender its title for LR No. 21919 for purposes of excision of Mombasa Road and Airport North road. Instead of using the title for the intended purpose, this official fraudulently and in abuse of his office excised certain parcels of KAA (ie public land) and thereafter allotted and issued title for the same to private persons resulting in double allocations.	• KAA and the Department of Lands should initiate legal proceedings to cancel the said irregularly issued titles and repossess the affected parcels of land. • Further investigations should be carried out against the former CoL in relation to possible charges relating to abuse of office, fraud and/or corruption.
Officials at the Department of Surveys	• Several officers within the Department of Survey may be culpable of (i) failing to cross-reference the survey plans at the Department of Surveys for the surveys carried out on KAA land in 1996, (ii) possibly colluding with officials of Jumbo to alter records (SKL 38 form)thereby creating LR No. 14231/2 without carrying out a survey. (iii) approving surveys without verification of the LoA and PDP presented by Uungani in 2008.	• The officials should be further investigated vis a vis possible charges relating to falsification of public records or negligence in performance of their official duties.
Officials of Ungani Enterprises	• The officials were in possession of forged documents including LoA.	• The officials should be further investigated by CID once more information is availed.
Former MAB officers	• Some military officers illegally and irregularly excised part of MAB land and colluded in obtaining titles for this public land.	• The Land Commission should initiate legal proceedings to cancel the said irregularly issued titles and repossess the affected parcels of land. • All officers involved in the excision process and officers or third parties who may have benefited should be investigated by CID vis a vis possible charges relating to fraud and forgery and charged with abuse of office, fraud and/or corruption.

1.6. Possible claims by affected individuals and Government

We have examined and assessed the options by both individuals and Government for:

1. Restitution;
2. Other humanitarian assistance, or
3. Ex-gratia payments.

1.6.1. Restitution

Individuals

We have examined the possible grounds for restitution and have recommended that the affected individuals should claim restitution based on the existing contracts between themselves and those from whom they purportedly bought the properties. Mavoko Council and the Ministry of Lands should refund all irregular charges levied and received from the affected persons in respect of the parcel of land in Syokimau. Since the Government was not a party to the sale of the parcels of land, there is no legal basis for payment of restitution by Government. There are other Kenyans who have lost money through similar schemes e.g. the pyramid schemes and have not received compensation payments from Government. Such a payment would send the wrong message as it would amount to rewarding and encouraging wrongdoing.

Government and public bodies

KAA may have a claim on the land that was compulsorily acquired by Government and reserved for the use of aerodrome at JKIA as well as the land that had been developed by the erstwhile Aerodrome Department at Wilson Airport on which titles have been issued to certain persons. The double allocations of land at JKIA and disparate individual titles within JKIA and Wilson Airport should be revoked and KAA should secure and repossess the land and the buildings thereon. KAA land at JKIA and Wilson should be resurveyed under the supervision of the Land Commission and/or the Auditor General to establish the boundaries and ensure that it corresponds to the measurements indicated in its title.

Some of the land held by the MAB and the former buffer zone thereof was irregularly allocated to certain individuals. The Land Commission should assist the MAB to recover this land, resurvey the same and obtain a title through PS Treasury.

1.6.2. Humanitarian assistance

We note that the Government has in the past resettled affected persons, for example, in the cases of the Mau Forest evictions in 2008 and the PEV victims displaced after the 2007 General Elections. The Government also paid ex-gratia payments to some of the PEV victims. We could not find any legal basis to support these payments. The affected persons in both instances were victims of situations that were not of their own making, and the trauma suffered is not comparable to the victims of evictions and demolitions in the aerodrome areas.

Unlike the victims in the Mau Forest evictions and the PEV victims, the victims of the above evictions and demolitions were either trespassers or had violated the Physical Planning Act regulations by their constructions. If the Government were to make any payments to these affected persons, who as stated before had no legal basis, it could be construed as rewarding irregularities and wrongdoing. This may set a bad precedence and would encourage encroachment and invasion of private property by individuals in hope of getting similar treatment from Government.

Noting that most of the affected persons in the informal settlements were already vulnerable and economically deprived, the demolitions would have aggravated further their already disadvantaged conditions. There may also have been people in the formal settlements who lost their property and life savings and as a result were rendered destitute in the process. For these individuals, the Government could use its internal mechanisms to identify any genuine and deserving cases of persons that may have been rendered homeless and destitute, and in line with Article 43 of the Constitution, the Government may consider integrating such persons into the already existing and ongoing resettlement programmes of IDPs and other existing social programmes designed for the aid of such persons.

1.6.3. Ex-gratia payments

From our investigations and findings we note that the Government has no legal obligation to make any form of restitution or other form of payments to the affected persons. However, it may consider making ex-gratia payments to the affected persons at its discretion. The only caution is that such discretion should be based in law and should not appear to be a reward for wrongdoing.

1.7. Recommendations

On the basis of the work undertaken in this investigation, we set out below a summary of our recommendations under the following subheadings:

i. Culpability and further investigations;
ii. Institutional reform and management of public assets;
iii. Legislative and judicial reform, and
iv. Other recommendations.

1.7.1. Culpability and further investigations

1) Investigations leading to possible prosecutions

The Director of Public Prosecutions should direct the CID to conduct further investigations on the culpable individuals identified and named in the Report with a view of obtaining further evidence and where appropriate prefer criminal charges. These include current and former:

- officials of representative groups in Syokimau (Uungani, Jumbo, Mulolongo Brothers, Foster, Ungani Enterprises)
- public officers at:
  - Mavoko Council.
  - MoL (Lands, Department of Surveys, Department of Physical Planning).

2) Investigations and consideration of assets freeze

The Ethics and Anti Corruption Commission should liaise with the CID and if appropriate move as a matter of urgency to identify and freeze the assets of group officials in Syokimau area who have received large sums of money from their members in what appear to be fraudulent circumstances. From the computed guesstimate figures above, the officers of the representative groups may have received in excess of Kshs 180m (Uungani (KShs 73m); Jumbo (KShs 65m); and Mulolongo Brothers (KShs 42m)).

3) Involvement of professional bodies

OAG should write a letter of complaint to LSK and the Institution of Surveyors of Kenya, asking them to investigate the actions of the professionals named in this Report as potentially being culpable.

1.7.2. Institutional reform and management of public assets

1) **Integrated Land Information System ("LIS")**

The existing LIS at the MoL is manual. This outdated system is grossly inadequate and is no longer fit for purpose. We understand that previous attempts to improve and modernise the system have failed for various reasons including a lack of financial resources, insufficient coordination and will for change. Its manual nature means that:

- Document preparation, storage and retrieval relies primarily on human memory;
- Key processes and procedures lack audit trails;
- Record maintenance and updating are often frustrated and delayed through the interference of interested parties;
- Verification and authentication of information and documentation coming from different departments within the land management system is difficult, and
- There is no backup system or adequate system for maintaining duplicate copies of key documents.

Resulting from these weaknesses, we found that:

- Land management processes are slow resulting in delays in concluding land transactions;
- The delayed processes provide an opportunity for corrupt practices;
- Confidence in the land management regime and the sanctity of property rights in Kenya is low which is likely leading to reduced investment and economic growth.

We therefore recommend that the National Land Commission should establish an integrated LIS that caters for the needs of public and private stakeholders. We further recommend that the National Land Commission should do this in consultation with the ICT Board and other relevant stakeholders like KRA. This will require investment and the political will to drive through change and unlock vested interests in the status quo.

In establishing a suitable integrated LIS there will be need for preparatory studies to properly identify the needs of the various stakeholders from the public and private sectors and the unique situational risks and challenges around land administration in Kenya. In addition, there is need to provide for appropriate storage of information and documentation that is accessible and secure.

2) **Institutional reform at MoL**

Reform at the MoL is urgently required. In particular:

- Computerisation of all records generated in the land administration process should be accelerated as a matter of priority. Land searches should also be computer generated.
- Certificates of Titles should be serialised for record and security and issuance process and time frames be documented and predetermined.
- Allegations of bribery and undue influence within Lands should be investigated by the CID. In addition, we noted that even though Lands had denied the existence of some files, some of the groups (e.g. Foster and Uungani) were discovered by CID to have files at the department. The CID should investigate how these files (some containing forged documents) found their way into MoL and who was responsible. The CID in consultation with MoL should also investigate criminal groups engaged in the issuance of fake documents of title and have them dismantled.
- The National Land Commission should create the necessary institutional linkage between the Lands, Physical Planning and Surveys in order to guard against the risk of role overlap and improve efficiency in land administration.

3) Management of assets held by KAA, MAB and other public bodies

Following the confusion that ensued and the resultant loss of assets that occurred during the transition and transfer of assets and liabilities from the Department of Aerodromes to KAA, the Government should institute proper mechanisms to avoid such scenarios in future transfers. This is especially critical for the envisioned transfer of assets from the central Government and Local Authorities to the County Governments.

The likely mechanisms to be instituted include:

- Timely publication of a vesting order transferring assets to the newly formed public bodies;
- To deter misappropriation of assets, the content of the vesting order should sufficiently describe the assets being transferred for ease of identification, i.e. it should list the assets being vested and clearly identify and define their particulars, and in the case of land, the order should include particulars of LR numbers and the acreage so as to mitigate the risk of contemporaneous excisions;
- Due to the apparent confusion and shrinkage in the size ("shrinkage" of KAA land between 1982 and 1996) and change of boundaries of KAA land at JKIA and Wilson Airport and cases of double allocation of KAA land ("attempted shrinkage" of KAA land between 1996 and 2002), Government through OAG should resurvey all KAA land for purposes of verification of its boundaries and size. Moreover, as a mitigating measure, all Government agencies and departments should resurvey their land, obtain title and physically secure the land by fencing to prevent illegal encroachment and excisions.
- For ease of identification and to guard against encroachment, all protected areas under the Protected Areas Act should be sufficiently described including the particulars of their LR Nos and acreage. The National Lands Commission should ensure that titles are issued for all the protected areas.
- To ensure compliance to the relevant aviation laws including ICAO regulations, the mandate of KCAA, KAA and DoD to control developments within and around aerodromes should be enhanced. In line with this, MoL should consider adding a special condition in the Certificates of Title of land around aerodromes and in flight paths prohibiting developments without approvals from KCAA, KAA or DoD around aerodromes.

4) Alienation of Government land

a) Irregularly allocated land: The National Land Commission should institute investigations on the alleged irregular land allocations to private persons referred to in this Report involving:

- Land that was compulsorily acquired by Government in 1971 and 1982 for use of JKIA and which was excluded from the 1996 JKIA title i.e. the "shrinkage" of KAA land between 1982 and 1996;
- Double allocations of KAA land in JKIA and Wilson i.e. the "attempted shrinkage" between 1996 and 2002;
- Land at Wilson that may have been excised and allocated to private individuals in the period prior to the issuance of the 1996 Grant, and
- Land reserved for MAB and surrounding buffer zones that appears to have been irregularly excised between 1963 to date.

b) **Letters of Allotment**:

- LoAs should be serialised and copies circulated to all relevant departments as is provided for in the document.
- There should be strict enforcement of the conditions specified in the LoA e.g. the lapsing of the offer after the specified days and development conditions.

- Issuance of LoAs must be brought under control. Pursuant to the new Land Act, any public land that is being alloted should be surveyed and subjected to a public auction in advance.
- Allotment should be done for specific purposes which purposes should be stipulated on the document and the parcels being allotted be subject to a public auction as stipulated in the new Land Act.

5) Strengthening of the Department of Surveys:

There is a need to strengthen capacity at the Department of Surveys. In particular:

- Survey plans should be scanned as soon as they have been authenticated. A database should thereafter be created to facilitate ease of searching of records of maps at the Department.
- Some key controls must be intrinsic to the process with appropriate audit trails and authorisation protocols, including:
  - All new surveys must be cross referenced to existing surveys covering the relevant parcel(s) of land.
  - Approval of a survey by the Director of Surveys should only be done after confirmation that cross referencing has been completed and charting has been authenticated.
  - a Deed Plan can only be issued by the Director of Surveys once it is confirmed that the approval in (ii) above has been obtained.
  - A Deed Plan register must be maintained by the Director of Surveys and include, inter alia, full particulars of (i) the person in whose favour the document has been issued (ie the owner of the land); (ii) the Surveyor who prepared the survey.
- Plans should be digitized and geo referenced (in a National Spatial Data Infrastructure) as part of the LIS as discussed above.

6) Strengthening of capacity of planning authorities e.g. Local Authorities, to control land development:

There is a need to strengthen the capacity of Local Authorities in their development control role. We recommend that:

- Local Authorities verify ownership of land before carrying out a valuation for purposes of levying rates. No rates should be levied or collected before valuation and verification of title.
- The Independent Electoral and Boundaries Commission should ensure that Local Authorities and counties have well defined and publicised boundaries. Any changes must be communicated and gazetted in accordance with applicable laws.
- To ensure compliance with the relevant planning laws, all Local Authorities and counties must have qualified physical planners.
- Moreover, there should be a technical committee supported by law that gives development approval with the Town Planning Committee and Full Councils only ratifying such approval. The technical committee should meet frequently and the process should be harmonised for all Local Authorities.
- The technical committee should comprise all relevant stakeholders e.g. Lands, KCAA and KAF for Nairobi etc.

1.7.3. Legislative and judicial reform

1) Judicial reform

As we have discussed in the body of this Report, delays in concluding Court cases may have assisted some of the culpable individuals in the representative groups to perpetuate the fraudulent land transaction schemes. We have also been made aware that some individuals who obtained Court injunctions at the time of the 2011 demolitions have taken advantage of these injunctions to continue and finish constructions, especially around MAB. In our view, this is abuse of the Court process and we recommend that the cases relating to the affected land be heard and determined expeditiously.

More broadly going forward, we recommend that recent trends in dealing with commercial transaction cases expeditiously continues and particularly in relation to land matters that affect groups of individuals.

2) Proposed legislation enactments and amendments

To address the concerns and legal inadequacies highlighted in this Report, we recommend the amendment or enactment of the following legislation:

- Evictions and Demolitions Law: Parliament should as a matter of priority enact this legislation. This law should comply with the Constitution and all relevant international statutes that Kenya has ratified and should also consolidate all laws appearing in disparate statutes on evictions and demolitions.
- The Government, through the MoL, should enact subsidiary legislation under the relevant enabling statutes to make provisions for the regulation of vetting, registering and licensing of any individual, group or company that offers plots for sale to the general public.
- The Physical Planning Act:
    - should be amended to make it mandatory for a Local Authority or other planning committee, while approving developments within a 12.5km radius of aerodromes, to consult aviation regulatory agencies including KAA, KCAA and KAF in line with ICAO regulations.
    - subsidiary legislation under the Act should be put in place to define the composition, quorum, stakeholders, manner of the meetings etc of the technical committee responsible for development approvals.
- The Land Act should be amended to provide that land compulsorily acquired by Government should not be used for any other purpose (other than the intended purpose) or allotted to another person except after re-planning. Such re-planning should be publicised and the previous owners given the first priority to acquire the land.
- The Survey Act and the Physical Planning Act should be amended in line with the newly passed Land Laws.

1.7.4. Other recommendations

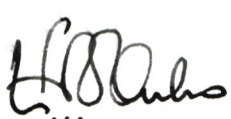
1) Monies irregularly collected by public bodies

The Government through the Ministry of Local Government and MoL should facilitate the Mavoko Council and the Department of Lands to refund any monies that may have been irregularly collected from the affected persons.

2) Public sensitisation on land and related matters

The MoL and the National Lands Commission should conduct a sustained civic education and awareness programme to educate the general public and create awareness on land and land laws. Such education and awareness should encompass the provisions of the Current Constitution and the newly enacted land laws on land and natural resources as well as the mandate, composition and functions of the institutions established thereunder.

Of paramount importance, and due to the emotive nature of land issues, the Government should sensitize politicians on the need to respect the established institutions mandated to deal with land issues and to refrain from interfering with legal processes or inciting the public on land matters.



Edward R.O. Ouko

Auditor-General

21 June 2012

Main Report

2. Introduction

Protection of property rights is fundamental to investment and growth in any modern economy. Like many other countries in Africa, issues relating to land in Kenya have persisted since before independence and such problems are widely seen to have impeded economic development. Over the years, there have been systemic land grievances which include, inter alia:

- Irregular allocation of land reserved for public land use to individuals;
- Double allocations of land to individuals;
- Loss of documents evidencing ownership of land by public bodies involved in the administration process;
- Lack of an integrated land management system;
- General lack of integrity in the system of land administration;
- Abuse of authority by Government officials in allocating land.

Successive Governments have tried to address these issues through legal, institutional and policy changes with, at best, moderate success. Various Commissions of Inquiry have been appointed to review some of the issues listed above and advise the Government on ways to address these challenges. Work has also been done by other technical bodies and institutions.

To this end, we note that a number of reports have been written in respect of land matters in Kenya although few, if any, key recommendations have been fully implemented. Some of the most recent and widely known reports include, inter alia:

- Report of the Commission of Inquiry into the Land Law System of Kenya of 2003 ("the Njonjo Report");
- Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land of 2004 ("the Ndung'u Report");
- Report of the Government's Task Force on the Conservation of the Mau Forests Complex of March 2009 ("The Mau Taskforce Report"); and
- The Report of the Taskforce on illegal appropriation of public and squatters problem in Athi River District of December 2011 ("John Abuduba Report").

We have, to the extent possible and where relevant, built on some of the information contained in the above reports as well as other studies and investigations. We detail in our Report wherever we have relied on such reports.

2.1. Purpose of the Report

Pursuant to our terms of reference as set out in the Contract for Consultancy Services dated 19 March 2012 ("the Contract"), we conducted a forensic investigation into the evictions and demolitions that were undertaken in various environs of Nairobi in October and November 2011. This investigation was carried out on the recommendation of the Joint Parliamentary Committee on Administration & National Security, Lands & Natural Resources, Local Authorities, Transport, Public Works and Housing ("the Joint Parliamentary

Committee") through the Office of the Auditor General ("OAG"). The investigation was conducted over a 12 week period from 19 March to 12 June 2012. The Report sets out the work done and key findings from the investigations and is aimed at assisting the Joint Parliamentary Committee in their review of the evictions and demolitions, and the various land ownership disputes thereon.

This Report is prepared for the exclusive use of the Joint Parliamentary Committee and the OAG. The contents may not be copied, quoted, referred to, disclosed or disseminated in whole or in part to any other party without the prior written consent of PwC. PwC accepts no responsibility to any other party, other than the OAG.

The scope of our work is set out in more detail below.

2.2. Structure of the Report

This Report is organised into an Executive Summary, which briefly highlights the findings from the investigative work carried out (section 1 above). Our findings are set out in the rest of the Report. It is essential that the Report is read in its entirety in order to comprehend fully the approach to, and findings of our work.

The rest of the Report is in the following sections:

- Section 2 – Introduction and background;
- Section 3 – Overview of legal framework, key processes and procedures;
- Section 4 – Ownership of Land;
- Section 5 – Assessment of the demolition exercise;
- Section 6 – Irregularities and weaknesses observed and assessment of possible wrongdoing and culpability of individuals;
- Section 7 – Possible claims by affected individuals and Government;
- Section 8 – Conclusions and next steps.

We refer to various appendices in this Report which are provided as an annexure to the Report.

2.3. Background to the investigation

On 21 and 22 October 2011, the Government evicted residents and demolished buildings at Kyang'ombe, KPA and Maasai Villages. On 12 and 13 November 2011, the same exercise was carried out in an area referred to as Syokimau. These areas are around the Jomo Kenyatta International Airport ("JKIA").

On 19 November 2011, the Government evicted residents and demolished buildings at Mitumba Village, near Wilson Airport ("Wilson").

On 22 November 2011, the Government evicted residents and demolished buildings in Eastleigh Biafra & Section III areas and Kitui Villages. These areas are next to the Moi Air Base ("MAB") in Eastleigh.

Following widespread outcry and condemnation as well as extensive media coverage of the demolitions, the exercise was suspended. In addition, following discussions in Parliament over the same issue, a Joint

Parliamentary Committee was appointed on 16 November 2011 to investigate the demolitions. The Joint Parliamentary Committee was given the following mandate:

- Inquire into the circumstances surrounding the evictions of people and demolition of property in some environs of Nairobi;
- Consider the possibility of compensation for affected persons;
- Investigate whether or not the Government acted within the law in carrying out the demolitions and evictions;
- Investigate and confirm the rightful owner of the land/premises in question;
- Make a Report to Parliament.

The Joint Parliamentary Committee conducted its work and in its report dated 7 December 2011 recommended that a forensic auditor be appointed to conduct further work on the same. Thus, the Clerk of the National Assembly wrote to the OAG on 15 December 2011 requesting the OAG to appoint an independent forensic auditor to carry out the investigation.

On 19 January 2012, the OAG wrote to various forensic auditors including PwC, inviting them to submit a proposal to conduct a forensic investigation into the demolitions and evictions. Our proposal was submitted on 7 February 2012. On 15 February 2012, the OAG wrote to PwC informing us that our proposal was successful. Upon further discussions and negotiations the contract between the OAG and PwC was signed on 19 March 2012.

2.4. Scope and key objectives of the investigation

Our terms of reference required us to conduct a forensic investigation into the evictions and demolitions in and around the following aerodrome locations:

1. JKIA:
    a. Syokimau area;
    b. Kyang'ombe Village;
    c. KPA & Maasai Villages.
2. Wilson:
    a. Mitumba Village;
3. MAB:
    a. Eastleigh Section III and Biafra;
    b. Kyambiu Village;
    c. Kitui Village.

For each of the areas above, our aim was:

- To understand:
    - What happened,
    - How it happened,
    - What it implies.
- To assess:
    - Who may be responsible and/or culpable;

- Lessons learnt;
- What might be done to remediate.

By so doing, we would meet our specific terms of reference as set out in the Request for Proposal dated 19 January 2012 which were to:

- Establish ownership of land in the affected areas;
- Authenticate the documentation therein;
- Look into the demolitions and evictions carried out in the affected areas;
- Assess other matters that may arise;
- Write a forensic audit report;
- Propose viable restitution options to the affected persons.

It is important to note that any forensic investigation, such as this, is a limited exercise that does not constitute an audit in accordance with any auditing standards, and will not provide any safeguards concerning the "completeness" of any detected incidences of possible fraud, criminal culpability or irregularities.

2.5. Methodology and work done

2.5.1. Approach

We sought to understand the previous work done on this matter so as to build on the same and avoid duplication of work to the extent possible. In addition, due to the enormity of the assignment and the relatively tight timeline, it was imperative that we planned properly for all aspects of the assignment in the first week. Thus, we held a planning workshop on 23 March 2012 where we discussed the team structure, work-plan and other logistical matters. We formulated work-streams that would form the basis upon which we would carry out our work. We thus developed a task-dominated work-plan that listed the work-streams and the tasks within the work-streams (as shown in the table below).



We also held a training workshop for the team on 2 April 2012 to ensure that all team members understood the objectives of the investigation, the rationale for our methodology, their role within the team and the relevance of the work-streams.

Our team consisted of various individuals with skills and expertise in different fields as follows:

- PwC – forensic expertise;
- OAG – public sector audit expertise & logistical support;
- Coulson Harney Advocates & Sichangi Partners Advocates – legal expertise;
- Knight Frank Kenya Limited ("Knight Frank") – survey, land management & valuation expertise;
- Trailstar Investigations – handwriting and document examination expertise.

Due to the short timeline, the number of parties we envisioned we would have to meet and the volume of documentation we required to review, it was apparent at the outset that we would need to meet these people as soon as possible at the beginning of the assignment and obtain the relevant documentation.

The success of the team hinged on collaboration of the team members and utilizing the diverse skills and experience within the team to achieve efficiencies in the field. In addition, owing to the sensitivity of the investigation, we ensured that all team members were made aware of the confidentiality they were expected to maintain. In this regard, all team members were required to adhere to a strict code of conduct in maintaining confidentiality by not sharing any information relating to the assignment with anyone outside the team.

We split the team into various working groups to ensure we achieved our objectives in the time available. The team structure is depicted in the diagram overleaf.

As shown on the diagram, the central team served as the "think-tank" for the assignment and its role was mainly to analyse the information received from the field teams and make findings based on the information received. The central team was also responsible for assessing progress and reporting back to the leadership.

From the onset of the project, it was apparent that sources of documentation were diverse and located in different physical places. In addition, these sources of information were both Government officials and the public. Thus, we had to plan for an extensive data collection exercise and organise our team in such a way that we were able to collect data from these various sources simultaneously, efficiently and in the least amount of time.

We therefore split the field teams based on the physical locations that we needed to access and obtain information. There were 5 field teams as follows:

i. Syokimau team – this team was tasked with meeting and collecting data from the public in the Syokimau area. The team set up camp at Mulolongo Police Station on 4 April 2012 and started receiving data from the public the same day. The team collected data from *circa.* 2,700 people;

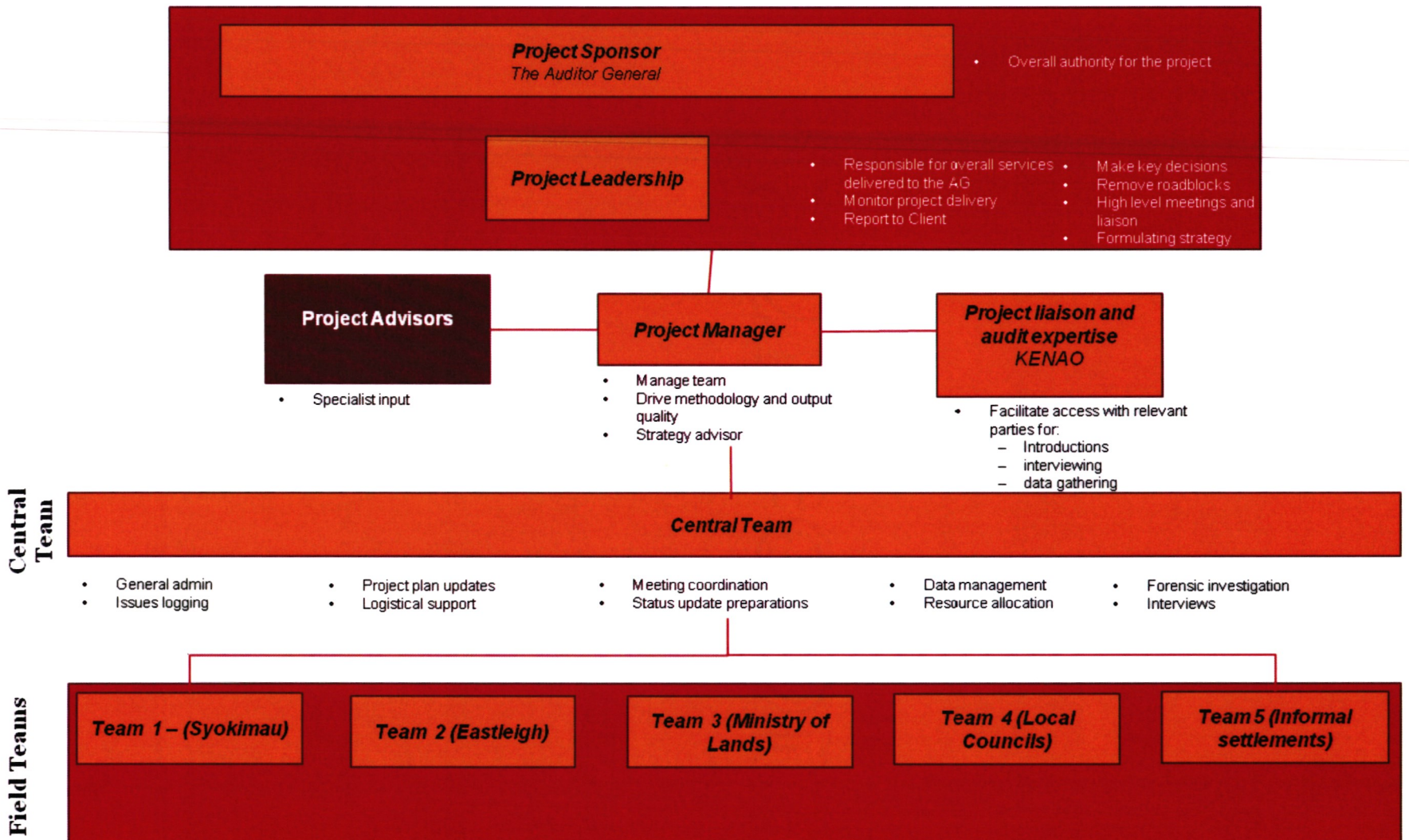
ii. Eastleigh team – this team was tasked with meeting and collecting data from the public in the area surrounding MAB. The team set up camp at California Police Post (in Eastleigh) on 3 April 2012 and started receiving data from affected individuals the same day. The team collected data from 32 people;

iii. Informal settlements team – this team was tasked with meeting and collecting data from the public in the areas referred to as "informal settlements" i.e.
    a. Kyang'ombe, KPA, Maasai Villages at JKIA;
    b. Mitumba Village at Wilson;
    c. Kyambiu and Kitui Villages at MAB;

    The team set up camp at KENAO offices and started receiving information from groups representing the residents of these villages. They also went round to the field to the affected areas and met the groups on the ground. The team collected data from 12 groups;

iv. Local Authority's team – this team was tasked with accessing the two relevant councils (City Council of Nairobi ("CCN") and Municipal Council of Mavoko ("Mavoko Council")) and obtaining relevant information. The team set up camp at CCN and Mavoko Council on 10 April 2012. The team acquainted themselves with the relevant systems in the councils and obtained information relevant to our investigation;

v. Ministry of Lands ("MoL") team – this team was tasked with accessing MoL and obtaining relevant information. The team set up camp at Ardhi House on 4 April 2012. The team acquainted themselves with the relevant systems in the ministry and obtained information relevant to our investigation.


Project Sponsor
The Auditor General
Overall authority for the project
Project Leadership
Responsible for overall services delivered to the AG
Monitor project delivery
Report to Client
Make key decisions
Remove roadblocks
High level meetings and liaison
Formulating strategy
Project Advisors
Specialist input
Project Manager
Manage team
Drive methodology and output quality
Strategy advisor
Project liaison and audit expertise
KENAO
Facilitate access with relevant parties for:
– Introductions
– interviewing
– data gathering
Central Team
Central Team
General admin
Issues logging
Project plan updates
Logistical support
Meeting coordination
Status update preparations
Data management
Resource allocation
Forensic investigation
Interviews
Field Teams
Team 1 – (Syokimau)
Team 2 (Eastleigh)
Team 3 (Ministry of Lands)
Team 4 (Local Councils)
Team 5 (Informal settlements)

2.5.2. Work done & sources of information

We obtained information from various sources including:

- Parliament;
- Government sources:- Kenya Airports Authority ("KAA"), Kenya Civil Aviation Authority ("KCAA"), CCN, Mavoko Council, Machakos District Lands office, MoL, Department of Defence ("DoD"), Registrar of Societies, Registrar of Companies, Criminal Investigation Department ("CID");
- Members of the public;
- Past relevant reports:- the Ndung'u Report, the Njonjo Report, the John Abuduba report, the Mau Forest Taskforce report;
- the Constitution of Kenya;
- Various statutes including but not limited to:- KAA Act, Civil Aviation Act (" CA Act"), Physical Planning Act, Government Lands Act ("GLA"), Registration of Titles Act ("RTA"), Land Titles Act ("LTA"), Registered Lands Act ("RLA"), the Protected Areas Act and other relevant judicial precedence, and
- Relevant international treaties and conventions.

We analysed this information and authenticated some of the documents to verify whether or not they were genuine. The legal experts advised on the laws governing land administration, evictions & demolitions and culpability while Knight Frank advised on the processes involved in survey of land, land management and property valuation options.

We then conducted a forensic investigation based on the information obtained, which included:

- Conducting interviews with individuals;
- Further analysis of processes and documentation;
- Authentication of documents.

We conducted 103 interviews with 95 individuals. The list of individuals and the dates of the interviews is attached at appendix 1.

2.5.3. Challenges and limitations

In the course of our investigation, we received cooperation and assistance from the OAG and various Government bodies and managed to satisfactorily carry out the procedures set out in our Contract. We however experienced various difficulties which were brought to the attention of the OAG on an ongoing basis. The challenges that we faced, although substantial in some cases, did not deter us from carrying out our work as set out under the terms of reference. We set out some of the difficulties we faced below:

- In certain cases, it was difficult to gain audience with senior Government officials resulting in delays to our work;

- Due to the time that has elapsed since some of the events in question took place, we faced challenges in accessing information, documentation and individuals who were involved. In some cases, these individuals had passed away;

- Owing to the voluminous nature of the documentation, it took a time to collect, consolidate and analyse facts;

- At the outset, it was envisaged that we would meet a certain number of people/groups of people. However, as the assignment progressed, there was an unexpected proliferation of representative groups

and claimants, more so, for the informal settlement areas, all of whom claimed to represent the affected villagers;

- There was a proliferation of what appeared to be duplicate or forged documents, some of which were brought to us towards the end of the assignment. This necessarily meant that more analysis and investigation was required;
- Certain key individuals did not respond to our invitation for an interview. Those who did not respond to our invitation include inter alia:
    - Head of Civil Service Mr Francis Kimemia;
    - Former KAA MDs Mr Muriithi and Mr Muhoho;
    - Former Commissioners of Land Mr Wilson Gacanja and Mr JR Njenga;
    - Officials of Foster,
    - Officials of Ungani Enterprises.

3. Overview of legal framework and key processes and procedures

3.1. Introduction

In this section, we provide an overview of the key processes and procedures governing land administration in Kenya. We also outline regulations that are specific to land used for aviation purposes.

Most of the transactions covered in this Report occurred in the period after 1990. This section therefore mainly sets out the laws and processes that were in effect after 1990 but before the new (2012) land laws. We however set out the history of the evolution of land administration in Kenya as this will help achieve a clear understanding of the basis of the 1990-2012 processes and statutes.

In addition to the processes and statutes, we within this section briefly describe the key institutions involved in the management and administration of land in Kenya.

Since our mandate includes a review of the evictions and demolitions that occurred in late 2011, we comment on the laws and principles that touch on evictions and demolitions. We briefly discuss other relevant legal and procedural matters which are important in this investigation and which we have considered in reaching conclusions. These include issues related to aviation and human rights principles.

In line with the foregoing, we have divided this section into the following three sub-sections:

3.2: Land administration

3.3: Laws and regulations governing evictions and demolitions

3.4: Other relevant legal & procedural matters.

3.2. Land administration

In this sub-section we set out the legal and institutional framework under which land in Kenya is administered. The section sets the background to section 4 where we discuss the ownership claims over the areas under review. The sub-section also describes the institutions that are involved in the administration of land in Kenya.

The sub-section is divided into two parts:

1. Legal and institutional framework governing land administration in Kenya; and
2. Land administration processes and procedures.

3.2.1. Legal and institutional framework governing land administration in Kenya

This sub-section seeks to set out the legal framework that governs land administration in Kenya and is divided into two parts:

1. History of land law in Kenya; and
2. A brief description of the institutional framework under which land is administered.

Throughout this sub-section, we focus only on those statutes and processes that have a direct bearing on the parcels of land and transactions covered in this investigation.

3.2.1.1. History of land law in Kenya

As outlined in section 2 above, land remains a contentious subject in Kenya and as such debates on land remain emotive. As for any modern economy, the sanctity of property rights is an important pillar for investment and economic growth. However, the administration of property rights, particularly in urban areas of Kenya, has remained problematic[1]. As a result there have been several attempts by the state to resolve the problem which has seen several Commissions appointed to help investigate abuses and search for solutions. Recent commissions include the Njonjo Commission of 2002 and Ndung'u Commission of 2004. However, dire problems related to land ownership, access and use remain unresolved – most particularly in Nairobi – and have had a devastating effect on development and management of infrastructural facilities. It is argued that the origins of these challenges are social, political and economic[2]. As a consequence, a complex body of land law has evolved to deal with these problems.

In analysing the land question in Kenya there is need to appreciate the two critical periods in the history of land in Kenya which have had significant contributions in the structuring and restructuring of land relations. These periods are the:

i. Pre independence period, and

ii. Post independence period.

i) Pre independence period

Kenya's land law like that of several post independence African countries can be traced back to the period that Kenya was declared a protectorate[3]. Prior to this (that is the pre-colonial period) land was owned and held

[1] See Obala, L.M (2011) The Relationship Between Urban Land Conflicts and Inequity: The Case of Nairobi, Unpublished PhD Thesis, University of the Witwatersrand, Johannesburg.
[2] Ibid
[3] See Okoth Ogendo (1991) Tenants of the Crown, Acts Press, Nairobi

under customary tenure in which rights of access to use and ownership were regulated by communal rules, usages and practices[4]. The rules, usages and practices were based on communal solidarity such as tribe, clan and lineage. In the pre-colonial period land was essentially communally owned but individuals had rights of use that were acceptable to the rest of the community.

This type of land relationship was interfered with upon the declaration of Kenya to be a protectorate. It is this declaration that brought forth the idea of private ownership. This meant that an individual could own land thereby excluding the rest of the community. The declaration of Kenya as a protectorate on 15 June 1895 by the British Government further saw the introduction of western procedures and processes of access and ownership of land. This affected lands that were considered unoccupied or wasteland by the colonial administration and therefore declared Crown Land. On the other hand, native areas [5] continued to be accessed through traditional systems based on the collective rules and practices of the community. In some native areas however, (particularly in the Rift Valley, Central and Coastal regions), there was a shift towards the western procedures. This saw the emergence of a dual system of land administration in the country – i.e. both an informal traditional and a formal legal system.

It is important to recognise that in the initial stages in the pre-independence period a major concern for many of the white settlers was capital accumulation. This concern was hindered by Kenya being under the protectorate status. According to an 1833 opinion by the Crown Law Office, the protectorate status did not confer radical title (ultimate ownership) of land in the protectorate to the British Crown[6]. This meant that the acquisition of rights in land in a protectorate could only be by way of conquest, agreement, treaty and to an extent, sale.

As a result of the complications brought about by the opinion of 1833, there was a gradual revision of imperial jurisprudence culminating in an explanation by the Law Officers in 1899 that their 1833 opinion only applied to protectorates "with a settled form of Government." In the case of the East African protectorate, the law officers stated that the Foreign Jurisdiction Act of 1890 gave the Crown the power of disposition over "waste and unoccupied land."

The revised opinion of the Crown Law Office provided the basis for development of subsequent legislative instruments touching on land. Thus in 1901, the East Africa (Lands) Order in Council was passed to give effect to the 1899 Crown Law Office opinion. It vested Crown lands in the whole of the protectorate in the Commissioner and Consul-General for the time being and such other appointed trustees, to be held in trust for her Majesty. The Commissioner was empowered to make grants or leases of Crown lands on such terms and conditions as he might think fit, subject to the directions of the Secretary of State.[7] In 1902 the Commissioner enacted the Crown Lands Ordinance which provided for outright sales of land and leases of nine hundred and ninety nine and in some cases ninety-nine years duration. The 1902 Crown Lands Ordinance formed the basis of the land laws that were used even after independence.

In 1915, the Crown Lands Ordinance re-defined Crown lands so as to include land occupied by native tribes, and land reserved by the Governor for the use and support of members of the native tribes. It also made it clear that the Africans had no right to own any land, whether they occupied it, or it was reserved for their use. On attaining independence in 1963, the Kenya Government changed the 1915 Crown Land Ordinance to the Government Lands Act, Cap 280 of the Laws of Kenya ("GLA") but did not alter its content significantly.

The 1915 Crown Lands Ordinance (GLA) was enacted to make further and better provisions for regulating the leasing and other dispositions of Government land and related issues. The GLA provided that only the President

[4] See Kenyatta J; (1959) Facing Mount Kenya,
[5] Native areas (land) refers to land that was occupied by the Africans
[6] Ndung'u report
[7] Crown land was defined as, 'all public lands within the East Africa Protectorate which for the time being are subject to the control of Her Majesty by virtue of any treaty, convention, Agreement, or of Her Majesty's Protectorate, and all lands which have been or may have hereafter be acquired by Her Majesty under the Land Acquisition Act 1894 or otherwise howsoever'.

(and previously the Governor) could sign documents granting title to land. The President could, however, delegate his powers to the Commissioner of Lands ("CoL"). The GLA further laid down the procedures the CoL must follow in allocating land.

The GLA defines Government Land as " Land for the time being vested in the Government by virtue of Sections 204 and 205 of the Constitution (as contained in Schedule 2 to the Kenya Independence Order in Council 1963) and Sections 21,22,25 and 26 of the Constitution[8] of Kenya (Amendment) Act, 1964 ".

Section 3 of the GLA further provides for the special powers of the President to make grants or dispositions of any estates, interests or rights in or over unalienated Government land. Unalienated Government land means Government land which is not for the time being leased to any other person, or in respect of which the CoL has not issued any Letter of Allotment ("LoA").

These provisions have far reaching implications in law and practice. There are varying interpretations to these provisions:

- They have been interpreted to mean that the Government owns the land as a private entity and can use, abuse and dispose it as if it were a private owner.
- They have also been interpreted to mean that the Government holds the land in trust for the citizens and should therefore follow set laid down principles in administering it.

With the enactment of the 1915 Crown Land Ordinance, the British Government had already acquired control of all land in Kenya by the time Kenya was declared a colony in 1920. In effect the pre-independence Government and later on the independence Government became the allocator of land rights.

In 1920, the pre-independence Government enacted the Registration of Titles Act, Cap 282 of the Laws of Kenya ("RTA"). RTA was enacted principally for the purpose of registering title over land by improving the issuance of titles as well as regulating transactions in land. It was borrowed from the Registration of Title enactment of the Federal Republic of Malaya and the Transfer of Land Act, 1890 of Victoria. After this statute was enacted in 1920, all successfully claimed plots were registered under it. Thus to date any titles adjudicated in 1920 and thereafter are registered under the RTA, unless they have been converted as we discuss further below.

Apart from introducing a form of title registration based on the Australian Torrens system of title registration, the RTA also introduced conveyancing by statutory form. The RTA provides inter alia, that "*the Certificate of Title issued by the Registrar to a purchaser of land upon a transfer shall be taken by all Courts as conclusive evidence that the person named therein as proprietor of the land is the indefeasible owner thereof .... and the title to that proprietor shall not be subject to challenge.*"

There are two Registries that register RTA titles: the Inland Registry at Nairobi (Ardhi House) and the Coastal Registry at Mombasa. RTA registration provides for freehold and leasehold rights over land.

Other than the GLA and RTA, some other statutes that were enacted in the pre-independence period that have a bearing on land management include:

i. Land Titles Act, Cap 282 of the Laws of Kenya ("LTA").

ii. Registration of Documents Act, Cap 285[9] of the Laws of Kenya ("RDA").

[8] Independence Constitution.

[9] The RDA is not peculiar to land laws since documents that are unrelated to land law are registrable under it, examples being, powers of attorneys, wills, trusts, among others.

iii. Survey Act, Cap 299 of the Laws of Kenya ("Survey Act").

iv. Town Planning Act

ii) Post independence period

Our discussion of land laws in the post independence period is split into two periods based on the Constitution in force i.e.:

1. The Independence Constitution, and
2. The Current Constitution

This split is necessary due to major changes in land administration brought about by the Current Constitution enacted on 27 August 2010 and the new land laws that came into effect on 2 May 2012. It is important to note that most of the transactions covered by this Report occurred in the post independence period and under the Independence Constitution.

The period covered by the Independence Constitution

In 1963, the Independence Government inherited the land administration system that had been created by the colonial regime. However, in response to emerging needs of the society, several land related statutes were enacted and amendments were introduced into the existing laws governing land administration. These changes did not substantially change the law because new laws that were enacted did not repeal the statutes that were applicable in the pre-independence regime. Thus in general the law remained intact. In this process there has evolved a complex set of land law enshrined in various statutes to cater for different needs, circumstances and situations. This has caused confusion and difficulties in the management of land in the country at times leading to abuse of the land administration processes and procedures.

One of the most significant Acts enacted in this period was the Registered Lands Act, Cap 300 Laws of Kenya ("RLA"). The RLA was enacted in 1963 with the aim of achieving two policy objectives i.e.:

a) To enable land occupied and owned by Africans to be registered under the law. In this regard it provided that '*all land that was consolidated or adjudicated in the African reserves and then offered to the Africans for settlement in the settlement schemes would be registered under the RLA*'; and
b) To simplify and unify the registration process.

The RLA provided for the conversion of a registration under any of the other statutes into a registration under its provisions.

The policy objectives behind the enactment of the RLA were ignited by the problems that attended the GLA, RTA and the Indian Transfer of Property Act 1882 as amended by the 1959 Amendment Act (the "ITPA"). The GLA and RTA were limited only to the registration of title to land. They did not provide for the procedure through which interests in land registered under them would be conveyed. The ITPA which was meant to serve this purpose was subsequently found to be inadequate[10].

In this light, the RLA repealed the Land Registration (Special Areas) Act save for its adjudication and consolidation provisions. The Land Registration (Special Areas) Act had been enacted in 1959 shortly after the

[10] Ojienda.O. in "Principles of Conveyancing in Kenya; A Practical Approach"

enactment of the Native Lands Registration Ordinance, both of which were focused on recognizing and registering the claims of Natives to land under customary law.

It needs to be recognized that the substantive laws on land in Kenya were borrowed largely from two statutes: (i) the ITPA, and (ii) the RLA. The RLA provides that the title deed is not conclusive evidence of ownership but rather the Register held in every district. The RLA provides for absolute proprietorship over the land.

The Current Constitution

Chapter Five of the Kenyan Constitution ("Current Constitution") deals with land and environment. This Chapter provides that land shall be held, used and managed in accordance with certain principles which include equitable access to land, security of land rights and transparent and cost effective administration of land. These provisions are to be implemented through a national land policy developed and reviewed regularly by the national Government and through legislation. The Constitution also establishes the National Land Commission which is, inter *alia*, charged with the overall responsibility of managing public land on behalf of national and county Governments and monitor and has oversight responsibilities over land use and planning throughout the country.

Article 66 of the Constitution also provides that *"the state may regulate the use of any land, or any interest in, or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use planning."*

Under the Constitution, land is classified as public land, community land or private land. Public land is defined to include any land lawfully held, used, or occupied by a state organ except where such land is held by the State organ as a lessee under a private lease.

Article 68 of the Constitution also requires Parliament to enact, revise, consolidate and rationalize existing land laws. Pursuant to this, Parliament has enacted the new land laws which commenced on 2 May 2012. These include:-

(a) The Land Registration Act, (No. 3 of 2012).

(b) The National Land Commission Act (No. 5 of 2012).

(c) The Land Act (No. 6 of 2012).

The land Registration Act provides a comprehensive system of the registration of titles to land. This Act has repealed the ITPA, the RLA, the RTA, the GLA, and the LTA.

The National Land Commission Act defines the composition, functions, roles, powers and responsibilities of the National Land Commission.

The Land Act creates a legal framework for the sustainable administration and management of land and land based resources. This Act has also repealed the Land Acquisition Act and the Wayleaves Act.

Whereas the transactions and events under investigation are based on the repealed laws and shall be analysed based on the repealed land laws, we shall make reference to the new laws as may be relevant especially in pointing the way forward.

3.2.1.2. A brief description of the institutional framework under which land is administered

In this subsection, we set out in brief, a description of three stakeholders that are involved in land management and administration in Kenya and that are relevant to this Report. These are:

A. The MoL
B. Local Authorities
C. Private sector consultants

A. Ministry of Lands

The MoL is tasked with land administration in Kenya. Its mandate is to:

- formulate and implement land policy;
- undertake physical planning;
- register land transactions;
- undertake land surveys and mapping, land adjudication and settlement, land valuation; and
- administration of state and trust land.

MoL is currently organized into five departments, namely:

i. Administration and Planning;
ii. Department of Surveys;
iii. Department of Physical Planning;
iv. Department of Lands ; and
v. Department of Land Adjudication and Settlement.

Other than the Department of Lands which is headed by the CoL, the other four departments are headed by Directors. MoL is headed by the Minister of Lands and the chief accounting officer is the Permanent Secretary ("PS").

We consider it important to set out some of the functions of three of the five departments at MoL (i.e. Department of Lands, Department of Surveys and Department of Physical Planning) as they are directly linked to this investigation. These functions are as summarized in the table below:

Table 3.1: Functions of some departments at MoL

Department	Division	Role
Department of Lands	Land Administration Division	• It is responsible for the administration of all Government land and trust land on behalf of the Local Authorities. • Processing of development applications (subdivision, change of user, extension of user and extension of lease) • Survey plans Records Office ("SPRO") checks the status of land noting allocations, plotting of maps/plans, preparing forms for setting apart, etc.
	Valuations Division	• The division is responsible for valuation of land and fixtures on land for various purposes e.g. Compulsory Acquisitions, Stamp Duty and valuation for subdivision (rent

		apportionment), change of user, rating etc
	Land Registration Division	• The division is responsible for all registration of titles and land transactions in Kenya. • It includes the Internal and Coastal registries under RTA as well as various district registries under the RLA.
Department of Physical Planning		• Formulation of national, regional and local physical development policies and guidelines. • Preparation of regional and local physical development plans and Part Development Plans ("PDPs"). • Advise CoL on matters concerning alienation of public land. • Advise the CoL and Local Authorities on most appropriate use of land including subdivision and amalgamation. • Require Local Authorities to ensure proper execution of physical development controls and preservation orders.
Department of Survey		• Surveying and Mapping. • Map Printing and General Publishing. • Maintenance of Land Registration Maps. • Inspection and re-establishment surveys of National and International Boundaries.

B. Local Authorities

The involvement of a Local Authority in land administration is in two main areas:

a) in respect to land owned by the Local Authority; and
b) in relation to development of land falling within the jurisdiction of the Local Authority.

a) Land owned by a Local Authority

With respect to lands owned by a Local Authority, the Local Government Act, Cap 265 of the Laws of Kenya ("Local Government Act") applies. Lands owned by a Local Authority can be:

- Government land falling under the GLA and leased to the Local Authority by the CoL;
- Land that is surrendered by individuals for public use; or
- Trust land that is held by the Local Authority in trust for the community.

Section 144 of the Local Government Act authorizes a Local Authority to acquire and to hold land for its purposes and functions. The same provision authorizes Local Authorities to sell, grant or lease any land which it may possess and which is not required for the purpose for which it was acquired or being used, subject to approval by the Minister of Local Government.

A Local Authority have powers to pass by-laws to govern land allocations within its jurisdictions, for example, the CCN has created by-laws that require that any sale, lease or grant of lands that they do not need must be approved by a resolution of the Council. These by-laws constitute procedures of issuing titles to lands owned by the Local Authority that must be adhered to in any alienation. Breach of or failure to adhere to these provisions in issuing titles gives rise to irregularly issued titles.

b) Development of land falling within the jurisdiction of a Local Authority

The powers of a Local Authority to control development of land within its jurisdiction are derived from the Physical Planning Act, Cap 286 of the Laws of Kenya. These powers are delegated by the Director of Physical Planning.

The Local Authority has the following powers under the Physical Planning Act:

i) to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
ii) to control or prohibit the subdivision of land or existing plots into smaller areas;
iii) to consider and approve all development applications and grant all development permissions;
iv) to ensure the proper execution and implementation of approved physical development plans;
v) to formulate by-laws to regulate zoning in respect of use and density of development; and
vi) to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

It is an offence for a person to carry out development within the area of a Local Authority without development permission granted by the Local Authority. Further, any dealing in connection with any development in which there is no development permission is null and void and such development shall be discontinued.

According to the Physical Planning Act, any Local Authority can, when considering a development application submitted to it, also consult with *"the Director of Surveys ("Director of Survey"), the CoL, the Chief Engineer (Roads), Ministry of Public Works and Housing, the Chief Public Health Officer of the Ministry of Health, the Director of Agriculture, the Director of Water Development, the Director of Livestock Development, the Director of Urban Development, the Chief Architect, Ministry of Public Works and Housing, the Director of Forests; and such other relevant authorities as the Local Authority deems appropriate".*

Due to capacity issues, we were advised by various persons that Local Authorities other than the CCN are required to circulate development approvals to the District Physical Planner. The District Physical Planner is an officer in the Department of Physical Planning, MoL.

C. Private sector consultants

Other than the public institutions and bodies discussed above, there are various private sector bodies that are involved in land administration and management matters. Some of the key professionals involved in land administration relevant to this assignment and their licensing bodies are as summarized in the table below:

Table 3.2: Summary of the roles of various consultants in land

Profession	Licensing body	Roles
Physical Planner	Physical Planners Board	Physical Planners are in charge of planning for land use. They prepare development plans showing the general pattern of land use and the character and location of infrastructure and amenities. A sub-division plan must be prepared by a licensed Physical Planner for it to be considered for approval by a Local Authority.

Profession	Licensing body	Roles
Surveyor	Land Surveyor's Board	Licensed private surveyors are in charge of carrying out field surveys by mapping plans onto the ground and establishing beacons. The Licensed surveyors are then in charge of preparing Survey Plans and submitting them to the Department of Surveys for approval. They also prepare Deed Plans that are used in preparing certificates of title.
Advocate	Law Society of Kenya	Advocates are involved in the conveyance process. Under section 3 of the Contract Act, Cap 23 of the Laws of Kenya, a contract for the disposition of an interest in land is required to be in writing and under section 34 of the Advocates Act, Cap 16 of the laws of Kenya, only qualified Advocates are allowed in law to draw the contracts and documents relating to the conveyance of land. Lawyers advice the parties and ensure that the intentions of the parties are clearly outlined in the agreements and documents relating to the conveyance. Sometimes, lawyers also undertake the due diligence formalities and registration of the conveyance instruments.
Architects	Architectural Association of Kenya ("AAK")	Architects are involved in the preparation of building plans and in supervising constructions. AAK is is a body corporate that coordinates not just architects, but various professionals engaged in the built and natural environment incorporating but not limited to professions in Architecture, Engineering, Landscape Architecture, Quantity Surveying and Town and Physical Planning.

It is important to note that other than the three stakeholders discussed above, there are other institutions such as the Law Courts and the Provincial Administration that have and are also involved in land matters. We will touch on the role of these institutions where they were involved in specific transactions.

In conclusion, we note that land administration in Kenya has over the years been defined by a complex set of laws. Land has also been administered by various bodies and departments and as we show later, the coordination between them has at times been poor.

With respect to the land to which this investigation relates, it is important to note that there are other statutes that define the administration and use of aerodromes and the land surrounding these aerodromes. We describe some of these statutes in section 3.4.

3.2.2. Land administration processes and procedures

Land administration is governed by various statutes. These statutes set out the processes that are to be followed in administering land. In addition to the statutes, the various bodies tasked with land administration have also developed their own working procedures over time. In this sub-section, we describe the land administration processes that were in play during the period under review i.e. post independence period but before the Current Constitution. These are the processes that are relevant to this investigation and will form the basis of the conclusions we will make relating to the transactions under investigation.

We note that the current disputes over the ownership of the various parcels of land under investigation can be traced back to the 1980s. The processes described in this section therefore have their focus in this period and specifically between 1980 and 2012. We however also comment on relevant and significant changes in the procedures that may have happened before this period.

Before the enactment of the Land Registration Act of 2012, there were several statutory regimes under which private land could be registered. From our review, we noted that the parcels of land in contention are registered under the RTA regime. Our description of the processes therefore focuses on the RTA registration regime.

In later sections of this Report, we will base our findings and conclusions on the level of adherence and compliance to the processes that we define here. An understanding of the processes set out in this sub-section is therefore important in understanding later sections.

We found the following processes to have been relevant to our work and therefore outline them in this section:

1) Alienation of Government land - that involves the following processes:
    a) physical planning;
    b) issuance of LoAs for individual parcels;
    c) surveying;
    d) granting of title; and
    e) registration of the title.
2) Compulsory acquisition.
3) Land consolidation and sub-division.
4) Development of buildings.
5) Change of land registration system i.e. from RTA to RLA.

In this Report, we only give a summary description of the above processes.

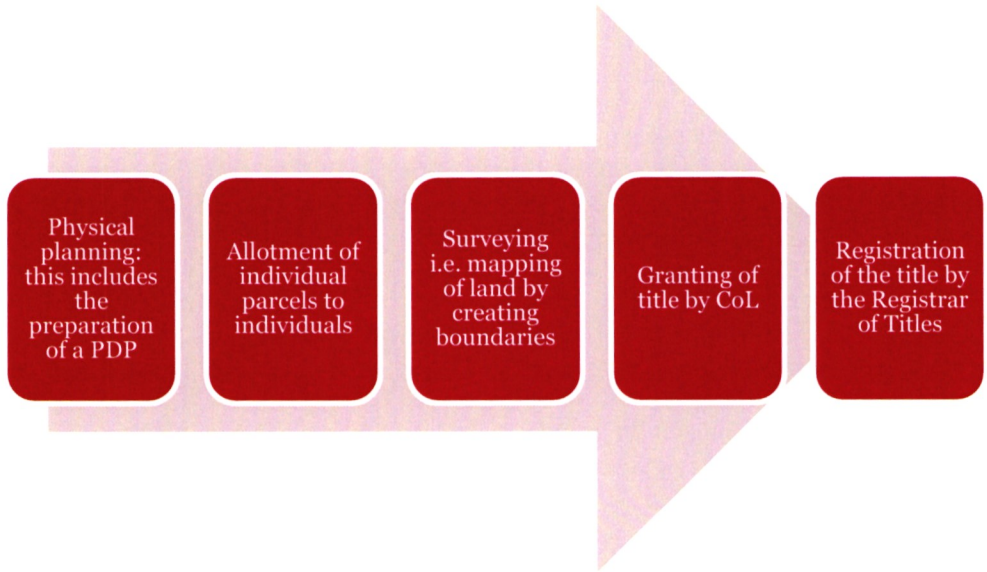
3.2.2.1. Alienation of Government land

The Land Registration Act of 2012 defines land alienation as the sale or other disposal of the rights to land. Our focus in this Report is the transfer of rights to land from Government to private individuals (alienation of Government land) and the subsequent registration of the acquired rights under RTA.

Our understanding of the alienation process is derived from various interviews held with MoL staff and from our review of the Report on Reengineering of the MoL Business Processes.

The process of land alienation can be summarized as follows:

Fig 3.1: Summary of the land alienation process



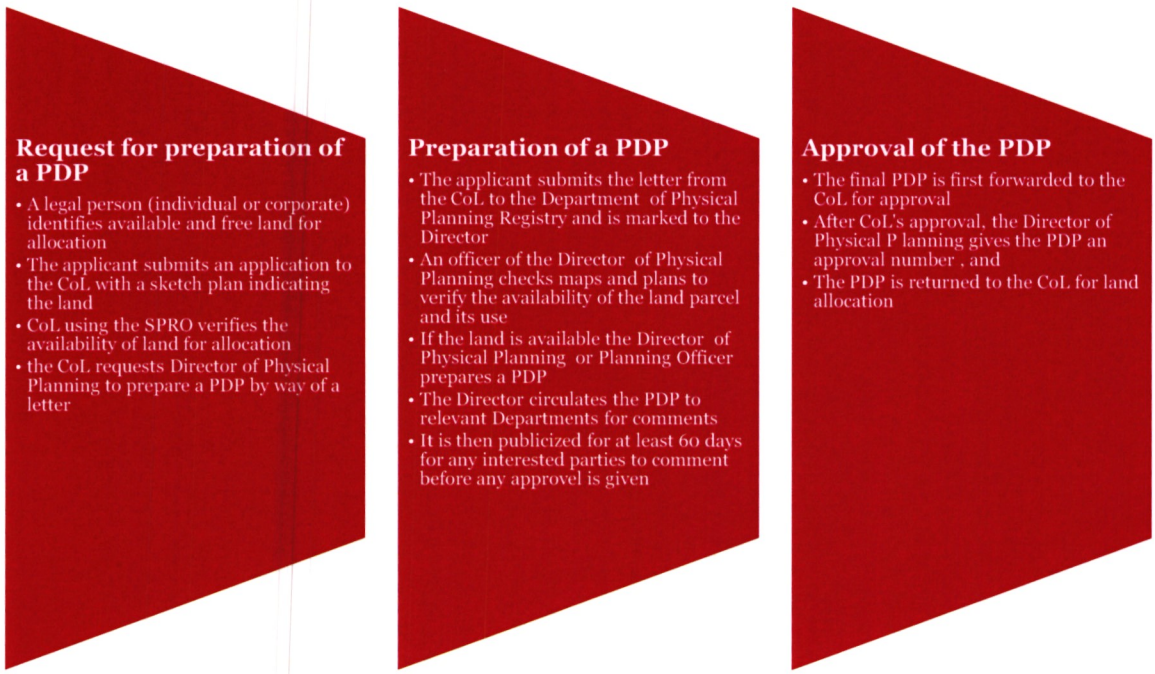
We discuss each of the processes below.

a) Physical planning

Physical planning falls under the Department of Physical Planning whose work is guided by the national demands and statutory requirements as stipulated in the Physical Planning Act of 1996. One of the main objectives of the enactment of the Physical Planning Act of 1996 was to consolidate the laws dealing with physical development in urban and rural areas. The enactment of the Physical Planning Act repealed the Town Planning Act CAP 134 and the Land Planning Act CAP 303.

In regard to alienation of land, the planning process is as summarised below:

Fig 3.2: Physical planning process in regard to alienation of Government land



It is important to note that PDPs are sequentially numbered. This 'PDP number' is issued before the PDP is approved. Upon approval, the PDP is then given a second number, the approval number. It is also important to note that some PDPs are prepared by District Planning Officers. These plans are then sent to the Department of Physical Planning Registry for registration and then to the Director of Physical Planning and CoL for approval.

It is also important to note that the Director of Physical Planning maintains a manual register of all submitted and processed PDPs in his office. This manual record dates back many years and contains both approved and unapproved PDPs.

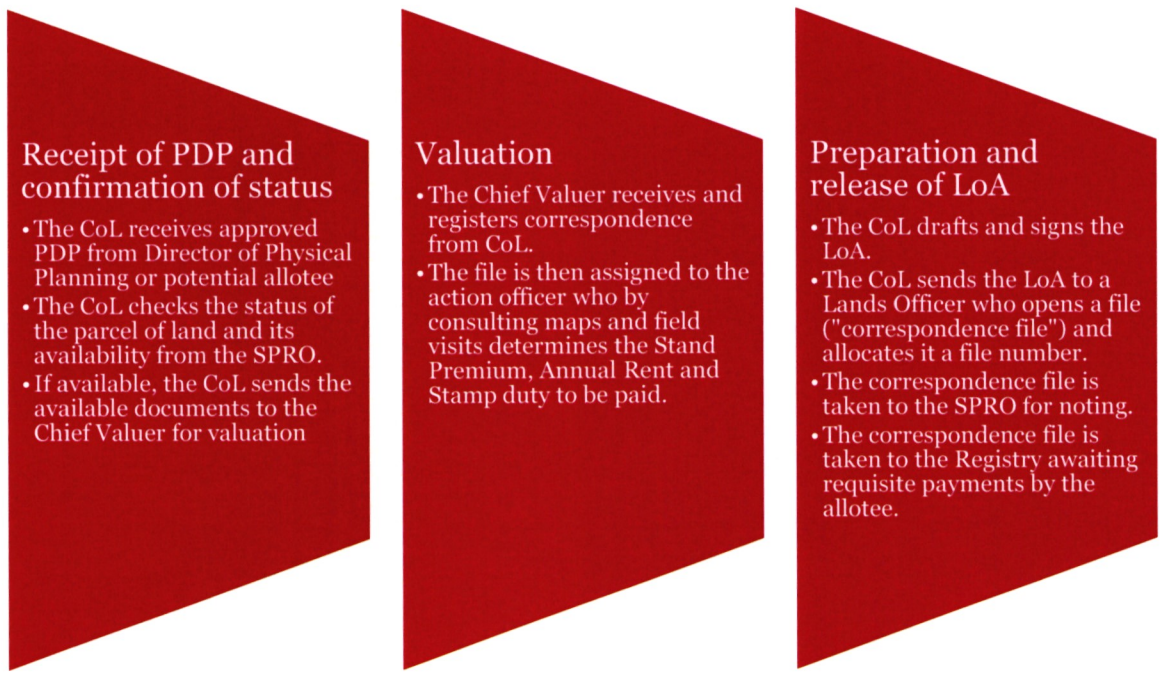
b) Issuance of Letter of Allotment to individual parcels

The issuance of a LoA is the responsibility of the CoL. The CoL and by extension Lands' involvement in the alienation process can be summarised in four stages:

1. requesting for a PDP as described in fig.3.2 above and its approval;
2. issuance of a LoA;
3. issuance of an Letter of Indent that allows the preparation of a Deed Plan; and
4. granting and registration of title after the land has been surveyed.

The process that is followed in issuing a LoA can be summarised as follows:

Fig 3.3: The process followed in issuing a Letter of Allotment



According to Mr Machuka who was a Lands Officer at Ardhi House between 1996 and 2006, the process of preparing the LoA in this period was:

i. The CoL would instruct the Senior Lands Officer in charge of a region to draft a LoA. The instructions would be either in writing or verbal.
ii. The Senior Lands Officer or one of the lands officers would then:
    a. go to SPRO to confirm that the parcel in question had not already been allocated;
    b. requisition for a blank LoA form from the stores through a requisition form;
    c. fill in the LoA in duplicate and sign it; and
    d. forward it to the Lands Officer tasked with opening the correspondence file.

Mr Machuka explained that the Lands Officers would not always open a correspondence file upon the issuance of the LoA as prescribed. This is because a good number of allottees did not accept the LoA once received. The officers in Lands would therefore only open a correspondence file once the allotee commenced payments. Mr Machuka further indicated that there was a freeze on the issuance of LoAs in August 1999.

Upon receipt of a LoA, the allotee is, according to the LoA, meant to formally accept the offer in writing and pay the allotment fees as prescribed in the LoA. The allotee is required to make the relevant payments within thirty days from the date of formal acceptance of the LoA in writing. In practice we found that this was not strictly adhered to. It was construed that payments accepted by the MoL after the thirty days had elapsed would signify an acceptance of the LoA.

The acceptance letter and copies of receipts are filed in the correspondence file once received. The correspondence file is then assigned to the Lands Officer in charge of the area where the parcel of land is located. After paying the allotment fees, there exists a contract between the allotee and the Government but the allotee does not have a registered title or interest over the land until a Grant over the parcel of land is issued by the CoL and registered.

c) Surveying

Surveying is the responsibility of the Department of Surveys. The Department of Surveys is headed by the Director of Surveys and is the official agency of the Government of Kenya on all matters affecting land surveys and mapping. Surveying in Kenya is defined by the Survey Act.

The purpose of surveying in the alienation process is to produce an unambiguous definition of the location of the parcel of land being alienated. This is a pre-requisite for any land registration or the production of titles. Cadastral surveying is the means by which the subject parcel of land for registration is identified and located.

Surveys can either be production surveys or non-production surveys. Production surveys result in the production of a Registry Index Map ("RIM") or a Deed Plan whereas non production surveys do not. Our focus is on production surveys and specifically those that result in the generation of Deed Plans. For the purpose of this Report, these surveys can be said to result in two main outputs:

- an updated Survey Plan; and
- a Deed Plan.

The process of survey can be summarised in three stages:

i. The field survey.
ii. Updating of Survey Plans at the Department of Survey.
iii. Issuance of a Deed Plan.

i) Field survey

Field surveys to fixed boundary standards are carried out on request and are executed either by Government surveyors or by licensed private surveyors. Upon request, the surveyor checks that the necessary approvals and authority to survey have been obtained from relevant authorities. For a new Grant survey the approving authority is the:

- LoA issued by the CoL;
- receipts evidencing payment of the fees set out in the LoA; and
- an approved PDP.

Once the surveyor has received the above requisite documents, he/she gathers the relevant Survey Plans (datum plans) from the offices of the Director of Survey. Datum plans are all the previous Survey Plans in the vicinity of the allocated parcel and this is done in order to connect the current survey to the national grid of control points and also check against overlaps. The field surveys are executed in accordance to set standards stipulated in the Survey Act and its regulations. The Director of Surveys is mandated to ensure that these standards are met by all surveyors through a quality control process.

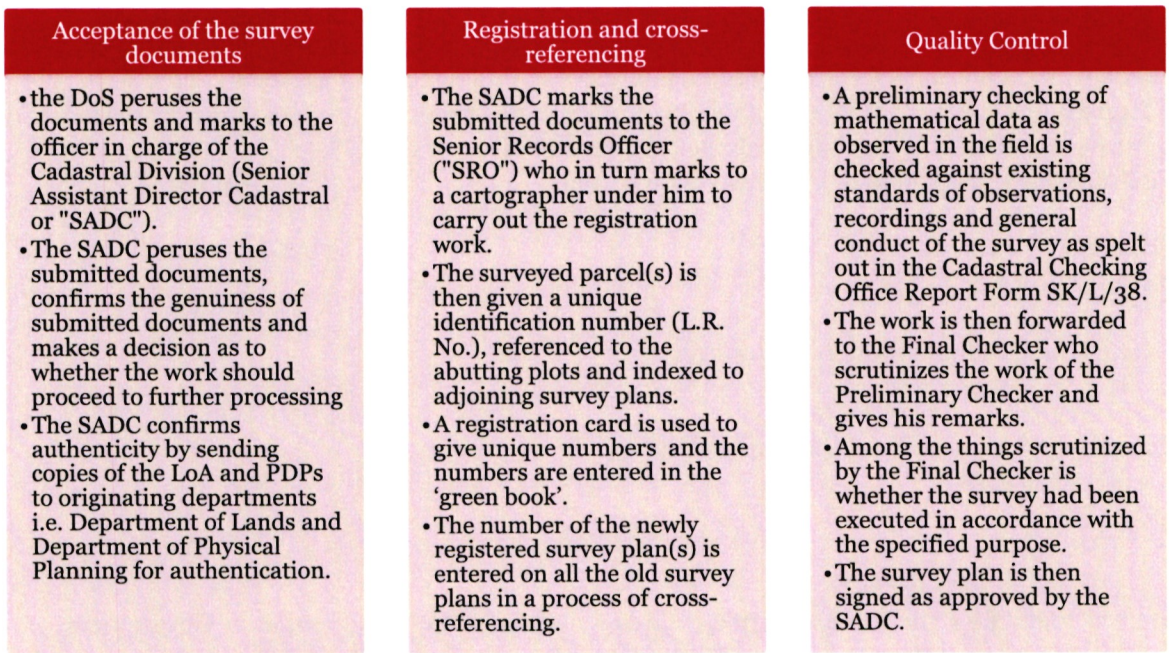
On completion of the field survey, the Surveyor prepares a survey report, which he submits to the Director of Surveys. The survey work is submitted to the Director of Surveys and contains the following set of documents:

i. a letter from the Surveyor submitting the surveyor's report to the Director of Survey;
ii. computations file;
iii. Survey Plan; and
iv. field notes.

ii) Updating of Survey Plans at the Department of Surveys

On receipt of the above documents, the process of authentication of the survey and updating of the survey records is as summarised below:

Fig 3.4: Summary of the process followed in updating Survey Plans



One of the most important steps in the registration process is cross-referencing. This entails the Cartographer indicating the file and registration number ("FR No") of the new Survey Plan on the old Survey Plans of the area. By doing this, the Cartographer indicates to any surveyor using the old Survey Plan that there is a new and updated Survey Plan. Cross-referencing ensures that:

- encroachments or overlaps are avoided,
- alerts the quality control section of the existence of other surveys on or in the vicinity, and
- acts as a data checking mechanism to ensure consistency between surveys.

After the final checking, the Final Checker makes a recommendation on the suitability of approval or otherwise, for the SADC, to take a decision. Statutory fees are then assessed and the CoL or the Licensed Surveyor informed of the approval of the survey in writing.

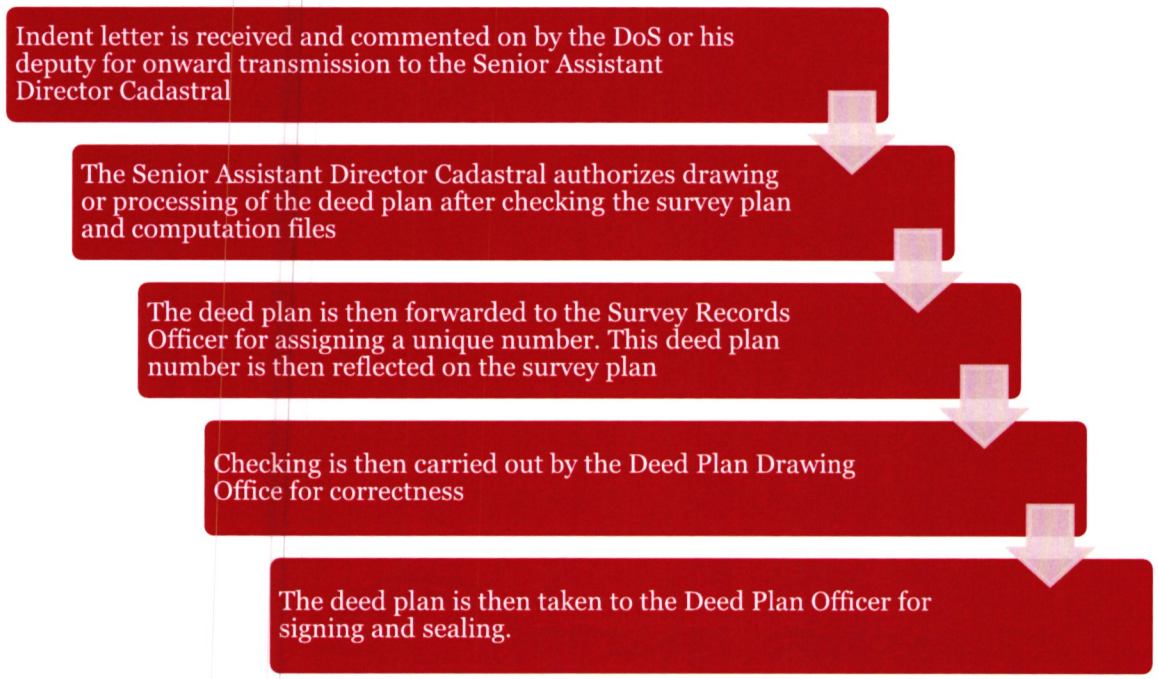
Once the survey is approved, the CoL, who would have been advised accordingly, may then issue a Letter of Indent for a Deed Plan.

Authenticated survey jobs which are under the RTA are also forwarded to the Charting Section for charting. Charting is the inclusion of the specific Survey Plan into the topocadastral sheet of the area. In simple terms, it is the updating of the map of that area to include the new plot and LR No. We understand that the Department of Surveys has not been keen on updating topocadastral sheets.

iii) Issuance of a Deed Plan

Below is the summary of the process followed in preparing and issuing Deed Plans after a Letter of Indent is received from the CoL.

Fig 3.5: Summary of the process followed in preparing and issuing Deed Plans



Upon preparation, the sealed linen copy of the Deed Plan is sent to the CoL. The original Deed Plan and related documents are taken to Survey Records Office for storage.

d) granting of title

The process of granting a title begins with a Letter of Indent written to the Director of Surveys for a Deed Plan. A Letter of Indent is usually written by a Lands Officer on behalf of the CoL and requires that the Director of Surveys prepares and submit a sealed Deed Plan to the CoL.

On receipt of the Deed Plan:

a) a Senior Lands Officer gives instructions to the Principal Registrar of Titles who in turn instructs the typing pool to type the required information on a form of title.
b) the Registrar of Titles peruses the typed document for any errors and forwards the form of title through a Senior Lands Officer, the Assistant CoL, the Senior Assistant CoL, the Deputy CoL and finally to the CoL for signing.
c) The signed Grant (which is by now an unregistered title) document then goes to the Principal Registrar of Titles for registration.

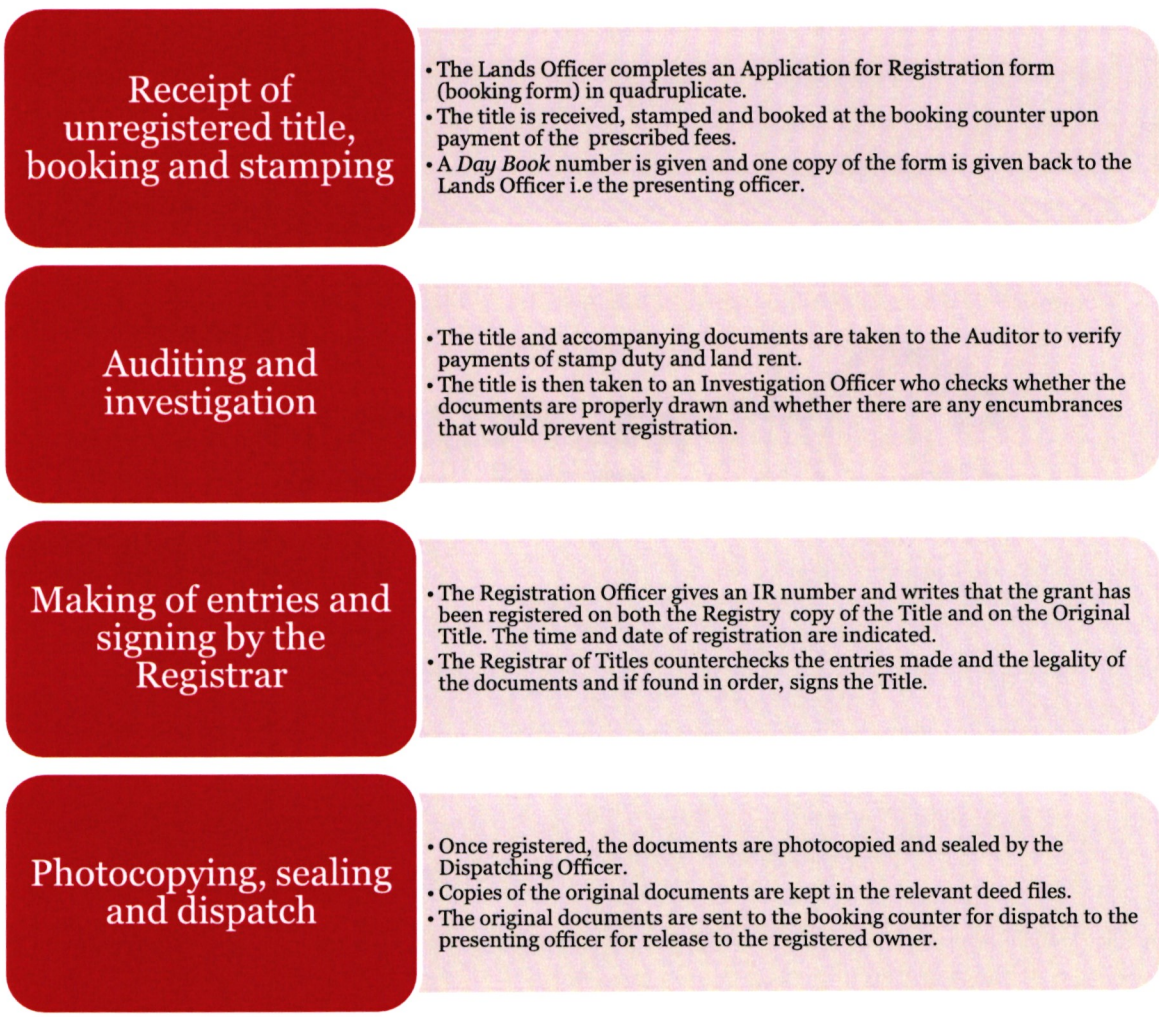
e) Registration of title

Land registration under the RTA registration regime is done at the Central Registry. Land registered under the RLA registration regime is handled from the District Registries.
It has been a practice since the early 1990s to verify the Deed Plans with the Director of Surveys (as the originating authority) before registration.

The process of registration starts with the assessment and collection of Stamp duty and other prescribed registration fees.

Once the relevant payments are made, the procedure for registration is as summarised below.

Fig 3.6: Summary of the process followed in registering a Certificate of Title under RTA



Under section 27 of the RTA, every Grant is deemed and taken to be registered under the Act as soon as it has been marked by the Registrar with folio and volume, so as to indicate its place in the register. Further, every transfer and other instrument purporting to transfer or in any way to affect the land under this Act are deemed

to be so registered as soon as a memorial[11] has been entered in the register upon the folio constituted by the existing Grant or Certificate of Title of that land.

It is important to note that under section 32 of the RTA, no instrument, until registered in the manner described under the Act can pass any interest in land. Of relevance to our investigations, a Grant, a lease or a surrender of title will be deemed registered if such registration is complete as described under section 27 of the RTA.

3.2.2.2. Compulsory acquisition

The Government may compulsorily acquire private land for public benefit under specific conditions. These conditions were provided for under Section 75 of the Independence Constitution. The conditions stipulated under the Constitution were that:

(a) the taking of possession or acquisition is necessary for *inter alia* the interests of defence, town and country planning and development or utilization of property so as to promote public benefit;

(b) the necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

The law on compulsory acquisition of land for public benefit is contained in the Land Acquisition Act, Chapter 285 of the Laws of Kenya ("Land Acquisition Act"). The procedure for compulsory acquisition of land as set out in the Act as summarised below:

[11] "memorial" means the entry signed by the registrar on the Grant or certificate of title embodied in the register of any instrument presented for registration with the time of registration.

Fig 3.7: Summary of the process followed in compulsory acquisition of land

Notice of acquisition	• This is done in two stages the first of which is a preliminary Gazette notice by the CoL on behalf of the Minister • This is followed by a substantive notice issued after the Minister is satisfied that the acquisition of the land is necessary and justifiable.
Demarcation of the land	• Where the land to be acquired has not been marked out, the CoL directs that the land be marked out and measured and a plan of the land to be prepared.
Notice of inquiry, award and payment of compensation	• The CoL gives a notice of inquiry and then holds an inquiry to determine who has interest over the land and its value. • A notice of award of compensation is then prepared after which the CoL pays full compensation awards as soon as practicable.
Survey of remaining land	• Where only part of the land comprised in documents of title has been acquired, the CoL sees to it that a final survey is made of all the land acquired.
Taking of possession and vesting of land	• The CoL serves notice stating that not later than 60 days after the award has been made, the Government shall take possession of the land and the title to the land will vest in the Government. • Upon taking of possession, the land vests in the Government absolutely free from encumbrances.

It is essential to note that the documents evidencing title to the land acquired are delivered and surrendered to the Registrar of Titles upon acquisition. On receipt of the documents of title, the Registrar is supposed to:

a. where the whole of the land comprised in the documents has been acquired, cancel the documents;
b. where only part of the land comprised in the documents has been acquired, the land acquired is excised from the original parcel and new title issued over the un-acquired portion.

Upon receipt of the documents of title, the Registrar is also meant to cause an entry to be made in the register recording the acquisition of the land under the Act.

Alienation and allotment of compulsorily acquired land to private individuals

Section 3 of the Government Lands Act provides that the President may subject to any other written law, make grants or disposition of any estates, interests or rights in or over unalienated Government land. Once land is acquired through the process of Compulsory Acquisition, it becomes Government land. There is no provision in the law which states that the land acquired for a specific public purpose ceases to be available for alienation and allocation to private individuals. We, however, make reference to a High Court decision by Justice Waki which interprets the law in this regard.

In ***Niaz Mohamed Jan Mohamed V Commissioner of Lands & 4 others (1996) eKLR*** Justice Waki ruled as follows

> *"The Court is not persuaded that upon compulsory acquisition of land and the consequent vesting of that land in government then the land falls to be used by the government in any manner it desires. There is plainly no such carte blanche intended in the provisions of the law. The land must be used subsequent to the acquisition, for a lawful purpose, and the only lawful purpose is the one for which it was acquired.* He further notes that such land" *...can neither be alienated by the Local Authority nor the Government under the Government Lands Act ... If it were not so, and taken to its logical conclusion, a loophole would be created for any government which does not mean well for its citizens, to compulsorily acquire whole sections of a city or town or other developed property on the pretext of public good, compensate the owners of the property acquired with taxpayers' money and then turn round and dish out those properties to favored citizens of its choice or the enemies of the state: Parliament could not have intended such preposterous consequences..."*

(See attached at appendix 6 – Justice Waki's decision)

3.2.2.3. Consolidation and subdivision

Consolidation and subdivision are taken as developments on land. As such, most subdivisions will require the services of a Physical Planner. The agencies involved in granting approvals for subdivision include the CoL, Director of Surveys, Director of Physical Planning and the relevant Local Authority.

Once the Local Authorities have given their approvals, the approved subdivision plans are used in processing new certificates of title in a process akin to the one described above. In this case, the approved subdivision plan plays the same role as the PDP.

The process followed in granting approvals for consolidation and subdivision of land at the Local Authority can be summarised as follows:

Table 3.3: Process followed in consolidation or subdivision of land

Process	Steps and officers involved
Paying of requisite rates to the Local Authority	• Land owner submits a copy of the title deed and his details (PIN certificate, ID) to the Council Valuer. • The Council Valuer (Valuer) carries out a search at the Land Registry to confirm the details of the parcel. • Upon confirmation, the Valuer carries out a valuation of the parcel of land • The Valuer then enters the details of the plot and its owner in the supplementary valuation roll of the Council. • The Council can then demand for and accept rates from the owner of the land.
Obtain preliminary approval to subdivide	• This is dependent on the terms in the title deed. • Some titles will require that the CoL assents to a subdivision in principle before the subdivision process can start.
Application for approval to subdivide land	• Land owner obtains a Rates Clearance Certificate after paying all requisite rates to the Council. • Land owner applies for approval to subdivide his/her land through a prescribed form:- the PPA 1 form. • They attach a copy of the title deed, Deed Plan, rates clearance certificate and the proposed subdivision plan prepared by a registered physical

Process	Steps and officers involved
	planner. • The land owner pays requisite processing fees to the Council.
Circulation of the application	• Other than in Nairobi, all sub-division and consolidation requests must be circulated to the District Physical Planner for approval. • Applications may also be circulated to among others: the District Lands Officer and the District Public Health Officer • The circulation is done via a prescribed form: PPA 1 form
Approval of the plan	• The plans may be considered by a Council technical committee if one exists. • The subdivision plan is considered and approved by the Town Planning Committee. The plan is then stamped approved. • The approval is communicated to the developer through a prescribed form: the PPA 2 form.

The subdivision scheme must be approved by the District Physical Planner who should ensure that the plots sizes are acceptable; enough public spaces have been left and all plots are accessible. The District Physical Planner is also the custodian of zoning plans for the District and should know what type of developments are acceptable in a particular area.

Though we have included the process of valuation in the table above, this is an independent process as plots are valued and rates paid even where no developments have been contemplated. We however include the valuation process here as clearing all outstanding rates is a requirement in giving any development approvals.

It may be important to note also that the supplementary valuation rolls are used to update a Council's valuation roll every ten years.

3.2.2.4. Development of structures

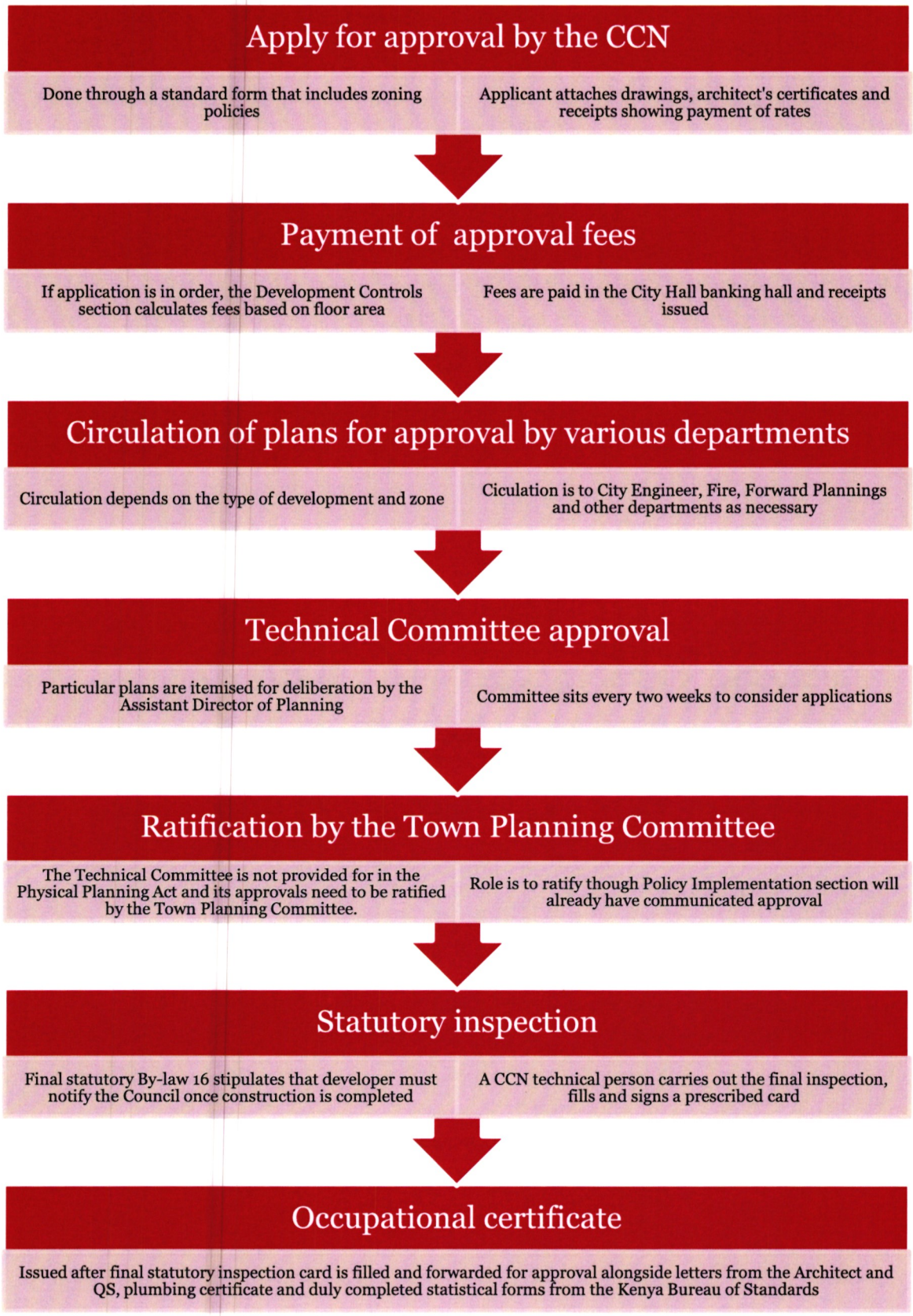
As noted above, the Physical Planning Act gives the responsibility of approving developments including constructions to Local Authorities. The development approval process that is followed by the CCN is described in pictorial form overleaf. We note that most Local Authorities such as the Mavoko Council will use the District Lands, Planning and Public Health officers rather than their own officers in the approval process due to capacity constraints.

All Local Authorities however require that the applicant satisfies the following conditions before they apply for approvals:

- Posses documents to prove ownership of the land:
  - The title documents required by Local Authorities include title deeds, approved subdivision plans.
  - Architects are expected to also request for these documents before designing any developments.
- Have a competent architect prepare the building plans:
  - The Architect must be registered
  - His registration certificate should be attached to the application.

We note that the technical committee that is included in the CCN approval process overleaf is unique to CCN and the Physical Planning Act only requires the ratification of the Town Planning Committee.

Fig 3.8: Summary of the process followed in approving developments



We note that developments that are next to certain critical installations require further approval. According to the Physical Planning Act, a Local Authority may in considering development applications consult "*such other relevant authorities as the Local Authority deems appropriate*". Pursuant to this provision and for developments around aerodromes, CCN indicated that they used to (before 1997) consult and seek approval from KCAA for civilian installations and from the Kenya Air Force ("KAF") for MAB. Such approvals were sought and granted at the circulation phase. CCN has recently resumed this consultation. The Mavoko Council however indicated that they do not consult these agencies.

Local authorities have the powers under the Physical Planning Act to remove or cause to be removed any unapproved developments. They must however issue a notice of such intent using the prescribed form PPA 7.

3.2.2.5. Change of land registration system from RTA to RLA

On the enactment of the RLA in 1963, the intention was to have land registered under the other different regimes to be consolidated under the RLA. As such the RLA allows the transfer of registration of title from other regimes to RLA. The RLA does not however stipulate the procedure to be followed.

The MoL has however come up with a process that is followed in transferring land registration from RTA to RLA. The process is as follows:

1) The registered owner of a parcel of land makes an application to the Chief Lands Registrar for the conversion of the registration from RTA to RLA. The application is accompanied by a certified copy of the title.
2) The Chief Lands Officer then writes to the Director of Surveys to confirm whether the conversion is viable in terms of any existing RLA registration blocks.
3) The Director of Surveys confirms to the Chief Land Registrar whether it is possible to convert the records or not.
4) If the response of the Director of Surveys is to the affirmative, the Chief Lands Officer then prepares a draft Legal Notice which is forwarded to the Attorney General for approval.
5) The Attorney General approves the draft Legal Notice and forwards it to the Chief Lands Registrar. The ownership of the parcel of land is confirmed and then the draft Legal Notice is forwarded to the Minister of Lands for execution, through the CoL and the PS, MoL.
6) After execution of the Legal Notice by the Minister, the Chief Land Registrar forwards the Legal Notice to the Attorney General for publication by the Government Printer.
7) The registered proprietor then surrenders the original title to the Chief Lands Registrar which is converted and forwarded to the relevant District Lands Registrar for issuance of the title under the provisions of the RLA.
8) Issuance of new Title under the RLA by the relevant District Lands Registrar.

We will refer to the above process in the remainder of this Report.

3.3. Laws and regulations governing evictions and demolitions

This investigation was prompted by the evictions and demolitions that occurred in late 2011. We discuss the evictions and demolitions in detail in section 5 of this Report. In this subsection, we briefly set out the various laws which provide for evictions and demolitions in circumstances relevant to this investigation.

The subsection is divided into the following:

i. Trespass on land

ii. Kenya Airports Authority Act

iii. Civil Aviation Act

iv. The Physical Planning Act

We shall consider the sections below in our analysis of evictions and demolitions in the affected parcels of land and establish their application in the evictions and demolitions.

3.3.1. Trespass on land

Under common law, trespass on land arises when one enters into or remains on the land of another without his permission, or if permission has been granted to enter, he remains on the land after expiration of the licensed period without authority of the owner. Trespass on land can also arise where one puts or allows his property to remain in, on or over the land of another without his consent.

The land owner has a right to remove the trespasser and/or his property on his land by using reasonable force. However in doing so, he should not use unreasonable force or violence or otherwise obtain possession extra-judicially or act illegally. The latter constitutes a forcible entry which is criminalized under section 90 of the Penal Code (Cap 63 Laws of Kenya). Therefore, unless a trespasser consents or agrees to give up possession of the land, the landowner has to refer to a competent Court or a statutory tribunal to obtain an order for possession.

The landowner is also entitled to an injunction to restrain trespass.

Trespass is also criminalised under the Trespass Act (Chapter 294 of the Laws of Kenya) and a trespasser can also be charged for an offence of forcible detainer under of the Penal Code.

3.3.2. Kenya Airports Authority

The KAA Act establishes the KAA as a body corporate with perpetual succession and a common seal and having capacity in its corporate name to sue and be sued and to acquire, hold and dispose of property. KAA is tasked with the responsibility of the construction, operation and maintenance of aerodromes related facilities in Kenya.

The KAA Act gives the KAA the power to prohibit, control or regulate the presence of any person, aircraft or goods within any prescribed aerodrome or any premises *"controlled or occupied"* by KAA. Under section 14(1), any authorized officer of KAA has powers to enter upon any land and to

> *"remove or cause to be removed any obstruction, materials, structures or buildings including slaughter-houses which are likely to attract birds that may be hazardous to aircraft operations."*

Under section 15 of the KAA Act, any authorized employee of KAA may for the purposes of the Act, enter upon land and cut down or remove any tree or other obstruction, not being a building or execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident. And if such tree or other obstruction cut down or removed came into existence subsequent to the construction of any aerodromes or to the service being provided thereafter, no compensation is payable to the effected person(s).

Where any building is erected in a manner that is likely to interfere with the operation of any service provided by the KAA, KAA is entitled, unless where prior consent of the MD of KAA had been obtained to the erection of such building, or the building has been modified to the satisfaction of the MD, apply to the High Court for an order for the demolition or modification of such building, or, as the case may require, for the payment to KAA of the cost incurred in the necessary resetting or replacement in order to prevent such obstruction or danger and the Court at its discretion may grant such order as it may deem fit as to the payment of compensation and costs.

3.3.3. Kenya Civil Aviation Authority

The Civil Aviation Act (the "CA Act") makes provisions for the control, regulation and orderly development of civil aviation in Kenya and for other incidental matters. The CA Act established the KCAA as a body corporate. The object and purpose of KCAA is to plan, develop, manage, regulate and operate a safe, economical, and efficient civil aviation system in Kenya. The functions of KCAA are set out in section 3A of the CA Act.

The CA Act gives KCAA power to control and restrict buildings in a 'declared area'. Under the CA Act, a 'declared area" is defined as "*any area adjacent to or in the vicinity of an aerodrome which the Minister may by notice in the Gazette declare to be a declared area.*"

Under section 9 of the Act and in the interests of the safety of air navigation, the Minister may, by order published in the Gazette, prohibit the erection within a declared area of any building or structure above a height specified in the order.

Under section 10 of the Act, the Director-General of KCAA may by order, where he considers that provisions for the safety or efficiency of air navigation ought to be made, and subject to any conditions specified in the order, require or authorize either the owner or occupier of any land on which the obstruction is situated or any other authorized person, to enter upon the land and carry out such work as is necessary to enable the warning to be given or the obstruction to be reduced in height. The KCAA is supposed to compensate any person(s) affected by the order and having interest in the land for any loss or damage suffered.

Under section 3B(2) of the CA Act, KCAA should discharge its functions without prejudice to the functions of KAA.

3.3.4. Physical Planning Act

Under the Physical Planning Act, no person is authorized to carry out a 'development' within the jurisdiction of a Local Authority without a development permission granted by the Local Authority. The term 'development' is defined in the Physical Planning Act to include, but not limited to, *"the making of any material change in the use or density of any buildings or land or the subdivision of any and erection of such buildings or works and the carrying out of such building operations".*

Under section 38 of the Physical Planning Act, where a development is carried out without the required development permission having been obtained, or compliance with any conditions of development permission, the Local Authority may serve an enforcement notice on the owner, occupier or developer of the land. The

enforcement notice should specify the development alleged to have been carried out without development permission, or the conditions of the development permission alleged to have been contravened and such measures as may be required to be taken within the period specified in the notice to restore the land to its original condition before the development took place, or for securing compliance with those conditions, as the case may be, and in particular such enforcement notice may require the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.

Under section 39 of the Physical Planning Act, where there is non-compliance with an enforcement notice, the Local Authority may, *inter alia*, enter on the land and take those measures and may, recover the costs and expenses resulting from its action from the offender.

Under section 45, the Physical Planning Act " *Any notice or order under this Act shall be made in writing and any notice or order shall be served or given to any person or his agent or shall be sufficiently served if is left at the last known postal, residential or business address of the person to be served or if it is so sent by registered post addressed to the person, and in the latter case the notice or order shall be deemed to have been received by the person in the ordinary course of post*".

The Physical Planning (Enforcement Notices) Regulations of 1998 requires a Local Authority to maintain a register of all enforcement notices served. This register should be available for inspection by the public.

3.4. Other relevant legal & procedural matters

There are other legal issues and procedural matters that are relevant to this investigation which we shall put in context as we make conclusions on the findings. These include applicable international laws and the laws relating to declared or protected areas. We also discuss the matter of adverse possession. Accordingly, under this subsection, we cover the following:

1. Declared and protected areas
2. Laws governing aviation
3. Human rights aspects
4. Adverse possession or prescription

3.4.1. Declared and protected areas (Military and Aerodromes)

Certain areas are designated as declared or protected areas. The declaration of an area as a declared area or protected area has the effect of restricting the use to which the parcel of land may be put into or restricting access to the area without permission. The statutes that make provision for the declaration of declared areas and protected areas for our purposes are as follows:

a) The Protected Areas Act (Cap 204 Laws of Kenya)
b) The CA Act (Cap 394 Laws of Kenya)
c) The KAA Act (Cap 395 Laws of Kenya)

a. The Protected Areas Act (Chapter 204 Laws of Kenya)

The Protected Areas Act makes provisions for the prevention of the entry of unauthorized persons into areas which have been declared to be protected areas. Under the Act, a protected area means *"any area, place or premises in relation to which an order made under section 3 is in force."*

Section 3(1) empowers the Minister responsible for internal security, by order published in the Gazette, to declare such area, place or premises to be a protected area under the Act. Where it appears to the Minister to be necessary or expedient in the interest of public safety and public order that special precautions should be taken to prevent the entry of unauthorised persons to the declared area, place or premises, the Minister may declare such area, place or premises to be a protected area.

No person should be in a protected area without the permission of the prescribed authority or such other person as may be specified in the order, subject to any exemptions for which provision may be made in the order.

An order declaring a protected area is required to be laid before the National Assembly at its next sitting after the making of the order. Precautions should be taken to prevent inadvertent or accidental entry into the protected area. The protected area should be fenced and prominent display of warnings notices erected.

The declared Protected Areas under the Act are listed in the subsidiary legislation to the Act.

Among the declared protected areas under the Act is the KAF Aerodrome at Eastleigh in the Nairobi Area.

b. CA Act Chapter 394 Laws of Kenya

Section 9 of the CA Act empowers the Minister to prohibit the erection within a declared area of any building or structure above a height by any order published in the Gazette where the Minister considers it to be necessary in the interest of the safety of air navigation.

Under the CA Act, "declared area" means *"any area adjacent to or in the vicinity of an aerodrome which the Minister may by notice in the Gazette declare to be a declared area."*

Aerodrome is defined to mean *"any defined area on land or on water, including any building, installation or equipment therein, used or intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft, and includes any such area as the Minister may by notice in the Gazette declare to be an aerodrome".*

c. The KAA Act (Chapter 395 Laws of Kenya)

Aerodrome is defined under section 2 of the KAA Act to mean *"a defined area including any buildings, installations and equipment intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft."*

The KAA Act under section 4 gives the Minister powers to transfer to KAA any property belonging to the Government which is necessary or useful for the performance of the functions of KAA. The transfer is effected through Gazettement of the order and the property shall vest in KAA without further assurance.

The KAA also has powers to acquire land required for its purposes under section 13. Where the land is not public land, KAA may acquire such land through negotiation and agreement with the registered owner of the land. Where the land is public land, the KAA should notify the Minister for lands that the land is required for its purposes. Under the section, where the land is not public land, the land may be acquired under the powers of compulsorily acquisition.

3.4.2. Laws governing aviation

In addition to the CA Act and the KAA Act that are described above, the following two other statutes are also relevant to aviation:

a) The Aerodrome (Control of Obstructions) Act (Chapter 396 Laws of Kenya)
b) The Chicago Convention 1944

a) The Aerodrome (Control of Obstructions) Act (Chapter 396 Laws of Kenya)

This Act makes provisions for the control and removal of obstructions on land adjacent to and in the vicinity of aerodromes. The act defines aerodromes to mean *"any land or water which the Minister may, by notice in the Gazette, declare to be an aerodrome for the purposes of the Act..."*

Declared area is defined to mean *"any area, adjacent to or in the vicinity of an aerodrome, which the Minister may, by notice in the Gazette, declared to be a declared area for the purposes of the Act."* The Aerodromes Act empowers the Minister, by order in the Gazette, to prohibit the erection within a declared area any structure above a height specified in the order.

The Minister may require the owner, lessee or occupier of land within a declared area to remove or reduce in height any structure or tree on such land which is above the specified height or natural growth which, in the opinion of the Minister, is likely to cause an obstruction to aircraft. The Aerodrome Act provided for compensation for damage suffered as a result of the reduction in height or removal of the structure, tree or natural growth.

The Aerodrome Act prohibited the planting of trees within the declared area without the consent of the Minister in writing.

The land declared to be aerodromes and the areas declared to be declared areas are set out in the subsidiary legislation to the Aerodromes Act.

b) The Chicago Convention of 1944

The main international convention that Kenya has ratified that touches on civil aviation is the Convention on International Civil Aviation of 1944 ("the Chicago Convention").

The Chicago Convention was signed on 7 December 1944 in Chicago U.S.A. by 52 signatory states. It received the requisite 26th ratification on 5 March 1947. It came into effect on 4 April 1947. Kenya deposited its Notification of Adherence on 1 May 1964. The Convention currently has 191 parties.

The Convention established the International Civil Aviation Organization ("ICAO") in 1944 as a specialized agency of the United Nations to promote the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection. The Organization serves as the forum for cooperation in all fields of civil aviation among its 191 member states.

The Convention states that signatories to the Convention should collectively work to harmonize and standardize the use of airspace for safety, efficiency and regularity of air transport. All the states signatory to the Chicago Convention, are obliged to implement the Standards and Recommended Practices ("SARPs"). SARPs are published as Annexes to the Chicago Convention. Some of the Annexes that are relevant to this Report include:

- Annex 14 – Aerodromes, and
- Annex 17 - Aviation Security

Each signatory State is obliged to establish a Civil Aviation Authority to oversee among other areas, the:

- designing and construction of aerodrome facilities; and
- managing the air traffic inside a country's airspace.

Under section 3B(4) of the CA Act the KCAA is under an obligation to carry out its functions in a manner consistent with the Chicago Convention, any Annex to the Convention relating to international standards and recommended practices and any amendment thereto.

3.4.3. Human rights considerations

We discuss these considerations under two headings:

1. The Current Constitution
2. International treaties on protection of people's rights and freedoms.

3.4.3.1. The Current Constitution

Chapter 4 of the Current Constitution, commonly referred to as the Bill of Rights, makes provisions for the protection of fundamental rights and freedoms of individuals. The Bill of Rights applies to all law and binds all state organs and persons. Pursuant to Article 21 of the Constitution, it is a fundamental duty of the state and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms under the Bill of Rights. Under Article 24 of the Constitution, a right and/ or fundamental freedoms in the Bill of Rights

should not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

The practice of forced evictions which refers to the involuntary removal of persons, families and groups from their homes and communities has been widely condemned as constituting violation of human rights. The human rights that may be violated by forced evictions include the right to human dignity, freedom and security of the person, protection of the right to property and economic and social rights.

In relation to evictions and demolitions, the Constitution provides that the state may regulate the use of any land or interest in, or right over, any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.[12] In contrast, the Bill of Rights makes provisions for the protection of certain fundamental rights and freedoms in relation to property ownership, use and occupation. These include:

1. Protection of the right to property.
2. Right to human dignity
3. Freedom and security of the person
4. Access to information
5. Economic and social rights

a) Protection of the right to property

Article 40 (3) of the Constitution provides that the State shall not deprive a person of property of any description, or any interest in, or right over, property of any description, unless the deprivation:

a. results from an acquisition of land or an interest in land or conversion of an interest in land, or title to land, in accordance with Chapter Five; or
b. is for a Public purpose or in the public interest and is carried out in accordance with the Constitution and any Act of parliament which:
    i. requires the prompt payment in full, of just compensation to the person; and
    ii. allows the affected person access to a Court of law.

It further states that provision may be made for compensation to be paid to occupants in good faith of land acquired. The rights envisaged under Article 40 do not however extend to property that has been found to have been unlawfully acquired.[13]

b) Right to human dignity

Article 28 of the Constitution provides that every person has inherent dignity and the right to have that dignity respected and protected.

c) Freedom and security of the person

Article 29 provides that every person has the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman or degrading manner.

[12] Article 66 of the Constitution.
[13] Article 40 (6) of the Constitution.

d) Access to information

Article 35 of the Constitution provides that every citizen has the right of access to information held by the State and any other person which *inter alia* is required for the exercise or protection of any right or fundamental freedom.

It further provides that every other person has the right to the correction or deletion of untrue or misleading information that affects the person.

e) Economic and social rights

Section 43 of the Constitution *inter alia* provides that every person has the right to accessible and adequate housing and that the State shall provide appropriate social security to persons who are unable to support themselves.

Pursuant to the foregoing, the Government is already undertaking various intervention measures towards the realization of these rights including the resettlement of internally displaced persons ("IDPs") and the slum upgrading programme under the Ministries of Special Programmes and Housing and Settlement respectively. There is also in place a pilot social support programme which caters for vulnerable and poor people who are unable to support themselves.

This is pursuant to the widely accepted human rights principle of "progressive realization of certain social and economic rights". This principle acknowledges that some of the rights (for example, the right to housing) may be difficult in practice to achieve in a short period of time, and that states may be subject to resource constraints, but requires them to act as best as they can within their means.

3.4.3.2. International treaties on protection of people's rights and freedoms

Article 2(6) of the Current Constitution provides that any treaty or convention ratified by Kenya forms part of the laws of Kenya, provided that such law is not inconsistent with the Constitution. Kenya has ratified certain treaties in relation to the protection of fundamental rights and freedoms of individuals, which pursuant to the said constitutional provision are now part of Kenyan law. These include:-

i) The International Convention on Economic, Social and Cultural Rights (the "ICESCR"); and
ii) The International Covenant on Civil and Political Rights (ICCPR).

i) The International Convention on Economic, Social and Cultural Rights

Article 11.1 of the ICESCR provides for the right to adequate housing. The Human Rights Committee on Economic, Social and Cultural Rights in its General Comment No. 7 (1997) defined forced eviction as *'permanent or temporary removal against their will of the individuals, families and/or communities from their home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection'*. The Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that instances of forced eviction can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. It further recommended that evictions should only be conducted after all feasible alternatives to eviction are explored and after due process protection are accorded to the affected persons.

The ICESCR imposes an obligation on State Parties to ensure that no discrimination is involved in any eviction nor should evictions render persons homeless or vulnerable to other human rights violations. Where those affected cannot provide for themselves, the State Parties must take appropriate measures, to the maximum of its available resources, to ensure that adequate housing, resettlement or access to productive land is available.

The United Nations Commission of Human Rights has established that forced evictions constitute a gross violation of human rights and in particular, has laid emphasis on the right to housing. Governments have been urged to take measures aimed at eliminating the practice of forced evictions and confer legal security of tenure to all persons threatened with forced evictions. It has also recommended that Governments should provide restitution, compensation and/or sufficient alternative accommodation or land to persons or communities which have been forcibly evicted.

The Commentary of United Nations Office of the High Commission for Human Rights of 1997 (General Comment No. 7) on *"The Right to Adequate Housing" (Article 11.1); Forced Evictions"*, states at article 15 that appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of rights recognized in both the international covenant on human rights. The committee considers that the procedural protections which should be applied in relation to forced evictions which affect the right to accessible and adequate housing include:

a. an opportunity for genuine consultation with those affected;

b. adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;

c. information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;

d. especially where groups of people are involved, Government officials or their representatives to be present during an eviction;

e. all persons carrying out the eviction to be properly identified;

f. evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;

g. provision of legal remedies; and

h. provision, where possible, of legal aid to persons who are in need of it to seek redress from the Courts.

ii) The International Covenant on Civil and Political Rights

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits forced evictions. This requires that the state's interference with a person's home should not take place except where it is provided for or envisaged in the law. Moreover, such evictions should be reasonable in the particular circumstances. Legislation should also be put in place to define the precise circumstances in which such interference may be permitted.

The above constitutional provisions and principles enshrined in the above treated were discussed and upheld by the High Court of Kenya in various cases discussed below.

In ***Ibrahim Sangor Osman vs. Minister of State for Provincial Administration & Internal Security*** eKLR [2011]. In this case, the court *inter alia* held that the Constitution provided that the Bill of Rights applied to

all and bound all State organs and all persons (*Article 20*), and that it was a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights (*Article 21 (1)*). Further, the Court observed that all State organs and public officers had a duty to address the needs of vulnerable groups within the society i.e. women, children and the elderly (*Article 21 (3)*). The Court further held that the affected persons were entitled to adequate information on the reasons of the proposed evictions and the alternative purpose the subject land was to be used had to be indicated, and the said information be given in accordance with *Article 35*, which guarantees the right to information. The evictions were then supposed to be carried out in a manner that respected human dignity, right to life and the security of the affected.

In ***Susan Waithera Kariuki & 4 others V Town Clerk, Nairobi City Council & 2 Other*** eKLR [2011] the Court made a similar finding regarding forceful eviction and violation of constitutional rights. The petitioners in this case were resident of several informal settlements in Nairobi. In this case, the Court *inter alia* ruled that the fundamental rights of the affected persons as guaranteed under the constitution overrides the respondent's (CCN) duty and responsibility to control development in the City of Nairobi under the Local Governments Act and Physical Planning. The Court further held that the Government has a constitutional obligation to provide alternative housing. The Court stated that evictions should be done humanely.
The judge observed that Kenya should develop appropriate legal guidelines on forced evictions and displacement of people from informal settlement so that if people have to be evicted from such settlements the act is done without violating people's constitutional rights. The judge proposed the adoption of the guidelines given by the UN of High Commissioner for Human Rights relating to forced eviction referring to them as reasonable housing policy.

3.4.4. Adverse possessions or prescription

Under section 38 of the Limitation of Actions Act (Chapter 22 of the Laws of Kenya) , a person can gain title over land by virtue of adverse possession. The relevant part of this section provides that:

*"**38.**(1) Where a person claims to have become entitled by adverse possession to land...he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land."*

For a person to succeed in a claim of an adverse possession, sufficient evidence must be given in a court of law and relevant orders obtained to the effect that:

- he has been in occupation of the land openly or overtly;
- that such occupation has been continuous and without interruption and with the knowledge of the registered owner for a period of twelve (12) years or more.

In the case of ***Amos Weru Murigu v. Marata Wangari Kambi & Another in Nairobi HCCC No. 33 of 2002***, the court stated as follows concerning the doctrine of adverse possession or prescription:-

> *"Where the period of 12 years is not continuous or is interrupted, the period of adverse possession is broken and must start all over again. But where one trespasser removes another trespasser who is in adverse possession to the owner and continues to occupy the land, the period of adverse possession is not broken and the second trespasser is entitled to combine the period of trespass of the first trespasser to his own. The land claimed by adverse possession need not be all the land comprised in the title; it may be a portion of it providing that the portion claimed is demarcated well enough to be identifiable. And as regards assertion of title, it is not enough for a proprietor of the land to merely write to the trespasser. A letter by the proprietor even if it be through an advocate or the chief of the area does not amount to assertion of title in law and cannot therefore interrupt the passage of time for the purpose of computing the period of adverse possession. For there to be interruption, the proprietor must evict or eject the trespasser but because eviction is not always possible without breach of peace, institution of suit against the trespasser does interrupt and stop the time from running.*

Possession is a matter of fact that depends on the circumstances of each case. A land owner can lose possession either by being dispossessed of the land or having discontinued his possession of it. The courts have been always reluctant to allow an encroacher or a trespasser to acquire a good title against the true owner. Trivial acts of trespass do not amount to trespass.

It is important to underline that under section 41 of the Limitation of Actions Act, there can be no adverse possession, *inter alia*, over 'Government land or land otherwise enjoyed by the Government'. In law, the term "Government" is defined to include a government department. Under the Limitation of Actions Act, "Government" is defined to include state corporations.

In addition, section 42, the Limitation of Actions Act provides that the Act does not apply, *inter alia*, in proceedings by the Government to recover possession of Government land or proceedings to which the Public Authorities Act (Chapter 39 of the Laws of Kenya) applies.

4. Ownership of land

4.1. Introduction

Pursuant to our terms of reference, we set out to assess the legal ownership and legality of the evictions and demolitions processes in the following locations which are adjacent to aerodrome related infrastructure in Nairobi:

- Jomo Kenyatta International Airport ("JKIA")
- Wilson Airport ("Wilson")
- Moi Airbase ("MAB")

The three airport locations comprise specific areas that were affected by the evictions and demolitions exercise which took place between October and November 2011. In this section of the Report, we assess the claims to ownership by various parties over the affected land in these locations. Our review relies on documentation from the various Government ministries and bodies involved in land administration processes in the affected areas, and documents and oral submissions made by the various claimants supporting their claims in the affected areas.

Attached at appendix 8 is a map showing the general locations of the three airports and the affected areas therein.

Whereas the three airport locations were all affected by evictions and demolitions, each location had its own unique issues and circumstances that led to the demolitions. We analyse the areas in the three locations and give an overview of the ownership of the affected parcels of land in each area. We base our assessment on documents and information received supporting the claims from the various parties.

Our review, comments and conclusions are based on the evidence presented to the team during the fieldwork. For each location, our approach in considering the claims was to assess the evidence provided by the relevant Government body involved in the disputes; we then assessed the merits of the various groups with competing claims and make our conclusions.

4.1.1. JKIA

The JKIA location had three areas in which the demolitions took place:

i. Syokimau area – The area is part of the original land LR No 3864 measuring approximately 1,005 Ha (2,484 acres) that was surrendered to the Government by Mr Andrew Macrae Watson as at 30 June 1972 vide a compulsory acquisition in the Gazette notices number 1105 and 1106 of 26 April 1971 ("1971 compulsory acquisition"). The ownership of the land is in dispute between KAA and four groups, i.e.
   - Uungani Settlement Scheme Self Help Group ("Uungani");
   - Jumbo Community Self Help Group ("Jumbo")/Foster Trading Company Limited ("Foster");
   - Mulolongo Brothers Association ("Mulolongo Brothers"); and
   - Ungani Enterprises Limited ("Ungani Enterprises").

   We understand that the demolitions that took place in this area were in relation to encroachment on airport land by the four groups above. We review the ownership claims in detail in section 4.2.2 below, and the evictions and demolitions in section 5.3.1 of our Report.

ii. Kyang'ombe area – This area south of Mombasa road is located between the highway and the railway line adjacent to the flight funnel from JKIA. It forms part of the parcels of land acquired in the 1971 compulsory acquisition including LR No 7135/6, 8 and 27. Through various allotments to individuals over the years, land in this area was subdivided and titles issued to private third parties. Currently it is depicted by the following Land Reference Numbers; LR Nos. 209/12076 and 20262-81. The parcels of land are depicted in the Survey Plans No. FR 254/25, and 251/60. These parcels of land are charted on topographical sheet number SE 5. The area, also known as Kyang'ombe Village was occupied by the following groups who were affected by the evictions and demolitions exercise:

- Kyang'ombe Settlement Scheme/ Mwangaza Community Based Organisation
- Kyang'ombe Juhudi Self Help Group
- Vigilant Self Help Group

KAA does not dispute ownership of the land in this area. We review in detail the ownership claims to the land in this area in section 4.2.3 and assess the evictions and demolitions in section 5.3.1 of our Report.

Though KAA does not lay claim to the land, the affected areas in Kyang'ombe area appear to have been compulsorily acquired by the Government for airport use.

iii. Maasai and KPA areas – This area is adjacent to Kyang'ombe but located across the railway line, between the Nairobi National Park fence and the railway line. This area covers both sides of the flight path from JKIA. It encompasses the Maasai Village and Mitumba Village. The Maasai Village is all that parcel of land that is under LR Nos 209/13340, 11386-7, 11462, 13543, 11971, 16437, 13721, 14622-3, 14492, 18586, 11804, 12016, 12480-2, 11845, and 11533-4 as depicted in Survey Plans Nos. FR 204/151, 312/59, 208/40, and 230/1230. The KPA settlement is situated on the parcels of land under LR Nos. 209/13419-21, 11143-4, 11125-6, 11249-50, 11410, 12110, 11309-12, 11270 and 12929 as depicted in Survey Plans Nos. FR 192/176, 273/85 and 362/170. These parcels of land are charted on topographical sheet number SE 5. The area was occupied by the following groups:

- Dupoto Juakali Self Help Group/ Maasai Dwellers Investors Ltd
- Fakima Self Help Group
- Dafur Self Help Group

KAA does not dispute the ownership of the land in this area as well. We review in further detail the ownership claims to the land in section 4.2.4 of our Report and assess the evictions and demolitions in section 5.3.1 of our Report.

Though KAA does not lay claim to the land, the affected areas in the KPA and Maasai areas may have been public land reserved for other public utilities.

4.1.2. Wilson airport

Wilson airport location had demolitions carried out in only one location, i.e.

i. The Mitumba area - the Mitumba area lies within adjacent to the Wilson airport fence next to the south eastern take-off runway. The area was occupied by the Mitumba Village and Mitumba School. The land ownership dispute is between KAA and the Mitumba Village dwellers. Details of our assessment of the ownership claims are as laid out in section 4.3.1 of our Report. The registered owner of the land in dispute as per records at MoL is indicated as KAA.

4.1.3. Eastleigh

The Eastleigh location refers to areas surrounding the Moi Airbase in Eastleigh ("MAB"). The location had three areas in which demolitions took place:

i. Eastleigh Section III and Biafra area - This is the area along Eastleigh First Avenue, after California Estate in Nairobi. The area covers land demarcated by:- (i) LR No 36/3 as depicted on Survey Plan No. FR 47/116 measuring 418.9 Ha (1,035 Acres); and (ii) LR No 36/II/1050 as depicted on Survey Plan No. FR 329/5. Other than in two cases where plots are said to partially encroach on MAB land, there is no dispute in the ownership of the land in the area between the Military and the occupants of the land. However we understand that a buffer zone that was designated as a public road around MAB has been allocated to private parties. Details of the claims on the land are in section 4.4.2 and our assessment of the demolitions is covered in section 5.4.3 of this Report.

ii. Kyambiu Village – The Kyambiu Village is located on the south eastern side of MAB extending to the Nairobi River. It covers the area demarcated by LR No 36/II/1050. The land ownership is disputed between the Military and individuals who either settled on the area or who we understand hold a LoA issued by the City Council of Nairobi, to portions of the land. There were no evictions or demolitions conducted at Kyambiu Village, though we are advised the village was earmarked for demolitions. We assess the ownership claims in section 4.4.3 and assess the evictions and demolitions in section 5.2.3.

iii. Kitui Village – Kitui area is an informal settlement located to the south west of the Airbase bordering the flight funnel. Part of Kitui Village falls on what used to be a public road acting as a buffer zone to MAB. According the Base Commander, Col. Badi, there were no demolitions conducted at Kitui Village, though we are advised the village was earmarked for demolitions (interview notes for our discussions with the MAB Base Commander are attached at appendix 79). We assess the ownership claims in section 4.4.4 and assess the evictions and demolitions in section 5.2.3.

4.2. JKIA

4.2.1. History of JKIA land

We have traced the legal history of the parcel of land, now known as LR No 21919 on which the demolitions in Syokimau took place and have made the following observations:-

- The history of the parcel of land on which JKIA is situated (LR No 21919) can be traced to the Aerodromes (Control of Obstructions) Act which empowers the Minister[14] to declare any land or water to be an aerodrome for the purposes of the Aerodromes (Control of Obstructions) Act by notice in the Gazette[15].
- The Aerodromes (Control of Obstructions) Act also empowered the Minister, by notice in the Gazette, to designate any area adjacent to or in the vicinity of an aerodrome, as declared area[16].

On the basis of this power under the Act, the Minister in 1953 declared several parcels of land as aerodrome for Nairobi Airport, now Jomo Kenyatta International Airport (JKIA), under Section 2 of the Act through Gazette Notice 1149 of 1953. The Minister also declared certain areas adjacent to the then Nairobi Airport (JKIA) to be Declared Areas through Gazette Notice No. 1159 of 1953. The same were listed in the Schedule to the Act[17].

According to the Aerodromes (Control of Obstructions) Act, the total acreage of the area declared in 1953 within the Nairobi Airport (as it then was), comprised a total of **4,380 acres (1,773 Ha)** *"as delineated in the Boundary Plan No. 273 a copy of which is deposited in the Survey Records Office, Survey of Kenya, Nairobi".*

We set out below the chronology of key events that have affected the JKIA since inception:

Event	Date	Issues	Approximate airport acreage
Aerodromes (Control of Obstructions) Act	Enacted in 1953 (Revised edition 1962)	The Nairobi Airport as it was then known is declared an aerodrome as defined in the Act. The Act specified the location in terms of LR Nos and size of all the aerodromes in the country at the time (including JKIA).	4,380 Acres 1,773 Ha
Compulsory Acquisition of 1971	26 April 1971	The Government through a Gazette notice 1105 and 1106 of 1971, compulsorily acquired parcels of land surrounding the then Nairobi Airport. The following 27 parcels were acquired in the 1971 compulsory acquisition, LR Nos:- a. 7135/6,28,29,8,20,14,25,30 b. 7137/27 c. 7839 d. 7075/21,3,20,7,8,17,13,10,18,11 e. 7149/3,1,11 f. 12017 g. 9041	11,039 Acres 4,467 Ha

[14] Minister is not defined under the Act. May be inferred to be the Minister incharge of transport and aerodromes
[15] Section 2 of the Act
[16] Ibid
[17] Subsidiary Legislation made under the Aerodrome (Control of Obstructions) Act

Event	Date	Issues	Approximate airport acreage
		h. 3955/2 i. 3864 The acquisition was meant for the future development of the Nairobi Airport. The area of land acquired measured 6,659 Acres (2,695 Ha) The Government proceeded to acquire the land and compensated the original owners. The land was not surveyed and consolidated as was required but it remained Government land vested in the then Department of Aerodromes.	
Survey of part of the airport land LR No 3864 in 1977	1977	We understand that there was a survey that was carried out on part of the airport land LR No 3864 in 1977 which created LR No 9042/56 measuring 631 acres (255.50 Ha), as claimed by Ungani Enterprises, one of the groups claiming part of the airport land. However, we did not find any records of the survey at the Department of Surveys, and there are no indications as to what the purpose of the survey was. This survey was subsequently used by one of the groups (Ungani Enterprises) as a basis of their claim to the parcel of land located within the JKIA.	11,039 Acres 4,467 Ha
Possible Compulsory Acquisition of 1982	25 February 1982	The Government through a Gazette notice no. 439 and 440 of 1982 issued a Notice of Intention to acquire the land known as LR No 7149/11/R ("Syokimau Farm"). Part of the Syokimau Farm had been acquired during the 1971 compulsory acquisition (about 450 Acres), and this acquisition was meant to acquire the rest of the farm. The area that was to be acquired measured 3,937 Acres (1,593 Ha). We have not seen any evidence to indicate whether the Government went through with the acquisition. The file for the Syokimau Farm was not available at the MoL registry. Assuming the acquisition took place, the airport land would have measured approximately 15,000 Acres by then. We understand that this land forms part of the land that KAA requires for the expansion of the airport to accommodate the second runway for JKIA.	14,976 Acres 6,061 Ha

Event	Date	Issues	Approximate airport acreage
Survey of part of airport land LR No 3864 to create LR No 13512	1985	In 1985, a Government surveyor, A.K Njuki carried out a survey on part of the original LR No 3864 that was acquired for the Nairobi Airport in 1971. The survey was carried out under the instructions of the CoL for the purposes of a new grant. The survey delineated on FR 185/26 excised part of the airport land known as LR No 13512 measuring 247 Acres (100 Ha), and a Deed Plan No. 126696 was subsequently produced. There is however no evidence of a title or Grant being produced subsequent to this. This survey is what created the new parcel and LR No that is claimed by Mulolongo Brothers.	14,976 Acres 6,061 Ha
Survey of part of airport land LR No 3864 to create LR No 14231	1987	A survey was carried out in 1987 by a Government surveyor, L.M Kivuti on part of LR No 3864. The survey was carried out to harmonise the coordinate system within the Syokimau region whose control points were in different systems. This was therefore not a production survey as described in section 3.2.2. This survey assigned the portion that was surveyed as LR No 14321 measuring 1,606 acres (650 Ha). There was no issuance of a deed plan or title. This survey would later be used by Uungani Self Help Group and Jumbo Self Help Group as a basis to their claim on the land for which they had a dispute with KAA.	14,976 Acres 6,061 Ha
Nairobi Airport Boundary Plan No. NBI/C/108 of 1991	1991	In 1991, the former Department of Aerodromes prepared a physical development plan to show the extent of JKIA. The plan is referred to as the Nairobi Airport Boundary Plan No. NBI/C/108 ("Plan No. NBI/C/108") and a copy was deposited with the Director of Physical Planning. Plan No. NBI/C/108 indicated the area of the airport as 5,098 Ha and included the area known as Embakasi Village and the area now known as Kyang'ombe. It however omits the part of Syokimau Farm which was earmarked for compulsory acquisition in 1982. We note that the area in Plan No. NBI/C/108 is more than the sum of the land area that existed in 1953 plus the 1971 acquisitions i.e. the plan shows the area as	12,597 Acres 5,098 Ha

Event	Date	Issues	Approximate airport acreage
		12,597 acres while the 1953 land area and 1971 acquisitions add up to 11,039 acres. We could not account for the 2,379 acre difference and note that this unaccounted land area is less than the 3,937 acres that were earmarked for acquisition in 1982.	
Establishment of KAA	31 May 1991	The KAA was formed by an Act of Parliament, KAA Act Cap 395. The KAA took over the responsibilities of the Department of Aerodromes. Unlike the Department of Aerodromes which was a Government department at the time, KAA is a body corporate and it can hold and dispose of movable and immovable assets as provided for in the Act. Though KAA had taken over the role of the Department of Aerodromes at the time, it still did not have ownership and or control of the assets previously administered by the Department of Aerodromes. The airport land and all assets were still vested in the Department of Aerodromes under the Office of the President.	
Attempt to gazette JKIA boundaries	July – September 1993	The KAA through its MD, Mr Bonventure Omuse attempted to secure the JKIA land through a gazettement of JKIA boundaries. The KAA MD wrote to the CoL and the Office of the Attorney General on the gazettement, and went to the extent of drafting the Gazette notice. The process was however halted by what the Attorney General's office termed "*legal snag*". We understand that this was in response to attempts to excise JKIA land and allot it to private individuals.	
Vesting Order (Legal Notice No. 201 of 1994)	1994	In 1994, the Government through a vesting order made under Legal Notice No 201 of 1994 transferred ownership of all assets previously administered by the Department of Aerodromes to KAA. The vesting order did not contain a schedule listing out the assets being vested. The Vesting Order would have covered all airport land which measured 5,098 Ha as at 1991 after earlier excisions. Between 1991 and 1994, the airport was continuously being excised and its size	

Event	Date	Issues	Approximate airport acreage
		shrank as will be seen later when KAA finally obtained a title for the land in 1996.	
Survey and issuance of Grant for LR No 21919 in 1996 for JKIA	1996	In 1996, the CoL requested the Director of Surveys through letter ref 88767/V/(204) dated 1st April, 1996 to have the land for JKIA and Wilson surveyed against approved Physical Development Plans that were supplied. (see attached at appendix 12 – Letter from CoL to Director of Survey) Both surveys were carried out by Mr Gordon Wayumba, a registered surveyor. The JKIA Survey Plan was registered and delineated on FR 265/27 as LR No 21919 and Deed Plan number 205580 was issued. This survey consolidated all the surveys carried out earlier on airport land, save for the Embakasi Village to form a single parcel measuring 4,654.2 Ha (11,500 acres). The title to this was then issued to KAA by a Grant registered as IR No 70118 dated 26 July 1996. At this point all other surveys should have been updated to indicate that they had been superseded by this 1996 survey. This was not done. This could have averted the subsequent claims that arose. JKIA land had in the process shrank to the current 4,654 Ha from 5,098 Ha in 1991, a loss of 444 Ha. This 444 Ha (1,097 acres) includes the Embakasi Village, the Administration Police camp, the Kenya Civil Aviation College, and private parcels that include various industrial establishments (Mugoya Construction Company Limited, Coca Cola, Kenya Airways Headquarters and Training School, establishments along the Airport North Road, land in Kyang'ombe area, etc).	11,500 Acres 4,654 Ha
Second survey and creation of Grant for LR No 24937 for JKIA	1998 - 2003	Title LR No 21919 issued to KAA in 1996 included part of the highway (Mombasa road) and the Airport North road, both public roads. We understand that KAA sought to excise this land from the KAA title and therefore commissioned a survey in 2001 which we understand was conducted by J.K. Ndede. We have not had sight of the documents relating to this survey from the Director of Survey's office, and the Deed Plan was not attached to the copy of the Certificate of Title LR No 24937 we were given by KAA.	11,018 Acres 4,459 Ha

Event	Date	Issues	Approximate airport acreage
		Consequently, a title LR No 24937 was issued in 2003 to KAA by the CoL. According to John Tito, the then Company Secretary at KAA (2003 – 2011), KAA surrendered title for LR No 21919 and were using the new title LR No 24397 as the genuine title for the airport. Mr Tito said that he had noticed a shrinkage in the airport land which appeared more than what was meant to have been excised by the 2001 survey. KAA subsequently rejected this title. Ms Joy Nyagah, the current Company Secretary advised that the KAA wrote to the CoL voicing their complaint and intentions to block the issuance of the new title deed. She told us that the CoL advised them to retain the old title deed LR No 21919 which was still valid since the surrender had not been registered. Consequently KAA reverted back to their original title deed for LR No 21919 which they still hold to date. We noted that airport land had shrunk further by 482 Acres in the new title (LR No 24937) and leases had been registered on the new title. We also noted new LR Nos that had been created as a result of this survey. We have requested for information relating to these parcels at the MoL, but have not been able to obtain the files as at the time of reporting. These comprised some 67 parcels of land listed in appendix 2. It appears there was an attempt to excise more land from JKIA by this survey. We also note that the parcel of land LR No 3864 which is in contention between KAA and various other groups, had not been affected by the issuance of the new title. The parcel of land is included in both titles LR No 21919 and LR No 24397.	
Reversion back to the title deed for LR No 21919	2008	KAA reverted back to its original title deed LR No 21919 after they were advised by the CoL that its surrender had not been officially registered and that it was still valid.	11,500 Acres 4,654 Ha
Registration of Mulolongo Brothers, Uungani, Jumbo, Foster and	Various dates in 2002 Foster	Three of the groups (Mulolongo Brothers, Uungani and Jumbo Self Help Group) were all registered in 2002, and have competing claims against KAA for land in JKIA (the	

Event	Date	Issues	Approximate airport acreage
Ungani Enterprises.	registered on 23 October 2009	Syokimau area). The other two which are companies were registered more recently (Foster Trading Company in 2009, and Ungani Enterprise Limited around the same time) All the groups have presented documents of title dating back to before their official registration. It is thus not possible for the groups to have obtained documents of title if they were not legally registered bodies. We review in detail the claims of these groups in the sections 4.2.2.4 to 4.2.2.8 below. All these groups used the existing Survey Plans of JKIA land (the ones carried out in 1985 and 1987 as described above, that had not been cancelled) as a basis for their claim. They all claim a part of the parcel of land defined as LR No 3864 that was acquired in 1971 measuring 2,484 Acres (1,005 Ha)	
Survey of 2008 on LR No 14231	January 2008	In January 2008, J.D Obel, a Licensed Surveyor, carried out a survey for a new Grant. The survey created LR Nos 14231/1 and 14231/R via Survey Plan FR 472/72. The Director of Surveys appears not to have verified the authenticity of the LoA from Uungani that was used to carry out the survey. This survey did not make reference to the 1996 survey carried out by Mr Wayumba. Mr Obel has also told us that he was unaware of the 1996 survey.	
Alleged survey of 2009 on LR No 14231/R	2009	This survey was allegedly carried out by Surveyor Obel and resulted in the renaming of LR No 14231/R to LR No 14231/2 and the production of a Deed Plan for Foster. Mr Obel has denied carrying out this survey and there are no computation files at the Department of Surveys to suggest that the survey was ever carried out.	
Survey of 2009 sub-dividing LR No 14231/2	2009	L.K Gitau, a Licensed Surveyor carried out the survey sub-dividing parcel LR No 14231/2 into LR Nos 14231/3 to LR No 14231/63, i.e. 61 portions of varying sizes. The survey was used by Foster who claimed LR No 14231/2.	

4.2.1.1. Compulsory acquisition

The Government acquired several parcels of land for the Nairobi Airport development in 1971 vide Gazette Notice Number 1105 and 1106 dated 26 April, 1971 under the Land Acquisition Act. The acqusition was done during the changeover from Nairobi Airport to JKIA.

Procedure followed in the compulsory acquisition of land for purposes of development of the Nairobi Airport In 1971

A Notice of Intention to Acquire Land for the Nairobi Airport development was issued by the CoL through a Gazette Notice No. 1105 of 1971 (on 26 April 1971). A plan of the affected parcels of land was deposited at the MoL office for inspection by the general public. A study of the list of land that was to be acquired revealed that the total acreage of the land affected was approximately 6,659 acres (2,695Ha) (attached at appendix 13 is the Gazette Notice No. 1105 of 1971).

The Government issued a further Notice of Inquiry through Gazette Notice No. 1106 of 1971 (on 26 April 1971) for the hearing of claims to compensation by the interested or affected individuals. The Government then conducted a public inquiry on 7 of June 1971 to receive the views of the affected persons including, their claims on compensation.

The Government acquired the land and the affected people were awarded compensation. Attached at appendix 14 is a table indicating the list of individuals who were affected and the compensation that was awarded and paid for by the Government. In total the Government acquired a total of 27 parcels and paid Kshs 3.2 million.

The Government thereafter took possession and vested the property in the Department of Aerodromes as it then was under the Office of the President. In the course of our investigation, we did not come across any records indicating whether the land was resurveyed after the 1971 compulsory acquisition and combined into an entity that was given one LR No.

We have also noted that upon acquisition of land for use by the airport a title document was not issued, presumably because the land vested in the Department of Aerodromes which was not a body corporate capable of owning land in its own name. Nonetheless, under the Treasury (Incorporation) Act, Chapter 101 of the Laws of Kenya, the Office of the PS to the Treasury of Kenya, which is a body corporate, is empowered in law to hold property on behalf of the State and a title could have been prepared and held by the said office. There is no evidence that this was ever done.

Procedure followed in the compulsory acquisition in 1982 for the second runway at the JKIA

The Government through the CoL issued another Notice of Intention to Acquire approximately 3,937 acres (1,593 Ha) of land specifically for the second runway at the Nairobi Airport (which at this time was now called Jomo Kenyatta Airport) vide Gazette Notice No. 439 of 1982 dated 25 February 1982. We have attached at appendix 15 the said Gazette Notice.

The CoL then issued a further Notice of Inquiry through Gazette Notice No. 440 of 1982 for the hearing of claims to compensation by the interested or affected individuals on 24 March 1982.

We have not seen the correspondence files at MoL relating to this acquisition and we are unable to confirm whether the said acquisition was completed and compensation paid. We note that this acquisition relates to what is now referred to as Syokimau Farm, whose file (at MoL) was not availed to us.

We also have no records to confirm whether a survey was conducted subsequently to confirm the parcel of land that would, upon completion of acquisition, be vested in JKIA.

We have however obtained a copy of a Physical Development Plan revised in 1991 which was done for the Department of Aerodromes at the advent of KAA, obtained from the Physical Planning Department at the MoL, detailing the boundaries of the Airport land as it was then (see attached copy of the plan at appendix 16). The acreage of the said parcel as per the map is shown to be 5,098 Ha (12,597 acres). The plan included the parcels of land acquired in 1971, but does not include the land that the Government sought to acquire in 1982 (the 3,937 Acres).

4.2.1.2. Establishment of the Kenya Airports Authority

KAA was established in 1991 with the enactment of the Kenya Airport Authority Act Cap 395. Section 3 of the KAA Act provides for the establishment of the KAA as a body corporate with perpetual succession and a common seal with capacity in its corporate name to sue and be sued and to acquire, hold and dispose of movable and immovable property for the purposes of this Act.

The commencement date of the KAA Act was 31 May 1991.

Under Section 13 of the KAA Act, KAA has the power to acquire land for its purposes and also the power to sell, let or otherwise dispose of any property, movable or immovable, which in the opinion of the Board is not necessary for the purposes of KAA.

The KAA is the successor to the Department of Aerodromes and took over the operations and management of the aerodromes administered by the Aerodrome Department. KAA did not however take over the assets of the Department of Aerodromes until 1994 when a vesting order was issued.

Section 41 of the Act also provides that any contract made and any action done on behalf of the Department of Aerodromes prior to the incorporation of KAA under this Act by any person acting in good faith and with due or apparent authority in that behalf, shall be deemed to be a contractor action by KAA.

The Vesting Order (Legal Notice No.201 of 1994)

The parcels of land that were compulsorily acquired by the Government of Kenya in 1971 for purposes of development of the Nairobi Airport were vested in the Government under the Office of the President, Department of Aerodromes. It is not clear how much airport land had not been encroached on at the time of this order, but ideally it would have been what was delineated in the Nairobi Airport Boundary Plan No NBI/C/108 of 1991, i.e. 5098 Ha.

By a Vesting Order made under Legal Notice No. 201 of 1994, all the Government property previously administered by the Department of Aerodromes was transferred to KAA. The Kenya Airports Authority (Vesting) Order, 1994 states as follows:

"All Government property previously administered by the now erstwhile Department of Aerodromes, Office of the President, is transferred to the Kenya Airports Authority"

Attached at appendix 17 is a copy of the Vesting Order.

The table below summarises the movements in the acreage of the JKIA land over time.

	Description	Area in Acres	Hectares (Ha)	Shrinkage in Ha
1	Land held by Nairobi Airport as at 1953 in accordance with the Aerodromes (Control of Obstructions) Act	4,380.00	1,773.3	N/A
2	Land compulsory acquired in 1971 vide gazette notices 1105 and 1106 of 1971	6,658.54	2,695.80	N/A
3	Land possibly compulsory acquired in 1982 vide gazette notice no. 439 and 440 of 1982*	3,937.00	1,593.90	N/A
	Total as at 1982*	**14,975.54**	**6,063.00**	N/A
4	Size of airport land as per Nairobi Airport boundary plan NBI/C/108 drawn up by the Department of Aerodromes in 1991	**12,597**	**5,098**	**965 from total acquired**
5	Size of airport land as at 1996 when title over LRLR 21919 was issued to KAA	**11,500**	**4,654****	**444 from 1991 plan**
6	Size of airport land on subsequent survey and issuance of title LR 24937 in 2003	**11,018**	**4,459**	**195 from the 1996 title**
7	Size of airport land on reversion back to present title over LR 21919	**11,500**	**4,654**	-

** We were unable to confirm whether this acquisition was finalised due to lack of relevant files at MoL and KAA.*

*** This acreage does not include the circa 21 Ha of land held by KAA* at the *Embakassi Village as discussed below.*

There are five further titles held by KAA for portions of land in Embakasi Village, i.e. L.R Nos 9042/665,667,668,669 and 670 measuring a combined area of 21.2 Ha (Approximately 52.5 Acres) which forms part of the original airport land. The titles were issued in 1998 by the CoL. This would mean that JKIA land belonging to KAA is about 4,707 Ha under the title L.R 21919 and the five other titles of land in Embakasi Village.

4.2.1.3. Review of KAA claim

As discussed above, the effect of the Vesting Order was to automatically confer ownership of all Government property previously administered by the Department of Aerodrome on KAA in 1994. In this section we set out further detail concerning:

i. Grant LR No 21919 of 1996
ii. Grant LR No 24937 of 2003

i. Grant over LR No 21919 of 1996

In 1996, KAA surveyed its land and obtained a Grant over LR No 21919 measuring approximately 4,674.60 Ha. The Grant was registered as IR No 70118 and is based on Deed Plan No 205580.

The 1996 survey of LR No 21919 is recorded in Survey Plan FR 265/27, which gives the acreage as 4,654.2 Ha. The difference in acreage between the Deed Plan and the Survey Plan arises from parcels within the JKIA parcel for which titles had already been issued. The survey was done by Mr Gordon Wayumba, a Licensed Surveyor and authenticated by Director of Surveys on 21 May 1996.

The survey incorporated several parcels of land acquired for airport use including LR No 3864 that had been surveyed in 1931. The authority for the survey of this land is contained in the CoL letter ref 88767/V/(204)

dated 1 April 1996 and attached at appendix 12. This letter enclosed an approved physical development plan to guide in the survey of the airport land. We have not been able to trace this physical development plan at either the Director of Physical Planning's or the Director of Survey's offices.

Effect of Grant on LR No 21919

The Grant to KAA was issued on 1 August 1996 following the due process of land acquisition and registration. The Grant is registered as IR No 70118 under the Registration of Titles Act, Cap 281 of the Laws of Kenya. The parcel of land measured approximately 4,674.60 hectares (which is different from the surveyed area of 4,654 Ha).

The RTA at Section 23 embodies the doctrine of sanctity of title and indefeasibility of title. Section 23 expressly provides that:

"The Certificate of Title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all Courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party."

From our review of the documents provided and the records at the MoL in respect of LR No 21919, KAA holds the valid title to the land in dispute which is legally indefeasible against the claims by all other third parties.

ii. Grant over LR No 24937 of 2003

Title LR No 21919 issued to KAA in 1996 included part of the Nairobi - Mombasa Road) and the Airport North Road, both of which are public roads. According to KAA's Legal Officer, George Kamau, KAA sought to excise the land occupied by theses public roads from the KAA title. This was as a result of instructions from the CoL to KAA to surrender their title and have the two public roads excised including several parcels of land belonging to private persons within the JKIA land that had not been delineated on the 1996 survey. KAA therefore commissioned a survey in 2001 conducted by J.K Ndede. The survey is delineated on Survey Plan FR 303/99 and a Deed Plan number 234878 issued for an area measuring 4,398.7 Ha (10,869 Acres), and LR No 24937 assigned.

According to Mr John Tito, the then Corporation Secretary at KAA (2003 – 2011), KAA had surrendered title for LR No 21919 and held the new title LR No 24397 as the genuine title when he took over as Company Secretary in 2003. After he became Company Secretary and together with the then new KAA MD, he noticed that the new title appeared to have excised more than the roads that were meant to have been excised by the 2001 survey. KAA subsequently rejected this title. Ms Joy Nyagah, the current Corporation Secretary informed that the KAA wrote to the CoL voicing their complaint and intentions to block the issuance of the new title deed. She told us that the CoL advised them to retain the old title deed LR No 21919 which was by then still valid since the surrender had not been registered (see interview notes with Mr John Tito at appendix 83 and with Ms Nyaga at appendix 78).

An examination of the Grant IR No 70118 in respect of LR No 21919, indicates an endorsement of surrender to the Government in exchange for a new Grant IR No 90243 in respect of LR No 24937. The endorsement was however, not signed by the Registrar of Lands as required by the process of surrender of title. Nevertheless, a new title Grant IR No 90243 in respect of LR No 24937 was issued. The area of the land under this Grant was 4,459.1 hectares.

A closer examination of the Grant IR No 90243 reveals that the Grant is signed by the CoL on 16 January 2003 and it was duly stamped with duty on the same day while the Grant was presented for registration on 18

January 2002. The Grant was registered on the same day, i.e. on 18 January, 2002. From the above, it can therefore be inferred that the Grant IR No 90243 was presented for registration and registered close to one year before it was signed and stamped with duty. In the normal course of events, a Grant ought to be signed by the CoL and stamped before it is presented for registration.

Mr Tito advised that KAA received the Grant in 2003, and explained that the discrepancy noted on the date of registration and the date when the Grant was signed (16 January 2002 and 18 January 2003) may have been as a result of the failure to adjust the year on the registration stamp which happens frequently at the turn of the year.

Despite the discrepancy in the Grant IR No 90243, the Grant was issued to KAA. KAA treated it as the genuine title for the airport land for about 5 years to 2008 and had even proceeded to register several leases against the Grant.

In the Court cases filed by KAA against Uungani and Mulolongo Brothers in 2004, KAA referred to their land as LR No 24937 being the land in Grant IR No 90243 to make their claim. They only amended their case by substituting the land title number with LR No 21919 in 2008.

The issuance of a Certificate of Title for LR No24937 gives rise to questions as to the intentions of getting a second title whereas KAA already had a good title. There is evidence to indicate that land was hived off from the original KAA land and new LR Nos created which further shrunk the area of the airport land. The title was in existence for at least five years to 2008, and it is not clear how KAA would have not noticed the anomalies arising from the new title. This is further explored in section 6 below on areas that require further clarity surrounding this title.

4.2.2. Syokimau

4.2.2.1. Introduction

The Syokimau area that was affected by the evictions and demolitions, the subject of this Report, and which is also in dispute with competing claims is the area that was formerly known as LR No 3864 (FR no. 185/26), Area 2,484 acres. LR No 3864 was first surveyed on 7 March 1931 by Survey of Kenya. This same piece of land was acquired by the Government on 30 April 1972.

A Notice of Intention to Acquire Land was issued by the CoL through a Gazette Notice No. 1105 of 1971. The Government then issued a further Notice of Inquiry through Gazette Notice No. 1106 of 1971 for the hearing of claims to compensation by the affected individuals. The Government then conducted a public inquiry on 7 June 1971 to receive the views of the affected persons including, their claims on compensation.

The Government then acquired the land and fully compensated the owner at the time, Mr Andrew Macrae Watson (see attached at appendix 18 a copy of the title deed surrendered indicating the compulsory acquisition).

The parcels of land that were compulsorily acquired by the Government of Kenya in 1971 for purposes of development of the Nairobi Airport were vested in the Government under the Department of Aerodromes.

We do not have records indicating whether the land formerly LR No 3864 was immediately resurveyed after the 1971 compulsory acquisition. However, there was no need for any further survey for this particular parcel (as it had already been surveyed) other than the survey that would have consolidated all the parcels that were acquired alongside this one.

In 1991, KAA was established with the enactment of the KAA Act. By a Legal Notice No. 201 of 1994, all the Government property previously administered by the Department of Aerodromes was transferred to the KAA by way of a vesting order.

The effect of the vesting order was to automatically confer ownership of all Government property previously administered by the Department of Aerodrome on the KAA, including all land declared as aerodrome._Upon its establishment, KAA proceeded to consolidate the properties previously administered by the Department of Aerodrome.

In 1996, KAA surveyed its land and obtained a title known as LR No 21919 and registered as Grant No. I.R No 70118 measuring approximately 4,674.60 hectares. A Survey Plan No 205580 was registered at Survey Records Office in Nairobi. This title included all the land under LR No 3864 previously acquired by the Government.

The title LR No 21919 is in dispute as there are other competing claims from the following groups:

a) Mulolongo Brothers;

b) Uungani;

c) Foster/Jumbo; and

d) Ungani Enterprises Ltd.

The groups are claiming portions of land comprised in the parcel of land LR No 3864. LR No 3864 is comprised in LR No 21919 that KAA claims represent their claim to ownership of the disputed land. We assess below the submissions, both oral and documentary of the various groups' claims to the disputed land LR No 3864.

Between 10 April 2012 and 25 April 2012, we met 2,688 people purporting to own 3,763 plots of various sizes in the Syokimau area. The table below gives a snapshot of the various categories of individuals and how they were affected in the demolitions that took place in November 2011.

Description	Uungani	Jumbo	Mulolongo	Total
Affected individuals	1,294	1,184	1,285	3,763
Approved building plans by Mavoko Council	-	-	70	70

Attached at appendix 19 is a list showing the individuals met and the nature of documents obtained from them.

4.2.2.2. Survey history of purported alienation and sub-division of areas in dispute

The Syokimau demolitions affected buildings that were erected on parts of a parcel of land formerly known as LR No 3864. The history of its surveys is as follows:

Date of survey	Land Reference	Remarks
1931	LR No 3864	LR 3864 represents the area under investigation known as Syokimau. This land reference no was created pursuant to a survey conducted in 1931 for purposes of allocation of this parcel of land to Andrew Macrae Watson. This parcel of land was later compulsorily acquired by the Government in 1971 for airport use. This parcel is now part of LR 21919 over which KAA holds a valid title.
1985	LR No 13512	LR 13512 is part of the land known as LR No 3864 above. LR No 13512 was created pursuant to a survey done by a Government surveyor on the authority of the CoL. Available records indicate that the purpose of the

Date of survey	Land Reference	Remarks
		survey was for issuance of a new Grant. However, it appears that no new title was issued. Despite a title having been issued over LR 21919, the survey that created LR No 13512 has not been cancelled. Mulolongo Brothers base their claim over the parcel of land on this survey.
1987	LR No 14231	LR No 14231 is part of the land known as LR 3864 above. LR 14231 was created pursuant to a survey done by a Government surveyor in order to harmonize the coordinate system within the region. It was not meant for title issuance. Despite a title having been issued over LR 21919, the survey that created LR 14231 has not been cancelled. Uungani, Jumbo and Foster all base their claim over the parcel of land on this survey.
1996	LR No 21919	LR No 21919 was created through a survey requested by the CoL for purposes of issuing a title to KAA. This survey encompassed the land known as LR No 3864 above. A title was subsequently issued and registered as IR No 70118 in favour of KAA. Previous surveys were not cancelled in accordance with the prescribed process.
2001	LR No 24937	LR 24937 was created through a survey requested by the CoL for purposes of excising public roads that had been captured as part of KAA's 1996 title. This survey encompassed the land known as LR No 3864 above. A title was subsequently issued in favour of KAA but was later revoked when KAA realised that that the land that was excised in this title included parts of LR No 21919 which were not roads. Further there were apparent errors on the face of this title and KAA reverted back to the title registered as IR No 70118 over LR No 21919 since the surrender was never finalized and registered. The area known as Syokimau was still part of KAA land even under this defective title that was revoked.
2008	LR No 14231/1 and LR No. 14231/R	LR No 14231/1 and LR No. 14231/R were created through a survey conducted by a private surveyor. It was a subdivision of land known as LR 14231 above. Uungani base their claim on this survey. Jumbo and Foster base their claim to ownership on a purported survey that created LR No. 14231/2 which we have established was never done by the surveyor they purport to have carried out the survey. At this time, KAA had gone to court and there was an injunction restraining all further dealings in this parcel of land.
2009	LR Nos 14231/3-63	Notwithstanding that LR No. 14231/2 did not exist, this survey was apparently carried out to subdivide LR No.14231/2 to create 61 plots for the benefit of Foster. At this time, KAA had gone to court and there was an injunction restraining all further dealings in this parcel of land.

This parcel of land was surveyed in 1931 with an area of 1,005.3 Ha (2,484 acres). The survey is delineated on Survey Plan number F/R 35/108 (see appendix 20 for the attached copy of the Survey Plan).

On 30 April 1972, the Government acquired this land from Mr Andrew Macrae Watson for use by the then Nairobi Airport. The acquisition was done through a Kenya Gazette notice number 1105 of 26 April 1971.

In 1985, a survey, delineated on FR 185/26 was carried out by A.K Njuki, Government surveyor on the authority of the CoL. Records at the Department of Surveys indicate that the purpose of the survey was for the issuance of a new Grant. This survey excised a parcel known as LR No 13512 measuring 100 Ha (247 acres) from LR No 3864. A Deed Plan No. 126696 was issued by the Director of Surveys to the CoL through a letter referenced CR/34/1896 dated 11 November 1986. There was no new number assigned to the unsurveyed portion of LR No 3864. We have not established to whom the new Grant was meant for, and there are no records at MoL indicating whether a title deed was issued following the survey.

In 1987, a further survey, delineated on FR 195/15, was carried out by L.M Kivuti, a Government surveyor, in order to harmonize the coordinate system within the region. This was necessitated after noticing that the values of the control points that were used to survey LR No 3864 were in different systems. This survey assigned the portion surveyed as LR No 14231, measuring 649.9 Ha (1,606 acres).

The effect of the surveys carried out by the Government in 1985 and subsequently in 1987 was the creation of LR Nos. 13512 and 14231, totalling 749.9 Ha (1,852 acres) and leaving out a portion of 255.4 Ha (631 acres) of the original LR No 3864.

In 1996, the CoL requested the Director of Surveys through letter ref 88767/V/(204) dated 1 April 1996 to have the land for JKIA and Wilson Airports surveyed against approved Physical Development Plans that were supplied. The survey for JKIA was carried out by Mr Gordon Wayumba and registered and delineated on FR 265/27 and assigned LR No 21919 and Deed Plan number 205580 issued. This survey consolidated all the surveys carried out earlier to form a single parcel measuring 4,654.2 Ha (11,500 acres) (including LR No 3864). The title to this was then issued to KAA by a Grant registered as IR No 70118 dated 26 July 1996.

In 2008, a survey was carried out on LR No 3864 by John D. Obel, a practicing Licensed Surveyor, which created LR Nos 14231/1 and 14231/R via Survey Plan FR 472/72. The Director of Surveys authenticated this survey on 31 January 2008. The authority for the survey is indicated as a LoA Ref no. 39711/XXIV dated 20 September 1996 and 39711/XXVI dated 5 January 1998 in the names of Uungani and Foster respectively. A PDP number MKS/8/97/6 dated 8 October 1997 was attached. The office of the Director of Surveys failed to verify the authenticity of the LoAs and the PDP with the CoL and the Director of Physical Planning as was the normal practice during this period. It further failed to take into account, at the point of registration in the survey records office, that this survey encroached on LR No 21919 of Survey Plan FR 265/27 that had been done in 1996 and a Deed Plan issued. The ramifications of this failure are apparent in the subsequent subdivisions of these parcels and occupations thereafter that led to the demolitions.

In 2009, L.K Gitau, a practicing Licensed Surveyor, subdivided parcel LR No 14231/2 into LR Nos 14231/3-63 (61 portions) of varying sizes. The authority for this is indicated as an approved subdivision scheme plan bearing signed rubber stamps of the District Lands Officer, Machakos, the Town Clerk of Mavoko Council and that of the CoL.

4.2.2.3. Various Court cases

In response to the alleged encroachment on their land by groups purporting to have documents of title for the land, and in light of their findings from investigations they undertook, KAA moved to Court and instituted two Court cases against the groups claiming ownership. These cases were:

i. HCCC No. 489 of 2004 – KAA against Uungani Settlement Scheme Self Help Group and Others
ii. HCCC No. 206 of 2004 – KAA against Mulolongo Brothers and Others

In the suits, KAA sought interim injunction orders to stop any further dealing by the two groups on the land until the contentious issue surrounding ownership was solved. The Court granted KAA an injunction dated 3 March 2004 which barred any dealings on land no LR No 24937 (see appendix 21). It read in part:

"That the defendants, their servants, agents and anybody authorized by them be and is hereby restrained by way of injunction from advertising for sale, interfering with, alienating, sub-dividing, trespassing upon, or in any manner dealing with all that parcel of land known as LR No 24937 or in any part thereof until 16th March 2004 when the application will be heard inter-parties."

The interim injunction orders were extended on a number of occasions when the matter came up for hearing or mention. To date, the Court cases have not been heard and determined.

Review of other claims

4.2.2.4. Uungani Settlement Scheme Self Help Group.

History of the group

According to the Chairperson of the Uungani, Mr David Wambua Mila, Uungani was formed in 1986. According to the Chairman, the subject land originally belonged to a Mr Douglas Watson[18] who had many employees, many of whom had settled on his expansive land and built homes thereon.

In 1971 the Government of Kenya acquired the said land compulsorily from Mr Douglas Watson. At around the year 1999 Mr Watson vacated the land but left his former employees in occupation of the same. The group was therefore formed for the purposes of applying for the allotment of the said land which had become Government land pursuant to the compulsory acquisition process.

The group approached former Member of Parliament for Embakasi the Late Hon. David Mwenje and the local Councillor, the Late Mr Mwololo, who assisted them to get a LoA in 1996. The late Hon. Mwenje was able to facilitate the issuance of the LoA and in the process received KShs 300,000 from the group as facilitation fees. According to the chairman, at this point, the group was unable to raise the fee indicated in the allotment letter. Therefore, they didn't pay for the same till 2002 when the members managed to contribute the required amount of KShs 3,167,377 which Uungani paid to the MoL in four tranches.

The group's claim to land is largely supported by surveys which they believe created the parcels of land making it available for allocation by the Government. Below, we discuss a chronology of various surveys that have been undertaken on the parcel of land claimed by Uungani and describe the other documents submitted by the group.

- Survey plan FR 195/15 for LR No 14231, acreage 649.9 Ha (1605.9 acres) which was surveyed by L. M. Kivuti, Government Surveyor and authenticated on 31 August, 1987. We have confirmed that this survey was undertaken for purposes of harmonization of the co-ordinate system within that area but not for allocation of land (See appendix 22)
- Survey plan FR 472/72 for LR No 14231/1 and 14231/2, acreage 1,109.2 acres (449.9 Ha) and 494.2 acres (200.0 Ha) respectively. It was surveyed by J. D. Obel, and authenticated by the Director of Surveys on 31 January, 2008. Deed Plan No.285225 for LR No 14231/1 and Deed Plan No. 297909 for LR No 14231/2 were issued on 25 March, 2008 and 5 June, 2009 respectively (see appendix 23 for the Survey Plans and appendix 24 for the Deed Plans)
- Uungani provided us with a LoA Reference No. 39711/XXIV dated 20 September, 1996 with the attached PDP No. MKS/8/97/6 for the land demarcated as LR No 14231/1 (See at appendix 25 a copy of the LoA from Uungani)
- We obtained a file at the MoL which contained a LoA Reference No. 39771/XXVI dated 5 January, 1998 for the other portion created after the survey carried out by J.D Obel i.e. LR No 14231/2 which purportedly allotted the land to Foster.
- Survey plan Nos 359/33, 359/34, 359/35 prepared for sub dividing LR No 14231/2 into 61 Plots i.e. LR No 14231/3 – 63 which was surveyed by L. K. Gitau, Licensed Surveyor and authenticated on 4 December, 2009. The survey was approved by the Commissioner of Land's letter Reference 223430 dated 4 December, 2009 and the approved sub division scheme plan (see appendix 26 for the Survey Plan)

Claim on the land

Uungani is claiming ownership of LR No 14231/1 on the basis of a LoA reference No. 39711/XXIV dated 20 September, 1996 and the survey maps mentioned above (FR 195/15 and FR 472/72).

[18] The area is commonly known by the local residents as *Kwa Dangi*, which is a corruption of the name of the previous owner Mr Douglas Watson.

The LoA obtained from Uungani is supported by PDP no. MKS/8/97/6 (refer to appendix 25). This differs from the reference in the LoA obtained from MoL which has a PDP no MKS/8/96/6. Further to that, the attached PDP MKS/8/97/6 is a reference to a PDP that does not exist. This was confirmed by the Director of Physical Planning through an Internal memo ref PPD/56/XII/(85) dated 28 November 2011 to the PS, MoL (refer to appendix 27 for the memo).

According to records obtained from the Director of Survey, the attached PDP no MKS/8/96/6 used by Uungani relates to land located in a totally different area, to the Syokimau area affected by the demolitions, i.e. industrial land in Athi River, and not the parcel claimed by Uungani . The Director of Physical Planning also wrote to the Director of Criminal Investigations vide letter dated 24 February 2012 confirming the PDP MKS/8/97/6 was not prepared and approved by his department.

From the Uungani correspondence file number 242206 at MoL, a copy of which is with the CID, MoL officials commenced the process of issuing the group with a Title Deed under the RTA regime. The Forwarding Form was initiated by a Mr Chebii S.K., a Lands Officer and Mr D.R. Kithunka, a Senior Lands Officer. The signatures on the Forwarding Form have been confirmed to be genuine by the handwriting expert (see attached at appendix 28 – Report by handwriting expert). From the document, Mr Kithunka made queries on the location of the land. On 6 January 2009, an officer in the grade of Chief Lands Administration Officer (CLAO) within the ministry confirmed that the land was within JKIA property. This seems not to have hampered the title generation as an unsigned title document was printed awaiting the signature of the CoL. This document when signed and registered would have conferred the land under LR No no. 14231/1 upon Uungani through its Trustees (see appendix 29 for a copy of the unsigned title for LR No 14231/1).

Our observations and conclusions on Uungani's claim to LR No 14231/1

Legal Status of Uungani

Uungani Settlement Self Help Group is registered as a Self Help Group by Ministry of Gender, Children and Social Development. It was issued with a Certificate of Registration with Serial No.18195 dated 11 September 2002 (see appendix 30 for a copy of the official search at the Ministry's registry). The officials of Uungani as per the records obtained from Ministry of Gender, Children and Social Development as at 23 April 2012 were as follows:

	Individual	Designation
1	David Wambua Mila	Chairman
2	Elijah Gitari Runo	Secretary
3	Charles O. Agutu	Treasurer

Capacity of Uungani to own the property

The LoA dated 20 September 1996 was issued in the name of Uungani. From information obtained from the Registrar of Societies, the group was registered on 11 September, 2002, which occurred after the issuance of the LoAs. The LoA was thus issued to a non-existing entity at the time of issuance. The said LoA cannot therefore confer any rights to the group since Uungani was not in existence at the time of issuance of the LoA.

Further, a self help group is an unincorporated body. Judicial precedents indicate that self help groups are amorphous entities which cannot own property in their own names.[19] They can only own property in the names

[19] See HCCC No 5116 of 1992 (OS)

of the office bearers as Trustees. Accordingly, the group lacks capacity in law to hold any land in its own name and could therefore not be allotted title in the name of the group.

Effects of survey of LR No 14231/1

Survey plan FR 472/72 area 449.90 was surveyed by J. D. Obel and authenticated by Director of Surveys on 31 January, 2008 and Deed Plan No. 285225 issued on 25 March, 2008. The Department of Surveys did not confirm the authenticity of the LoAs before undertaking the survey.

Comments on the Letters of Allotment

Other than the LoA that was given to us by the officials of Uungani, we also obtained a second LoA Reference No. 39711/XXVI dated 5 January 1998 from the Director of Survey (see appendix 31). According to the officials of Uungani, they acknowledged that they claim that they had been given the first LoA dated 20 September 1996, which they had used for some years, but were advised that it was defective and therefore they went to the MoL and replaced it with the one dated 5 January 1998. The Uungani Chairman advised that he did not know what the alleged defect was but did as he was advised to have the LoA changed for a new one (see minutes of discussion with Uungani officials at appendix 32).

The LoA dated 5 January, 1998 makes reference to a PDP No MKS/8/97/6. From records at the Director of Physical Planning, the PDP does not exist. The PDP No MKS/8/96/6 referenced in the 1996 LoA relates to industrial land in Athi River and not the parcel claimed by Uungani. The Director of Physical Planning vide letter dated 24 February 2012 confirmed the PDP was not prepared and approved by his department.

Conclusion

From our assessment of the documents provided by Uungani and the documentation at MoL relating to the registration and ownership of the disputed land, Uungani does not have a claim supported in law on the land. We summarise the basis of our assessment below:

- They do not hold a valid title to the land being claimed.
- The LoA they hold would amount to double allocation by the CoL, since KAA already had a valid title to the land in dispute.
- The LoA they hold and rely on for their claim was purportedly issued before the group was officially registered.
- They are not a body corporate and therefore cannot hold assets in their names, land included.
- The PDP MK/8/96/6 they purport to make reference to in the copies of LoAs we have been given relates to a different parcel of land (in Athi River) and the other PDP referred to in the second copy of a LoA to the same piece of land MK/8/97/6 does not exist.
- The Survey Plans they rely on which created the parcel of land LR No 14231 was carried out for the purpose of harmonizing co-ordinates and not for a new Grant.

Further to this, the group has been transacting with the public using what has been determined to be forged documents which they base their claim to ownership of the land on. This is explained in further detail in section 6 of our Report.

4.2.2.5. Jumbo Community Self Help group

Background

We met with the officials of Jumbo including their Chairman, Secretary and lawyer on 9 May 2012 (see attached at appendix 33 notes of meeting with Jumbo officials). According to the Secretary, Mr Joseph Ngugi Kabiru, Jumbo was formed in 1997 as a result of the amalgamation of six self help groups, four of which were officially

registered and two which were unregistered. The four registered groups were Nuru Self Help Group, Mana kayo Self Help Group, Embakasi Savadon Self Help Group and Kayole Masomo Self Help Group (see attached appendix 34 – registration certificates).

These groups were originally from Embakasi in Nairobi and were brought to the site at Syokimau by their then Member of Parliament, (the late Hon David Mwenje) in 1998.The officials advised that the Late Hon. Mwenje accompanied by security (police), brought the groups to the site they are laying claim to and showed them the beacons demarcating their parcel of land, and gave them an LoA dated 5 January 1998 (see attached appendix 35). The LoA was in the name of Jumbo Community Self Help Group.

The officials further advised that by the year 2000, people started moving in to the allocated parcel of land. They explained that the group had been asked by the Late Hon. Mwenje to raise the amount required to pay for the processing of the LoA at the MoL as well as to cover their other administrative costs. To raise the monies required, the members contributed small amounts, and after a meeting also agreed to sell some portions of the land they were allocated to invite and include more members and as a result raise capital. They raised KShs 2 million which they handed to the late Hon Mwenje. The officials advised that to date they have never known whether the money was used for the processing of the title documents as they have never received any receipt for the same.

The officials advised that the responsibility of following up on the obtaining and registration of title for the land Jumbo were apparently allocated, lay on the Late Hon Mwenje who handled the matters on the group's behalf. The officials advised that between 1998 and 2008 when Hon Mwenje passed on, he exclusively handled the land title formalization matters. According to the Jumbo officials, the MP was beyond reproach or questioning at the time, and whenever they raised the issue, they would be informed by the late MP that he was in the process of obtaining title for the land.

From searches undertaken in the course of the audit, Jumbo was registered as a Self Help Group by Ministry of Gender, Children and Social Development. It was issued with a Certificate of Registration with Serial No. 2602 dated 1 January 2002 (see attached appendix 30 for the official search from the Ministry).

The officials as per the records obtained from ministry as at 23 April, 2012 were as follows;

Official	Position
Charles Karanja Njuguna	Chairman
Joseph Ngugi Kabiru	Secretary
Jane Wamuyu Ndiritu	Treasurer

Jumbo's claim on LR No 14231/2

Jumbo provided us with the following documents supporting their claim of title to the land in dispute;

Document	Date issued	Ref.No.
LoA in the name of Jumbo Community Self Help Group	5 January 1998	Ref. No. 39711/XXVI
Department of Lands, Fee Receipt for KShs 202,610	26 June 2002	F.0011271
Deed plan for land ref.14231/2	5 June 2009	Plan. No. 297909

Claim on the land

Jumbo's claim to the land is based on the LoA dated 5 January, 1998 ref No. 39711/XXVI, and a receipt allegedly issued by the MoL Number 011271 (see attached appendix 36).

There is no evidence of an application for allotment by Jumbo or a formal letter of acceptance to the CoL accepting the conditions and payment of the charges there under. The group officials could also not provide these documents.

The total amount payable as indicated on the allotment letter was KShs 1,587,660. The group alleges to have paid KShs 202,610 vide cheque No. 015548 and were issued with a receipt for the same being receipt Number 011271, file No. 227363.This file could not be traced at the MoL. According to the officials, Jumbo pursued the registration of the title and even obtained a Deed Plan No. 297909 for LR No 14231/2 dated 5 June 2009 (see attached appendix 37).

According to Jumbo, they went ahead to subdivide LR No 14231/2 into plots which they were selling to their members and thereafter issuing them with Ownership Certificates in their names. From the group's members' register, 1,762 plots were allotted to members. The plot sizes were ranging from 0.125 acres to 11 acres. The subdivision of LR No 14231/2 was neither approved by the Mavoko Council nor is there evidence of approval by the MoL. The creation of this parcel of land, LR No 14231/2 has also been denied by the surveyor who purportedly created it, Mr John Obel. Mr Obel advised that he only carried out a survey for land identified as LR No 14231/1 and the remaining parcel was demarcated by LR No 14231/R, for which he retained records and provided us with (see attached appendix 38).

The subdivision scheme provided by Jumbo indicates that is was processed by Mr John M. Ohas of John M. Ohas and Associates, a Consulting Urban and Regional Planner. The scheme plan is dated 10 November 2010 (see attached appendix 39). Some of the members who purchased the plots commenced construction of homes without formal approval by the relevant authorities involved in approving building plans.

In addition, no file was available at the Mavoko Council in the name of Jumbo. The Council through the Deputy Town Planner, Mr Kinoti reiterated that the group was not known by the Council and no transactions had been undertaken by the group with the Council.

The MoL officials from Machakos who we spoke to regarding the area, Mr Joseph Ndavi, District Chief Land Administration Officer for Machakos and Ms Maryanne Gikunda, the District Physical Planning Officer for Machakos, both advised that they never dealt with Jumbo.

Information from other groups within Jumbo

Mavicor Ndunda Self help Community Group

Mavicor Ndunda Self Help Community Group ("Mavicor") registered as a Self Help Group by Ministry of Gender, Children and Social Development. It was issued with a certificate of registration with Serial No.21384 dated 21 May 2009 (see attached appendix 40).

The officials as per the records obtained from Ministry of Gender, Children and Social Development as at 23 April, 2012 were as follows:

	Name of official	Designation
1	Peter Njore Wakafa	Chairman
2	Philip Indiaka Keya	Secretary
3	Rebecca Wanjiru Kamau	Treasurer

According to the Group's Treasurer, Ms Rebecca Wanjiru Kamau, Mavicor officials were originally members of Jumbo. She advised that the group was formed after a disagreement arose between them and the officials of Jumbo. This led to a Court case in which an out of Court agreement was reached and a consent order given at the High Court of Kenya in Machakos allotting 8.3 hectares to Mavicor within LR No 14231/2. The consent order is dated 4 February 2010 (see attached appendix 41). Others allotted land by Jumbo in the out-of-Court settlement included Mr George W. Machua (2 hectares) and Mrs Rebeccah W. Kamau the Treasurer (2.5 hectares).

In addition to the consent order, Jumbo officials signed agreements with Mavicor vesting the land on the group (see attached appendix 42). Attached to the Agreement is a sub division scheme showing the land allotted to Mavicor and two Deed Plans no. 303574 and No. 303375 dated 15 December 2009 (see attached appendix 43).

Mavicor provided us with the following documents in support of their claim to title of the land they occupied:

Document	Date issued
Consent Order from the High Court of Kenya, Machakos	4 February 2010
Letter to the Deputy Registrar, High Court of Kenya, Machakos	2 February 2010
Agreement between Jumbo and Mavicor	8 January 2010
Deed plans No. 303574 and No. 303575	15 December 2010

Mavicor went ahead to register members and issued 243 plots ranging from 30 by 60 feet to 0.4 hectares. Members were issued with a plot certificate as proof of ownership. There is however no evidence of approval for the subdivision.

Our assessment and conclusions

From our review of the documents provided by Jumbo officials, we noted the following;

i. The LoA was issued before the group came into formal existence, i.e. it is not possible to allocate land to a non-existent entity
ii. The PDP No. MKS/8/97/6 used to acquire the LoA was confirmed as a forgery by the Director of Physical Planning through an internal memo to the PS, ML dated 28 November 2011 and a letter to the Director of Criminal Investigation dated 24 February 2012. The Director confirmed that there is no record of the PDP and no plan has been done on the area under review (see attached appendix 136).
iii. The rent amount indicated on the LoA goes against the requirement of the Valuation for Rating Act Cap 266. The rent value of KShs 37,065 does not amount to 20% of the stand premium figure of KShs 1,482,600.
iv. The LoA does not have an "authority reference number" and cannot be referred to any other document or payment file. This from the explanation of the Director of Surveys is in order as land allotted by the president was indicated as Authority "Government".
v. Further, the LoA is issued to a Self Help Group which is an unincorporated body. It is not a legal entity with capacity to own property. The property of a Self Help Group ought to be registered in the name of the office bearers of the group. This has been the holding in various Court cases. Jumbo cannot legally hold property in its name.
vi. Only one receipt of payment was availed by Jumbo (see copy at appendix 36). No evidence is available to show that the group paid the balance of the LoA figure. Jumbo officials acknowledge that the amount could still be outstanding.

vii. Jumbo did not have a formal written acceptance of the LoA. This means as per the terms of offer in the LoA, failure to give a formal written acceptance and to settle the sums due within 30 days made the offer lapse.
viii. The survey being used by Jumbo to lay claim on the land appears to never have happened and the surveyor who purportedly carried it out, Mr J. Obel has confirmed that he never carried out any survey delineating land LR No 14231/2.
ix. The land claimed by Jumbo forms part of LR No 21919, to which KAA has a legal title.

Based on the assessment of the documents provided by Jumbo officials and the oral submissions supporting their claim on the disputed parcel of land, Jumbo does not have a valid legal claim over the disputed parcel of land which is confirmed as registered to KAA at the MoL.

Further, there are cases of document forgery and misrepresentations to the public by the Jumbo officials who were transacting in the disputed land over which they did not hold legal title. This is discussed further in section 6 of our Report.

4.2.2.6. Foster Trading Company Limited

Foster is a limited liability company registered on 23 October 2009. It was formed by former officials of Jumbo. The current Jumbo officials informed us that after 2008, the Jumbo leadership appointed three of their committee members, Mr Simon Migwi Ndegwa, Mr Justus Wainaina and Mr Peter Maina Ndegwa, to follow up the registration of the parcel of land on behalf of the members of the group.

According to the Chairman and Secretary of Jumbo, Mr Njuguna and Mr Kabiru, these three individuals acquired the services of an advocate, Nyaga and Company Advocates, who drafted a Trust Deed and presented it to the Minister of Lands for registration. Mr Njuguna and Mr Kabiru had been advised that the Title Deed could only be registered in the names of Trustees of the groups, which required a Trust Deed to be executed and authorized by Minister of Lands. This they advised has not been done to date. The officials advised that the three individuals tasked with formalizing title went behind the backs of the group and registered a company called Foster through which they were trying to register title for the parcel of land.

The officials advised that the Chairman was alerted about the Foster scheme by an individual working within MoL whom they declined to name. The Chairman confronted the three officials who reassured them that it was just a name change and that it was not going to affect Jumbo. Foster officials even offered the Jumbo Chairman shares as a sign of confidence. The Chairman advised us that he later on reflected on the matter and saw that the entire group was not benefitting and took legal action and sued Foster. Jumbo have not furnished us with details of the suit.

As evidenced from the search undertaken at the Department of the Registrar of Companies, Foster was registered as a limited liability company on 23 October 2009 with registration number CPR/2009/12866 (see attached at appendix 44 – the search undertaken at the Registrar of Companies). From the records we obtained from the Registrar of Companies as at 30 April 2012 indicate the shareholders and directors as follows:

Shareholders			
Name	**Address**	**Nationality**	**Shares**
Grace Watetu Waruru	P.O. Box 1207 Thika	Kenyan	200
James Wainaina Ndung'u	P.O. Box 84-00610 Nairobi	Kenyan	50
Salome Njoki Muhia	P.O. Box 84-00610 Nairobi	Kenyan	75
Rosemary Ngonyo Wamunyu	P.O. Box 84-00610	Kenyan	50

	Nairobi			
Charles Karanja Njuguna	P.O. Box Nairobi	84-00610	Kenyan	100
Joseph Ngugi Kabiru	P.O. Box Nairobi	84-00610	Kenyan	100
Jane Wamuyu Nderitu	P.O. Box Nairobi	84-00610	Kenyan	100

Directors			
Name	**Address**	**Nationality**	**Shares**
Simon Migwi Ndegwa	P.O. Box 1207 Thika	Kenyan	300
Peter Maina Ndegwa	P.O. Box 1207 Thika	Kenyan	350
Justus Wainaina	P.O. Box 1207 Thika	Kenyan	150

We have noted that three of the office bearers of Jumbo, Mr Charles Karanja, Mr Joseph Ngugi Kabiru and Mrs Jane Wamuyu Ndiritu are all shareholders in Foster.

Foster was issued with a LoA dated 5 January 1998 which is the same date as the LoA issued to Jumbo, and 12 years before Foster was officially registered. The two LoAs have the same details except the rent charged and signatories. There is no evidence available from the MoL or from any other source showing how Foster applied for the land or whether it accepted the allotment offer.

Foster was issued a LoA with the same reference number 39711/XXVI as the one issued to Uungani. From the correspondence file at the MoL, it is evident that the only amount paid by Foster in respect of the allotment amounted to KShs 300,000 on 22 March 2011. Only the deposit slip and the pay-in slip were available, there is no evidence of MoL receiving the money through a payment receipt as is the normal procedure (appendix 45 – Payment receipt to MoL from Foster).

In addition, the file has a Rent Clearance Certificate indicating that Foster had complied with the requirements of MoL as regards rent payment. Our investigations to confirm the authenticity of the Certificate No. 300742 confirmed that the said certificate had not been issued to anyone and the original certificate book was still intact at the MoL (see attached appendix 46 – rent clearing certificate for Foster).

Foster was purportedly issued with a Deed Plan No 297909 for LR No. 14231/2 dated 5 June 2009 after a survey was undertaken by the Director of Surveys through Mr J.D. Obel a Registered Surveyor (see attached appendix 37).

We have not received any claims from Foster, neither have we met the officials of the company to verify the information we obtained from the MoL.

In the course of our investigations, we obtained a Grant registered as Number I.R 117257 purportedly conferring ownership of the parcel of land known as LR No 14231/2 to Foster. The document is dated 13 June 2011 (see appendix 4 – copy of Foster title).

Further to this, we obtained the documents as well confirming transactions between Mavoko Council and Foster:

a. Receipt for Plot sub-division fees for KES 538,400 dated 14 March 2011;
b. Rates Clearance Certificate No. 10225 dated 14 March 2011;

c. Receipt showing payment for a *"Debt Clearance Certificate"* for which Foster purportedly paid KES 4,000 dated 11 March 2011; and

d. Receipt for payment of rates for KES 414,609 dated 11 March 2011.

See attached at appendix 48 the documents showing dealings of Mavoko Council with Foster.

Further subdivision of land under LR No 14231/2

On the 18 September 2009, Foster's application to the CoL for approval of a sub division scheme on land covered under LR No 14231/2 was replied to by Mr I.A. Macuka for the CoL (see attached appendix 49). The letter stated that the scheme had been endorsed by Lands albeit with a few conditions. In addition, Foster was purportedly issued with a PPA 2 approval form from the Mavoko Council on their sub division scheme. The letter is dated 14 October 2009 and signed by Mr F.M. Ndereba the Town Planner Mavoko Council (see copy of letter at appendix 50).

Both signatories of the above letters informed us that they never at anytime gave approval to Foster and as far as they can assess the documents, Foster must have forged their signatures to perpetrate a fraud. Mr Machuka went further to state that he has never had any dealings with Foster and he would welcome an opportunity to meet Foster's directors to set the record straight.

The subdivision scheme further sub-divided LR No 14231/2 into LR No 14231/3 – 63 (61 plots). There is a Survey Plan 359/33, 359/34 and 359/35 done by L.K. Gitau, a Licensed Surveyor and which document was authenticated on 4 December 2009. The survey was also approved by the CoL who signed it on 18 September 2009 as approval reference 223430 (see appendix 26).

Documents availed from the Director of Surveys indicate that there was a copy of the scheme plans which have approval stamps from the CoL, Town Clerk Mavoko Council and the District Land Office Machakos District. A valuation requisition for Stamp duty was also filed with MoL where values were given to the 60 parcels of land (see attached appendix 51).

4.2.2.7. Mulolongo Brothers Association

Background

Mulolongo Brothers officials informed us that the group was formed by youth residing along Mombasa road next to KAA land. According to Mr John Mutuku, the current Group Treasurer who was present from the formation of the group; the youth group undertook hawking and other small businesses along the busy Mombasa road to earn a living. They were initially registered as a Self Help Group before changing their structure to an association which was registered in 2002.

Mr Mutuku further explained that in 1990, the former Head of State Ret. President Daniel Moi, while passing along Mombasa road was approached by the youth for assistance.

The President noted their makeshift structures constructed along the road and ordered that the occupants, who were members of the youth group, be moved from the location in which they were squatting in to land along Mombasa Road where the current Mulolongo trading centre is located. According to Mr Mutuku, the reason for the relocation was to clear (what he claims the President described as an "eye sore") the makeshift structures presented along the road. The youth were moved to Mulolongo and were purportedly "allocated" land which they subdivided among themselves into portions measuring 20 by 80 feet.

According to Mr Mutuku, who was one of the youth members at the time the group had been moved to Mulolongo, some of the members (approximately 180) were unlucky and did not get any allocations as the land area was not sufficient. Mr Mutuku also said that he had advised the group to approach the late Hon Mulu Mutisya for his assistance to get them alternative land for settlement having missed out on the land others had received at Mulolongo. Mulolongo Brothers believes that through the intervention of the late Hon Mutisya, the then President "allocated" them the piece of land they claim as LR No 13512 within Syokimau area. This was in 1992.

Mulolongo Brothers claims the late Hon. Mutisya assisted them in acquiring the title Grant registered as IR No 58266 dated 5 March, 1993 from the MoL (see attached appendix 52). The parcel of land is described in Deed Plan Number 126696 dated 11 November, 1986 (see attached appendix 53).

The details obtained from the Registrar of Societies with regard to Mulolongo Brothers as they appear in the records of the Registrar show that this entity was registered on the 20 September 2002 and a Certificate of Registration issued No. 21754 (see attached appendix 54).

Office bearers as per year ending 31 December, 2007	
1)	Chairman – Stephen Nzuki Mwania
2)	Vice Chairman – Agnes Njeri Gichuki
3)	Secretary – James Njoroge Murigi
4)	Ass. Secretary – Christopher Wambua Mutisya
5)	Treasurer – John Mutuku Muinde
6)	Assistant Treasurer - Rose Mumbe Mwanza

Registered Office
Athi River, Mombasa Road, Plot No. 154

It should be noted that the previous Chairman of the Mavoko Council, Peter Mbiti, was also a former Chairman of the Mulolongo Brothers and is purported to have exerted influence in the Council especially in the Town Planning Committee where he was also Chairman.

Claim on land under LR No. 13512

Mulolongo Brothers' claim to the land is based on a Grant they allege was issued to them by the CoL. The alleged Grant is registered as Number I.R 58266 dated 9 March 1993 and was apparently issued to Mulongo Brothers some nine years before its registration in 2002.The group has no other documents that evidence the process they followed to obtain the Grant. The parcel of land is described in Deed Plan No 126696 dated 11 November, 1986.

From evidence adduced by the MoL to the Joint Parliamentary Committee, the IR No 58266 which was allegedly issued in respect of the said LR No 13512 refers to a totally different parcel of land registered in the name of Alcon Holdings Limited dated 5 March, 1993. This parcel of land is described in Survey Plan Number 166834 dated 15 September, 1992 (see attached appendix 55).

We came across another alleged Grant registered as IR No 85126 dated 30 September, 1995 in respect of LR No 13512 in the name of Mulolongo Brothers (see attached appendix 56). This Grant was obtained from the

Mavoko Council having been issued to the Mavoko Municipal Council by Mulolongo Brothers for purposes of subdivision and construction approvals.

A different copy of the Grant registered as IR No 58266 dated 5 March, 1995 in respect of LR No 13512 was provided to us by the District Lands Administration Officer for Machakos, Mr Joseph Ndavi, which he advised us was obtained from Mr Mwania, the Chairman of Mulolongo.

Further investigations undertaken by the CID on land LR No 13512 revealed that the land is registered in the name of National Science and Technology Institute (see appendix 57). The Department of Lands through a letter to the CID confirmed that Grant No.IR. 91423 for LR No 13512 and purportedly described in a Deed Plan Number 126696 dated 15 February 1985 was issued to the institution. Further evidence gathered and presented to us by the CID indicates that the institution is not registered with the Ministry of Higher Education, Science and Technology, or with the registrar of Companies.

We are yet to obtain the file records in respect of LR No 13512 from the Registrar of Titles. We have not seen a LoA allocating the parcel of land LR No 13512 to Mulolongo Brothers or an application by Mulolongo Brothers for allotment of land in the Mulolongo area. We are therefore not able to verify whether the process of alienation was carried out before the title was issued to Mulolongo Brothers in respect of LR No 13512 and we could not verify origin of the alleged titles.

Sub division of LR No 13512

Mulolongo Brothers claim to have commenced the sub-division process in 2002 after registration of new members and registration of the group as an Association. According to the Chairman, Mr Mwania, each new member was required to pay KShs 3,500 which entitled them to a single plot measuring 50 by 100 feet within their land in Syokimau. Mulolongo Brothers contracted a firm by the name Peman Consultants to undertake a subdivision survey of which they were issued with a plan dated 12 April 2003 (a copy is attached at appendix 60).

Mulolongo Brothers advised that they used this plan to allocate its members land for which a plot certificate was presented to each member as proof of ownership.

Mulolongo Brothers' officials informed us that in 2003 they submitted the sub-division scheme for approval to the Mavoko Council which was later forwarded to the District Physical Planning Officer Mr PN Matheka in Machakos. Mr Matheka advised the Council that he had no objection but advised that the group should provide space for utilities and schools (see appendix 58 – letter from District Physical Planning Officer dated 2003).

From documents availed by Mulolongo Brothers' officials, the group acquired services of Mr Henry Muthoka Mwau of Real Plan Consultants to oversee another sub division process in 2009. The Planning Brief presented to the group and allegedly to Mavoko Council gives details of the scheme and gives justification for the sub division as undertaken i.e. in accordance with planning regulations and Mavoko Council by-laws. This document is dated 11 May 2009, three years after the Mavoko Council Town Clerk Mr Tubman Otieno issued a PPA2 form approving the scheme presented to him (see appendix 59).

According to Mr Ndereba, the Town Planner for Mavoko Council in 2009, this second sub division scheme was to regularize plans presented to Mavoko Council, which at that time had several unapproved developments. The map availed by the group shows that the approval stamps on the scheme by the District Lands Office, Machakos, District Physical Planning Officer, Machakos and the Mavoko Council are dated May and July of 2009 (see appendix 60).

Approval of sub-divisions by the Mavoko Council

From the documents availed to us by the Mavoko Council, we note the following;

- Mulolongo Brothers submitted their subdivision scheme in 2006 for approval through a letter dated 7 March 2006 which was received by Mavoko Council from the Chairman of Mulolongo Brothers. The letter also outlined an agreement on the modality in which Mulolongo Brothers will pay for its rates which were in arrears at the time (see attached appendix 61).
- Mulolongo Brothers wrote another letter dated 12 April 2006 to the Town Clerk giving details of the sub division scheme with emphasis on the public utility areas set aside within the scheme (see attached appendix 62).
- Mavoko Council issued a Form PPA2 dated 10 May 2006 and signed by the then Town Clerk Mr Tubman Otieno approving the sub division application (see attached appendix 59). Mr Tubman Otieno made reference to minute TP. 25/6 of the Town Planning Committee held on the 25 April 2006 as having approved the sub division scheme as submitted by Mulolongo Brothers (see attached appendix 64).

Minute TP 25/06 of the Town Planning Committee held on the 25 April 2006 does not make any mention of Mulolongo Brothers' scheme approval being reviewed or the Committee passing an approval of the scheme. The areas mentioned in the meeting have no relation with Mulolongo Brothers' land LR No 13512. However, according to both Mr Otieno and Mr Peter Mbiti, a Councillor at Mavoko who was present at the meeting, there was discussions of the Mulolongo Brothers sub-division scheme which was not captured by whoever was writing the minutes for the meeting. We note that we did not see the signed minutes.

In our assessment of the claim by Mulolongo Brothers based on the documentation provided by their officials and our assessment of these against records at the MoL and other Government institutions to validate their authenticity, we noted the following:

- The Grant No IR 58266 for LR No 13512 is dated 9 March 1993, which was purportedly issued to the Mulolongo Brothers some nine years before its registration in 2002.
- The IR No 58266 which was allegedly issued in respect of the said LR No 13512 was used in and refers to the registration of a different parcel of land in a different area registered in the name of Alcon Holdings Limited dated 5 March, 1993.
- There were multiple versions of the said title document being issued in the name of Mulolongo Brothers which have differing dates when they were purportedly signed by the CoL. We have seen three different copies of the titles in circulation:- one is signed in March 1993 (obtained from Mulolongo Brothers); and the other two obtained from Mavoko Council and the MoL office in Machakos District are signed in March 1995 and September 1995 respectively.
- Mulolongo Brothers is not a body corporate and therefore does not have capacity to own land.
- There are no records at MoL in respect of the title Mulolongo Brothers have been basing their claim on.
- There is no evidence of any payments in relation to the land (rates and land rent) having ever been paid by Mulolongo Brothers. The land was not in the valuation roll at the Mavoko Council.

Based on the assessment of the documents provided by Mulolongo Brothers officials and the oral submissions supporting their claim on the disputed parcel of land, Mulolongo Brothers do not have a valid legal claim over the disputed parcel of land which is confirmed as registered to KAA in the MoL records.

4.2.2.8. Ungani Enterprises Limited

Ungani Enterprises is laying a claim on LR No 9042/56 within LR No 21919 measuring 255.50 Hectares (note: this entity should not be confused by Uungani described above). The Ungani Enterprises claim is based on a LoA ref. No. 33745/XX/208 in respect of this land which was purportedly issued on 14 March 1995. The letter which was purportedly signed by I. A. Machuka for the CoL and is supported by Deed Plan number 185056 dated 11 May 1994 signed by D.R. Gitau.

We met the officials of Ungani Enterprises only once. The group had not made a claim during the sittings of the Joint Parliamentary Committee nor did their members turn up when we were collecting details of the persons affected by the demolitions in the Syokimau area. In our only meeting, Ungani Enterprises provided us with the following attached documents as claim to the land:

- LoA ref. No. 33745/XX/208 in respect of this land was issued on 14 March 1995 (see attached appendix 65)
- Deed Plan number 185056 dated 11 May 1994 (see attached appendix 66)

The group was represented by Mr Hassan Shaba Aden who claimed to be a shareholder of the company and Ms Alice Mutua, the Company Treasurer.

Our assessment of the claim

We have been unable to reach the group's representatives since the initial meeting in which they presented their claim. There is an irregularity, however, in the manner in which the LoA and the Deed Plan were issued. The Deed Plan appears to precede the LoA.

The LoA they presented which is alleged to have been signed by I.A Machuka was confirmed to be a forgery by the forensic document examiner.

There is insufficient evidence to back the claim of the group on title to the land.

4.2.2.9. Possible claims on the basis of adverse possession by the groups

In Syokimau Area, the affected parcels of land were KAA's land and are classified as public land under the Current Constitution. As we state in section 3.4 above, a claim for adverse possession cannot arise in respect of public Land. Moreover, the affected persons had continuing legal proceedings with KAA over the ownership of the land, which goes to show that KAA had taken steps to regain its possession.

4.2.3. Kyang'ombe

4.2.3.1. Introduction

As indicated in section 4.1.1 above, Kyang'ombe is the area covered under LR Nos 209/12076, and LR Nos 20262 – 81. The land is defined as per Survey Plans No. FR 254/25 and 251/60. The areas are charted on topocadastral sheets SE 15 (see attached appendix 67).

Kyang'ombe formed part of the area that was compulsorily acquired in the 1971 compulsory acquisition for the development of the Nairobi Airport (now JKIA). In the period between 1971 and 1991, the land, as were other aerodrome assets, was vested in the Department of Aerodromes and was subsequently transferred to the newly formed KAA.

We carried out a search on the titles for the current owners of the parcels of land in the area. The allotments and allocations that occurred in the area conferred ownership to individual owners who either:

- Obtained title deeds and maintained ownership of the land parcels; or
- Subdivided the land and sold some or all of the parcels of land they had been allotted after processing the title deeds.

As at the time we were reviewing the files at MoL to confirm ownership of the affected land in Kyang'ombe, the owners in the records are indicated as per the listing attached in appendix 9.

When the demolitions occurred, several claimants who claim to represent the affected individuals surfaced. They do not have any documents supporting their claims to ownership, but gave us oral submissions explaining their claim to the area affected by the demolitions. The groups laying claim to ownership of the land include:

- Kyang'ombe Settlement Scheme/ Mwangaza Community Based Organisation
- Kyang'ombe Juhudi Self Help Group
- Vigilant Self Help Group

Various members claiming to belong to the groups that resided within Kyang'ombe Village came and gave their oral submissions. A list of all the individuals we interviewed in relation to the Kyang'ombe area is attached at appendix 68. The following individuals gave us detailed accounts of the claims by the groups:

- Marietta M. Munyao - Kyang'ombe/ Mwangaza Group
- Councillor Ken Ngondi - Councillor Kyang'ombe
- Benedict Muli - Director (Owner) Airways Academy
- Kamunye Gichigi - Lawyer
- Thomas Makambora - Vigilant Group
- Others within the three groups including - Sunya Orue, Adnoice N. Kirigha, Josephine N. Mungura, Margaret Waweru, Anne N. Ndirangu, Julius K. Kinoti

4.2.3.2. Background information from the claimants

The groups at Kyang'ombe submitted the following in support of their claims:

- A letter from Office of the President recognizing Kyang'ombe Village
- A letter from Provincial Administration allowing development of Kyang'ombe
- Minutes from the CCN

We did not obtain any documents of title from the claimants who appeared before us for the land they occupied. The various groups gave us oral submissions in support of their claims to the land which we summarize some of these below.

- According to Councillor Ngondi, the entire Kyang'ombe Village falls under Embakasi Constituency. He advised that the history of the land goes back the 1950s during the colonial era (in the 1950s). He indicated that individuals from the Kamba community occupied the land at the time working for the settler who owned the land. After independence, he informed us that the white settlers left the locals behind. With time, squatters started spreading within the area that is now Kyang'ombe, all the way to the flight path and they grew into a village which was initially called Kyang'ombe Manyatta and had 1,200 people ("voters").
- Mr Ngondi indicated that in 1971, the land was compulsorily acquired by the Government of Kenya from the white settler for purposes of Aerodromes.
- Mr Ngondi further informed us that during the time Mr Fred Waiganjo was the Provincial Commissioner ("PC") of Nairobi Province, a group calling themselves Vigilant approached him (the

PC) and requested him for some land to occupy, within the village. The PC agreed and the group members started occupying the land.

- We also spoke to members of the other groups in the area, Kyang'ombe Self Help Group and Mwangaza Self Help Group. Ms Marietta Munyao, who we understand is in both groups claims to have been born in Kyang'ombe. She claims the land was occupied by a white settler for whom her parents and other individuals who were present at the time worked for. In her submissions, she advised that the groups had no documentation proving ownership, but that they had lived in the area for several years and had constructed residential dwellings in the area. The claim from these groups is based on the fact that they had settled there

From the submissions of the groups affected by the evictions and demolitions in the Kyang'ombe area, there was no documentary evidence to support their claim to ownership of the land. From our work at the MoL, the records indicate that the land has its legally registered owners listed at appendix 9. KAA advised us that they do not have any claim over the ownership of the parcels of land in Kyang'ombe. However as explained in section 4.5 below, this area having been part of land that had been compulsorily acquired by the Government in 1971, there may be a claim by either Government or KAA on the land in the area.

4.2.4. KPA/Maasai

The Mitumba Village is situated on the parcels of land known as LR Nos. 209/13419-21, 11143-4, 11125-6, 11249-50, 11410, 12110, 11309-12, 11270 and 12929 as depicted in Survey Plans Nos. FR 192/176, 273/85 and 362/170. These parcels of land are charted on topographical sheet number SE 5.

The Maasai Village is situated on the parcels of land known as LR No 209/13340, 11386-7, 11462, 13543, 11971, 16437, 13721, 14622-3, 14492, 18586, 11804, 12016, 12480-2, 11845, and 11533-4 as depicted in Survey Plans Nos. FR 204/151, 312/59, 208/40, and 230/1230. These parcels of land are charted on topographical sheet number SE 15.

In assessing the legal ownership of the parcels of land in the area, we reviewed the records at MoL to confirm who the registered owners of the parcels of land are. The list of registered owners of the parcels of land in the affected areas is as laid out in appendix 10.

We also received documentary and oral submissions from the individuals who were affected by the evictions and demolitions. The following groups were settled in the area in dispute:

- Mitumba Village consists of 3 groups :-
  - Muma Housing and Cooperative Scheme
  - Lang'ata Juakali Muungano Self Help Group/ Shirikisho Settlement Scheme
  - Lang'ata Juakali Youth Self Help Group/ June Seventeenth Enterprises
- Maasai Village consists of 3 groups:
  - Dupoto Juakali Self Help Group/ Maasai Dwellers Investors Ltd ("Dupoto")
  - Fakima Self Help Group
  - Dafur

  **The officials of Fakima Self Help Group did not present us with their claim during the course of our fieldwork.*

Below we describe in more details the basis for the claims by the different groups to the parcels of land affected by the demolitions.

- Dupoto did not present any document of title in support of their claim for the land they were occupying. Their Chairperson, Mr Benjamin Lemeloi Payai stated that they were the first people to arrive in the area, and were engaged mainly in grazing their livestock in the open land at the time. He stated that the pastoralist families in the area built temporary shelters as they moved round in search of pasture. They

were later joined in 2001 by a different group calling themselves Muma Housing and Cooperative Scheme ("Muma").

- According to Mr Payai, Muma settled at the now Mitumba Village area next to the KPLC way leave. The officials of Muma Housing group soon started subdividing the land they squatted on, and even invited members of Maasai families to share/get some of the plots the officials of the group were allocating to their members. There are no documents of title provided for the subdivisions.
- Having learned from the Muma group, the Maasai in 2002 formed a self help group, "Dupoto Jua Kali Self Help Group", and the officials also started subdividing the land they occupied and allocating the plots to their members.
- Dupoto engaged a surveyor who subdivided the land they had occupied, into at first three hundred twenty nine (329) plots, and later into around one thousand (1,000) plots as they expanded the land area they occupied. He further noted that the three hundred twenty nine (329) plots are all located in the current area referred to as Dupoto phase 1 in Maasai Village area. It should be noted that there were no title documents provided either for the sub-divisions to the members of Dupoto.
- The officials of Dupoto informed that even by around 2002 nobody had come to claim the land on which they squatted, and it is for this reason that they went to the MoL where they conducted searches of the land and they established that it was still un-surveyed Government land that was available for allotment. They therefore, in liaison with the officials of "Maasai Dwellers Investors Ltd", made a formal request for allotment of the land, and were advised to engage a surveyor who was to prepare a Deed Plan and then go back to the MoL for further review of their case. There is no documentary evidence supporting this assertion. Both officials of Dupoto Jua Kali Self Help group and Maasai Dwellers Investors Ltd acknowledge that the current membership/shareholding of Maasai Dwellers Investors Ltd comprises all the members of Dupoto Jua Kali Self Help group, and that their interests, especially with regard to pursuit of a LoA for the land they are squatted on, are being addressed through the company.
- However discussions with the officials of Maasai Dwellers Investors Ltd (whose membership mostly comprise of those who bought plots from initial beneficiaries) indicated that at the time they bought plots from the purported initial beneficiaries, they did so on the strength of an allotment letter ref;11674/xv/76 dated 23/1/1992 held by the Self Help Group. They note that it is only after independent searches were conducted at the MoL that the LoA was confirmed to be fake. The secretary of Dupoto Jua Kali self help group Mr Benjamin Lemeloi Payai however explains that the allotment letter referred to relates to their land in Dupoto Phase 2 which already has a title deed issued under the name "Dupoto Group Ltd.

We also held discussions with the Chairman of Muma, Francis Mwanzia, who advised on the following:

- Muma members were settled at the current KPA site by the then PC of Nairobi, Cyrus Maina due to congestion at the Mukuru Kwa Njenga informal settlement in Industrial Area. This was in 1999. He advised that this occurred after the squatters had contributed some money and given it to the PC. The squatters were told by the PC that the land was unsurveyed and belonged to the Government. Mr Mwanzia advised that the squatters verified this assertion by the PC to be true after enquiring from the MoL. Mr Mwanzia advised that the PC was also involved in settling people at Mkuru Kwa Njenga and Tasia slums around the same period. The land that Tasia occupied turned out to be land belonging to NSSF.
- Mr Mwanzia advised that in 2000 after the group had settled, they subdivided the land using a private surveyor who issued them with a map showing the respective plot numbers. The squatters lived peacefully for many years and did not bother to legalize their stay on the piece of land on the comfort that they were sitting on Government owned land.
- Some of the members sold their plots to other people. A share certificate from Muma was issued on sale of a plot. The share certificate would indicate the transfer of a plot from the seller to the buyer.

- These documents being used by the groups to justify their claim to ownership of the land in dispute are internally generated by the groups and do not confer any legal entitlement to ownership of the lands in dispute.

In our assessment of the registered owners as per the records at the MoL, these groups have no legal claim over the parcels of land in which they were squatting. The records indicate that the land belongs to the individuals and entities listed in appendix 10 of this Report. KAA has no claim over the ownership of the land in this area either. However, this land could have been formerly reserved for other public entities and we suggest that further work is carried out to establish the history of ownership of this land.

4.2.5. Possible claims on the basis of adverse possession by the villagers

In Kyang'ombe, Maasai and KPA, the affected parcels of land were either owned by private persons or had encroached on the flight funnel, which is government land. As stated above, there can be no claim on adverse possession on government land. In respect of private land occupied by the affected persons, we have not been able to independently verify for how long they had been in occupation of the land and more so, we did not see evidence of any adverse possession legal proceedings by the affected persons against the private land owners.

4.3. Wilson Airport

4.3.1. Introduction and history

The land occupied by Wilson Airport is the parcel of land referred to as LR No 209/13080.measuring an estimated 163.67 hectares (as per the Title Deed held by KAA) and referred to as delineated on Survey Plan No. FR 265/26.

The said survey comprised in FR 265/26 was carried out by a Government Surveyor in 1996 on the instructions of the CoL in a letter that authorized the survey of Wilson Airport dated 1 April 1996 (see appendix 12). This survey created LR No 209/13080 measuring 168.5 Ha (416 acres) and the demolished Mitumba Village falls entirely within this land (see appendix 69 – a copy of the said FR 265/26). It should be noted that the area as per the surveys and the title deed differ by 4.8 Ha.

Subsequent surveys on the parcels of land, i.e. the Survey Plan FR 290/126 that appears to have created parcels 209/12908, 209/12921 were cancelled through a request by the CoL in 1996 and a follow up letter by KAA in 2009. These two parcels form part of the land occupied by the demolished Mitumba Village.

Other surveys FRs 372/189 and 408/174 that created parcels LR Nos 209/14758, 9308-9310 were later carried out but all fall within the portion of land occupied by the Mitumba Village (see appendix 70).

4.3.2. Claims on the land

4.3.2.1. KAA Claim

KAA has title for a parcel of land known as Grant No. IR 70522 being all that piece of land containing by measurement 163.67 hectares and referred to as LR No 209/13080 delineated on Survey Plan FR No. 265/126. The title was issued to KAA on 18 September 1996 (see appendix 71 a copy of the said Certificate of Title).

4.3.2.2. Claim by Mitumba Village dwellers

The competing claim for the parcel of land is by squatters dwelling in the Mitumba Village. They occupied the parcel of land demarcated by the Survey Plan FR 290/126 that appears to have created parcels 209/12908, 209/12921 which we understand were cancelled through a request by the CoL in 1996 and a follow up letter by KAA in 2009. KAA advised that previously officials of Mitumba slums had written to them acknowledging that KAA were owners of the parcel of land in which the slum is located. This was after some private individuals laying claim to the land had attempted to evict them from the land they were occupying (see appendix 72 for copies of letters to KAA from Mitumba dwellers indicating that they recognize that KAA owns the land on which the slum is located).

According to the Chairperson of the group, Mr John Mungai, the dwellers were relocated to the current site of the Mitumba Village by the former PC, David Waiganjo in 1992 from Belle Vue area in South C. He advised that the operation involved the Provincial Administration assisted by KWS officials and at that time the area was uninhabited and was just a bush. In their claim to the land, he advised that they do not have any documents of title which they were pursuing before the demolitions occurred.

Mr Mungai advised that there have been private developers who have in the past attempted to evict them from the said parcel of land, and on two occasions torched down the school, though they did not get possession of the land. He contends that the parcel of land KAA is claiming is not within the title LR No, 209/13080, and that Mitumba lies on LR Nos 209/12908 and 12921.

In our assessment of the records at the MoL, the registered owners of the parcel of land under dispute is KAA as the parcels in contention are part of LR No209/13080 for which KAA has title. The dwellers of the slum therefore do not have a legal claim over the parcel of land.

We have also noted several LR Nos created within the Wilson Airport land some of which we understand is land registered to private individuals. According to Mr Tito and Ms Ongera, the former Corporation Secretary at KAA, there are hangars within KAA that were built by the Government which used to be leased out to private commercial flight operators. He further advised that these hangars and the parcels of land on which they are constructed were subsequently allocated to private individuals who now own them.

We believe KAA may have a claim over these parcels as discussed in section 4.5 below.

4.3.3. Possible claims on the basis of adverse possession by Mitumba residents

The area occupied by Mitumba village is part of KAA land, which is classified as public land under the Constitution. As stated in section 3.4 above, in respect of such land, there can be no claim for adverse possession.

4.4. Eastleigh

4.4.1. Introduction & history of the land

The Eastleigh location refers to areas surrounding the Moi Airbase in Eastleigh ("Eastleigh Airbase" or "MAB"). The location had three areas in which demolitions took place, i.e.

- The Eastleigh Section III and Biafra areas;
- Kyambiu Village; and
- Kitui Village.

According to the MAB Commander, Col MA Badi, MAB served as the Royal Air Force station serving East and Central Africa as well as part of the Middle East Command during the colonial era. It thereafter reverted to Kenya at independence and was named the KAF Station Eastleigh but was later renamed MAB after the failed coup of 1982.

Col Badi advised that the earliest Survey Plan in the custody of MAB dates back to 12 April 1940 and it gives the size of MAB LR No 36/3 as 1,035 acres. He explained that in an aerial photograph of the Base produced in January 1973, it showed the Base as it was in the 1940 survey except for a developed portion where the Airport primary school currently stands.

Col Badi noted that the encroachment of Maina Wanjigi Secondary, Kenya Christian Industrial Training Institute, Muungano Mashimoni No 10 group and Kiambiu slums at the time had not commenced. The Base, he advised, has since been encroached and buildings not adhering to zoning regulations had cropped up around the aerodrome which has in some way interfered with the smooth operations of the Base and posed security threats.

Below we assess the ownership claims to the land in the different areas that were affected by the evictions and demolitions in Eastleigh that occurred in November 2011. We first review the various surveys that were carried out at the base to delineate MAB over the years and the reasons thereof.

4.4.1.1. Survey of 1940

The first survey for the aerodrome was carried out in 1940 vide FR 47/116 and assigned LR No 36/3 with an area of 418.9 Ha. (1,035 acres). In the Aerodromes (Control of Obstructions) Act of 1948, the area then known as the Eastleigh Aerodrome was declared an aerodromes under the Act. The area of the aerodrome then was estimated at 1,077 Acres (about 436 Ha). This was delineated in Boundary Plan No.452 (attached at appendix 73 is the Survey Plan 47/116). Both of these surveys, did not include the area currently occupied by the Moi Forces Academy and the flight funnel across First Eastleigh Avenue.

4.4.1.2. Survey of 1965-66

A survey was carried out on part of LR No 36/3 which excised it vide FR 105/61 and 108/102 creating LR Nos 36/1/915-7. The excised land was set aside for a primary school.

4.4.1.3. Survey of 1972

Several parcels of land were acquired and surveyed in 1972 vide FR 124/27 to form LR No 209/7995, forming the flight funnel.

4.4.1.4. Surveys between 1975-1998

Between 1975 and 1985, several parcels of land abutting the western side of the MAB land as delineated on FR 47/116 were surveyed with some of these altering or encroaching on the MAB land.

The Moi Forces Academy was surveyed separately in 1980 via FR 143/38 to produce LR No 209/ 9322 and Deed Plan No. 106614.

Between 1996 and 1998, more plots were alienated and surveyed within the southern side of the original 1940 land. This is in the Kyambiu area.

4.4.1.5. Survey of 2004

In 2004 a survey that combined the flight funnel portion, the main airport land and the Moi Forces Academy land was done vide FR 329/5 in 2004 and gave the area reserved as 482.9 Ha (1,193 acres). The authority for this survey was via an approved PDP 260 dated 19 September 2002.

MAB surveyed its land in 2004 against an approved physical development plan prepared in 2002. This development plan excluded a portion comprising several plots (LR Nos 209/13647-83 as surveyed on FR 281/73 in 1998) that was surveyed in 1940 for the Royal Air Force Aerodrome (as the MAB was called then).

4.4.2. Eastleigh Section III and Biafra areas

The Eastleigh Section III and Biafra area that was affected by the demolitions and eviction exercise is all that parcel of land described by LR Nos 209/7259/217, 218, 234, 233, 235; 209/12602, 209/12047, 36/111/144.

4.4.2.1. Claim by the Military

The Military does not have a Certificate of Title for MAB land, however they provided a LoA dated 16 January 2002 Ref. No. 53648/33 allotting the PS DoD as Trustee (appendix 74) (which in itself was not regular as the PS DoD has no powers to hold land). The LoA defines the area as unsurveyed measuring 480.5 Ha.

Our understanding is that the airbase being a Military installation is protected under the Protected Areas Act and is a declared area considering it is also an aerodrome.

The Airbase Commander, Col. Badi, advised that a 50ft wide public road that provided a buffer zone between MAB and neighbouring civilian properties has been encroached and parts of MAB land occupied by private individuals. From an old aerial photograph provided by MAB (see appendix 75), MAB was bordered by a road which marked the boundary as well as acting as the buffer zone between the airbase and any other private property.

It should be noted that the areas in contention are under the Protected Areas Act and access to the land is restricted to authorised personnel only. Therefore despite the Military not having a Certificate of Title document (they only have a LoA), the area it occupies and claims is under the Protected Areas Act and therefore no unauthorized persons should have access to the land, let alone encroach or be allotted land therein.

4.4.2.2. Claim by third parties

We met and interviewed 7 individuals who were affected by the evictions and demolitions that took place in the Eastleigh Section III and Biafra areas in November 2011. The individuals advised that they were the rightful

owners of the affected land and had valid title documents to support this. The 7 individuals and the documents they presented to us as proof of their claim of ownership of the land are as listed below:

Name	LR No	Document of ownership presented
Charles Kagio	209/12602	Grant from CoL
Julius Mwangi	36/111/144	Grant from CoL
James Kigathi	209/12047	Grant from CoL
Grace Wambui	209/7259/ 217	Lease from CCN
Francis Kibe	209/7259/ 218	Lease from CCN
Esther Kagio	209/7259/234 & 235	Lease from CCN
James Nyakundi Orina	209/7259/233	Title deed

The Military have not laid any claim of ownership to the parcels of land that were affected by the demolitions for which the individuals above provided proof of ownership. The complaint from the Military was that the developments in some of the land occupied what is meant to be a buffer zone between the airbase and any other developments nearby and that the demolished structures did not conform to zoning regulations and approvals by the CCN as required of developments near aerodromes.

We understand that there are other buildings earmarked for demolition which were not affected by the November 2011 demolition exercise. Further demolitions have been suspended at the moment.

4.4.3. Kyambiu Village

Kyambiu Village is all that parcel of land on the south east of the airbase bordering the Nairobi River, lying within LR No 36/II/1050.

4.4.3.1. Claim by the Military

MAB claims the entire area occupied by the Kyambiu Village which they advised encroached the MAB property. The village is within the airbase LR No 36/II/1050 which extends to the Nairobi River. This is as delineated in the surveys of 1940 and 2004.

The airbase falls under the Military installations that are described in the Protected Areas Act. Though the Military have not formally obtained a title for the land they occupy, they have presented a LoA, Survey Plans and Deed Plans which would indicate that the land in which Kyambiu Village falls belongs to the Airbase. In our assessment, the area in Kyambiu belongs to MAB.

4.4.3.2. Claim by third parties

The occupants of the informal village in Kyambiu do not have any documents conferring title of the land to them. They base their claim on the land on the fact that the issue of their allocation of land to them was

presented before the Full CCN Council meeting. They did not provide us with a copy of the minutes of this meeting or of any evidence that this issue was discussed.

Our assessment from their submissions is that the residents of the village have no valid claim to ownership to the land which belongs to the airbase.

4.4.4. Kitui Village

Kitui Village is situated to the south west of the airbase on and around the flight funnel. The village is an informal settlement and part of it was demolished in November 2011.

4.4.4.1. Claim by Military

The Military does not claim the land occupied by the village. The Military claims the village is situated on what used to be a public road just next to the flight funnel.

The Military is concerned with the close proximity to the undershoot on the flight funnel where there are restrictions on developments of any kind.

4.4.4.2. Claim by villagers

We met with the representatives of the group, Mr Kilonzo Nzioki – Chairman, Mr Joseph Ngugi Omari Abdi – Village representative and Ms Fauma Kaswii – Secretary. Mr Ngugi explained that the village was started by former freedom fighters who settled on the land where the current flight funnel is situated in around 1948 and put up temporary structures. He advised that the airbase was already in existence at the time, but it had not extended to the area currently occupied by the MAB flight funnel where the village borders the MAB. He advised that the area was then known as Muthare.

Mr Ngugi admitted that they did not have any document of title for the land they occupied and that it was Government land. He advised that the area chief in conjunction with the area committee were responsible for authorizing people on where to build on the land.

A second group, the Muungano Women's Group who occupy land between California Estate and the MAB fence, advised through their Chairperson, Ms Miriam Wambui Kariuki that they were allowed to occupy the land by the District Officer ("DO") at the time, a Mr Wairunge. Ms Kariuki advised that the DO instructed the Chief for the area, a Mr Okeka to settle them at the current site so that they could be quickly mobilized to sing for the president and other Government officials when they landed at the MAB. This she advised was back in 1987. Ms Kariuki advised that they were given a LoA by the CCN dated 31 July 2001 (Ref: No. CPD /1304) for which they paid the relevant costs associated with it.

4.4.4.3. Possible claims on the basis of adverse possession by the groups

In Kyambiu and Kitui villages, the affected persons did not have title over the land they were occupying, which was either MAB's or Government land. Accordingly, a claim on adverse possession cannot arise as we explain in section 3.4.

4.4.4.4. Our assessment and conclusion

In our assessment of the claims presented and the supporting documentation and submission by both the Military and the residents of Kitui Village, the land that was occupied by Kitui Village does not belong to the Military. The villagers and Muungano Women's Group also don't hold title to the land. This land however

appears to have been part of a public road. We note that it is illegal to occupy, obstruct or allocate part of a public road.

The reasons for the evictions and demolitions in the area are discussed in detail in section 5 of the Report.

4.5. Summary

In summary, our review of the claims presented to us on ownership, we can conclude the following:

Location	Summary of findings
JKIA	For the area under contention in the Syokimau area, our assessment is that the land is within the KAA title LR No 21919 For Kyang'ombe, Maasai and KPA, the land that was affected by the demolitions belonged to private individuals although part of it appears to have been irregularly allocated, particularly Kyang'ombe as it had been previously acquired by the Government for airport use. The victims of the demolitions did not have any valid claim to title of ownership of the land.
Wilson Airport	From our assessment, the land in dispute is part of KAA land within their Certificate of Title for LR No 290/13080.
Eastleigh Airport	The area, though without a Certificate of Title held by the Military, is a protected area under the Protected Areas Act and therefore access is restricted to third parties and cannot be alienated and allocated to third parties. The Kyambiu area falls within this and is therefore Military property. The Eastleigh Section III and Biafra areas and the Kitui areas fall outside MAB land, but some plots encroach on the public road that was supposed to be a buffer zone around the airbase which has been encroached, and zoning regulations which have been ignored for structures in the areas.

For the shrinkages noted in the areas around the aerodromes, Government would have a possible claim against the individuals who allotted the land (CoL, KAA officials). It would be advisable if they would obtain legal advice to assess if there are possible options to sustain a claim for the land that has been systematically excised and allotted to individuals.

There were excisions that took place in the early 90s mainly around the Kyang'ombe area as and within JKIA, and in 1999- early 2000s for excisions within the JKIA title and along Nairobi - Mombasa Road. A listing of these parcels that were excised is attached at appendix 2 indicating list that is not exhaustive containing 67 parcels which were irregularly allocated to private individuals. Similar cases were observed in the Wilson

Airport land. It should be noted that the excisions and irregular allocations noted were carried out around or before the general elections of 1992 and 2002.

5. Assessment of the evictions and demolitions exercise

5.1. Introduction

The evictions and demolitions exercise under investigation led to a public outcry regarding the manner in which it was carried out. The evictions and demolitions raised many concerns around the sanctity of title as protected in the Current Constitution. In addition, there were fears with respect to the signals that the evictions and demolitions were sending to potential investors. In our interviews with the affected persons, there were claims (inter alia) that:-

- their rights to shelter were violated; and,
- the demolitions were inhumane as they were carried out at night in inclement weather, during school examination period and without notice.

In this section, we set out our findings on the reasons that led to the evictions and demolitions, the parties involved and the manner in which they were carried out.

As noted earlier in section 3, a number of statutes give various bodies e.g. CCN, KAA and KCAA the authority to evict persons and demolish structures. These statutes include:-

No.	Statute	Body with powers to control
1	Trespass Act	Land owner (KAA)
2	Physical Planning Act	CCN
3	KAA Act	KAA
4	CA Act	KCAA

The CA Act and KAA Act also give KCAA and KAA respectively the power to control and restrict developments in areas adjacent to or in the vicinity of an aerodrome. These bodies have powers of enforcement in the event that such laws are breached as outlined in section 3. Also as outlined in section 3 above, there is no single statute that guides the process for carrying out evictions and demolitions. However, various statutes e.g. Physical Planning Act, CA Act, other international treaties that Kenya has ratified e.g. ICESCR and ICCPR and Court decisions require that adequate notice be given to the affected persons before any evictions and demolitions are carried out. According to General Comment No 7 on the right to adequate housing adopted by the Committee on Economic Social and Cultural rights in 1997, the process ought to be carried out in a humane manner as discussed in section 3.4.

The chronology of events surrounding the evictions and demolitions can be summarized as shown below:

14 April 2010	• The Cabinet purpotedly issues a Directive on evictions and demolitions in airport locations.
18 Feb 2011	• CCN issues a Notice of Eviction for occupiers of the road reserve around MAB (appendix 11)
15 Sep 2011	• KAA issues a Notice of Eviction for the illegal occupiers in the vicinity of JKIA in various local dailies (appendix 84)
16 Oct 2011	• Beginning of "Operation Linda Nchi" (appendix 181)
21 and 22 Oct 2011	• Initial demolitions in Kyang'ombe
29 Oct 2011	• Kyang'ombe, Maasai and KPA village demolitions (appendix 100)
12, 13 and 17 Nov 2011	• Syokimau demolition (appendix 182)
16 Nov 2011	• Joint Parliamentary Committee commences its sittings (appendix 2)
19 Nov 2011	• Mitumba village demolitions (appendix 173)
22/23 Nov 2011	• Eastleigh demolitions (appendix 108)
14 Dec 2011	• Joint Parliamentary Committee report to Parliament is adopted (appendix 2)

5.2. Causes and parties involved

In this section, we discuss the causes of the evictions and demolitions and the parties involved.

5.2.1. Causes

In our assessment, the evictions and demolitions in the three airport areas were occasioned by three main concerns. These are:

i. Aviation safety and security;
ii. Encroachment on private or public land;
iii. Breaches of the requirements of the Physical Planning Act, and
iv. Heightened security concerns arising from Operation Linda Inchi.

5.2.1.1. Aviation safety and security

As we note in section 3.3, ICAO has set standards and regulations necessary for aviation safety and security. It requires that states that are signatories to the Chicago Convention should collectively work to harmonize and standardize the use of airspace for safety, efficiency and regularity of air transport.

In line with this, Kenya enacted the CA Act which established the KCAA whose mandate includes regulation of aviation safety and security. Consequently, the CA Act requires that any developer who intends to construct any structure within the vicinity of an aerodrome must seek and obtain approval from the KCAA. Failure to this, Section 10 of the CA Act gives KCAA the power to remove or reduce the height of any obstruction that goes against the dictates of the Chicago Convention. In addition to the provisions of the CA Act, the Civil Aviation (Aerodromes) Regulations, 2008 and the KAA Act provides that all land use practices and activities in the vicinity of an aerodrome should conform to the guidelines prescribed by the KCAA and/or KAA.

In line with these statutes, KAA and KCAA require that developments near JKIA and Wilson must obtain approvals from both Authorities. For MAB, KCAA has delegated its approval role to the KAF as the aerodrome is not operated under the Civil Aviation (Aerodromes) Regulations, 2008.

KCAA, KAA and MAB have all made submissions to us and we attach reports from the three at appendices 95, 96 and 82 respectively. According to the reports the demolitions at:

i. JKIA took place within the final approach of the current and proposed runway 06L and runway 06R (Kyang'ombe and Syokimau areas);
ii. Wilson took place on the final approach for runway 32 (Mitumba Village), and
iii. Eastleigh took place within the conical and inner horizontal surfaces of the runway.

In all the areas, the demolished buildings did not have approvals from KCAA, KAA or KAF and were thus illegally constructed.

5.2.1.2. Encroachment on KAA and MAB land

In section 4 above, we have discussed the ownership of the various parcels of land where evictions and demolitions either occurred or were intended. We have assessed that KAA and MAB have legal title over some of the affected parcels of land.

As we note in section 3, KAA and MAB as land owners have the right under common law, and statutes to remove trespassers from their land by using reasonable force and can also obtain civil or criminal sanction against a trespasser.

5.2.1.3. Breaches of the Physical Planning Act

In addition to the approvals required under aviation rules and as we note in section 3.2 above, the Physical Planning Act gives the responsibility of approving developments including constructions to Local Authorities. Local Authorities require that applicants satisfy various conditions as set out in the Physical Planning Act and the regulations thereunder. Any developments that are carried out without such approvals are regarded as illegal. For purposes of enforcement, the Physical Planning Act requires that Local Authorities should give enforcement notices to illegal developers in which the defaulters are required to either regularise their developments or remove them. If the developer fails to heed the notice, the Local Authority has the right to remove the development at the developer's cost.

5.2.1.4. Heightened security concerns arising from Operation Linda Inchi

According to the Nairobi PC Mr Njoroge Ndirangu, KAA, CCN and KAF had on various occasions attended the Provincial Security and Intelligence Committee ("PSIC"), a committee he chairs, and expressed their concerns regarding the aviation safety in the three main aerodromes within Nairobi i.e. JKIA, Wilson and MAB.

Furthermore, according to the PC there was immense pressure from various international airlines which were said to have been contemplating pulling out from JKIA unless their security concerns arsing from encroachment were addressed. The PC noted that JKIA was thus losing its competitive advantage as the entry point to East Africa and thus urgent action needed to be taken (a copy of the interview notes for our discussions with the PC are attached at appendix 81). These sentiments were confirmed to us by KAA during our meeting with them.

According to Mr Ndirangu, the PSIC had therefore been discussing evictions and demolitions that were to be carried out in the interest of aviation safety and security and in order to meet ICAO's safety standards. The PC noted that long deliberations on the issue spanning several meetings. The PSIC finally resolved in the wake of the Operation Linda Nchi war in Somalia that it was necessary to carry out the envisioned evictions and demolitions immediately to address these security concerns.

5.2.2. Parties responsible for the evictions and demolitions

According to the submissions by the then PS Ministry of State for Provincial Administration and Internal Security Mr Francis Kimemia to the Joint Parliamentary Committee hearings on 29 November 2011, the demolitions were authorised by Cabinet. This Cabinet Directive dated 14 April 2010 was issued in the interest of aviation safety and security. However, we were unsuccessful in meeting Mr Kimemia to confirm this neither did we see a copy of the directive (a copy of our letter to the Head of Public Service inviting him for the interview is attached at appendix 77). Nonetheless, various other individuals including the KAA MD, the MAB Base Commander and the PS Ministry of Transport, confirmed that the demolitions were as a result of a Cabinet Directive (a copy of the interview notes for our discussions with the KAA MD, MAB Base Commander and PS Ministry of Transport are attached at appendix 78, 79 and 80).

According to the Nairobi PC, Mr Ndirangu, he was not aware of any Cabinet Directive authorising the demolition. However, he indicated that there was likelihood that the matter might have been discussed in various forums including the Cabinet. He noted that their minutes were normally copied to the PS Ministry of State for Provincial Administration and Internal Security, and as such the Government was well briefed on the matter. The PC also indicated that regardless of who made the decision, this exercise was long overdue.

Arising from the foregoing, we cannot ascertain whether Cabinet issued a formal Directive and further work needs to be done to ascertain whether there was such a Cabinet Directive. What is clear however is that the matter was discussed and a resolution taken by the PSIC. We could not also ascertain who exactly executed the evictions and demolitions.

According to the PC, it is the complainants i.e. KAA, CCN and KAF who were tasked with the responsibility of arranging logistics while the PSIC was to assist in coordinating the exercise and in providing security. However, according to a MAB brief to PwC dated May 2012, the evictions and demolitions at Eastleigh were executed by the PSIC and CCN (a copy of the MAB brief dated May 2012 is attached at appendix 82). KAA have also indicated that their involvement in the exercise was limited to pointing out the extent of their land at JKIA and Wilson while the Government executed the evictions and demolitions (interview notes of our second meeting with KAA are attached at appendix 78).

Although no single Government department or agency seems to take responsibility for carrying out the exercise, considering the sheer number of Government departments that were mobilised and the massive logistical support necessary for the exercise, it is our view that it is unlikely that the Cabinet was unaware of the same. The question of who executed the assignment may therefore have its answer in Cabinet.

5.3. Detailed review of the evictions and demolitions

For the purposes of this section, we discuss the evictions and demolitions in two categories i.e.

- Evictions and demolitions in areas claimed by KAA or MAB, and
- Evictions and demolitions in areas falling outside KAA and MAB land.

We provide a detailed review of the evictions and demolitions in each of the affected areas under these two categories below:

5.3.1. Evictions and demolitions in areas claimed by KAA or MAB

In this subsection we review the evictions and demolitions that resulted from encroachment of KAA's and MAB's land. The areas affected under this category are:

- Syokimau;
- Mitumba Village;
- Kyambiu Village.

For each area, we will discuss (i) how the demolitions happened, (ii) effect of existing Court cases and injunctions, and (iii) our assessment.

5.3.1.1. Syokimau

According to KAA, the disputed land in Syokimau area belongs to it. Consequently, over the years KAA has made efforts to secure the land by stopping developments and evicting illegal occupiers (see interview notes with Mr John Tito at appendix 83). This is demonstrated by various notices that KAA has issued over time as well as Court cases that KAA has instituted against various groups.

How the demolitions happened

According to various copies of notices issued on diverse dates in the national dailies, KAA appears to have consistently issued notices to persons who had illegally settled on KAA's pieces of land under contention (copies of the newspaper notices are attached at appendix 84). KAA informed us that they went as far as posting these notices on doors (see interview notes with KAA officials at appendix 78).

For instance on 14 November 2003 KAA published a notice in the Daily Nation warning the public not to purchase land in the contested areas. KAA also published notices in the dailies on various other occasions advising occupiers of the various plots under contention to vacate them failure to which they would be evicted. The notices were published in the Daily Nation on the following days:

- 07 October 2008;
- 25 September 2010;
- 15 September 2011.

Therefore, it is evident that the notices were issued but appear to have been ignored by the illegal occupiers.

As stated in section 5.1 above and according to the PC, the demolitions and evictions were thereafter authorised by the PSIC who coordinated the exercise. According to the KAA report dated 24 November 2011, the exercise was carried out on the 12, 13 and 17 November 2011 under the coordination of the Provincial Administration.

However, we are unable to conclusively determine who executed the exercise following denials by PSIC, KAA and CCN. The Deputy Director of Town Planning, CCN Mr Kathenge noted that CCN was not involved because the Syokimau area is outside CCN's jurisdiction.

The affected persons have claimed that the exercise was carried out in an inhumane manner given that they were ambushed in the early hours of the rainy morning of 12 November 2011 (which was a Saturday) and were not even given time to salvage their belongings (a copy of the interview notes of our discussions with some of the evictees is attached at appendix 85). We are unable to independently verify this claim as the Nairobi PC indicated to us that the evictions were carried out in daylight and that the evictees were given adequate time to remove their belongings and vacate the land.

Effect of Court cases and injunctions

In our discussions with the evictees, they claimed that the evictions and demolitions were done in total disregard of Court Orders that were issued in 2004 (a copy of our interview notes with the evictees is attached at appendix 85). These orders stated that KAA and all other parties in the suit to maintain the status quo as regards the contested Syokimau land until the matter was heard and determined (see copy of Court Orders involving KAA and Uungani :- 489 of 2004 and KAA and Mulolongo:- 206 of 2004 Brothers at appendix 21).

According to Mr Mechack Obura, the Uungani lawyer, the status as at 2004 was that Uungani was in possession of the land while KAA was out. The orders therefore meant, in Mr Obura's view, that KAA was stopped by the orders from entering the "Uungani land". Indeed, Mr Obura noted that KAA had in 2008 attempted to fence off the "Uungani land" at which point Uungani had successfully obtained a High Court order to stop KAA (interview notes of our meeting with Uungani officials are attached at appendix 32). Mr Obura however seems to have changed his views as in a letter to PwC dated 16 May 2012, he notes that the order restraining Uungani from dealing in their Syokimau plot was lifted in 2005 (a copy of the letter is attached at appendix 86).

According to KAA status quo meant that the land remains as it was at the time of the order hence this had been initially breached by the various groups who continued with the subdivision, sale and developments (a copy of our interview notes with KAA is attached at appendix 78). In addition, KAA stated that the Court Orders were to be in force until the hearing and determination of the case. They further noted that they did not need to have the orders vacated for them to enter their own land as they had licensed the land to a herdsman for grazing. Thus, KAA's view is that the claimants were in contempt of the Court Orders of 2004 as they went ahead and subdivided, sold, and built on the land subsequent to the Court Orders. In any case, KAA has denied having carried out the evictions and demolitions.

Our assessment

As explained in section 4 above, it is our view that KAA owns the land under dispute. With this in mind, it should be noted that the victims of the evictions and demolitions had trespassed on KAA's land. KAA therefore had a right under the KAA Act to prevent and remove illegal occupiers from its land. The KAA Act allows KAA to have the evictions and demolitions carried out by another body on its behalf.

On the argument by Mr Obura that the status quo as at 2004 was that Uungani was in possession of the land, KAA has provided us with Google images of the area at the time. These images clearly indicate that there was no development on the land. Additionally, KAA had licensed the land to a herdsman for grazing. In our view and in light of the evidence assessed, KAA's assertion that they were in possession of the land as at 2004 is valid.

Mr Obura also argued that the 2004 Court Order was lifted in early 2005. KAA has strongly disputed this arguing that the orders have never been lifted since the suit has not been determined. Mr Obura did not provide any evidence to show that the Court Orders had been lifted and as such, it is our view that the Court Orders were never lifted.

We also assess the manner in which the evictions and demolitions were carried out.

From our assessment, there is sufficient evidence to show that KAA had given the affected persons adequate notices to vacate the disputed land. Further, no party seems to have lodged an appeal against the eviction notices. In respect to notices, the evictions and demolitions were in our view carried out procedurally and in line with the principles stated in section 5.1 above.

In respect of the claims from the evictees that excessive force was used and that they were not allowed enough time to rescue their belongings, we cannot independently verify this due to the conflicting information from the PC. In our view, in light of the onset of Operation Linda Nchi, there was an urgency to remove security threats.

In summary, we recognise that the evictions and demolitions exercise was a very difficult exercise carried out in a challenging environment, but in our assessment the Government acted within the law. We also note that most of the affected evictees knew or ought to have known that there were enforcement notices issued as far back as 2004 and as such cannot claim to have been caught unawares.

5.3.1.2. Mitumba Village

According to our discussions with the KAA MD, Mitumba Village falls within LR No 209/13080, which is part of KAA land (interview notes of our discussions with the KAA MD are attached at appendix 78). Moreover, in a letter dated 22 December 2008 from the Mitumba Village residents to KAA, the residents of the village acknowledged that the land they occupied belonged to KAA (a copy of this letter dated 22 December 2008 is attached at appendix 72).

Furthermore, according to our discussions with the KAA and KCAA MDs, Mitumba Village was seen as a hazard to flight operations due to its attraction of birds and other animals, and also a safety hazard to the residents in the event of an airplane accident (copies of the interview notes for our discussions with the KAA MD's and KCAA's report are attached at appendices 78 and 95). In a letter dated 2 February 2010 from the Kenya Association of Air Operators ("KAAO") to the Nairobi PC, KAAO indicated that the then planned demolitions at Mitumba would aid to rid Wilson of flight hazards arising from the encroachment of KAA land (a copy of the letter dated 2 February 2010 is attached at appendix 88).

How the demolitions happened

In our discussions with the Nairobi PC, Mr Ndirangu, the informal settlements at Mitumba Village were regarded as illegal developments, a security threat and a safety hazard. Thus, a decision was taken by the PSIC to evict the residents and demolish the village. As noted above, this decision was reached after the PSIC received complaints from inter alia KAA who were represented in the committee during the deliberations (a copy of the interview notes for our discussions with the PC Nairobi are attached at appendix 81).

On 24 September 2010, KAA issued a public notice for the evacuation of the occupiers on illegally developed and encroached portions of KAA land LR No 209/13080 at Wilson (a copy of public notice dated 24 September 2010 is attached at appendix 84). The notice was addressed to persons who had:

- *".....Entered, occupied, developed or initiated any human activity upon or in the vicinity of the area known as Mitumba Village at Wilson Airport;*
- *Undertaken development on any portion thereof, being the property of the KAA, without obtaining due approval and authority of KAA to undertake such activity therein;*
- *Undertaken development without obtaining due approval of KAA on any portion thereof falling on the flight path or upon any restricted area of JKIA or Wilson Airports....."*

The public notice further stated that previous similar notices had been issued and were either ignored or not complied with.

KAA subsequently issued a reminder notice on 15 September 2011. The notice stated that illegally developed and encroached portions of KAA land (LR No 209/13080 i.e. Mitumba Village at Wilson Airport) should be vacated (a copy of the reminder notice dated 15 September 2011 is attached at appendix 89).

According to an undated memorandum written by Mr Benjamin Kaunda Gisemba, the Chairman of Mitumba Village residents, to the Prime Minister, the first demolitions at Mitumba happened in 2005 which targeted Mitumba Primary School. This demolition was as a result of a Court Order obtained by Roseville Trustees Ltd, a company that claimed ownership of the land that the school occupied. The memorandum further states that in 2008, Roseville Trustees Ltd obtained *ex-parte* injunctive Court Order barring the community from developing, trespassing on and claiming interest or right over the premises occupied by the community (a copy of the undated memorandum by Mitumba residents is attached at appendix 90).

In a second undated memorandum written by the village residents to the Chief Justice, Attorney General and others, the residents state that over the years i.e. between 1992 and 2005, Mitumba Village had been receiving eviction notices from wealthy individuals claiming ownership of the land occupied by the school. In addition, they noted that since 1996, KAA has been issuing eviction notices on the villagers occupying LR No 209/13080 (a copy of the second undated memorandum by the Mitumba residents and the interview notes for our discussions with the current chairman can be found at appendices 91 and 173 respectively). However, when we met the erstwhile residents of Mitumba Village, they claimed that they were not served with enforcement notices prior to the evictions and demolitions (a copy of interview notes with the Mitumba evictees is attached at appendix 173).

According to the residents, the entire village was demolished on 19 November 2011. Several structures were rebuilt which were again demolished on 8 January 2012 and yet again on 26 March 2012. The residents indicated that the evictions were carried out in an inhumane and discriminatory manner as the KAA targeted and demolished Mitumba Village, leaving intact the nearby residential estates belonging to wealthy and powerful individuals.

The residents further claim that the demolitions were done during a period when primary school children were sitting for their Kenya Certificate of Primary Education exams. According to a preliminary report dated January 2012 on the Mitumba Village evictions written by Pamoja Trust, a Non-Governmental Organization, the first round of evictions were carried out under severe weather conditions, exposing the residents to rain and cold. The report further states that although the second round of evictions was done under fairer weather condition, the residents were still exposed to water borne diseases and other illnesses such a pneumonia (a copy of the report by Pamoja Trust dated January 2012 is attached at appendix 92).

As stated in section 5.1 above and according to the PC, the demolitions and evictions were authorised by the PSIC who coordinated the exercise. However, we are unable to conclusively determine who executed the exercise following denials by PSIC, KAA and CCN. When we spoke to the Deputy Director of City Planning Mr Kathenge he indicated that CCN had no knowledge and did not participate in the demolition of Mitumba Village (see interview notes at appendix 93).

Effect of Court cases and injunctions

According to the former residents of Mitumba, there were Court Orders stopping KAA, the AG and CoL from evicting them or demolishing their homes. They informed us that they had presented their pleas to the High Court via petition No. 164 of 2011 and had obtained interim injunction orders, which were subsequently extended to 20 January 2012 (a copy of the unverified Court Order extending the interim orders dated 9 January 2012 is attached at appendix 87). Though we have seen a copy of the unverified Court Order, we have been unable to trace the case file or the interim orders and cannot not confirm the claims by the residents.

Our assessment

As explained in section 4 above, it is our view that KAA owns the land where Mitumba Village was located. With this in mind, it should be noted that the victims of the evictions and demolitions had trespassed on KAA's land. KAA therefore had a right under the KAA Act to prevent and remove illegal occupiers from its land.

From our assessment, there is sufficient evidence to show that KAA had given the affected persons (residents of Mitumba Village) adequate notices to vacate the disputed land. In respect to notices, the evictions and demolitions were in our view carried out procedurally and in line with the principles stated in section 5.1 above.

On the argument by the residents that they had obtained Court Orders barring KAA, the AG and CoL from evicting them, we note that KAA has denied carrying out the exercise while both the AG and CoL were not involved in any way in the exercise. As such, we have not seen any evidence to suggest that KAA was in contravention of the Court Orders. We have also not verified the existence of the Court Orders.

The residents claim that the exercise was discriminatory i.e. it was targeted at the poor residents of Mitumba Village and overlooked the neighbouring residential estates. We note that these estates do not lie within the current title that KAA holds over Wilson. However, as stated in section 4 above, KAA may have a claim on some of the land surrounding Wilson.

The residents have also claimed that private individuals have evicted them on the premise that they own the land. In light of our conclusion in section 4 above that KAA owns this parcel of land, these private individuals who had in the past evicted the Mitumba residents should be investigated and made to pay for any losses incurred by the residents.

In respect of the claims from the evictees that excessive force was used and that the exercise was carried out in an inhumane manner, we cannot independently verify this due to the conflicting information from the PC. In our view, in light of the onset of Operation Linda Nchi, there was an urgency to remove security threats.

In summary, we recognise that the evictions and demolitions exercise was a very difficult exercise carried out in a challenging environment, but in our assessment the Government acted within the law. We also note that most of the affected evictees knew or ought to have known that there were enforcement notices issued as far back as 2010 and as such cannot claim to have been caught unawares.

5.3.1.3. Kyambiu

Information gathered from our discussions with the MAB's Commander, Col Badi indicated that the area currently occupied by the Kyambiu Village sits precariously next to MAB's bomb dump and within MAB land. According to Col Badi, the land currently occupied by Kyambiu Village was intentionally left undeveloped and unfenced to mitigate loss of lives and property in the unfortunate event of the bombs exploding. The area is also designed to serve as an evacuation area for the KAF officers (a copy of the interview notes for our discussions with the MAB Base Commander is attached at appendix 79 while at appendix 94 are aerial photos showing the location of Kyambiu).

However, it should be noted that though Kyambiu Village was not demolished it had been earmarked for demolition but was spared due to the injunction obtained by some Eastleigh landlords on 23 November 2011.

Our assessment

We note in section 4 above that Kyambiu Village has encroached on MAB land and is situated next to the MAB bomb dump which poses a dangerous and serious human safety risk to the thousands of its residents. The Government should therefore take urgent measures to relocate the residents and secure the land. In light of the

recent disasters that have occurred near Military installations (Dar es Salaam, Ukraine, DRC etc) it is imprudent for the Government to allow continued settlement in Kyambiu.

We further note that the developments at Kyambiu are most likely illegal as they lack approvals from KAF. As we note in section 3, all developments near MAB require the approval of KCAA and KAF in addition to CCN approvals. They should therefore be removed.

5.3.2. Evictions and demolitions in areas falling outside KAA and MAB land

5.3.2.1. Introduction

In this subsection we review the evictions and demolitions that resulted from concerns related to aviation security and safety. The areas affected under this category are:

- Kyang'ombe, Maasai and KPA Villages;
- Eastleigh;
- Kitui Village.

For each area, we will discuss (i) how the demolitions happened, (ii) effect of existing Court cases and injunctions, and (iii) our assessment.

5.3.2.2. Kyang'ombe, Maasai and Mitumba Villages

How the demolitions happened

KAA had issued a public notice on 24 September 2010, giving the residents of Kyang'ombe seven days to vacate. The notice was addressed to persons who had: *"Entered, occupied, developed or initiated any human activity upon or in the vicinity of the area known as Kyang'ombe Village at JKIA"*. The notice further stated that previous notices had been issued but the residents had ignored them (a copy of the public notice by KAA dated 24 September 2010 is attached at appendix 84).

On 15 September 2011, KAA issued a reminder notice for the same area (a copy of the reminder public notice dated 15 September 2011 is attached at appendix 89). In addition, earlier public notices had similarly been ignored. The table below lists the public notices issued by KAA relating to the areas in contention.

Publication	Area/Plot Number/LR No	Type of notice	Date
Daily Nation	LR No 24937	Public notice	14 November 2003
Daily Nation	LR No 21919 Kyang'ombe area	Public notice	7 October 2008
Public notice	LR No 21919 at JKIA and LR No 209/13080 at Wilson airport	Public notice	24 September 2010
Standard Newspaper	LR No 21919 at Kyang'ombe and Syokimau, JKIA and LR No 209/13080 Mitumba Village at Wilson airport	Reminder notice	15 September 2011

From our discussions with the Deputy Director of Town Planning at CCN Mr Kathenge, he stated that CCN was actively involved in the Kyang'ombe, Maasai and Mitumba Villages' demolitions. He noted that CCN's involvement was mainly in pointing out to the PSIC the structures that did not have building approvals. In addition, he noted that they had earlier issued enforcement notices to the affected areas (a copy of the interview notes for our discussions with the Deputy Director of Town Planning CCN Mr Kathenge is attached at appendix 93).

The table below shows a list of enforcement notices issued to Kyang'ombe, Maasai and Mitumba Villages by the CCN (copies of the enforcement notices for Kyang'ombe, Maasai and Mitumba Villages are attached at appendix 11).

Publication	Area/Plot Number/LR No	Type of notice	Date
7111	KPA Self-Help Group	Enforcement notice	28 August 2009
7908	Kyang'ombe Village	Enforcement notice	8 January 2010
7907	Maasai Village	Enforcement notice	8 January 2010
7909	KPA Village	Enforcement notice	8 January 2010
Daily Nation newspaper	Road reserves, open spaces, "declared areas", as provided in section 38 of the Physical Planning Act.	Public notice	7 October 2010

According to a CCN report dated 1 December 2011 the 3 villages fall within industrial land use as per the city zonal policy plan, however part of Maasai Village falls within the flight path and thus a security risk to aircraft operations. The report also states that the villages had unauthorized residential structures while the designated land use was for industrial purposes (a copy of the CCN report dated 1 December 2011 is attached at appendix 98).

The report also stated that in 2007/2008, the structures and population of the villages had overwhelmingly increased, and thus the CCN was forced to use the names of the villages as references in the enforcement notices. It also indicated that the notices were issued to the residents of the villages with help from Government security agents. Public notices were also published in the press in 2010 as shown above.

According to a report from KAA dated 24 November 2011 on the removal of illegal structures in the vicinity of the JKIA and Wilson airports, the demolition exercise at Kyang'ombe, Maasai and Mitumba Villages occurred on 21 and 22 October 2011 (a copy of the KAA report dated 24 November 2011 is attached at appendix 96).

According to a letter dated 2 November 2011 from the PC to the PS Ministry of State for Provincial Administration and Internal Security, the evictions were effected after several notices had been issued by the CCN dated 12 July 2005, 28 August 2009 and 8 January 2010. The letter further states that the most recent notice was issued on 15 September 2011 and was published in both The Standard and Daily Nation newspapers (a copy of the letter dated 2 November 2011 is attached at appendix 99).

According to the village residents, they claim that they were not served with any enforcement notices. They also seemed unclear as to who was responsible for the demolition exercise. They further stated that the demolitions were done in an inhumane manner, with incidents of structures being demolished while people were still asleep in the houses (copies of the interview notes of meetings with officials from various groups in Kyang'ombe, KPA and Maasai Villages are attached at appendix 100).

The following is a chronology of events on the demolitions as given to us by the officials we interviewed from Kyang'ombe Village (copies of the interview notes for our discussion with the officials of various groups in Kyang'ombe are attached at appendix 100).

2002

- Kyang'ombe residents apply for an LoA and also request KAA to mark their boundary of the flight path.

2004

- KAA gives notices to the Kyang'ombe residents informing them of the imminent demolitions.

2008

- Village residents get to hear that there will be some demolitions and only a portion of the village would be demolished.

2009

- KAA and OCPD - Embakasi place KAA beacons in Kyang'ombe (for security reasons)
- Kyang'ombe residents proactively go to court and get an injunction stopping the demolitions.
- Court order served to the PPO's office, CCN and OCPD- Embakasi.

2010

- Another eviction notice to Kyang'ombe village from KAA (copy of notice can be found at appendix 84).
- KAA advices villagers the map has been reviewed and Kyang'ombe is within KAA land.
- Judge rules that surveyors from KAA, Kyang'ombe and MoL survey the land so as to settle the matter.

2011

- 19 October 2011, Kyang'ombe residents again informed that demolitions would take place.
- 19 October 2011, their lawyer got a court order petition No. 188 to stop the demolitions (copy of court order can be found at appendix 101).
- Demolitions take place as planned on 21 October 2011 despite the court orders.

The Court Order preventing the demolitions and evictions was originally obtained by the residents on 10 October 2011. The order was served on the AG, KAA and the CoL, and was to remain in force until 19 October 2011. On 19 October 2011, the order was extended to 16 November 2011 when the matter was to be heard in Court. On 1 December 2011, the order was again extended until 20 January 2012 (copy of Court Order and extensions can be found at appendix 101).

According to the residents of Maasai Village (a copy of the interview notes for our discussions with the officials from Maasai Village is attached at appendix 100), the demolitions started in Kyang'ombe Village and later spread to KPA and Maasai Villages. Officials of Dupoto from Maasai Village, on seeing the demolition exercise taking place in Kyang'ombe Village, approached the policemen supervising the exercise to find out if the demolitions would also be carried out in Maasai Village. The policemen responded saying that Maasai Village would not be demolished. As a precaution, the Dupoto officials obtained an Injunction No 585 of 2011 (a copy of the Court Order no 585 is attached at appendix 102), preventing any demolitions from taking place in the Maasai Village. The Dupoto officials indicated that the Injunctions were served on the Embakasi Police Station, KAA and CCN but despite this, they stated that demolitions still took place in Maasai Village the day after from 10pm (on 29 October 2011). The Court Order was specific to LR No 209/12016 (hitherto known as LR No 209/13721). The residents further stated that after the demolitions took place on 29 October 2011, despite the Court Orders preventing them, they went back to Court seeking contempt orders against KAA and CCN (copy of the application for breach of Court Order can be found at appendix 103). Similar to what the Kyang'ombe residents informed us, the Maasai Village residents also stated that they had received CCN approvals for the permanent structures but agree to not having obtained any approvals for the semi permanent structures. They further stated that the demolitions were done in an inhumane manner, with incidents of structures being demolished while people were still inside.

According to the residents of KPA Village (a copy of the interview notes for our discussion with the officials of various groups in Mitumba Village is attached at appendix 100), in December 2009, demolitions took place on an approximate 4 acre parcel of land occupied by a group of KPA residents, which represents a small portion of the village. They made inquiries at the Embakasi police station to find out why the demolitions took place. At the police station they found Court Orders which indicated that the parcel belonged to a private individual (copy of the Court Orders could not be obtained). The demolitions extended slightly beyond the 4 acre parcel without any explanation given. Immediately after the demolitions, foundation excavations started, which seemed to be in preparation for construction. The residents claimed that they were not served with an enforcement notice, but it was rumoured that a notice was issued but kept hidden from the residents.

In our meeting with representatives of the Village, we were informed that the squatters continued living in the village until the second demolitions that took place on 29 October 2011. They also claim that no enforcement notice was issued for this demolition. The villagers further stated that they had CCN approvals for the permanent structures in the village but not for the semi permanent structures.

Residents from the 3 villages stated that they suffered immense loss as they had built both permanent and semi-permanent buildings though these had not been duly approved by the CCN. According to them, the demolitions were carried out through the night and in the process their properties and documents were destroyed, lost or stolen. The evictees indicated that the demolitions were carried out by several bulldozers bearing government, CCN and private registration plates. The villagers pointed out that despite Government involvement in carrying out the demolitions, there were also powerful wealthy individuals who had influenced the process. Similar information from residents of all 3 villages is that they had building approvals from CCN for the permanent structures but did not have any approvals for the semi permanent structures.

Our assessment

Despite the residents of the villages saying that they had never received notices, there is evidence to show that notices for the demolitions in the 3 villages had been given by both KAA and CCN as listed above. The notices from KAA were published in the local dailies from as early as 2008, therefore the villagers ought to have seen or heard of the notices before the demolitions took place 2 years later. However we cannot ascertain whether the enforcement notices from CCN were actually delivered/served to the residents of the 3 villages. . On review of the enforcement notice register, that is the Occurrence Book, we noted that none of the enforcement notices that were issued had not been registered as required under the regulations under Physical Planning Act.

As stated in section 3 of this Report, the Physical Planning Act provides for those served with enforcement notices to appeal to the Physical Planning Liaison Committee. Further appeal lies in the High Court. The CCN report dated 1 December 2011 however points out that there was no action taken by those affected by the enforcement notices to appeal or redeem their developments. This is despite the fact that public and enforcement notices appear to have been issued to residents since 2003.

Even though the villagers claim to have obtained building approvals from CCN for the permanent structures, the building plans presented to us by the residents indicated that they had not been approved. Some of the residents provided building plans that indicated they were received by CCN but not approved. Others submitted building plans that had been neither received nor approved by CCN. Therefore, both permanent and semi permanent structures in the villages had been illegally constructed.

Although Court Orders were obtained by the Maasai Village residents against KAA and CCN, and a subsequent application made to the Court on 11 January 2012 to charge KAA and CCN of being in contempt of the orders, the ruling made by the judge stated the following:

- Since the village residents (represented by Dupoto) stated that it was the District Officer (D.O) II-Nairobi West Division together with armed administration police officers who carried out the demolitions, with approval from KAA and CCN, the orders were served to the wrong people. Therefore KAA and CCN were not in contempt of Court.

- The orders were not served to the D.O II, Nairobi West Division, therefore, the D.O was also not in contempt of Court (copy of the ruling can be found at appendix 103).

From the above, it was the view of the Court that the demolitions did not go against the Court Orders obtained by the residents of Maasai Village because the orders were not served on the right individuals.

We have also assessed the manner in which the evictions and demolitions were carried out.

From our assessment, there is sufficient evidence to show that KAA had given the affected persons in Kyang'ombe adequate notices to vacate the disputed land. As for the CCN notices, we cannot independently verify whether the notices were actually served.

In respect of the claims from the evictees that the evictions were not carried out in a human manner, we cannot independently verify this. In our view, in light of the onset of Operation Linda Nchi, there was an urgency to remove security threats.

In summary, we recognise that the evictions and demolitions exercise was a very difficult exercise carried out in a challenging environment, but in our assessment the Government acted within the law. We also note that most of the affected evictees knew or ought to have known that there were enforcement notices issued as far back as 2010 and as such cannot claim to have been caught unawares.

5.3.2.3. Eastleigh

As we have described in section 5.3.2.1 above, the buildings that were demolished next to MAB lacked approvals from KAF and had gone against the allowable height as per ICAO regulations.

We have seen evidence to indicate that some developers breached these regulations with some having constructed 4-storey buildings barely 100 meters from the runway (a copy of a photo showing the proximity of the buildings to the runway is attached at appendix 104). During our discussions with the MAB Commander, he explained that it was these uncontrolled developments that forced the Government into action to ensure safety and security around MAB. This was however only after the Cabinet Directive had been issued (a copy of our interview notes for the discussion with the MAB Base Commander are attached at appendix 79).

According to Major Aloka of MAB, statistics show that most accidents occur at take-off or during landing (a copy of a report showing accident statistics is attached at appendix 105). It is therefore imperative that security measures be put in place for areas around aerodromes. Major Aloka further noted that due to the security risk posed by these illegal developments, KCAA has advised MAB that the aerodrome is unsafe for aviation purposes and had it been a civilian aerodrome it would be shut down. In addition, he advised us that in previous years, the President and other foreign dignitaries used the Base. However, in recent years, State House security has advised that MAB is unsafe for the President and foreign dignitaries.

In addition to the aviation concerns, the MAB Commander explained that some of the developments could act as ideal launch pads for attacks into the base. Col Badi shared some intelligence information that showed that some of these houses were occupied mainly by foreigners. These concerns had forced the Base to invest in further deterrent measures. In addition, the Base had made considerable investments in acquiring intelligence on the occupants of the buildings around the Base.

How the demolitions happened

The MAB Commander indicated in our discussions that the issue of encroachment and uncontrolled developments had been raised on various occasions by MAB (through DoD) to various relevant authorities dating back to 1997. These concerns culminated in a stakeholders' meeting on 14 March 2000 (a copy of the minutes of the 14 March 2000 meeting is attached at appendix 106). During the meeting, it was agreed that CCN and the Nairobi PC be instructed to relocate squatters on the Military land whilst the CoL should cancel allocations to private developers and put caveats on all other titles. This however appears to have been ignored given that the illegal constructions continued to take place unabated.

From our discussions with the Deputy Director of City Planning Mr Kathenge, two general enforcement notices serial numbers 1178 and 9850 dated 18 February 2011 (copies of the general enforcement notice is attached at appendix 107) were issued to the various residents who had encroached on the road reserve surrounding the MAB requesting them to vacate the area (a copy of the interview notes of our discussion with Mr Kathenge are attached at appendix 93). The notices mainly targeted those who had encroached on Military land as well as those who had breached the physical planning regulations.

We have not been able to independently confirm whether these notices were issued in the prescribed manner. The victims have claimed that the exercise happened without their knowledge leading to massive losses both to their property and to that of their tenants. CCN on the other hand has indicated that they would normally stick the notice on the gates of the various affected buildings in the event that no one was available to take delivery.

The demolitions in Eastleigh took place on the 22 and 23 November 2011. From our discussions with victims the demolitions were executed by personnel from CCN, the police and other ministries. The exercise is said to have been supervised by the then MAB Commander and other MAB personnel (interview notes of our discussions with the victims are attached at appendix 108). Mr Kathenge has confirmed that CCN was involved in the evictions and demolitions in Eastleigh.

Our assessment

Following our site visits and discussions with the victims, we noted that six landlords were adversely affected by the demolition in the Eastleigh Section III area. According to the MAB brief dated May 2012 and the CCN report dated 1 December 2011 all these buildings had exceeded the maximum allowable height and had no CCN approvals (copies of the MAB brief dated May 2012 and the CCN report dated 1 December 2011 are attached at appendix 82 and 98 respectively).

We however noted that some of the buildings had CCN approved building plans, however even for these buildings, the developments did not comply with the building approvals issued. An example is building plan CV 574 (LR No 36/111/144) where we noted a number of inconsistencies including:

- Whereas the Town Planning Committee gave approval for a dwelling house, the actual construction was a three-storey building (a copy of the Town Planning Committee minutes dated 13 January 1995 is attached at appendix 109).

- The LoA for LR No 36/111/144 dated 08 July 1993 specifically recommends the construction of a dwelling house (a copy of the allotment letter dated 08 July 1993 for LR No 36/111/144 is attached at appendix 110).

- The covering letter dated 08 March 1995 on the approved plan for LR No 36/111/144 refers to a dwelling house (a copy of the covering letter dated 08 March 1995 is attached at appendix 111). The accompanying building plans provided to us by the owner, and which appear to have been duly signed and stamped by CCN, indicates that the approved building was a three-storey flat in line with the actual building on the ground.

We could however not get a copy of the approved building plan at the CCN and thus were not able to verify the authenticity of the presented building plan.

The lack of compliance to the approved building plans is also further demonstrated by the significant differences between the approved plinth area and actual plinth area of the developments as well as differences in the approximate cost and current valuation of the buildings as analysed in appendix 112.

According to a CCN report dated 1 December 2011, 26 other buildings had also been earmarked for demolition though they were spared by the Court injunction that was obtained by the landlords on the 23 Nov 2011. Some of the breaches of regulations listed in the report include:

- Building height exceeding permitted levels;

- Building along flight path;

- No occupation certificate;

- Building on the 15m road buffer zone around MAB;

- Lack of 3 meter setback, and

- Encroachment on sewer line.

On the issue of notices, we have not been able to independently confirm whether notices were actually issued, in good time and in the prescribed manner to the occupiers it had targeted. The victims have claimed that the exercise happened without their knowledge leading to massive losses both to their property and to that of their tenants. CCN on the other hand indicated that they would normally stick the notices on the gates of the various affected buildings in the event that no one was available to take delivery of the same. In addition, CCN would mark all buildings earmarked for demolitions with an 'X'.

The residents have however claimed that the marking was done during the demolitions and not before. During our visits on site, we noted that there was an effort to delete most of the 'X' marks. According to Mr Kathenge of CCN, this was done by the landlords in order to calm the tenants and ensure that they did not move out in fear of demolitions.

In our view, landlords owe their tenants a duty of care and in the event they received the eviction notices they ought to have warned their tenants. In the cases above however, they appear not to have shared the notices with their tenants. If this is proven to be the case, then they could be held liable for the loss incurred by their tenants.

Nonetheless, we noted a number of discrepancies in the issuance of notices, these include:

- Lack of an entry in the Occurrence Book ("OB") – we noted from the review of the CCN OB that not all notices were duly recorded in the OB, a process that ought to be followed as a way of confirming the occurrence of a specific event. For instance notice number 3850 dated 18 February 2011 could not be found in the OB (a copy of a page from the OB and notice number 3850 are attached at appendix 113).

- Duplicate notices – we also noted that some notices with different contents held the same serial number. For instance there were two notice numbered 8774, one dated 04 November 2009 while the other was dated 10 November 2009 (copies of the duplicate notices are attached at appendix 114).

In respect to the above, we cannot independently verify that the enforcement notices were actually issued before the demolitions took place. We did however see the 'X' marks which supports CCN's assertion that notification was given to the affected persons.

Having assessed the available evidence, it is our view that the demolished buildings were illegal structures. In addition these buildings posed a safety and security risk to both MAB and tenants. CCN and Government therefore had a right in the circumstances to demolish these buildings and should take necessary measures to address the risk that is still posed by the remaining illegal buildings.

We note that there have been calls by among others the residents of Eastleigh and CCN that MAB be relocated away from the City of Nairobi. However, according to CoL Badi and his team, MAB is a strategic installation in terms of its use in Military logistics, supplies and emergency evacuation. The KAF team also advised that such relocation would be costly. We did not carry out adequate analysis to allow us to conclude on this relocation proposal.

5.3.2.4. Kitui Village and informal settlements in Eastleigh Section III

Despite MAB claiming that no demolitions took place in Kitui Village, the village residents indicated that demolitions of several temporary houses happened on 23 November 2011 at around 12 noon. Furthermore, the residents claim that there were no enforcement notices issued to them. The Chairman of Kitui Village presented a memorandum and a list of around 278 households that appear to have been affected by the demolitions. A number of informal settlements adjacent to MAB's fence on the Eastleigh Section III area are also said to have been demolished.

According to Col Badi and other MAB officers, both written and verbal notices were duly issued to the victims and that claims by the village residents that they were taken unawares are false. In addition, the MAB officers indicated that no demolitions occurred in Kitui Village. Instead, the residents proactively demolished the structures that were viewed to encroach on MAB's land on their own accord on the assumption that they would be the next victims in the demolition exercise. The Chairman of the village confirmed that the residents did demolish some of the houses but only after a few houses had been demolished by the Government bulldozers.

As stated earlier in section 5.1.1, although CCN appear to have issued written notices, we cannot ascertain whether the notices were actually served to the village residents. We also note that the MAB officials had indicated that there were no demolitions in Kitui Village, however, from our site visit, it is evident that a section of the village bordering MAB land was demolished and thus what still remains unclear is the body which carried out the demolitions in Kitui Village (a picture of the demolished area in Kitui Village is attached at appendix 115). We further note that Kitui Village is at close proximity to the MAB under shoot, an approach area for landing aeroplanes which raises security concerns to aviation operations in the area as well as a hazard to the village residents in the event of an accident.

5.4. Conclusion

Following our investigations, we note that the order for the demolition and eviction exercise appears to have been issued by the Cabinet on 14 April 2010 in a formal Cabinet Directive and in the interest of aviation safety and security. We have not had sight of a copy of the Cabinet Directive. The execution was consequently carried out by the PSIC supported by various other bodies including CCN, KAA and MAB. This appears to have happened only after relevant enforcement notices were duly issued. We have so far not seen any evidence regarding any appeal having been logged either with the Provincial Planning Liaison Committee or the High Court, thus it would appear that the demolition exercise followed due process.

The exact number of victims in the Syokimau, Kyang'ombe, Maasai and KPA demolitions remains unclear given the various conflicting submissions and information presented to us. In Eastleigh area, as noted in section 4 six landlords who appear to have had some form of ownership documents were affected by the demolitions. A number of informal settlements on the fence of MAB on the Eastleigh Section III area were also affected while another approximately 15 metre strip of informal settlements on the Kitui side area bordering MAB's undershoot were also demolished. A list from the Kitui Village chairman indicates that around 278 households were affected.

As noted in section 3 above, we were not able to get a well laid down procedure that should be followed in the process of evictions and demolitions both under the various legislations and in the various CCN or Mavoko Council by-laws, however in our assessment, it appears that the evictions and demolitions exercise in most of the areas was carried out in compliance with the existing applicable laws. We have however made recommendations later in the report on how the process of carrying out evictions and demolitions in Kenya can be safeguard.

6. Irregularities and weaknesses observed and assessment of possible wrongdoing and culpability of individuals

6.1. Introduction

As indicated in section 4 above, we have come across conflicting claims to ownership of the parcels of land in the areas under review. Various parties have laid claim to the land and have produced documents proving their alleged ownership. Inevitably, we have received duplicate documents of title on the same parcel of land, contradictory information, claims and counter claims from the interested parties. In addition, our work has identified the existence of forged documents. Double allocation could not have occurred without the involvement of individuals in public bodies, especially those tasked with land administration which implies that there was abuse of powers vested in these individuals.

As a result of our conclusions on ownership of land (section 4 above), it appears that many individuals have suffered financial loss as a result of dealings in the parcels of land under dispute. These dealings include purchase of the land and other investments that individuals had carried out on the land e.g. construction etc. In addition, public bodies have incurred costs and suffered financial loss in the process of having to deal with the situation and protect their rights e.g. legal costs incurred by KAA in Court, costs incurred by MAB in constructing perimeter fences, costs incurred by the Government in demolitions etc.

As a result of our findings on the evictions and demolitions process (section 5 above), it appears that the process followed was largely in accordance with applicable laws and given the overriding security concerns under which the evictions and demolitions were carried out, the exercise was inevitable. However, in an ideal world implementation should have happened within a larger plan to relocate and re-house affected individuals, and especially the vulnerable ones, as per the international conventions covered in section 3 of this Report. Failure to abide by these international conventions (which Kenya has ratified) could give rise to a consideration of granting compensation to affected individuals on restitution grounds, for infringement of their human rights. All of those matters are assessed in section 7 of this Report.

In light of our findings in sections 4 and 5 above, we need to consider whether wrongdoing and/or irregularities have occurred, and if so how such occurred and who was involved (both individuals and institutions) in order to assess:

i. for Government:

   a. possible culpability of public officials;

   b. options to recover any losses or costs incurred as a result of any wrongdoing;

   c. areas where processes have been abused such that processes can be improved and controls strengthened;

ii. for affected claimants:

a. better understand the roles played by various participants in any wrongdoing and/or irregularities so as to inform Government on the appropriateness of compensation (if any), and

b. options to recover losses.

6.2. Overview

One of the main recurring themes that we identified in the course of our work was the highly inadequate manner in which records are maintained in the key public offices and bodies that were the focus of this assignment. We found that for the most part, a manual system of record keeping exists at MoL. In addition, only one copy of key documentation is kept at MoL. Due to the nature of the manual system and the inherent risks associated with such a system, the process can be readily abused by simply removing or hiding key records (of which only a single copy exists) that detail what processes have been completed or which evidence authorisation of a key task in the process.

This is a very outdated process which has been in existence at MoL since the 1950's and it appears the process has not been significantly modified or improved since then. Available evidence suggests that as a result of the manual process and inherent weaknesses in such a system, some informed groups and individuals took advantage and created documentation that sought to confer ownership to the disputed parcels of land. In some cases such individuals colluded with public sector officials to either advance the process or also to ensure that the irregular activities were not flagged or exposed.

We note that there was endemic abuse at the Department of Surveys and Mavoko Council in particular and as such, these two institutions were the main focus of our forensic investigation. Department of Lands is more robust compared to the Department of Surveys but major weaknesses exist here as well. We note that minimal controls are in place to detect and deal with abuse in the land administration process. Our investigation has uncovered various acts of possible wrongdoing by specific individuals.

Despite the weaknesses in the processes in various departments, the robustness noted at Department of Lands is sufficient to allow us to reach reasonably clear conclusions on ownership of the land in dispute as set out in section 4.

6.3. Investigation of process irregularities

6.3.1. Introduction

In this section, we will look at process irregularities identified in respect of (i) land ownership and development and (ii) evictions and demolitions.

For land ownership and development, we will look at each of the main claimants and follow through processes involving key administrative bodies. For demolitions, we will look at the overall exercise and the role of key players in the exercise. We will then assess culpability of individuals/institutions for each of the areas.

6.3.2. Land ownership and development

We set out our assessment of process irregularities that affect land ownership and development below. This is summarised under the three airport locations that we reviewed.

6.3.2.1. JKIA

As we note in section 4 above, KAA has a title over the land that is claimed by:

1. Mulolongo Brothers ;
2. Uungani.
3. Jumbo;
4. Foster, and
5. Ungani Enterprises.

We assess the claims by these groups below. After this, we comment on the ownership documents that KAA has over the JKIA land and the shrinkage of the land that KAA has title over.

a) Mulolongo Brothers

Ownership

Mulolongo Brothers claim to own land in the Syokimau area. Their claim is in respect of the parcel of land known as LR No 13512. Their ownership claim is entirely founded on a Grant No IR 58266 ostensibly issued to them by MoL as per the Certificate of Title they provided to us dated 9 March 1993 (appendix 52). However, our view is that this Certificate of Title is not genuine because:

- We could not trace the file for LR No 13512 at MoL;
- We have seen different versions of the Certificate of Title;
- There are no documents preceding the issuance of the Certificate of Title as would be the case had a standard process been followed and assuming no irregularity on behalf of MoL e.g. LoA as required under the prescribed process of acquiring title in section 3 above.

When we requested for the file for LR No 13512 from MoL, we were informed that the file does not exist in their records. We then requested Mulolongo Brothers officials to provide supporting documentation e.g. LoA, but they could not provide this as they indicated that they obtained their Certificate of Title from the late Hon Mulu

Mutisya (see interview notes at appendix 116). In the absence of these supporting documents or a file at MoL we are unable to verify whether any public bodies/officials were involved in processing the Grant.

The Mulolongo Brothers Grant is based on a survey FR 185/26 carried out in 1985 by Mr AK Njuki on the authority of the CoL. Records at the Department of Surveys indicate that the purpose of the survey was for the issuance of a new Grant. This survey excised a parcel known as LR No 13512 measuring 100 Ha (247 acres) from LR No 3864. A Deed Plan No. 126696 was issued to the CoL through a letter referenced CR/34/1896 dated 11 November, 1986. We have not established to whom the new Grant was meant for, and there are no records at MoL indicating whether a title deed was issued following the survey. We were unable to meet with Mr Njuki in the course of the assignment to obtain an explanation for the survey. However, this survey could not have been done for the purpose of issuing Mulolongo Brothers a Grant since Mulolongo Brothers had not been registered at the time.

In addition, when we requested for the file for Grant No IR 58266 from the MoL, appearing on the Mulolongo Brother's title, we noted that it relates to a different parcel of land registered in the name of Alcon Holdings Limited dated 5 March 1993 and situated in Athi River (see appendix 55). Further investigations undertaken by the CID in respect of LR No 13512 revealed a Grant in the name of National Science and Technology Institute. Their title is Grant IR No 91423 and relates to the land depicted on Deed Plan Number 126696 dated 15 February, 1985. This is the same Deed Plan annexed to the title for Mulolongo Brothers.

According to the Ministry of Education and Registrar of Companies, the National Science and Technology Institute does not exist in their records (see confirmation from Ministry of Education and Registrar of Companies at appendices 117 and 118 respectively). However, Hon Sammy Mwaita who as CoL purportedly signed the National Science and Technology Certificate of Title recalled that there was an intention to Grant LR No 13512 to an organisation that would build a technical institute. He could however not remember a title having been issued (interview notes of our meeting with Hon Mwaita are attached at appendix 119). Our handwriting expert has also indicated that the signature on the title appears to be a forgery (see the Report by the handwriting expert attached at appendix 28).

In addition, we obtained a copy of Mulolongo Brothers' Certificate of Title from Mavoko Council which we were informed by the Mavoko Town Clerk Mr Sietenei had been obtained from Mulolongo Brothers when they were applying for approval of their subdivision scheme (see copy of title at appendix 56). We noted that the contents of this copy differed from the one obtained from Mulolongo Brothers in the following material respects:

- The Grant IR No on the copy obtained from Mavoko Council is 85126, not 58266 as per the copy given to us by Mulolongo Brothers;
- The Mavoko Council copy was signed by the CoL on 20 September 1995 and registered by the Registrar of Titles on 21 September 1995, while the copy given to us by Mulolongo Brothers was signed by the CoL on 5 March 1993 and registered on 9 March 1993;
- Special condition No. 5 in the Mavoko Council copy states that the land will be used for *"residential purposes"* while the copy given to us by Mulolongo Brothers states that *"the land and the buildings shall only be used for shops, offices and/or flats "*.

When we asked Mulolongo Brothers officials about the copy of title obtained from Mavoko Council, they disowned that document insisting that it is not the copy they gave Mavoko Council and they further alleged that someone at the Council had substituted the document (see interview notes at appendix 116). While we cannot discount this version of events, it is unlikely as Mulolongo Brothers would not have had their subdivision approved had they presented the copy that set the user of the land as commercial.

We also obtained a third copy of a Certificate of Title in the name of Mulolongo Brothers from Mr Joseph Ndavi who was the Machakos District Lands Officer in 2009. Mr Ndavi informed us that he had obtained the copy

from Mr Mwania, the Chairman of Mulolongo Brothers (see copy of title at appendix 120 and interview notes at appendix 121). We noted that this copy also differed with the one obtained from Mulolongo Brothers. The copy from Mr Ndavi was signed by the CoL on 5 March 1995 and registered by the Registrar of Titles on 9 March 1993 while the copy given to us by Mulolongo Brothers was signed by the CoL on 5 March 1993 and registered on 9 March 1993.

The Certificate of Title for Mulolongo Brothers obtained from Mr Ndavi had a stamp and signature by CS Maina, a registrar at Lands, certifying it as a true copy of the original. According to our handwriting expert, the signature by CS Maina is a forgery.

From the foregoing, it appears that Mulolongo Brothers' claim to the land and their supporting documentation is highly questionable at best and fraudulent at worst. The presence of forged documents as outlined above leads to questions regarding the roles played by officials of Mulolongo Brothers. We conclude on roles played and culpability in the "Conclusions" subheading below.

Subdivision

Mulolongo Brothers applied for approval to subdivide the land in 2003 but their plan was rejected by the Machakos Municipal Council because the plan did not provide for public amenities e.g. schools etc (see interview notes at appendix 116). On 7 March 2006, the Chairman of Mulolongo Brothers wrote to Mavoko Council applying for approval of the subdivision scheme (see copy of letter at appendix 61). The group wrote another letter dated 12 April 2006 to the then Mavoko Town Clerk giving details of the subdivision scheme emphasising the land set aside for public amenities.

Mavoko Council issued a PPA2 form dated 10 May 2006 signed by the Town Clerk Mr Tubman Otieno approving the subdivision scheme (see PPA2 form at appendix 59). Mr Otieno made reference to minute TP. 25/6 of the Town Planning, Housing and Markets Committee held on the 25 April 2006 as having approved the subdivision scheme as submitted by Mulolongo Brothers (see Committee minutes at appendix 64). The aforementioned minutes do not make any mention of Mulolongo Brothers' subdivision scheme. The minutes do not list the subdivision schemes approved as required by the process. When we spoke to Mr Otieno, he indicated that at the time there was no Physical Planner and as such he used to approve all the plans submitted to the Council. Mr Otieno however maintained that the Town Planning Committee had approved the subdivision and doubted the minutes presented to us. He further explained that Mavoko Council had come to an arrangement with Mulolongo Brothers under which the Council would collect the subdivision fees from members of Mulolongo Brothers after the subdivision was approved (see interview notes at appendix 122).

In 2008, Mr Otieno issued Mulolongo Brothers with a rates clearance certificate dated 23 January 2008 in lieu of rates due for the land (see copy of certificate at appendix 123). This was despite Mulolongo Brothers not having paid for rates over LR No 13512. Mulolongo Brothers confirmed that Mavoko Council issued the rates clearance certificate after Mulolongo Brothers had proposed that that all pending rates owed to the Council be paid by the group members in respect to their respective plots before any transfer was undertaken. Mr Otieno indicated that he did this because the Council needed the revenue but acknowledged that it was irregular.

In 2009, Mulolongo Brothers submitted another subdivision scheme to Mavoko Council for approval (see subdivision plan at appendix 60). This new approval was demanded by the Mavoko Council Physical Planning Officer Mr Ndereba, after he had realised that the 2003 subdivision scheme used to obtain the 2006 approval had not been approved by the District Lands Officer (interview notes of our meeting with Mr Ndereba are attached at appendix 124). The 2009 scheme was drawn up by Mr Henry Muthoka Mwau of Real Plan Consultants. It is in 2009 that Mulolongo Brothers filled in a PPA1 form as required in the approval process (see PPA1 form at appendix 125). The scheme was endorsed by the Machakos District Lands Officer Mr Joseph Ndavi and District Physical Planning officer Ms Maryanne Gikunda on 14 May 2009. It was then approved by the Town Planning Officer Mr Ndereba on 2 July 2009.

When we spoke to Mr Ndavi, he stated that when the subdivision scheme was presented to him by Mr Mwania, Chairman of Mulolongo Brothers of whom Mr Ndavi requested to obtain a certified copy of the Certificate of Title from the CoL. Mr Ndavi provided us a certified copy of original title he was given by Mr Mwania (see copy attached at appendix 120) which appears to have been certified by Mr JG Gichichi, Registrar of Titles on 29 August 2008. However, upon enquiring at MoL, we were informed that no officer by the name of Mr Gichichi worked at MoL then or currently. In addition, the certified copy has certain anomalies that we noted e.g. it was signed by the CoL on 5 March 1995 but it was registered by the Registrar of Titles on 9 March 1993. Mr Ndavi indicated that it is on the basis of this certified copy that he recommended that the subdivision scheme be approved. He however indicated that he never saw the original Certificate of Title belonging to Mulolongo Brothers.

When we spoke to Ms Gikunda the District Physical Planner, she indicated that her role was to check that the subdivision scheme was drawn properly and catered for public amenities. She stated that it was not her duty to verify the authenticity of the Certificate of Title presented to her (see interview notes at appendix 126).

When we spoke to the former Mavoko Council Town Planner Mr Ndereba, he indicated that he approved the 2009 scheme based on the fact that the Town Clerk had approved the scheme in 2006. In his view he was regularising the approval already given by the Town Clerk (see interview notes at appendix 124).

In our view, the approval given by Mr Otieno in 2006 was irregular because it did not follow the prescribed process of subdivision as outlined in section 3 above. As per the prescribed process, Mulolongo Brothers did not do the following:

- pay all rates due to the Council;
- pay the prescribed subdivision fee;
- obtain approval from the CoL (i.e. through the District Lands Officer);
- fill in a PPA1 form.

In addition, Mr Otieno had no basis signing the PPA2 without the prior approval of the Planning Committee. In addition, he should not have given a rates clearance certificate before Mulolongo Brothers paid the rates in full as outlined in the process. In our interview Mr Sietenei indicated that only the Minister for Local Government could give a waiver from rates to Mulolongo Brothers (see interview notes at appendix 127).

We further note that Mavoko Council has been receiving rates from members of Mulolongo Brothers despite LR No 13512 and the resultant plots not being in the Council's valuation roll. This contravenes the Valuation for Rating Act which states that Local Authorities should only receive rates after they have valued a property and included it in their supplementary valuation roll.

We conclude on roles played by various individuals and culpability in the "Conclusions" subheading below.

Building plans approval

According to records obtained from Mavoko Council, the Council approved 79 building plans which were presented to the Council by members of Mulolongo Brothers. According to Mr Otieno the Council Committee approved these building plans because Mulolongo Brothers had presented a Certificate of Title and the Council had already approved the subdivision plan as discussed above (see interview notes at appendix 122).

When we spoke to Mr Sietenei he indicated that when he joined the Council in October 2011 the then outgoing Town Planner Mr Samson Makali brought the building plans related to Mulolongo Brothers to the Town Planning Committee for approval (see interview notes at appendix 128). He indicated that the Committee went

through the list of building plans tabled for approval and realised that the Mulolongo Brothers subdivision scheme was not properly authorised and as such, the Committee resolved not to approve these plans and not to deal with any matters related to Mulolongo Brothers (see copy of Committee minutes dated 18 October 2011 at appendix 129).

When we spoke to Mr Makali he stated that he had approved the building plans because the subdivision scheme for Mulolongo Brothers had already been approved. He stated that as long as an applicant attached a copy of the "mother title" from Mulolongo Brothers he would approve the building plans without question in order to collect revenue for the Council (see interview notes at appendix 128).

When we spoke to Mr Ndereba he indicated that before he joined the Council in 2007, all approvals were carried out by the Town Clerk alone which was contrary to the required process as per the Physical Planning Act. He indicated that after he joined the Council, he advised the Council that all approvals should be done by the Town Planning Committee (see interview notes at appendix 124). He further indicated that he asked Mulolongo Brothers to stamp each of the development plans submitted as Mulolongo Brothers were the legal owners of the land.

Based on the process of approval outlined in section 3 of this Report, the approvals given by the former Town Clerk Mr Tubman Otieno were irregular since he did not follow the prescribed process. These building plans were not submitted to the Town Planning Committee as per the process. The Town Planner tried to do this retrospectively in October 2011 but to its credit the Committee rejected this irregularity.

Based on the foregoing, it appears that the building plans were not approved as per the due process and various individuals played roles in the irregular approvals. We conclude on these individuals in the "Conclusions" subheading below.

Change of regime from RTA to RLA

Mulolongo Brothers officials had commenced the process of converting the land registration regime of LR No 13512 from RTA to RLA.

By a letter dated 24 February 2009, the surveyors acting on behalf of Mulolongo Brothers, J.R.R. Aganyo & Associates, applied for the conversion of registration of LR No 13512 from RTA (Cap. 281) to RLA (Cap. 300) for the purposes of sub-division (see copy of letter at appendix 130).

This attempt however appears to have stalled after MoL officers realised that the Mulolongo Brothers' title was not registered. In a letter dated 22 July 2009, MoL notified the surveyor that the Grant forwarded as part of the application was not registered and a certified copy was required to enable them to proceed (see copy of letter at appendix 3).

Surprisingly, a draft legal notice allegedly signed by the Minister of Lands on the conversion was sent to the Attorney General for publication by the Government Printer. This draft was accompanied by a forwarding letter allegedly signed by Mrs E. N. Gicheha on the 9 September 2010 (see draft legal notice at appendix 131). The Notice was published in the Government Gazette as Legal Notice No. 157 (see copy of Notice at appendix 132).

When we spoke to Mulolongo Brothers officials (see interview notes at appendix 116), they indicated that they wanted to convert the registration regime in order to expedite the process of obtaining title deeds for their members. They indicated that they hired a lawyer (whose name they could not recall) to assist them in the process. The lawyer later confirmed to them that the process was completed successfully.

The process of change of regime is outlined in section 3 of this Report. We have not seen any evidence that the process as outlined in this Report was followed as officials at MoL indicate that they were not involved in the process. Further, MoL officials indicate that the alleged documents from the Ministry mentioned above are forgeries and did not originate from the Ministry. Thus, we handed the documents to the handwriting expert who came to the following conclusions:

- Mrs Gicheha's signature on the letter dated 9 September 2010 appears similar to Mrs Gicheha's sample signature;
- Hon Orengo's signature is a forgery.

We did not however have an opportunity to verify the authenticity of the signature with Mrs Gicheha by the time of issuing our Report.

Court case and orders against Mulolongo Brothers

KAA filed a suit against Mulolongo Brothers and 5 of its officials in High Court Civil Suit No. 206 of 2004 on 3 March, 2004 (a copy of the plaint is attached at appendix 133). In the suit KAA claimed it is the registered owner of the parcel of land LR No 24937 on which JKIA is located. KAA states that around 2003, the five officials of Mulolongo Brothers misrepresented to the public in general that Mulolongo Brothers was the owner of LR No 24937 or part thereof, and were in the process of subdividing and allocating the parcel of land to its members. KAA alleged fraud and misrepresentation by Mulolongo Brothers in purporting to be the owners of LR No 24937 and in inviting members of the public to purchase the plots hived off LR No 24937, and collection of money from the public as consideration for the sale of the plots. KAA asked the Court to issue a permanent injunction to restrain Mulolongo Brothers and its officials from selling, interfering with, alienating, sub-diving, or trespassing upon LR No 24937.

At the same time with filing of the suit, KAA applied for a temporary injunction to restrain Mulolongo Brothers from advertising for sale, interfering with, alienating, sub-dividing, and trespassing upon LR No 24937 pending the hearing of the suit. The interim injunction order restraining Mulolongo Brothers from dealing with LR No 24937 was granted on 3 March 2004. The order stated in paragraph 2 stated as follows:

"That the Defendants, their servants, agents and anybody authorised by them be and is hereby restrained by way of injunction from advertising for sale, interfering with, alienating, sub-dividing, trespassing upon, or in any manner dealing with all that parcel of land known as LR No 24937 or any part thereof until 16th March, 2004 when the application will be heard inter-parties."

The interim injunction orders were extended on a number of occasions when the matter came up for hearing or mention.

In their defence, Mulolongo Brothers stated that they have never purported to own LR No 24937 and had nothing to do with LR No 24937; that it had not acted fraudulently or made any misrepresentation to the public regarding the subdivision and allocation of LR No 24937. Mulolongo Brother stated further that they are the registered owner of LR No 13512 since 1986 and that the parcel of land had been subdivided into 1,800 plots and allotted to its members who had developed them.

KAA subsequently amended its plaint to replace it title number LR No 24937 with LR No 21919 as we discuss further below under the role of KAA.

The suit is still pending.

Conclusions on roles played by individuals and culpability

Mulolongo Brothers officials

In our view, based on the evidence available and as documented above, the officials of Mulolongo Brothers bear the greatest responsibility for any losses suffered by individuals in relation to the parcel of land LR No 13512. The key individuals who claim to represent Mulolongo Brothers (according to the defence filed in 2004) are Mr Peter Mbiti, Ms Agnes Njeri, Mr James Murigi, Mr Solomon Mwau, Mr Stephen Mwania and Mr Dominic Katua. We summarise below the key identified acts of potential wrongdoing attributable to these officials which we have highlighted above and which should be considered as leads for further investigation:

- possible forgeries of documents – legal notices signed by the Minister of Lands;
- misrepresentation of ownership of land to group members;
- contempt of Court

While the officials argue that their Certificate of Title is genuine, the evidence highlighted above clearly indicates that the documents they have presented to support their claim are not genuine.

In particular the role of Mr Peter Mbiti should be investigated further as he at one time served as the Mulolongo Brothers Chairman and thereafter became Mayor of Mavoko Council and also chaired the Mavoko Council Town Planning Committee. He appears to have been instrumental in aiding Mulolongo Brothers to obtain approvals and exemptions at the Council.

These officials should be held responsible for the subsequent events that occurred and the financial loss that individuals have incurred. These officials should be investigated further and necessary action taken, including assessing the profits they may have made out of these dealings as explained in more detail in section 7 below.

Tubman Otieno

Mr Otieno was the Town Clerk of Mavoko Council who was involved in providing various approvals to Mulolongo Brothers as explained above. While Mulolongo Brothers officials bear most of the responsibility Mr Otieno also has to bear some responsibility for giving the approvals to Mulolongo Brothers. By giving these approvals, he appeared to legitimise Mulolongo Brothers' ownership of the parcel of land and created an opportunity for Mavoko Council to illegally collect various fees and charges from the affected persons. He argues that he approved the subdivision scheme because he needed revenue for the Council. However, as a public officer he had a duty to ensure that such approvals were given in accordance with the applicable law and after due process. If he had done this, it would not have been possible for Mulolongo Brothers to achieve their intent.

We also note that Mr Otieno illegally and in abuse of his powers issued a Rates Clearance Certificate to Mulolongo Brothers without having received any payments from Mulolongo Brothers.

We advise that Mr Otieno be investigated further and necessary action taken.

Joseph Ndavi

Mr Ndavi was the Machakos District Lands Officer who endorsed the Mulolongo Brothers' subdivision scheme. He stated that he did this on the basis that Mulolongo Brothers officials presented a copy of their Certificate of Title ostensibly certified by the CoL. In our view, Mr Ndavi should have independently certified that the copy provided to him was authentic before endorsing the subdivision scheme. In our view Mr Ndavi was negligent and should be held accountable.

Mr E. N. Matheka and Ms Maryanne Gikunda

As District Physical Planning officers, Mr Matheka and Ms Gikunda approved the Mulolongo Brothers sub-division scheme despite the land the group was claiming being part of KAA's land. These officers should have verified the ownership of the disputed land from the Director of Physical Planning or from zoning plans or regional physical development plans before approving the same as we note in section 3.2.2.3. In our view these officers were negligent and should be held accountable.

b) Uungani

Ownership

Uungani is an organization that is registered in Nairobi under certificate No. 18195 of 10 April 2008 (a copy of the certificate is attached at appendix 134). It claims the ownership of parcel No. LR No 14231/1. This claim is founded on the following documents:

1. LoA Ref No 39711/XXIV of 20 September 1996 that is based on PDP No. MKS/8/96/6;
2. LoA Ref No 39771/XXVI of 5 January 1998 that is based on PDP No. MKS/8/97/6;
3. Various receipts and Rent Clearance Certificate No. 080918, serial No. 1583 of 31 March 2003;
4. Deed plan No. 285225 of 19 March 2008;
5. Undated and unsigned Certificate of Title.

Uungani does not have a registered Certificate of Title and cannot therefore claim to have title over the land. In addition, we found several irregularities and inconsistencies that cast aspersions as to the authenticity of the above listed 'ownership' documents. These include:

1. Admissions by Uungani officials that they paid facilitation fees in order to obtain the documents.
2. Use of non-existent and forged PDPs.
3. Existence of more than one LoA.
4. Questions on the process followed in obtaining the Deed Plan and unsigned Certificate of Title.

We discuss each of these below.

a) Admissions by Uungani officials that they paid facilitation fees in order to obtain documents

During our meeting with officials of Uungani on 29 April 2012, the officials indicated that they paid KShs 300,000 to the late Hon David Mwenje to facilitate the acquisition of the LoAs for LR No 14231/1 (interview notes of our meeting with Uungani officials are attached at appendix 32). The officials further undertook to avail minutes of Uungani meetings where this was captured.

Consequently, the officials availed unsigned minutes of the Uungani meeting held on 16 November 2002 (appendix 135). Under Min 3, it is noted that, *"The report on various payments made to our contacts and "helpers" at Land's office were given, and approved by the members present".*

As stated in the minutes, it is evident that Uungani intended to obtain the title documents by corrupting the concerned public officers.

b) Use of non-existent or forged PDPs

Uungani has used two PDPs to claim ownership of LR No 14231/1:-

- PDP No. MKS/8/96/6 that is quoted in the 1996 LoA but was not attached to the LoAs that we have seen, and
- PDP No. MKS/8/97/6 that has an approval No. 141 and was allegedly approved by the Director of Physical Planning on 5 October 1997 and by the CoL on 8 October 1997 (see appendix 136).

The authenticity of both PDPs has been questioned by the Director of Physical Planning. According to a letter from the Director of Physical Planning to the PS MoL dated 28 November 2011 (see appendix 27):

- PDP No. MKS/8/96/6 was prepared in Machakos for two industrial plots within Athi River Town and was never approved (a copy of the unapproved PDP No. MKS/8/96/6 is attached at appendix 138). It has no connection with parcel LR No 14231/1.
- PDP No. MKS/8/97/6 does not exist. The Director of Physical Planning was however able to trace a PDP No. MKS/8/94/25 that is unrelated to the Uungani plot but which bears the approval No. 141. A copy of the PDP register for Athi River town showing the approval No. 141 is attached at appendix 139.

In addition to the assertion by the Director of Physical Planning, we find it strange that the two LoAs that were purportedly issued to Uungani would refer to different PDPs yet they relate to the same plot. In the unlikely event that there are two PDPs for the same plot, it is odd that the two would have almost identical numbers i.e. MKS/8/96/6 and MKS/8/97/6.

c) Existence of more than one LoA

We observed that Uungani has used or referred to three different LoAs, all purporting to offer them the same plot. These are:

i. LoA Ref No 39711/XXIV of 20 September 1996 ("the 1996 LoA") that was found in the Lands Office and a copy of which Uungani provided to us (a copy of this LoA is attached at appendix 25).

ii. LoA Ref No 39711/XXVI of 5 January 1998 ("the 1998 LoA") that was used to carry out the 2008 survey and a copy of which we found at the Department of Surveys (a copy of this LoA is attached at appendix 31)

iii. LoA Ref No 39711/XXVII of 24 January 2002 ("the 2002 LoA") that appears to have been used to pay rates at the Lands Office (a copy of an Uungani letter to the CoL that refers to this LoA is attached at appendix 141).

According to Uungani officials, the 1996 LoA was delivered to them by the Late Hon David Mwenje. This 1996 LoA was however determined to 'have a problem' by a Lands Officer when Uungani presented it in 1998. An unidentified Lands Officer then offered to give Uungani a 'good' LoA i.e. the 1998 LoA. The officials were not clear on why they would have been presenting their 1996 LoA to the officer in 1998. The officials claimed to also not know the identity of the Lands Officer that they dealt with in 1998 as the persons dealing with MoL at the time, a Mr Marine and Mr Ndirangu, are now deceased. The Uungani officials did not admit to the existence of the 2002 LoA (interview notes of our meeting with Uungani officials are attached at appendix 32).

Though it is not clear why Uungani would have more than one LoA, it is highly unusual that they were able to obtain three LoAs for the same plot. One likely reason for Uungani 's multiple LoAs would be the absence of a PDP in the 1996 LoA. This may have necessitated Uungani to acquire a LoA that had a PDP in 1998 (or later and then backdated to 1998). The possibility that the 1998 LoA was meant only for use in the survey process is

reinforced by the fact that the 1998 LoA appears to only have been used in the survey process (attached at appendix 142 is a copy of a letter dated 6 December 2011 in which Surveyor J. D. Obel indicates the LoA that he used for the survey of LR No 14231/1).

Another likely explanation for the multiple LoAs is the fact that the rent amount indicated in the 1996 and 1998 LoAs is not the 20% of the stand premium prescribed by the Valuation Department at the MoL. Further work is however necessary to establish why Uungani used multiple LoAs.

d) Questions on the process followed in obtaining the Deed Plan and unsigned Certificate of Title

The Uungani Deed Plan that was issued in 2008 is based on a survey by Mr L. M. Kivuti in 1987 that resulted in parcel No LR No 14231. LR No 14231 was later resurveyed for the purposes of a new Grant in 2008 by Surveyor John Obel to create LR Nos 14231/1 and 14231-R. The Department of Surveys authenticated this survey on 31 January 2008. A Deed Plan was then issued on 19 March 2008 after Lands had issued indent letter Ref. No. 242206/13 on 29 Feb 2008 (a copy of the indent letter is attached at appendix 143 while a copy of the Deed Plan is attached at appendix 24).

As we note in section 4 of this Report, a survey of JKIA land had been done in 1996 and a new title issued for LR No 21919. This survey ought to have nullified the 1987 survey and LR No 14231 should have been cancelled. Accordingly:

- the 1996 and 1998 LoAs should not have been issued;
- the 2008 survey should never have been done and approved.

We therefore find that the 2008 survey and issuance of a Deed Plan to have the following faults:

- the Department of Surveys failed to verify the authenticity of the LoAs and the PDP with the CoL and the Director of Physical Planning respectively as was the normal practice during this period and as we note in section 3 above.
- the Department of Surveys failed to notice that this survey encroached on LR No 21919 over which KAA already had a title;
- the parcel was surveyed despite there being an ongoing Court case and an injunction as we note below. (it is important to note that the Department of Surveys had already carried out surveys as part of the case proceedings on 15 September 2004 and again on 4 November 2009 (a copy of the survey reports dated 29 October 2004 and 4 November 2009 are attached at appendices 144 and 145 respectively)), and
- Mr Odima Otieno who is an officer at Lands, issued an indent letter despite there being a Court case. We were however not able to meet Mr Odima or to establish the authenticity of the indent letter.

Following the issuance of the Deed Plan, officers at Lands appear to have put in motion the process of granting title over the land. We list below the steps that were taken and comment on observed irregularities:

- On 19 March 2008 the Department of Surveys forwarded the Deed Plan 285225 for LR No 14231/1 to the CoL (a copy of the forwarding letter is attached at appendix 146). On receipt of the letter and Deed Plan, Mr Odima made a note (on the forwarding letter) to the SPRO and asked for the authority file 39771/XXVI to be brought up. According to Mr Koskei who is a Deputy CoL, the file and the letter were not returned to Mr Odima for verification. Instead, the Deed Plan was forwarded for generation of a Certificate of Title.
- A Lands Officer Ms Tsuma filled and signed an 'Instructions to prepare a new lease/grant' form on 2 September 2008 (a copy of the form is attached at appendix 147). The instructions on the form were *"prepare a government grant"*. We noted the following irregularities in this form:

- that the amounts of rent and stand premium indicated in the form (and also in the 1996 LoA) i.e. KShs 74,000 and KShs 2,970,000 respectively are different from the KShs 74,130 and KShs 2,965,200 that Uungani actually paid (and are the amounts quoted in the 1998 LoA) for rent and stand premium (a copy of a letter from the Accountant Lands Mr M. O. Maseno showing a breakdown of the payments made by Uungani is attached at appendix 148).
- the amount of rent paid was not the prerequisite 20% of stand premium as per the requirements of the valuation department of the MoL.

- On 27 October 2008, a Ms Linda Andai of MoL issued instructions to the typing pool to have a Grant prepared (a copy of the instructions is attached at appendix 149). Ms Andai does not also appear to have noted the anomalies on the payments as indicated above.
- A day later on 28 October 2008, Mr S.K. Chebii, who is a Lands officer forwarded the Certificate of Title form for execution by the CoL (a copy of the forwarding form is attached at appendix 150 while the unsigned Certificate of Title is attached at appendix 151). The form was however not executed by the CoL after the SPRO confirmed that the land in question was part of JKIA already owned by KAA. This confirmation by the SPRO resulted from the actions of a Deputy CoL, Mr Peter Kahuho who upon receiving the form on 27 December 2008, returned the form to the Senior Lands Officer Mr D. R. Kithunka for confirmation of status. We observe the following of this process:

  - As with the previous two letters, Mr Chebii and the Senior Lands Officer Mr Kithunka who had forwarded the form for execution did not note the discrepancies in the payments made.
  - Mr Chebii has claimed he did not originate or deal with the forwarding form. However, the handwriting expert confirmed to us that the signature on the document is similar to Mr Chebii's sample signature.

In conclusion on ownership, we found that in addition to Uungani not having a title over LR No 14231/1, the documents that they have presented to show claim over the land are questionable in many respects. We conclude on roles played and culpability in the "Conclusions" subheading further below.

Court case

We found that Uungani continued following up on title documentations and dealing in parcel LR No 14231/1 despite there being an Injunction against them.

On 13 May 2004, KAA filed civil case No. 489 of 2004 against Uungani in the High Court of Kenya at Nairobi (a copy of the plaint is attached at appendix 133). According to the plaint, "*on or around the year 2003*", Wambua Mila, Elijah Runo and Charles Aguto as officials of Uungani had made fraudulent misrepresentations by:

- purporting to be owners of LR No 24937 while the land belonged to KAA;
- inviting members of the public to purchase plots hived off LR No 24937, "*knowing very well that they did not have the capacity to sell the said parcel of land*", and
- collecting money from members of the public as consideration for the sale of the plots allegedly hived off from LR No 24937.

The plaint went on to seek from the Court, *"a permanent injunction to restrain the defendants and each of them, their servants, agents and anybody claiming through the defendants, from advertising for sale, interfering with, alienating, subdividing, or trespassing upon all that parcel of land known as LR No 24937 or any part to it".*

Meshack Okoth Obura & Company Advocates filed a defence to the suit on 9 July 2004 in which Uungani denied the allegations against them and sought to have the suit dismissed with costs (a copy of the 9 July 2004 defence is attached at appendix 152).

The High Court issued injunctions in 2004. These orders stated that KAA and all other parties in the suit to maintain the status quo as regards the contested Syokimau land until the matter was heard and determined.

Despite this order, Uungani:

- went on subdividing and developing parcel LR No 14231/ as evidenced by numerous share certificates;
- surveyed the land and had a Deed Plan issued to them in 2008, and
- attempted to procure a Certificate of Title over LR No 14231/1 in 2009.

When we spoke to the Uungani officials, their legal counsel Mr Meshack Obura said that in his understanding, the maintenance of status quo by the Court meant that Uungani could continue possessing and transacting in the land as they were doing before the suit. He explained that in his opinion, it was KAA that was stopped from interfering in the land since Uungani had sought and obtained Court Orders in 2008 to stop KAA from erecting a fence (interview notes of our meeting with Uungani officials are attached at appendix 32).

On the argument by Mr Obura that the status quo as at 2004 was that Uungani was in possession of the land, KAA has provided us with Google images of the area at the time. These images clearly indicate that there was no development on the disputed land in 2004. Additionally, we learnt from KAA that KAA had licensed the land to a herdsman for grazing. In our view and in light of the evidence assessed, KAA's assertion that they were in possession of the land as at 2004 is more credible that the claim by Uungani.

Mr Obura also argued that the Injunction were lifted in early 2005. KAA has strongly disputed assertion and informed us that the orders were to subsist until the hearing and the determination of the case by the parties. Mr Obura did not provide any evidence to support his view, and our examination of the Court file does not show any evidence of the lifting of the Injunction.

Development of plots

Despite Uungani not having a title over LR No 14231/1, the existing ownership dispute with KAA and the refusal by Mavoko Council to approve developments, Uungani officials continued to encourage their members to build houses on their plots. According to the former Machakos Lands Officer Mr Ndavi and former Mavoko Physical Planner Mr Makali, the Uungani officials and some officers from Mavoko Council advised members that the only reasons that Mavoko Council could not approve building plans was that Uungani did not yet have a title over LR No 14231/1 and there was a boundary dispute between their land and KAA's. Members were misled into believing that Mavoko Council would approve the building plans as soon as the dispute was over. In the meantime, members were advised to proceed developing their individual plots (interview notes of our meeting with Mr Ndavi and Mr Makali are attached at appendices 121 and 128).

We note that the case between KAA and Uungani was not a boundary issue as Uungani officials had allegedly made it appear. In such circumstances, in our view Uungani officials should have advised their members that the case was about the entire parcel of land that Uungani claimed to own.

Conclusions on roles played by individuals and culpability

We access the key individuals separately as follows:

- Uungani officials

- Uungani advocate
- officers in the Department of Surveys
- officers in the Department of Lands.

Uungani officials

In our view and based on the evidence available and as documented above, the officials of Uungani bear the most responsibility for any losses suffered by individuals in relation to the parcel of land LR No 14231/1. We summarise below the key identified acts of potential wrongdoing attributable to these officials which we have highlighted above and which should be considered as leads for further investigation:

- bribing of MoL officers;
- apparent forgery of documents – PDPs, LoAs;
- misrepresentation of ownership of land to group members;
- collecting money from members and the public by false pretence;
- subdivision of land without relevant consent;
- aiding and abetting the construction by members without building permission, and
- trespassing on KAA' s land and contempt of Court.

While the officials claim to have been allocated the land, the evidence highlighted above shows that they went ahead to deal with the land as owners without any registered rights over the same. They further continued to transact in the land and "sell" plots to their members in blatant disregard of the existing Court Orders.

Uungani Advocate - Meshack Obura

Mr Obura as an advocate of the High Court had a duty and responsibility to advice Uungani officials and members on the implications of the unresolved ownership dispute and especially of the existing and associated risk around the Court Orders. He however:

- failed to advise against the development of LR No 14231/1, and
- advised the Uungani officials that they could continue in their efforts to alienate the land and specifically stood by, aided and encouraged the officials to carry out the 2008 survey and the 2009 unsuccessful attempt to procure a Certificate of Title.

Mr Obura indicated that he was the one who advised Uungani officials to form a Trust and have a title issued in the names of Trustees. It therefore appears that he aided and abetted Uungani in their illegal and unlawful mission.

Officers in the Department of Surveys

The attempt to alienate LR No 14231/1 was possible primarily because of a failure to cancel the 1987 survey and LR No 14231 upon the 1996 survey of KAA's LR No 21919, as well as the lack of cross referencing of the 1996 survey on previous related Survey Plans as required per the process outlined in section 3 above. Had the cancellation been done:

- charts of the area would not have shown the presence of a plot, LR No 14231, and

- Mr Obel would not have carried out the 2008 survey as LR No 14231 that he was to survey would not have existed.

The failure to cancel LR No 14231 seems to have been as a result of a failure by Ms Akanda to cross reference the 1996 survey onto the older surveys in the area.

Department of Surveys officers further failed to verify the LoA and PDP that were presented to them by Uungani. In summary the following persons should be investigated further for their role in the failures at Department of Survey:

1. Ms S. A. Akanda whose role it was to cross reference the 1996 surveys.
2. Mr Shikuku who authenticated the 1996 survey. This was despite the preliminary checker noting that the cross referencing had not been done.
3. Mr Njukia who approved the survey without verification of the LoA and PDP presented by Uungani in 2008.

Officers in the Department of Lands

As we note above, Uungani very nearly obtained a title over LR No 14231. Whilst the deputy CoL Mr Kahuho should be commended for his diligence, the following officers should be required to formally explain certain failures:

1. Mr Odima Otieno for issuing an indent letter without verifying the authenticity of the LoA and PDP.
2. The officer that forwarded the Deed Plan for generation of a certificate of Title.
3. Ms Tsuma, Mr Chebii and Mr Kithunka for not noting the anomalies in the rent and stand premium payments.

c) Jumbo

Ownership

Jumbo claims to own the land under LR No 14231/2. Their claim is based on a LoA dated 5 January 1998 and with a reference no 39711/XXVI (see copy of LoA attached at appendix 35). However, our view is that their claim is not genuine and has no legal basis because:

- Jumbo do not have a Certificate of Title;
- We could not find a corresponding file for Jumbo at MoL;
- The PDP referenced in the LoA does not exist according to MoL;
- The reference number on the LoA as shown above is duplicated in another LoA for another claimant;

When we requested for the file for LR No 14231/2 from MoL, we were informed that the file does not exist in their records. MoL officials also indicated that the LoA did not originate from their offices. When we asked Jumbo officials where they got the LoA from, they advised us that they were given the LoA by the late Hon David Mwenje after paying him KShs 2m and as such did not know the origin of the LoA (see interview notes at appendix 33). We also requested the Director of Physical Planning to confirm that the PDP quoted in the LoA (MKS/8/97/6) originated from his office. However, the Director Mr Masinde, indicated to us and to the Joint Parliamentary Committee that the PDP quoted above does not exist. He indicated that the approval number 141 indicated on the Jumbo PDP referred to another PDP, MKS/8/94/25, prepared on 9 September 1994 and approved on 30 December 1994 for an industrial plot within Athi River town (see confirmation from Director of Physical Planning at appendix 136). In the absence of these supporting documents or a file at MoL or the

Director of Physical Planning's office, we are unable to verify whether any public bodies and officials were involved in processing the LoA.

Jumbo officials are also relying on a survey ostensibly carried out in 2008 for LR No 14231/2 by a Licensed Surveyor Mr John Obel. The survey is dated 7 December 2007 and was authenticated by the Director of Surveys on 31 January 2008. However, when we met Mr Obel he indicated that he did not carry out the aforementioned survey and had no dealings with Jumbo (see interview notes at appendix 153). He also gave us a copy of the Survey Plan he submitted to the Director of Surveys for authentication (see copy of survey at appendix 38). We noted that Mr Obel carried out the survey of LR No 14231/1 and as his drawings indicate, the other part of the land was marked as LR No 14231/R, which would later become LR No 14231/2 in unclear circumstances as we explain below.

Mr Obel's survey was submitted to the Director of Surveys on 7 December 2007 and was forwarded to the Cadastral Division on 16 January 2008 for checking. At the Cadastral Division, the survey was checked as per the Cadastral Checking Office Report (attached at appendix 155) and approved on 31 January 2008. A Deed Plan was then issued on 19 March 2008 as indicated on the Cadastral Checking Office Report. It is important to note that this survey was conducted and processed for a different group, not Jumbo. However, in unclear circumstances the LR No 14231/R was also processed and a Deed Plan issued on 5 June 2009 as shown on the Cadastral Checking Office Report (appendix 155). The process that is followed in the Cadastral Division is summarised in Fig. 3.4 in section 3 of this Report.

As per the process outlined in section 3 of this Report, for a survey to be processed, authenticated and a Deed Plan issued, certain steps need to be followed:

- The Surveyor has to submit his work including a submission letter, computation file, Survey Plan and field notes;
- A Cadastral Checking Office Report (form SK/L/38) is used by the Cadastral Division to process each survey;
- The Senior Assistant Director – Cadastral signs the Survey Plan;
- An indent letter is issued by the CoL to request that a Deed Plan be prepared;

In the case of LR No 14231/2, we have not seen any evidence of any of the four the steps above being followed. Instead, it appears that an officer in the Cadastral Division at the Department of Surveys altered the Cadastral Checking Office Report for a neighbouring plot (LR No 14231/1) in an attempt to irregularly indicate that a survey of LR No 14231/2 had been carried out by Mr Obel and processed and authenticated by the Department of Survey. In addition, it appears that a Deed Plan was issued without an indent letter from the CoL. It is our view that the above process followed was irregular because:

- The surveyor who purportedly carried out the survey delineating LR No 14231/2 has disavowed the same;
- The process of checking and authentication does not appear to have been followed. The approval for LR No 14231/1 was given on 31 January 2008 while the approval for LR No 14231/2 was given one and a half years later on 5 June 2009 against the same SK/L/38 form. Normally, each survey job would have its own SK/L/38 form;
- A Deed Plan was issued without written authority from the CoL as required in the prescribed process and as outlined in section 3.

We were unable to obtain the name of the officer who signed the SK/L/38 form indicating issuance of a Deed Plan as the signature on the form was unknown to the Department of Survey. We suggest that more work be done to confirm the identity of the individual in question.

Conclusions on roles played by individuals and culpability

Jumbo officials

In our view and based on the evidence available and as documented above, the officials of Jumbo bear the most responsibility for any losses suffered by members since:

- they appear to have relied on forged documents to further their claim;
- they misrepresented their ownership claim to members.

More work needs to be done to ascertain which officials were involved in coming up with these forged documents.

Officers in the Department of Survey

Based on the evidence laid out above, it appears officers within the Department of Surveys were responsible for processing and authenticating the survey upon which Jumbo is relying. The Licensed Surveyor (Mr Obel) who purportedly carried out the survey has denied that he carried out the survey which implies that records at the Department of Surveys were forged to indicate that Mr Obel carried out the survey. In addition, it appears that a Deed Plan was processed and issued without any instructions being given by CoL. We recommend that further work be done at the Department of Surveys by the CID to ascertain which officers played key roles in this apparent abuse of the process.

d) Foster

Ownership

As discussed in section 4.2 above, Foster is an offshoot of Jumbo. We note that Foster is relying on a similar LoA to the one obtained from Jumbo. The two LoAs have the same details except in relation to the rent charged and the signatories. There is no evidence available from MoL or from any other source showing how Foster applied for the land or whether they accepted the allotment offer. However, we were able to obtain a correspondence file for Foster at MoL which contained a copy of the LoA (see appendix 156). There was no other document in this file and when we queried the MoL officials as to the origin of the file, they could not provide any explanation.

In addition to the LoA, we obtained a copy of a signed Certificate of Title from Mavoko Council (a copy of the title and Deed Plan is attached at appendix 9). This is despite the Mayor and Town Clerk of Mavoko Council having initially refuted ever dealing with Foster. The Certificate of Title and attached documents were however availed to us in the final week of our field work and we were therefore unable to investigate them further. We however conducted some preliminary work and note as follows:

- Mavoko Council has denied approving the Foster subdivision scheme in 2009 (appendix 47) and the Council claims that it did not deal with Foster before 2011;
- Surveyor J.D. Obel who purportedly prepared and signed the Foster Deed Plan has denied ever dealing with Foster.
- The MoL has denied issuing Rent Clearance Certificate No. 300742(appendix 46)

- The CoL Mr Mabea has denied signing the Certificate of Title.

Based on these facts, we doubt the authenticity of the Certificate of Title. The title should however be investigated further as should the role of the Mavoko Council who:

- issued a rate clearance certificate No. 10225 of 14 March 2011 (a copy of the certificate is attached at appendix 5);
- allegedly approved a subdivision plan in 2009 (appendix 47), and
- received various payments from Foster (copies of various receipts are attached at appendix 48).

e) Ungani Enterprises

Ownership

Ungani Enterprises is laying a claim on LR No 9042/56 within LR No 21919 measuring 255.50 Ha. Its claim is founded on a LoA ref. No. 33745/XX/208 in respect of this land dated 14 March 1995. This LoA was allegedly signed by I. A. Machuka for CoL. The LoA indicated that the land is represented by a PDP No OR/237/747. Ungani Enterprises claim is further hinged on a Deed Plan number 185056 dated 11 May 1994 signed by a Mr D.R. Gitau.

We could not trace a file for this land at MoL or any other supporting documentation supporting this LoA. Accordingly, we are unable to conclude on whether it originated from MoL or whether the due process was followed in obtaining it. Ungani Enterprises did not provide a copy of the PDP quoted in its LoA for our verification with the Director of Physical Planning.

In addition, Mr Machuka told us that he did not sign this LoA and claimed that his signature appearing thereon was a forgery (see interview notes at appendix 157). The LoA was examined by our handwriting expert who noted that the signature on the LoA differs from the sample provided by Mr Machuka. This analysis indicates that this LoA is a forgery.

We also examined the Deed Plan provided by Ungani Enterprises and noted the following:

- The Deed Plan appears to precede the LoA;
- There are no supporting documents e.g. Survey Plan, Indent Letter etc

As per the process set out in section 3 of this Report, a Deed Plan is issued as follows (in summary):

- A PDP is issued by the Director of Physical Planning;
- A LoA is issued by the CoL;
- A survey is carried out by a Licensed Surveyor and authenticated by the Director of Survey;
- An Indent Letter is issued by the CoL requesting for a Deed Plan;
- A Deed Plan is drawn by the Director of Surveys and forwarded to the CoL.

Going by the process above, it is unclear why the Deed Plan is dated almost a year before the LoA. In our view, this is irregular and casts doubt on the validity of Ungani Enterprises' claim. We were unable to question the directors of Ungani Enterprises as they did not avail themselves for a second meeting with us despite our various attempts at contacting them.

Conclusions on roles played by individuals and culpability

Ungani directors

In the absence of any supporting information for the documents presented to us, the presence of forged documents and the reluctance of the directors of this company to meet with us, we believe that further work should be carried out by the CID to establish the owners of this company and the source of the forged documents. The directors of this company should also be charged with forgery and/or possession of forged public records.

f) KAA's role in securing JKIA land

The failure by the former Department of Aerodromes and KAA to secure JKIA land since 1991 has led to irregular allocations of JKIA land. It is these failures that seem to have allowed and/or encouraged the encroachment by the five groups discussed above.

As we note in section 4 above, KAA was established in 1991. In 1994, KAA was vested with all assets of the former Department of Aerodromes. These assets included the JKIA land.

In 1994, JKIA land should have consisted of 6,061 Ha (14,976 acres) that included:

1. the parcels of land measuring 1,772.5 Ha (4,380 acres) declared by the then Minister as aerodrome land for Nairobi Airport in 1953;

2. the parcels of land compulsorily acquired and declared as airport land for the Nairobi Airport in 1971 and measuring approximately 2,695Ha (6,659 acres).

3. the approximately 1,593 Ha (3,937 acres) of land specifically acquired for the purposes of a second runway at JKIA in 1982.

Ideally, the Department of Aerodromes should have resurveyed and fenced its land following the 1971 and 1982 compulsory acquisitions. This does not appear to have happened. KAA would therefore not have been sure of the extent of its land in 1994.

Nonetheless, we did obtain a copy of a Physical Development Plan revised in 1991 from the Director of Physical Planning which was prepared by the Physical Planning Department at MoL for the Department of Aerodromes, which details the boundaries of the JKIA land (see attached copy of the plan at appendix 16). The acreage of the said parcel as per the map is shown to be 5,098 Ha (12,597 acres).

We expect that KAA should have secured the 5,098 Ha of land and being a body corporate, unlike the Department of Aerodromes, secure a title over the land. However KAA does appear to have attempted to secure this land and in particular:

- attempted to have the land gazetted in 1993, and
- procured a Certificate of Title in 1996.

The 1993 attempt to have the land gazetted appears to have flopped. This was after the Attorney General's office indicated on 17 August 1993 that the proposed Gazette Notice had a "*legal snag*". We attach the following documents that give a glimpse of this attempt to gazette the land:

1. A letter dated 14 July 1993 from the Chief Lands Registrar to the Attorney General forwarding the proposed Gazette Notice (appendix 158);

2. The proposed Gazette Notice (appendix 159);

3. Plan DRG No. NBI/C/018 that was referred to in the above Gazette Notice which put the extent of the airport land at 5,088 Ha (appendix 16);

4. A letter dated 16 September 1993 from the then KAA MD Mr Bonventure Omuse to the then CoL Mr Wilson Gacanja (appendix 160) in which the KAA MD:

    a. refers to an urgent need to "*protect the current airport land from further allocation to outside applicants*"

    b. notes that the gazettement "*may take sometime to realise*";

    c. confirms that the existing boundary has been fully surveyed, and

    d. requests that the CoL urgently ensures that KAA is issued with a title deed for the land.

When we met Mr Omuse in the course of our investigations, he explained how he fought off attempts by senior government officials to have airport land allocated to them. Mr Omuse described how powerful Cabinet Ministers and other officers with access to State House pressurised him to give 'letters of no objection' to enable them to obtain title to various parcels of land at JKIA. Though Mr Omuse declined to give such letters to these individuals, he informed us that he was aware that some individuals still managed to have parts of the airport land allocated to them (interview notes of our meeting with Mr Omuse are attached at appendix 161).

Upon Mr Omuse's retirement in 1995, Mr Peter Lagat was appointed KAA MD. It is under Mr Lagat that KAA commissioned Mr Gordon Wayumba to carry out a perimeter survey of JKIA and obtain a Deed Plan. The survey resulted in Survey Plan FR 265/27 that put the extent of JKIA land at 4,654.6Ha (a copy of the Survey Plan is attached at appendix 162). Based on this Survey Plan, Deed Plan No. 2015580 was issued for what became LR No 21919 and finally a Certificate of Title IR No 70118 was granted to KAA on 26 July 1996 (a copy of the title and Deed Plan are attached at appendix 71).

It would appear that between 1993 and 1996, JKIA land decreased by more than 400Ha (1000 acres) from 5,088Ha to 4654.6Ha. This decrease is attributable to the exclusion of:

1. Parcels of land that had been allocated to individuals and certificates of title issued between 1993 and 1996. These parcels include land in the Kyang'ombe area. We attach at appendix 163 a list of some of the beneficiaries of these new parcels. It is important to note that this list includes names of individuals who were senior government officials at the time, as alluded to by Mr Omuse in our interview. It is also possible that other initial beneficiaries did not use their own names.

2. Embakasi Village from the survey of LR No21919. This was done by Mr Wayumba in 1996 since there were competing claims over the village.

It is also important to note that the plots LR No 13512 and LR No 14231 in the Syokimau area were considered as part of JKIA land both in the 1991 plan, plan DRG No. NBI/C/018 and the 1996 Survey Plan.

According to Mr Lagat, when he took over from Mr Omuse, he did not know the extent of the airport land as it was Government land but he was aware that the airport was having encroachment issues. Thus, KAA was ordered by a Parliamentary Committee to survey the airport land and obtain title over the land. This was a

directive issued to all government bodies (see interview notes at appendix 164). Mr Lagat stated that KAA then obtained the services of a surveyor who carried out the survey. The terms of reference for the surveyor were drawn up by KAA's Engineering Department which was in charge of the exercise, in tandem with KAA's Legal Department. Mr Lagat indicated that the survey was carried out and a title issued in 1996/1997. He indicated that between this time and his departure in 1998, no further surveys were carried out on the land.

When we spoke to Mr Wayumba, he indicated that his instructions were to only include within the JKIA title, parcels that had not already been alienated to individuals (interview notes of our meeting with Mr Wayumba are attached at appendix 165).

Soon after the departure of Mr Lagat as the KAA MD in October 1998, KAA undertook a new survey of JKIA that took more than three years to complete i.e. between 1998 and 2001 and that resulted in a new Deed Plan and Certificate of Title (copies of Deed Plan 234878 and Certificate of Title IR No 91243 for LR No. 24937 signed on 16 January 2003 are attached at appendix 166). This new survey was supposedly done to remove Mombasa Road and Airport North Road from LR No 21919. It however resulted in a further reduction of JKIA land from 4,654.6 Ha to 4,459.1 Ha, a reduction of almost 200Ha (480 acres). From our investigations, we have established that this reduction resulted from plots on the periphery of the airport land that were excised and allocated to individuals. According to Mr John Tito who was the KAA Corporation Secretary at the time, the excised plots were registered in the names of various companies (interview notes of our meeting with Mr Tito are attached at appendix 83). When we spoke to Ms Janet Ongera, she indicated that this survey and issuance of new title was instigated by the then CoL Mr Gacanja and his successor Hon Mwaita (see interview notes of our meeting with Ms Ongera at appendix 167). This was also confirmed by KAA who also gave us a copy of the letter written by Mr Gacanja to KAA in 1999 requesting for the re-survey of the land for purposes of excising the roads (see interview notes of our third meeting at KAA at appendix 78 and a copy of the letter from Mr Gacanja at appendix 168 respectively).

According to Mr Tito, after a change of guard at KAA in 2003, the new management of KAA protested the loss of land in the 2003 title. KAA therefore wrote to the CoL to have the 2003 Certificate of Title withdrawn and have the 1996 boundaries reinstated. At this point, the CoL is said to have noticed that the surrender of the Certificate of Title No. 70118 had not been registered and the title had not been cancelled. As we note in section 3, all transactions relating to a Certificate of Title need to be registered by the Chief Registrar of titles for them to be valid. The CoL therefore concluded that Certificate of Title IR No 91243 was irregularly issued and thus cancelled it in 2008 (interview notes of our meeting with the CoL Mr Mabea are attached at appendix 169).

We additionally observed that Certificate of Title IR No 91243 appears to have been registered before it was signed by the CoL. Going by the registration entry by E. N. Gicheha, the title was registered on 18 January 2002. The Central Registry stamp on page one of the Certificate of Title also bears the same stamp. Hon Sammy Mwaita who was then the CoL appears to have signed the certificate on 16 January 2003. This is the same date captured in the KRA stamp on page one of the Certificate of Title. Since a Grant of land must be signed by CoL before registration, it was irregular to have this Certificate of Title registered before the CoL's signature had been appended.

Although the excisions from LR No 21919 in 1998-2003 do not directly affect the parcels affected by the 2011 demolitions, the confusion brought about by the two competing certificates of title has been used to question KAA's claim over the Syokimau parcels. This is because KAA initially (2004) took Mulolongo Brothers and Uungani to Court for encroaching into parcel LR No 249327. KAA then filed a successful application in 2004 seeking to amend their statement of claim to have LR No 24937 substituted with LR No 21919 (a copy of the application is attached at appendix 170).

According to a statement delivered to us by the Uungani lawyer Mr Obura (a copy is attached at appendix 171):

- KAA currently holds two titles over JKIA;

- the title over LR No 21919 was surrendered to "*legitimise the grabbing of KAA land*", and
- that "*residents of Uungani have been dealt with unconstitutionally by being arbitrarily deprived of their property, discriminated and dealt with in a different manner from these grabbers and their beneficiaries*".

In view of the fact the surrender of LR No 21919 was never registered or title cancelled, the anomalies noted on the title LR No 24937, and the apparent fraud resulting in shrinkage of KAA's land, these claims by Uungani and Mulolongo Brothers over JKIA land have no basis. However, the role of MoL and especially Mr Gacanja & Hon Mwaita and other MoL officers in the shrinkage of the land and failure to secure JKIA land need to be investigated further as:

1. they appear to have given the impression that JKIA land was open for grabbing;
2. these irregular excisions might be used to weaken KAA's claim over the land and in particular may have led to the delay in the determination of the cases that KAA has filed against Mulolongo Brothers and Uungani, and
3. the excisions have resulted in JKIA losing a significant extent of its land and therefore control over developments in the Kyang'ombe area.

6.3.2.2. Wilson Airport

Ownership

As we note in section 4, Wilson Airport lies on parcel LR No 209/13080 measuring 163.67 Ha and is delineated on Survey Plan No FR 265/126. The LR No 209/13080 was created after a survey that was conducted by Mr Gordon Wayumba in 1996 and a new Certificate of Title was issued to KAA on 18 September 1996.

We did not find sufficient information to explain how the Wilson Airport land increased from approximately 120 Ha declared by the then Minister as aerodrome land for Wilson Airport in 1953 to the 163.67 Ha in 1996. Mr John Tito who is a former KAA Corporation Secretary did however state that just as with JKIA, the Government allocated Wilson Airport more land between 1953 and 1990. Again, as with JKIA, there were allocations of parcels of airport land to individuals especially in 1995 and 1996. This was around the time that KAA obtained its title over Wilson Airport i.e. 1996 (interview notes of our meeting with Mr Tito are attached at appendix 83). This claim was supported by Ms Ongera (former KAA Corporation Secretary) who stated that some hangars built by the Department of Aerodromes at Wilson were allocated to individuals before 1996. These individuals now hold title over the land on which these hangars are built or may have subsequently sold the plots. Ms Ongera indicated that over the years KAA has faced challenges in dealing with these individuals since they own land within Wilson but are not under the control of KAA (see interview notes of our meeting with Ms Ongera at appendix 167).

In addition, we also obtained information to suggest that the Wilson Airport land has been irregularly excised since 1996. For instance, surveys of land within LR No 209/13080 have resulted in the creation of multiple plots within Wilson Airport land. These include the survey set out in Survey Plan FR 290/126 that appears to have created parcels 209/12908 and 209/12921 that form part of the land occupied by the demolished Mitumba Village. This survey was however cancelled following a request by the CoL in 1996.

There are however other surveys such as FR 372/189 and FR 408/174 that have created parcels LR Nos 209/14758, 9308-9310 that were carried out after the cancellation of survey FR 290/126. These surveys have created new parcels within the portion of land occupied by the Mitumba Village. We did not see any evidence of these surveys having been cancelled.

We found that computation files and Survey Plans relating to three of the major surveys that relate to Wilson Airport land were missing. These are:

1. FR 209/13080 done by Mr Wayumba in 1996 that created LR No 209/13080,
2. a re-survey carried out by Surveyor Ndede in 2001, and
3. FR 290/126 that created LR Nos 209/12908 & 12921.

There are other surveys that do not touch on the parcel occupied by the Mitumba Village but which also appear to have been carried out within LR No 209/13080. At appendix 172 we attach a copy of the Survey Plan FR 305/39 of 2001 that shows new plots with new LR Nos within LR No 209/13080.

Though surveys do not confer title over land, from our investigations, we have established that they are and have been used as the first step in irregular alienation, or "grabbing", of land. Further work therefore needs to be carried out to establish whether these surveys have resulted in titles over parcels that were initially within LR No 209/13080 and if necessary, these surveys and titles should be cancelled. We comment on possible culpability of individuals below.

Settlement

As we note in section 4, we are advised that the inhabitants of Mitumba Village were relocated to the current site by the former PC, Mr David Waiganjo in 1992 from Belle Vue area in South C. The PC is said to have involved the Provincial Administration assisted by KWS officials in this relocation (see interview notes of our meeting with Mitumba officials attached at appendix 173).

We note that the residents of Kyambiu and Kitui Villages in Eastleigh have also claimed to have been moved there by the Provincial Administration. According to the GLA the Provincial Administration does not have the powers to unilaterally settle individuals on Government land. When we spoke to Hon Mwaita who is a former CoL, he explained that the Provincial Administration in conjunction with the Local Authority can recommend that the CoL allocates Government land to squatters (interview notes of our meeting with Mr Mwaita are attached at appendix 119).

We did not see any evidence that the late Mr Waiganjo or CCN:

1. checked if the land was available for allocation before settling the squatters, and
2. initiated the process of alienating the land and having it legally allocated to the squatters.

Conclusions on roles played by individuals and culpability

Department of Survey

The Director of Surveys should be required to explain the disappearance of crucial computation files and Deed Plans relating to the Wilson Airport land. If these files are found, then the concerned officers at the Department of Surveys need to be questioned to understand the role they played in the various surveys and process breaches in relation to Wilson Airport.

Provincial Administration

It would appear that the late Mr Waiganjo overstepped his powers in settling squatters in the Mitumba parcel. There are claims that Mr Waiganjo owned the Belle Vue plot in South C from which the Mitumba inhabitants were removed. His actions may therefore be considered as an abuse of office.

Politicians

From our investigations, we observed that some politicians have played a role in encouraging people to squat on public land and to influence public officials to abuse set down procedures. As a general observation, we comment that politicians should be encouraged not to mislead members of the public on sensitive matters like land or interfere with institutions established and mandated by law to handle such matters.

6.3.2.3. Eastleigh

Extent of MAB land

Unlike JKIA and Wilson Airport, our focus in Eastleigh was not ownership of land but rather the developments around MAB. We however noted during the course of the investigations that some of the contentious developments were within what we established should be MAB land.

As we note in section 4, there is a Survey Plan (FR 47/116) dated 12 April 1940 that gives the size of MAB (LR No 36/3) as 1,035 acres. In 1972 several parcels of land were acquired for MAB and surveyed vide FR 124/27 to form LR No 209/7995. The acquired parcels encompass the approach across First Avenue Eastleigh.

We noted that in the 33 year period from 1965 to 1998, there have been various surveys that seem to have excised MAB land including:

- 1965-1966 – Part of LR No 36/3 was excised vide FR 105/61 and 108/102 for LR Nos 36/1/915-7 for a primary school.
- 1975-1985 – several parcels abutting the western side of MAB as delineated on FR 47/116 were surveyed with some of these altering or encroaching on the MAB land.
- 1996-1998 – more plots were alienated and surveyed within the southern side of the 1940 land parcel i.e. in the Kyambiu area.

Details of some of these surveys are in the report attached at appendix 174.

According to Col. Badi (the MAB Commander), some of the alienated parcels of land, and especially in 1998, were given out by the Ministry of Water which at the time was housed within MAB. The land was allocated to two developers who went on to obtain LoAs from the MoL. The DoD protested to the CoL who promptly cancelled the allotments in 1998 while the matter was investigated (a copy of the brief prepared by MAB Ref: MAB/A/41 is attached at appendix 82).

Col Badi advised us that on 14 March 2000, a meeting between officers from the Cabinet office, the PC's office, DoD, KAF, Lands, Ministry of Environment and Natural Resources and Ministry of Roads and Public Works was held at the MoL Boardroom. The meeting discussed various parcels within MAB land that were in dispute and it was resolved that the land belonged to DoD. During this meeting, MoL noted that part of MAB land along the Nairobi River was not fenced and thus gave the impression that the land was not required. MoL further noted that part of the land was by then occupied by squatters while other parts had been re-planned and allocated to private developers. DoD on their part insisted that all the land was required for development purposes. It was resolved that the Nairobi PC and CCN relocate the squatters on MAB land and that the CoL was to cancel all the allocations to private developers. MAB was also to receive a Certificate of Title for MAB and the CoL was to stop any further allocations within MAB land (a copy of the 14 March 2000 minutes is attached at appendix 106).

The allocations do not however appear to have stopped as evidenced by a Certificate of Title issued on 8 November 2001 that appears to encroach onto MAB land (a copy of the Certificate of Title issued to James

Orina Nyakundi is attached at appendix 175). When we spoke to Hon Mwaita who as CoL signed the 2001 title, he observed that the recommendations of the 14 March 2000 meeting may not have been circulated to him (interview notes of our meeting with Mr Mwaita are attached at appendix 119).

On 16 Jan 2002, the PS Defence as Trustee of DoD was granted a LoA for the un-surveyed land of MAB measuring approximately 480.5 hectares. The land was subsequently surveyed in 2004. The survey, FR 329/5, combined the main airport land and the Moi Forces Academy land and indicated the area reserved as 482.9 Ha (1,193 acres). The survey was based on approved PDP No. 260 dated 19 September 2002 (copies of the LoA, PDP No. 260 and Survey Plan FR 329/5 are attached at appendices 74, 177 and 178 respectively).

The 2004 survey however excluded plots that had been encroached, especially in the Kyambiu area as well as parcels that had been allocated to private developers. In our meeting with MAB officers on 16 May 2012, the officers noted that they were against these exclusions, and as such MAB refused to obtain a title based on this 2004 survey. The officers further noted that Kyambiu in particular was located in close proximity to the bomb dump i.e. stores of high explosives (interview notes of our meeting with MAB officers are attached at appendix 79).

When we spoke to the current CoL Mr Mabea, he noted that some of the parcels both in Kyambiu and elsewhere within MAB had been allocated to senior Military officers. If this is proven to be the case, it could partly explain why the Military did not stop the encroachment into their land (interview notes of our meeting with Mr Mabea are attached at appendix 169). This view is collaborated by our discussion with MAB officers who explained that some former MAB commanders had been transferred when they opposed developments on plots that had encroached into the MAB land (interview notes of our meeting with MAB officers are attached at appendix 79).

We conclude on roles played and culpability in the "Conclusions" subheading below.

Encroachment into the buffer zone

In the 1970s, there existed a road that ran around the entire MAB land and acted as a buffer between MAB and surrounding settlements. This road has been encroached into and allocated to individuals as plots. The allocations are by both CCN and the CoL and the allotees have since developed the plots.

MAB provided us with a 1973 photograph that shows a road going around the entire MAB site (a copy of the photo is attached at appendix 75). During our meeting, some members could recall that in the 1980s, buses from the Kenya Bus Services would use this road.

The current map of the area however shows that the road has been encroached into at various points. The encroachment is both by informal settlements (e.g. Kitui informal settlement) and by plots that have been allocated by either the CoL or by CCN. Current maps show these encroachments, we also at appendix 94 attach aerial photos that show the encroachments. As we note in section 5, the houses that were demolished in Eastleigh all fall within developments that have encroached the buffer zone.

In addition to affecting the operations of MAB, these encroachments have deprived residents of Eastleigh of a road. Section 58 of the Kenya Roads Act (Act No. 2 of 2007), incriminates any occupation, obstruction or interference of public roads. A person who commits such an offence is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred thousand shillings.

We conclude on roles played and culpability in the "Conclusions" subheading below.

Building plans approval

We found that CCN has not been presenting building plans for developments near the aerodrome to MAB for MAB's comments as interested stakeholders prior to CCN granting development permission. This is despite the

Physical Planning Act providing for consultation of the relevant stakeholders before the granting of development permission by Local Authorities.

According to MAB officers, the KAF raised concerns on the proliferation of high-rise buildings in the vicinity of MAB in the 1990s. After these complaints, a few development plans were referred to KAF for scrutiny for compliance with obstacle limitation parameters. Some plans were approved while others were rejected depending on whether they met the required parameters. The forwarding of plans was however short-lived and in the late 1990s, irregular developments started mushrooming all around MAB without KAF input (this information is contained in the brief prepared by MAB Ref: MAB/A/41 and attached at appendix 82). According to MAB, the last plan to have been referred to them was in 1997, we attach a copy of this plan at appendix 179.

Mr Justus Kathenge the Deputy Director of City Planning at CCN confirmed this to be the case but indicated that CCN had recently resumed the practice of circulating building plans to KAF. According to Mr Kathenge, CCN knows the area around MAB where CCN cannot approve buildings beyond four levels. CCN has therefore been relying on this knowledge to give or deny approvals (interview notes of our meeting with Mr Kathenge are attached at appendix 93).

During our meeting at MAB, the KAF officers informed us that they would not have given approvals for any high rise (above two levels) buildings that are near the runway. According to the brief from MAB, chapter 4 of Annex 14 of the Chicago Convention of ICAO sets the basis from which KAF determines the maximum safe height of objects in the environs of its airfields. These regulations establish the height to which objects may project into the airspace in the following areas:

- Approach surface
- Transitional Surface
- Inner horizontal surface
- Conical surface
- Outer horizontal surface

From these defined limits MAB has calculated heights above which permanent objects should not project with reference to their distance from runway as shown at appendix 180. It is important to note that Kenya has ratified the Chicago Convention and domesticated it through the CA Act.

Buildings with no approvals

According to CCN, the majority of the buildings that have exceeded the height limit set by MAB have no approvals from CCN or were erected in violation of the approved development permission.

According to Mr Kathenge, CCN has serious capacity issues that affect its role in monitoring and enforcing building laws and by-laws. These capacity challenges are especially as a result of a shortage of technical officers to carry out inspections. CCN has further challenges when it comes to demolition of illegal structures, for example, it has only one functional bulldozer which cannot demolish building with more than two levels (interview notes of our meeting with Mr Kathenge are attached at appendix 93).

Due to these capacity issues as well as delays in obtaining approvals, some developers in Eastleigh (and indeed the whole of Nairobi) have gone ahead and developed buildings without approvals. We have in section 5 analysed some of the buildings that were unapproved.

Conclusions on roles played by individuals and culpability

Department of Defence – taskforce set up in 2002

We note that the Military has (and has always had) the capacity to keep squatters away from their land. The fact that squatters were allowed to encroach onto MAB land, especially in the Kyambiu area is therefore an indictment of complicity of past MAB commanders and others within DoD. If it is proven that some former (and maybe current) top Military officers either currently own (or previously owned land that they sold) in the Kyambiu area, this would indicate that these officers have been culpable in both alienating protected land and in allowing illegal encroachment by others.

The Military should investigate this apparent illegal encroachment further with a view of taking appropriate action. In particular, the role of a task force that was reportedly set up sometime in 2002 to secure all Military land should be investigated. We requested for more information regarding this task force from the PS Defence Ministry but we did not obtain this information as at the date of this Report.

Ministry of Lands

The Departments of Physical Planning, Lands and Surveys within MoL should have known the extent of MAB land at all times since 1940. These officers should further have known of the presence of a road or buffer zone running around MAB. Their involvement in alienating both MAB land and the surrounding buffer zone suggests the relevant officers were negligent in performance of their duties and shows disregard of the applicable laws and regulations.

We were unable to determine the specific individuals that were involved in these alienations as we did not receive relevant files in time. The Auditor General and MoL should investigate the alienations further and appropriate action taken against any officers found to be culpable.

City Council of Nairobi

As with the MoL, CCN officers involved in allocating MAB land and the surrounding road or buffer zone to private developers, as well as in approving building plans around MAB without requisite consultations, should be investigated further and appropriate action taken against any officers found to be culpable.

Individual developers

As we note, there are individuals who have constructed buildings without approval or have gone against the approved plans. According to the Physical Planning Act, any such development is illegal and should urgently be brought down at the owner's cost upon CCN serving the developer with an enforcement notice. Depending on the severity of the breach and attendant risks, CCN may also consider regularizing some of the developments in consultation with MAB.

6.3.3. Evictions and demolitions

We have covered the laws and processes governing evictions and demolitions in section 3 above, while in section 5 we have covered how the evictions and demolitions were undertaken. In this section we assess the roles played by various individuals and institutions and comment on whether there are any issues arising as regards any culpability relating to the institutions and individuals involved.

6.3.3.1. Cabinet

As discussed in section 5 above, discussions with various individuals e.g. KAA officials, MAB officers, CCN officers indicated that the evictions and demolitions exercise was authorised by the Cabinet. Whilst we were unable to confirm with the Secretary to the Cabinet that the Cabinet was involved and issued a formal written Cabinet Directive, it is our view that it would be unusual for an operation of this magnitude to be undertaken without the knowledge and approval of the Cabinet. We also note under the prevailing circumstances at the time i.e. war in Somalia, complaints by airline operators etc, Cabinet was within its legal mandate to approve such an exercise. Indeed, the Cabinet has powers to approve such operations for security or safety reasons.

6.3.3.2. Provincial Security and Intelligence Committee

The PSIC, chaired by the PC Nairobi Area, coordinated the evictions and demolitions exercise and provided security. The PSIC is made up of representatives from the PC's office, the provincial police, the intelligence services and the Military. KAA and CCN were called to offer technical input. According to the Nairobi PC, it is the PSIC that responded to the Cabinet Directive and resolved that the evictions and demolitions should happen (interview notes of our meeting with the PC, Mr Njoroge Ndirangu are attached at appendix 81). In our view, the PSIC had authority to carry out the exercise, especially considering that there appears to have been authority from Cabinet.

6.3.3.3. KAA

KAA's involvement was limited to pointing out the extent of their land i.e. in Syokimau area and Mitumba Village. According to the KAA Company Secretary Ms Joy Nyaga, the actual demolition was undertaken by the PSIC.

KAA would ordinarily have required a Court Order to carry out evictions and demolitions under the KAA Act. KAA did not obtain such orders since KAA was not responsible for the demolitions (interview notes of our meeting with KAA are attached at appendix 78). Additionally there were Court Orders issued against KAA blocking KAA from interfering with the land claimed by Mulolongo Brothers and Uungani. However, KAA contends that it did not carry out the exercise.

6.3.3.4. CCN

CCN admit to have carried out demolitions in Eastleigh, Kyang'ombe, KPA and Maasai Villages. CCN has been accused of having carried out the demolitions without issuing notices. Firstly, as we note in section 5 above, we have established that the demolitions were carried out under the supervision of the PSIC and not by CCN alone. Secondly, we have had sight of various notices issued by CCN relating to the various areas affected by the exercise, some dating back many years e.g. to 1997. Some of the residents of these areas have claimed that they did not receive these notices. However, in our view this assertion does not appear to be credible. Indeed, some of the residents admit to having seen the notices but ignored them in the hope that no action would be taken. We have also shown that all the demolished buildings did not have the requisite approvals from CCN or went against the approval given. It is our view therefore that CCN acted within the confines of the Physical Planning Act.

6.3.3.5. Conclusions on culpability

Based on the evidence as discussed in section 5 above and the roles played by various Government and public sector bodies, it is clear that the demolition exercise was carried out in very difficult circumstances and many individuals were affected. However, because:

- there is evidence to suggest that residents in the affected areas had been adequately forewarned with public notices (some reportedly extending many years), and
- of the prevailing (and well documented) concerns around aviation security and safety by KAA, airline operators and other interested stakeholders, and
- of the ongoing war in Somalia;

It is our view that the Government acted within the law in the process of carrying out the evictions and demolitions, particularly in view of the fact that the overriding reason for the demolitions was public security. However, it is our assessment that there are lessons to be learnt on how to conduct such exercises in future and we have made some recommendations to this effect in section 8 of the report.

7. Possible claims by affected individuals and Government

7.1. Introduction

In this section, we examine and assess the options for *"restitution, other humanitarian assistance or ex-gratia payments"* in accordance with the terms of reference and based on our findings as per the previous sections.

We discuss in detail the principle of restitution and whether its application is relevant following the evictions and demolitions which affected various individuals in the three airport locations we reviewed. We also consider the case for "humanitarian assistance" which we have addressed in the context of possible claims arising from possible breaches of human rights.

Accordingly, we assess separately the three possible solutions, two of which are based in law i.e. restitution and human rights, and finally we assess ex-gratia payments argument and options.

We consider first the possible claims of affected persons, and then we look at the possible claims by Government and/or its agencies.

7.2. Assessment of possible claims by affected persons

7.2.1. Restitution options

Obligations to make restitution and obligations to pay compensation are each a type of legal response to events, which may:

- be contractual;
- relate to breach of legal or fiduciary duty; or
- relate to other causative events such as unjust enrichment and the vindication of property rights which an adverse party has interfered with.

The law of restitution is the law of gains-based recovery. It is to be contrasted with the law of compensation, which is the law of loss-based recovery. When a Court orders restitution, it orders the defendant to give up his gains to the claimant and when a Court orders compensation it orders the defendant to compensate the claimant for his or her loss. In ordinary circumstances, restitution is based on the law of contract. The effect of restitution as a remedy is that it restores the benefit conferred to the innocent party. The term restitution describes the act of restoration. The basic purpose of restitution is to achieve fairness. Restitution is used in contractual situations where one party has conferred a benefit on another party but cannot collect payment or other agreed consideration because the contract is defective or no contract exists. There are two general limits to recovery, i.e. (i) that a breach of contract has occurred; and (ii) that the damages will be capped at the contract price or other consideration if the restitution damages exceed it.

According to Black's Law Dictionary, restitution is defined as the *"Act of restoring; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury and indemnification"* (4th edition; pg 1477, 1968).

In the case of unjust enrichment as a basis for restitution, we shall consider whether there are individuals or Government agencies or departments who could have been unjustly enriched at the expense of affected persons and which, therefore are, legally responsible to make restitution regardless of liability or wrongdoing.

An exercise to work out the restitution costs due to the affected persons would involve analysing the nature of the transactions that were undertaken between various parties. Of relevance to our assessment are the following four types of costs:-

i. Costs incurred by a person in purchasing land in the affected areas i.e. the purchase price paid to:-
   - group officials of Mulolongo Brothers, Uungani, Jumbo et al by original allottees, (in the case of land at the Syokimau area) as well as the persons who paid other groups in the Kyang'ombe, KPA and Maasai areas as original allottees; and/or
   - original or subsequent purported property owner in the affected areas by the current affected person.

ii. Costs incurred by a person to make various irregular payments to the Mavoko Council including:- plot transfer fees; debt clearance certificates; plot registration fees; occupational certificate fees; amalgamation fees; application for building plan approval fees; plot rent and plot subdivision fees.

iii. Costs incurred by a person or group for purported LoAs and received by MoL.

iv. Costs incurred by an affected person in erection of a building in the affected areas.

7.2.2. Assessment of restitution claims by persons in the affected areas

We have examined possible restitution claims in two main categories:

a) Claims by persons in the formal settlements in the affected parcels of land i.e.:- Syokimau and Eastleigh Section III and Biafra areas;
b) Claims by persons in the informal settlements i.e. the villages in:- Mitumba; Kyang'ombe; Maasai and Kitui areas.

7.2.2.1. Restitution claims in the formal settlements

a) Syokimau

i. Costs incurred by persons in purchasing property in the affected area;

In the area known as Syokimau, which was affected by the evictions and demolitions in November 2011, we noted that various persons paid purchase considerations for plots in the affected areas to the group officials or to the original or subsequent allottees.

As discussed in section 4 of this Report, the land in question is owned and registered in the name of KAA. Therefore, the five self help groups and companies that claim ownership of the land i.e. Mulolongo Brothers, Uungani, Foster, Jumbo and Ungani Enterprises had no legal basis of dealing in the land which belonged to KAA. Any purported land transactions or dealings by the five groups or any other person without the consent of KAA were therefore invalid, unlawful and void *ab initio*.

The group officials made misrepresentations to the public that they owned the affected land. The officials issued the affected persons with plot share certificates upon receipt of the purchase consideration from the purported original allottees or subsequent purchasers. The plot share certificates originated from the groups and are neither official nor legal documents of title for land. The affected persons also paid other fees including plot

acquisition fees, membership fees and transfer fees to the group officials. These fees were all illegal and irregular considering that these groups had no valid title to the land. The land belonged to KAA and accordingly, the affected persons could not have received any valid consideration from the group officials for the payments made.

It is evident that there was a contractual basis upon which such purchase price payments and other fees were paid by the affected persons. Having found that the land in question belonged to KAA and not to the groups that were "selling" to affected members of the public, there was no valid consideration for the contracts relating to the affected parcels of land.

In light of our findings, we recommend that as a restitution option, the affected persons should seek refunds for their purchase consideration and other fees paid from the persons to whom they made payments. As we note in section 8, the officials of the five groups made circa KShs 132m from the sale of plots.

ii. Costs incurred by individuals to pay for various transactions at the Mavoko Council

Based on our findings as outlined in section 4 and section 6, all payments collected by Mavoko Council from the affected persons were illegal and irregular for which Mavoko Council issued official receipts. We estimate that Mavoko Council collected circa KShs 55 m. Mavoko Council collected these monies from members of Mulolongo Brothers and Foster including: plot transfer fees; debt clearance certificates; plot registration fees; occupational certificate fees; amalgamation fees; application for approval fees; plot rent; rates and plot subdivision fees.

In our view Mavoko Council is liable for restitution on the basis of unjust enrichment. Mavoko Council has received funds illegally and irregularly from the affected persons. All such payments received by Mavoko Council should be refunded to the affected persons.

From our investigations, we noted that Mavoko Council operates a computerized revenue collection system. It is, therefore, possible to ascertain payments received from the affected persons.

iii. Costs incurred by individuals or groups for purported LoAs and received by MoL.

Uungani claim to have paid KShs 3,167,377 to MoL as indicated on the LoAs in their possession for which Uungani was issued official receipts. MoL confirmed that the receipt originated from them and that MoL had therefore received the monies. In our investigation, we have found that despite the LoA being forged, MoL accepted the payment.

In the course of our investigation, we also came across an LoA purportedly in the favour of Foster with a number (Ref. No: 39711/XXVI) which has the same reference number as the one issued to Uungani, for which they purportedly paid KShs 300,000 as ground rent. There is no evidence that MoL issued a receipt for this payment although the correspondence file at Lands indicates that Foster submitted proof of payment of this amount in the form of a bank deposit slip. Foster allegedly made the rent payment to the Kenya Revenue Authority account at National Bank of Kenya Limited.

Jumbo also produced a copy of an LoA which indicated that the total amount payable to MoL in respect of the purported allotment was some KShs 1,587,660. Jumbo alleges to have paid KShs 202,610 vide cheque No. 015548 and were issued with a receipt Number 011271, file No. 227363. This file could not be traced at MoL.

In view of the foregoing, we recommend that on restitution basis, MoL should refund Uungani, Foster and Jumbo the funds it received on the account of the said LoAs as a remedy for unjust enrichment. The funds should however not be paid out to the officials of the abovementioned groups but should form part of the assets

to be frozen by the Ethics and Anti Corruption Commission in liaison with the CID and reserved for purposes of compensating the affected persons.

iv. Costs incurred by various persons in erecting buildings in the affected areas.

From our investigations, various persons constructed buildings in the Syokimau area which were demolished in November 2011. As advised in section 3 of our Report, persons who constructed houses in this area were unable to demonstrate or prove any proprietary interest in the land. The land is owned by KAA. We also established that Mavoko Council had irregularly approved some of the building plans for the demolished buildings in the affected areas on the basis of a forged mother title submitted to it by Mulolongo Brothers. The affected persons are members of Mulolongo Brothers who hold plot share certificates issued by Mulolongo Brothers.

The affected persons are also parties to litigation proceedings between KAA and Mulolongo Brothers in their capacity as members of Mulolongo Brothers. As we have also explained in section 6 of our Report, the building plans for the houses in Syokimau were either:

- not approved by the relevant authorities, including the CCN, Mavoko Council and KAA; or
- were approved irregularly.

Further, the affected persons had constructed houses on land that did not legally belong to them and they were aware (or ought to have been aware) of the ongoing ownership dispute with KAA. These buildings were constructed in violation of terms of prevailing Court Orders barring any developments on the affected land pending final determination of the suits. In addition, as stated in section 5, there were several notices published by KAA notifying the affected persons not to construct on the affected land which were ignored. These served to give sufficient notice and time to allow the affected persons to vacate the affected areas, and remove their belongings and structures thereon. In our view, by going ahead to construct on land for which they did not have any valid ownership documentation and in violation of the terms of the existing Court Orders affected persons were either:

- ignorant;
- negligent;
- reckless, or
- a combination thereof.

Under the prevailing circumstances, and noting that the Government was not a party to the transactions involving the groups and the affected individuals over the affected parcels of land, it would be difficult to establish a case for restitution against the Government.

Legal mechanism for enforcing claims for restitution

In the absence of an amicable settlement between the affected individuals, any person with a claim on restitution is afforded rights under the Current Constitution to commence legal proceedings in a competent Court of law for redress of their claims.

b. Eastleigh Section III and Biafra areas

As stated in section 5 of this Report, the DoD indicated that the demolitions in Eastleigh Section III and Biafra areas were undertaken because the buildings did not adhere to the zoning regulations including ICAO regulations for developments surrounding an aerodrome, more so, a Military installation. From our investigations, we also established that all of the seven buildings in the affected areas had violated the approved building plans.

We established in the course of our work that land ownership was not in dispute in this area. All houses which were demolished were either constructed on undisputed private land or in what was meant to be a buffer zone between MAB and civilian dwellings. In total, only seven buildings (belonging to six landlords) were demolished in the area. Several other buildings had been marked for demolition but the process was halted when the issue was raised in Parliament and the Joint Parliamentary Committee was formed to investigate the matter.

In our view, and noting that the affected persons had violated the terms of the approved building plans and zoning regulations in the affected areas, and failure by the affected persons to comply with enforcement notices issued by CCN, it would be difficult to establish a case for restitution against the Government.

c. Restitution in the informal settlements

In this subsection we discuss whether a claim for restitution in the informal settlements can arise based in law. The areas we discuss herein are Mitumba Village, Kyang'ombe, Maasai, Kyambiu Villages and Kitui Village in Eastleigh. As stated in section 4 of this Report, the affected occupants had no title to the affected land, and had erected structures on the affected land without approvals from CCN. The demolished structures and human settlements on the affected land posed a risk to aviation security and safety for the aerodromes next to these informal settlements. Adequate notices to vacate had also been issued to the occupants of the affected areas for their own safety. These notices were not complied with.

Accordingly, it is our considered view that under the prevailing circumstances, it would be difficult to establish a case for restitution against the Government.

7.2.3. Compensation options in relation to possible violations of human rights

Human rights are rights inherent to all human beings and are applicable to all human beings without discrimination. These rights are all interrelated, interdependent, indivisible and inalienable. They should not be taken away, except in specific situations and in accordance with due process of the law. As we have explained in section 3 of this Report, the rights that may have been threatened by the evictions and demolitions exercise are provided for under the Current Constitution.

In this section, we will examine whether the evictions and demolitions exercise violated the human rights of the affected individuals and if there are any available remedies for violations provided for in law.

In our assessment, we examine the possibility of human rights violations with respect to the following rights:-

a) Right to protection of property
b) Right to human dignity
c) Right to freedom and security of the person (right not to be treated in an inhuman or degrading manner)
d) Economic and social rights (the rights to accessible and adequate housing and social security)
e) Right to access to information.

7.2.3.1. Right to protection of property

Article 40 of the Current Constitution provides for the protection of the right to property provided that the same is lawfully acquired.[20] However, this right is not absolute and is subject to some limitations. As previously discussed in this Report, the Constitution provides that the State may regulate the use of any land or interest in, or right over any land, in the interest of defense, public safety, public order, public morality, public health, or land use[21] This is commonly referred to as "police power" in land use parlance.

The right to protection of property presupposes that the person to whom the right is entitled legally owns and/or legally acquired the property. This protection only arises where the property was lawfully acquired.

i. The Syokimau area

As stated in section 4, the affected parcel of land in Syokimau is owned by KAA. The affected persons did not meet the lawful acquisition threshold. The affected persons did not hold any valid legal documents in support of their claim to ownership of the land. The plot ownership certificates presented by the affected individuals are not supported in law and did not confer any proprietary interest to their holders. KAA as the registered owner of the said land is entitled to legal and constitutional protection over its property against the affected persons. Accordingly, the case by the affected persons for violation of their right to protection of property cannot arise if they had no ownership rights *ab initio*.

Article 40 (4) of the Current Constitution also provides that provision may be made for compensation to be paid to occupants in good faith of land acquired. This provision for payment in good faith is only applicable where the Government affects occupants in land that is compulsorily acquired under the Land Act, and previously, the Land Acquisition Act. The evictions and demolitions that were carried out were not pursuant to a compulsory acquisition by Government and so a compensation situation does not arise.

ii. Eastleigh Section III and Biafra areas

Article 66 of the Current Constitution provides that the state may regulate the use of any land or any interest in, or right over any land, in the interest of defence, public safety, public order, public health or land use planning. The state does this through its various departments and agencies. Of more relevance to our investigation in Eastleigh Section III and Biafra is CCN and the Ministry of State for Defence.

The Physical Planning Act mandates Local Authorities like CCN to control and regulate developments in the areas of their jurisdiction. CCN implements the regulations through providing approvals and ensuring that developments are in line with the approved plans and zoning regulations.

Further, MAB, being a Military installation is a protected area under the Protected Areas Act, and any surrounding developments must be approved by the Ministry of State for Defence.

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[20] Article 40 (3) of the Current Constitution provides that the State shall not deprive a person of property of any description, or any interest in, or right over, property of any description, unless the deprivation:-
results from an acquisition of land or an interest in land or conversation of an interest in land, or title to land, in accordance with Chapter Five is for a public purpose or in the public interest and is carried out in accordance with the Constitution and any Act of parliament which requires the prompt payment in full, of just compensation to the person and allows the affected person access to a Court of law. It further states that provision may be made for compensation to be paid to occupants in good faith of land acquired.

The rights envisaged under Article 40 do not however extend to property that has been found to have been unlawfully acquired.

[21] Article 66 of the Current Constitution.

In our investigations we have noted that the developments that were demolished in Eastleigh Section III and Biafra areas were in violation of zoning regulations and building approvals. In our assessment, these violations in turn caused a threat to aviation safety and security.

In our view, the Government has an obligation to enforce its regulations for good order in society and for the safety and security of its citizens. An enforcement of Government regulations is in our view, not a violation of the right to protection of property. We established that CCN served adequate enforcement notices to the affected persons. For citizens to enjoy the protection of the right to property, their enjoyment and use of their property should be within the confines of the law.

As pointed out in Section 5, the affected persons were also afforded an opportunity to remove their movable property. In light of the foregoing and noting that the affected persons violated various provisions of the law, it is our assessment that no constitutional legal protection for property can be afforded to the affected persons.

iii. The informal settlements

Here, we discuss whether a claim for violation of the right to protection of property in the informal settlements can arise under the Current Constitution. The affected areas we have discussed under this subsection are Mitumba, Kyang'ombe, Maasai, Kyambiu and Kitui Villages.

The affected persons in the informal settlements were squatters on either private land, KAA land or MAB land. The developments in these informal settlements had been erected in violation of the provisions of the Physical Planning Act. The residents had also unlawfully squatted or occupied and developed structures on private land. By so doing, they had deprived the lawful owners of the land of the use and enjoyment of their property. Moreover, the residents were exposing themselves and their property to great danger in the event of an aircraft accident. The occupation and development of such structures in these informal settlements were also a risk to aviation safety and security, more so in light of the ongoing war in Somalia.

As stated in section 5, in the course of our investigations we established that the evictions and demolitions in these areas were necessitated by the concern for aviation safety and security as well as the safety of the occupants of the affected areas. As stated in section 5 of this Report, the occupation of such areas poses a great risk to life and property of occupants in such areas. The Government was, therefore, under an obligation to protect the lives and safety of the people in the settlements as a risk mitigation measure in the event of an air crash during takeoff or landing. We also established that the Government issued several notices of its intention to evict the occupants and demolish the structures within these settlements.

Therefore, it is our view that the violation of the right to protection of property did not arise since the occupants of these settlements did not own the land from which they were evicted. Accordingly, any consideration of compensation based on this right does not arise in law.

7.2.3.2. Right to human dignity and freedom of security of the person

"Human dignity" is a general term used in moral, ethical and political discussions to signify that a human being has an innate right to respectful and ethical treatment. Article 28 of the Constitution provides that every person has the inherent dignity and the right to have that dignity respected and protected. Article 29 also provides that every person has the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman and degrading manner.

Pursuant to Article 19(2) of the Constitution, the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice

and the realization of the potential of all human beings. Human rights are only subject to limitations contemplated in the Constitution. Section 24(1) of the Constitution provides that a right or fundamental freedom.... *"Shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including; ... (b) the importance of the purpose of the limitation ... and (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others".*

In this section, we shall examine whether the persons affected by the evictions and demolitions exercise in Syokimau, Eastleigh Section III and Biafra areas and in the informal settlements were subjected to inhumane and undignified treatment.

i. Syokimau area

As stated in section 4 of this Report, the affected persons in Syokimau did not own the land from which they were evicted. Notwithstanding, we have to examine the reasons and the manner in which the evictions and demolitions were carried out to enable us to determine whether there was a violation of a right to human dignity and/or treatment in a degrading manner.

As mentioned above, Article 66 of the Constitution empowers the Government to regulate land use in the interest of defense, public safety, public order and land use planning. The persons affected in this area unlawfully encroached on KAA land. In our view, the War in Somalia heightened the security threats around the Airport. Accordingly, the demolitions were carried out as a measure to mitigate threats to security and aircraft safety considering that that JKIA is a strategic public installation that serves Kenya and the greater East African region. As stated in section 5, a number of airline operators had threatened to pull out of JKIA as a result of the violations of ICAO regulations. The settlements in the affected areas were also in violation of the requirements of the Physical Planning Act. In our view, the evictions and demolitions by the Government based on aviation security and safety are, therefore, supported by law under Article 66 of the Constitution. We consider these reasons for evictions and demolitions to be important, reasonable and justifiable under the circumstances.

KAA also issued several notices as discussed in section 5 above that it would demolish the buildings which were constructed in its land in Syokimau area. The notices were issued over several years. The last notice was issued two months prior to the evictions and demolitions. We have also not been able to verify the affected claims that regarding the timing and manner of the evictions or that affected persons were treated in a degrading manner. Accordingly, in our assessment, we have not seen any evidence of violation of the right to human dignity of the affected persons in this area, or that they were treated in an inhumane and degrading manner.

In our view the notice period was adequate and was given to protect the dignity of the affected individuals. Noting that the occupants had unlawfully occupied KAA land and had not complied with the notices issued by KAA over the years, and the said security and safety concerns, in any event there may have been no dignified way of protecting the interests of KAA.

ii. Eastleigh Section III and Biafra areas

As noted in section 5 of this Report, the affected persons in the Eastleigh Section III and Biafra areas had erected buildings in violation of the requirements of the Physical Planning Act and in breach of the terms of approved building plans. The affected persons were issued with enforcement notices by CCN which they did not comply with. We have also examined the reasons and the manner in which the evictions and demolitions were carried out to enable us to determine whether there was a violation of a right to human dignity and/or treatment in a degrading manner.

As mentioned above, Article 66 of the Constitution empowers the Government to regulate land use in the interest of defense, public safety, public order and land use planning. The evictions and demolitions were carried out as a measure to mitigate threats to aviation security and safety. In this area, the demolished buildings contravened development approvals. Considering that the buildings were within the vicinity of MAB, the contraventions greatly prejudiced aviation safety and security. The war in Somalia was a trigger that heightened the need to enforce compliance for security reasons.

In our view, the evictions and demolitions by the Government based on aviation security and safety are, therefore, supported by law under Article 66 of the Constitution and were, therefore, important, reasonable and justifiable under the circumstances. In our view, the enforcement notices were given to the affected persons to protect their dignity and afford them an opportunity to comply with the building and zoning regulations.

Accordingly, in our assessment there was no violation of the right to human dignity of the affected persons in this area, neither were they treated in an inhumane and degrading manner. In our view, these people were fully aware that they had violated the zoning and planning regulations and were liable in law.

iii. The informal settlements

In this subsection we discuss whether a claim for violation of the right to dignity and protection from treatment in a degrading and inhuman manner can arise based in law. The areas we have discussed under this subsection are Mitumba, Kyang'ombe, Maasai, Kyambiu and Kitui Villages.

As mentioned above, the affected persons in these informal settlements were either squatters on private land, KAA land or MAB land. The developments in these informal settlements were carried out in violation of the requirements of the Physical Planning Act.

The evictions and demolitions in these areas were informed by the need to preserve the safety and security of the affected persons in the settlements. Consequently, the Government was under an obligation to protect the lives and safety of the people in the settlements as a risk mitigation measure in the event of an air crash during takeoff or landing. We also established that the Government through KAA and CCN issued several notices of its intention to evict the affected persons and demolish the structures erected within these settlements.

We consider these reasons for evictions and demolitions to be important, reasonable and justifiable under Article 66 of the Constitution, and adequate notices were given to the occupants of the affected areas which gave them an opportunity to be treated in a humane and dignified manner. We have also not been able to verify the affected claims that regarding the timing and manner of the evictions or that affected persons were treated in a degrading manner. Accordingly, in our assessment, we have not seen any evidence of violation of the right to human dignity of the affected persons in this area, or that they were treated in an inhumane and degrading manner.

7.2.3.3. Economic and social rights and right to accessible and adequate housing

Section 43 of the Constitution *inter alia* provides that every person has the right to accessible and adequate housing and that the State shall provide appropriate social security to persons who are unable to support themselves.

The people that were affected by the demolitions are entitled to the protection of their right to housing by the Government. Though the demolitions were necessary, the Government should have provided alternative housing to those individuals that did not have access to adequate housing or were rendered destitute. In the areas where evictions and demolitions took place, it is our view that the duty of the Government to provide

housing to the affected persons who were rendered homeless is not and cannot be limited on the grounds of any wrongdoing by the said persons. It also our opinion that the safety and security considerations which made the demolitions necessary are not sufficient grounds not to provide housing to those rendered homeless. However the Government may be excused from providing housing to homeless citizens where it proves that it lacks the resources to provide such housing.[22]

To enable Government to afford protection of the right to accessible and adequate housing of the affected persons, we recommend that the Government should carry out a survey to determine the exact number of persons who may have been rendered homeless and destitute as a result of the evictions and demolitions exercise.

We further recommend that such people or individuals should be integrated into the ongoing Government housing and resettlement programmes under the Ministry of Housing in consultation with the Department of Land Adjudication and Settlement and the Ministry of Special Programmes.

We note that the Government is already undertaking various intervention measures towards the realization of the right to housing including the resettlement of internally displaced persons and the slum upgrading programme under the Ministry of Special Programmes and the Ministry of Housing and Settlement. There is also in place a pilot social support programme which caters for vulnerable and poor people who are unable to support themselves which could also be considered for purposes of the deserving affected individuals.

7.2.3.4. Right to access to information

Article 35 of the Constitution provides that every citizen has the right of access to information held by the State and any other person which *inter alia* is required for the exercise or protection of any right or fundamental freedom. In our view the affected persons had the right to be informed that the areas would be affected by the evictions and demolitions exercise. In our assessment, the protection of this right was expressed in the notices that were served to the affected persons to afford them the opportunity to vacate the land and remove their belongings before the exercise.

Article 35(2) further provides that every person has the right to the correction or deletion of any untrue or misleading information that affects the person. From our investigations, we have established that the affected persons in the Syokimau area, paid money to the groups on account of purchase consideration for the plots which did not have proper title. These affected persons were further misled into believing that the MoL would one day be issue valid titles in their favour. Pursuant to Article 35(2) of the Constitution and noting that the groups have no valid title, the affected persons have the right to be informed the truth that they have no proprietary rights in law over the affected parcels of land over which they can be awarded compensation based in law.

7.2.4. Ex-gratia payment options

Ex-gratia is a Latin word meaning "*out of good will.*" It is a sum of money paid as a gift without consideration and does not arise out of any legal obligation or liability. From the preceding discussion, it is evident that the Government is not liable to make monetary payment to the affected individuals. However as stated above, the Government has an obligation under Article 43 of the Constitution subject to the limitations as provided in Article 20 (5) to provide accessible and adequate housing and reasonable standards of sanitation to the affected individuals who were rendered destitute by the evictions and demolitions exercise.

[22] Article 20 (5) (a) of the Constitution of Kenya 2010.

From our investigations and findings we note that the Government has no legal obligation to make any form of restitution or other form of payments to the affected persons. However, it may consider making ex-gratia payments to the affected persons at its discretion. The only caution is that such discretion should be based in law and should not appear to be a reward for wrongdoing.

We note that in the past, the Government has in some previous situations which could be said to have some similar characteristics, paid out token ex-gratia payments or given other form of material assistance to affected citizens displaced as a result of issues related to land. Examples of such cases are:

- The 2007-08 post election violence ("PEV") victims, and
- Victims of illegal/irregular settlements in the Mau Forest in 2008

These are briefly assessed below and compared to the situation at hand.

Victims of the 2007-08 post election violence

In the case of the PEV victims, the affected persons were people who had been forcibly displaced from their homes, farms and/or business premises as a result of the violence that ensued in various parts of the country after the outcome of the disputed 2007 General Election. The affected persons were caught up in the unfortunate situation of being displaced and homeless as a result of circumstances not of their own making. The affected persons were settled in various camps for the Internally Displaced Persons ("IDPs").

To improve their circumstances, the Government and other humanitarian agencies came to the aid of the PEV victims and provided assistance including token ex-gratia payments. The ex-gratia payments were made out through the Provincial Administration amounts ranging between KShs 10,000 and KShs 25,000. The Government also instituted a Programme under the Ministry of Special Programmes for the resettlement of IDPs which involved provision of land, housing, food items and agricultural inputs.

Victims of illegal/irregular settlements in the Mau Forest in 2008

In the case of the victims of the evictions in the Mau Complex in 2008, the affected persons were evicted from the Mau Forest following illegal and/or irregular land allocations of the forest land, which is a gazetted forest area and more so a critical water catchment and biodiversity site. Some of the victims in this case had been settled by the Government, others had bought land from the original allottees, whereas others had encroached on the forest land.

There was a threat of deforestation, environmental degradation and subsequent destruction of the water catchment areas as a result of the encroachments and human settlements. These would have had adverse effects on the water resources, biodiversity and livelihood of the communities that directly or indirectly depended on the forest. In order to arrest further degradation of the Mau Forests Complex and restore the eco-system, the Government moved in to evict the persons who had encroached on the forests.

Following the evictions, some of the victims moved and settled in areas surrounding the forests, In order to ameliorate the suffering of these victims, the Government and other donors provided the affected persons varied forms of material and humanitarian assistance. There are ongoing efforts by the Government to integrate the victims in the ongoing IDPs resettlement programmes and accord them similar assistance as stated above.

Comparisons with the evictions and demolitions in the areas around the three aerodromes

We note that the Government moved in to resettle the affected persons in the cases of the Mau Forest evictions in 2008 and the PEV victims displaced after the 2007 General Elections. The Government also paid ex-gratia payments to some of the PEV victims. We could not find any legal basis to support these payments. The affected

persons in both instances were victims of situations that were not of their own making, and the trauma suffered is not comparable to the victims of evictions and demolitions in the aerodrome areas.

As noted above, the victims of evictions and demolitions:

- in the formal settlements, i.e. Syokimau, Eastleigh Section III and Biafra:
  - were ignorant, negligent or reckless in dealing with land that they did not have title to; or
  - had constructed buildings that contravened provisions of the Physical Planning Act.

- the informal settlements, i.e. Kyang'ombe, Maasai, KPA, Mitumba, Kitui and Kyambiu Villages had constructed buildings that either:
  - encroached the flight paths of the affected aerodromes or private land; or
  - violated requirements of the Physical Planning act; or
  - posed a great danger to their personal safety as well as being a threat to aviation safety and security.

Unlike the victims in the Mau Forest evictions and the PEV victims, the victims of the above evictions and demolitions were either trespassers or had violated the Physical Planning Act regulations by their constructions. If the Government were to make any payments to these affected persons, who as stated before had no legal basis, it be construed as rewarding irregularities and wrongdoing. This may set a bad precedence and would encourage encroachment and invasion of private property by individuals in hope of getting similar treatment from Government.

Noting that most of the affected persons in the informal settlements were already vulnerable and economically deprived the demolitions would have aggravated further their already disadvantaged conditions. There may also have been people in the formal settlements who lost their property and life savings and as a result were rendered destitute in the process. In view of the foregoing, the Government should use its internal mechanisms to identify any genuine and deserving cases of persons that may have been rendered homeless and destitute, and in line with Article 43 of the Constitution, the Government may consider integrating such persons into the already existing and ongoing resettlement programmes of IDPs and other existing social programmes designed for the aid of such persons.

Since there is no legal basis of ex-gratia payments to the affected individuals in the formal settlements in Syokimau who may have relied on fraudulent misrepresentations by the group officials with the aid of negligent or complicit public officers when dealing with the affected land. The Government should encourage the affected persons to pursue reimbursement of their monies from the group officials, Government agencies and individuals to whom they may have made payments.

The Government should also consider setting up mechanisms to assist the affected persons to follow up these reimbursements and use the CID and Ethics and Anti-Corruption Commission to track and freeze any assets acquired by the culpable individuals as a result of proceeds from the irregular and illegal land transactions that were being carried out.

7.3. Impact on affected individuals

Given our findings on land ownership and the evictions and demolitions exercise, it is apparent that in relation to the formal settlement areas large numbers of people appear to be at risk of financial loss as a result of the investments they have made with the representative groups. Some of these also developed properties and made payments to public bodies in respect of buildings they have erected. A small number have suffered financial loss in respect of buildings erected irregularly on private land at MAB.

In respect of informal settlements, although the affected individuals may not have made payments for title to land, their demolished buildings would have some value which has now been lost.

In this section we provide broad figures for illustrative purposes of:-

- The numbers of people affected in the formal and informal settlements
- An approximation of the scale of financial losses some of the affected individuals could be facing

7.3.1. Numbers of people affected

It is not possible to obtain a reliable estimate of the number of affected individuals in view of the underlying uncertainties resulting from the lack of documentary evidence (particularly in relation to the informal settlements), and the number of assumptions that therefore need to be made in any such exercise.

However, if we take as read the information provided to us by the representative groups and make some assumptions on average household size, it appears that as many as **250,000** people may have been affected directly or indirectly by the land disputes and the evictions and demolitions exercise. We stress that this figure is a broad guesstimate that is not based on authoritative data.

Category of settlement	Location	Number affected directly	Estimate of possible total individuals affected including dependents	Comments
Formal	JKIA (Syokimau)	3,800	19,000	Six representative groups came forward. Of these, four purport to hold title documents and claim to have members numbers as follows:- Uungani (1300); Jumbo (1,200); Mulolongo Brothers (1,300); and Ungani Enterprises Limited (did not provide member numbers). We have not verified these figures. Guesstimate assumes the figures presented by the representative group are correct and a household is 5 people
	MAB	6	1,100	Six landlords privately held 7 properties. These were all rented out. Guesstimate of total affected persons assumes that each building had 30 units and each unit had 5 family members.
Informal	JKIA Kyamg'ombe	50,000	50,000	All figures provided by victim representatives. Total of 229,000. We have not verified any of these figures.
	Maasai/ KPA	113,000	113,000	
	Wilson Airport - Mitumba	14,000	14,000	
	MAB Kyambiu	12,000	12,000	
	Kitu	40,000	40,000	

7.3.2. Possible losses facing affected individuals

Affected individuals in the formal settlement areas are facing losses resulting from their land investments with the representative groups and related expenditure. In the table below we capture guesstimates of the various categories of expenditure that we are aware of and the basis of these figures.

Given the necessary caveats, our guesstimate computations suggest that the representative groups may have handled substantial sums that may be in excess of **KSh 180m**:- Uungani (KSh73m); Jumbo (KSh65m); and Mulolongo Brothers (KSh 42m).

In addition, Mavoko Council benefitted from land related payments totalling around KSh 54m.

The single largest expense incurred by affected individuals is likey to be the sums spend on putting up properties. Given the extent of the inherent underlying uncertainties involved we have not computed guesstimates for these potential losses.

Similarly, we have not computed guesstimates for the losses incurred by those in informal settlements whose structures were demolished.

Category of settlement	Location	Category of expense and/or loss	Monies paid to	Guesstimate of amounts involved KSh	Comments
Formal	JKIA (Syokimau)	Land	Representative group or previous "owner"	More than KShs 160 million	Uungani (KSh73m); Jumbo (KSh65m); Mulolongo Brothers (KSh24m). Guesstimate based primarily on interview evidence and on evidence provided by some of the representative groups (Uungani and Mulolongo Brothers)
	JKIA (Syokimau)	Transfer fees	Mulolongo Brothers and Mavoko Council	More than KShs 50 million	Mulolongo Brothers (KSh 18m); Mavoko Council (KSh 36m). Guesstimate based primarily on interview evidence
	JKIA (Soykimau) MAB properties on private land which was demolished (7 structures)	Development (building the property) – either demolished or still standing	Various 3rd parties – architects, brick layers, builders etc etc	Not known but significant	Not possible to estimate based on information made available to us. Likely to be the highest category of individual cost for affected persons.
	JKIA (Soykimau)	Building plan approval fees, Rates, plot rent, plot registration fee etc	Mavoko Council and Machakos District Lands Office	More than KShs 20 million	Mavoko Council (KSh18m); Guesstimate based primarily on interview evidence plus on documentation provided by Mavoko Council Machakos District Lands Office (KSh1m)
Informal	JKIA (Kyamg'ombe, Maasai, KPA) Wilson Airport (Mitumba) MAB (Kyambiu, Kitui)	Putting up informal structures	N/a	Not known	Not possible to estimate based on information made available to us

7.4. Assessment of possible claims by Government

7.4.1. Introduction

In this part we have examined the possible claims by KAA and DoD as Government agencies. The two agencies which are responsible for the aerodrome locations we reviewed in our investigations (JKIA, Wilson Airport and MAB). Over the years the agencies have been victims of fraudulent excisions, invasion and encroachment of their property. As a result of this, these agencies have been deprived of the ownership, use and enjoyment of the property and the benefits that accrue thereof.

Below we elaborate the potential claims and loss suffered by the two agencies.

7.4.2. Possible claims for restitution by KAA

We have examined possible claims arising from:

i. Irregular allocation of land compulsorily acquired by the Government and reserved for aerodrome use.
ii. Double allocation of land over which KAA had valid title.
iii. Deprivation of use and enjoyment of the property over which KAA has title by the groups in Syokimau area.

We begin with a summary of the shrinkage or attempted shrinkage of KAA land.

7.4.2.1. 'Shrinkage' of KAA land

JKIA

In respect of JKIA, we noted that there was shrinkage falling under both categories noted above as follows:

1. possibly irregular allocations prior to the issuance of the 1996 Grant, and
2. post 1996 double allocations of JKIA land.

Possibly irregular allocations prior to the issuance of the 1996 Grant

In the introduction to section 1.2.1, we have briefly explained the shrinkage of JKIA land prior to 1996. We note that in addition to the land that existed as Nairobi Airport land in 1953, the Government compulsorily acquired land in 1971 and designated the land as airport land for use by JKIA. There is also possibility that the Government acquired more land in 1982 for the purposes of JKIA. Assuming that the 1982 acquisition took place, JKIA should have had circa 6,063 Ha of land in 1982 i.e. the sum of the land that existed as at 1953, the land acquired in 1971 and the land acquired in 1982.

However we note that as at 1991, the Department of Physical Planning in Plan NBI/C/108 indicated the size of JKIA to be 5,098 Ha. This 1991 plan does not include the land earmarked for compulsory acquisition in 1982. The size of JKIA had however reduced to 4,654 Ha by the time KAA obtained a Grant over JKIA.

We note that due to the lack of a perimeter survey of or title over JKIA prior to 1996, it is difficult to conclude on the legality of this shrinkage.

Post 1996 double allocations of JKIA land

As indicated in section 4 above, in the course of our investigation we noted that there exists double allocation of land within the parcel of land at JKIA registered in favour of KAA. This occurred after KAA had obtained its title in 1996 and was brought about by a subsequent survey carried out in 2001. We understand that the CoL sought

to excise some roads as well as other parcels which were apparently granted to private persons and titles issued but were part of the land covered in the KAA title. KAA therefore commissioned a survey in 2001 which created LR No 24937 and a deed plan was issued for an area measuring 4,398.7 Ha. A title was created and registered as Grant IR No 90243 in favour of KAA in the process of the surrender of the title over LR No 21919 to the CoL. There were however apparent defects on the new title issued to KAA. This Grant was registered in 2002, whereas it was signed by the CoL in 2003. In law, all Grants are registered after the CoL has signed the title.

KAA also realized that that its land had substantially shrunk in the new title i.e. over LR No 24937. In addition to the roads, there were additional parcels of land that were excised from the KAA land which were part of the 1996 Grant. In total, JKIA land as indicated in the 2001 survey was less by 195 Ha compared to the land surveyed in 1996. KAA subsequently rejected the title over LR No 24937 and wrote to the CoL voicing its complaints and intention to revert to the old title. The CoL advised KAA to return the title over LR No 24937 and to revert to the original title i.e. title over LR No 21919 which was still valid since its surrender had not been registered at MoL. Since the CoL had already issued titles to some of the parcels excised in the 2001 survey, the reversion by KAA back to the 1996 Grant meant that there are double allocated parcels of land within JKIA.

There are at least 67 parcels of land that were created within KAA land after 1996 and titles issued over them irregularly. These titles, that were issued to private persons have not been revoked to date. We understand that some of these persons (or persons who have purchased the plots from the initial allotees) have constructed on this land. These developments were not demolished, unlike in the Syokimau area.

We established that KAA has put in place a framework process to allow these persons to surrender these titles and obtain long term leases from KAA. However, only two persons have responded to this offer. KAA should therefore seek legal measures to reclaim this land by having the CoL revoke the double allocations.

ii. Wilson

Like in JKIA, the title over Wilson was issued to KAA in 1996. Again as in JKIA, it appears that private persons were issued with title over land which was previously designated as Wilson land before 1996. Moreover, it appears that there are also double allocations within Wilson. The main difference between Wilson and JKIA is that unlike in JKIA where there was an attempted surrender of the 1996 KAA's Grant, we did not find any evidence to suggest any attempt to surrender the 1996 KAA's Grant over Wilson.

7.4.2.2. Persons who may have irregularly acquired land reserved for aerodromes at JKIA and Wilson Airport before KAA obtained title in 1996

As stated in section 4, KAA may have a claim to land:

- that was compulsorily acquired by Government and set aside for specific use by JKIA and subsequently irregularly allotted to private persons before KAA was issued with a title;
- that was originally reserved for the Department of Aerodromes at Wilson Airport and some of which the Government had erected various structures which were irregularly allotted to private persons;
- with individual titles resulting from excisions within the KAA titles for JKIA and Wilson Airport.

7.4.2.3. Double allocation of KAA land

As highlighted in section 4 of our Report KAA were issued with two titles in 1996:

- a title for LR No 21919 which measured approximately 4,654 Ha; and
- a title for LR No 13080 which measured approximately 164 Ha.

For the JKIA land, there appears to have been excisions of land and creation of new LR Nos following the unsuccessful surrender of the title for LR No 21919 and creation of LR No 24937. The purpose of the resurvey and issuance of the new title was to excise Mombasa road and the Airport North roads. However we noted that 482 acres of the original land had been excised, which included additional irregular excisions of the JKIA land for which various persons were issued with titles.

Considering the original title for LR No 21919 was not successfully surrendered, the subsequent titles amounted to a double allocation on the same piece of land. These titles should be cancelled and the land and fixtures thereon should be repossessed by KAA.

KAA may also have a claim against the persons occupying the land for the loss of use of the property and any benefits that may have been derived thereof.

7.4.2.4. Deprivation of use and enjoyment of the property over which KAA has title by the groups in Syokimau area

As noted in section 4, various groups had invaded and illegally occupied KAA land in the Syokimau area. As a result of this, KAA was deprived of the use and enjoyment of its property which is protected by the law. KAA may have claim for restitution to recover the benefit accrued by the said persons from the use of the land.

7.4.3. Possible claims for restitution by DoD

As noted in sections 4 and 5 of our Report, certain persons had encroached and invaded land reserved for MAB at Eastleigh. Some of the person managed to irregularly obtain individual title in the said land as well as the buffer zone around MAB. Certain informal settlements have also been created within the MAB land.

The Department of Defence ("DoD") does not have a title over MAB to date. In the course of our investigations, we noted that the land earmarked for MAB has in varied occasions been allocated to public officers, private persons and public institutions.

We noted that in the 33 year period from 1965 to 1998, there have been various surveys and excisions of land previously reserved as belonging to MAB and declared as a protected area under the Protected Areas Act. These include:

- 1965-1966 – Part of MAB land was excised for a primary school.
- 1975-1985 – several parcels abutting the western side of MAB were surveyed with some of these altering or encroaching on the MAB land.
- 1996-1998 – more plots were alienated and surveyed within the southern side MAB i.e. in the Kyambiu area.

In the course of our investigations, we have noted that though MAB is a protected area under the Protected Areas Act, the said Act does not specify the land reference number or the size of the said land. In our view, this may have been exploited by the persons who had invaded MAB property and the surrounding buffer zone.

The Government should through the Land Commission and the Department of Lands assist the DoD to recover the land that was lost through such irregular allocations and unlawful encroachment, secure the said land, have it resurveyed and the DoD issued with the title through the PS Treasury.

DoD may have a claim to recover the land that has been occupied and/or encroached by third parties.

8. Conclusions, recommendations and next steps

8.1. Introduction

This assignment has been a challenging exercise with high expectations placed by various parties on the outcome of the investigation. We have met with or interviewed most key players (some on more than one occasion) and obtained and reviewed a fairly large volume of documentation. In the instances where we were unable to meet individuals or did not access relevant documentation, we have mentioned the same in our Report.

We have sought to maintain objectivity in what is an emotive situation and as such, our findings and conclusions presented above are evidence and fact based. These are summarised again below together with lessons learnt and restitution and compensation options that might be considered.

We have uncovered several cases of abuse in the various Government agencies, amongst professionals and by group officials involved in the land dealings of what has been established to be KAA land as detailed in this Report. As a result of this, and our conclusions on ownership of land, many individuals will potentially lose out financially based on legal and contractual merits of their position.

In our view, the culpable individuals whose actions have caused financial loss to the public are the officials of the groups (Mulolongo Brothers, Uungani, Jumbo, Ungani Enterprises and Foster) as covered in detail in this Report. These groups and individuals have obtained large sums of money from:

(i) selling plots to their members,

(ii) selling plots which they had allocated to themselves to members and/or third parties; and

(iii) collecting irregularly levied fees and charges from members.

These groups have taken advantage of the weak control environments existing in public offices and the ignorance of the populace on land administration procedures to perpetrate their fraudulent schemes. In so doing, they may have also colluded with public officers so as to enrich themselves at the expense of their members and the Government.

We end this section by setting out our recommendations and views on next steps.

8.2. Summary of key conclusions and lessons learnt

8.2.1. Ownership of land

Based on the evidence available we have, to the extent possible, concluded on ownership of the affected parcels of land as shown below.

Location	Summary of findings
JKIA	For the area under contention in the Syokimau area, the land is within the KAA title LR No 21919 i.e. KAA has valid title. For Kyang'ombe, Maasai and KPA Villages, the land that was affected by the demolitions belonged to private individuals. However there is evidence to suggest that Government may have a claim on the land at Kyang'ombe Village which is part of the land that was compulsorily acquired in 1971 for purposes of development of the then Nairobi Airport. KPA and Maasai Villages may also be public land that was irregularly allocated to private individuals. The victims of the demolitions do not have any valid claim to title of ownership of the land.
Wilson Airport	From our assessment, the land in dispute is part of KAA land within their Certificate of Title for LR No 290/13080 i.e. KAA had valid title.
Moi Airbase	The area, though without a Certificate of Title held by the Military, is a protected area under the Protected Areas Act. It is reserved as a Military installation and an aerodrome and therefore access to the land is restricted to civilians. The Kyambiu area falls within this land and is therefore Military property. The Eastleigh Section III and Biafra areas and the Kitui areas fall outside MAB land, but there is supposed to be a buffer around the airbase which has been encroached by private individuals. The owners of the structures that were demolished had also ignored Physical Planning regulations controlling constructions in the areas.

As a result of our findings on ownership, many individuals potentially stand to lose out financially as a result of dealings in the parcels of land under dispute. In addition, public bodies have incurred costs and suffered financial loss in the process of having to deal with the situation and protect their rights e.g. legal costs incurred by KAA in Court, costs incurred by MAB in constructing perimeter fences, costs incurred by the Government in demolitions etc.

While we note that the officials of the representative groups bear the greatest responsibility for the losses, this would not have been possible without the involvement of public officers who were either negligent in their duties or were wilfully complicit in the abuse as explained in this Report.

In this investigation, we have been able to uncover the broad modus operandi underlying abuse and wrongdoing and in addition we have identified key individuals who we believe may be culpable. It is clear a number of failings occurred at various levels of key public bodies at different times.

Further investigations involving police powers to retrieve evidence would enable the investigation to be taken a step further. Furthermore, we were unable to meet certain individuals in the time available. We believe that these individuals would have provided more insight and explanations and as such we recommend that such individuals be compelled to appear and give their side of the story.

8.2.2. Evictions and demolitions

Following our investigations, we understand that the order for the demolition and eviction exercise appears to have been issued by the Cabinet on 14 April 2010 in the interest of aviation safety and security. The execution was consequently carried out by the PSIC supported by various other bodies including CCN, KAA and MAB. This appears to have happened only after relevant enforcement notices were duly issued. We have so far not seen any evidence regarding any appeal having been logged either with the Provincial Planning Liaison Committee or the High Court thus it would appear that the demolition exercise followed due process.

The exact number of victims in the Syokimau, Kyang'ombe, Maasai and KPA demolitions remains unclear given the various conflicting submissions and information presented to us. In Eastleigh area six landlords who appear to have had some form of ownership documents were affected by the demolitions. However, from our review it appears that these landlords may have violated the approved building plans and in the process contravening the requirements of the Physical Planning Act, thus making their structures illegal. A number of informal settlements on the fence of MAB on the Eastleigh Section III area were also affected while another approximately 15 metre strip of informal settlements on the Kitui side area bordering MAB's undershoot were also demolished. A list from the Kitui Village chairman indicates that around 278 households were affected.

As noted in this Report, there is no single statute to guide the process of carrying out evictions and demolitions. However various statutes including the KAA Act, the Physical Planning Act and Case law require the affected persons to be given adequate notice before carrying out such an exercise. Moreover, in the interest of human rights and as contained in various international treaties ratified by Kenya as discussed in our Report, any eviction should at a minimum be authorized by law and be conducted in accordance with international human rights law that includes issuing appropriate enforcement notice. Both of these considerations seem to have been adhered to in the circumstances under review.

Based on the evidence and the roles played by various Government bodies, it is clear that the evictions and demolitions exercise was carried out in very difficult circumstances and many individuals were affected. However, because:

- there is evidence to suggest that residents in the affected areas had been forewarned with public notices (some for many years),
- of the prevailing (and well documented) concerns around aviation security and safety by KAA, MAB, airline operators and other interested stakeholders, and
- of concern of homeland security as a result of the ongoing war in Somalia,

it is our view that even though the process could have been carried out in more humane manner and there are lessons to be learnt going forward on how to conduct such exercises in future, it is difficult to apportion any culpability to the various Government institutions and individuals who may have played roles in the evictions and demolitions exercise.

8.2.3. Conclusions on roles played by individuals and culpability

Based on our investigations various persons appear culpable as discussed in section 6 above. The investigations concluded that officials of some of the groups affected in the Syokimau area evictions and demolitions bear the responsibility for the loss suffered by the general public pursuant to the evictions and demolitions exercise and may be found criminally liable for various offences including (inter alia):-

- misrepresentation of ownership of land to group members;
- bribing of MoL officers;
- apparent forgery of documents – PDPs, LoAs;
- collecting money from members and the public by false pretence;
- subdivision of land without relevant consent;
- aiding and abetting the construction by members without building permission;
- trespassing on KAA' s land; and
- Contempt of Court.

Further, we have found the municipal council of Mavoko, Machakos District Land Officer and Machakos District Physical Planning Officer are culpable as they facilitated irregular approvals of subdivision schemes and building plans. The Mavoko council in particular also issued a Rates Clearance certificate unlawfully over parts of the affected parcel of land in Syokimau.

In addition, various omissions within MoL and in particular the Department of Surveys and Lands created opportunities for fraud. We further noted that the Military has (and has always had) the capacity to keep squatters away from their land. The fact that squatters were allowed to encroach onto MAB land, especially in the Kyambiu area is therefore an indictment of complicity of past MAB commanders and others within DoD. If it is proven that some former (and maybe current) top Military officers either currently own (or previously owned land that they sold) in the Kyambiu area, this would indicate that these officers have been culpable in both alienating protected land and in allowing illegal encroachment by others.

We have also established that there are individuals who have constructed buildings without approval or have gone against the approved plans. Such individuals are culpable for breach of the provisions of the Physical Planning Act.

The acts or omissions which make various individuals and/or persons culpable in one way or another had a bearing on the threats to aviation safety and security which led to the evictions and demolitions exercise.

8.2.4. Possible claims by affected individuals and Government

We have examined and assessed the options by both individuals and Government for:

1. Restitution;
2. Other humanitarian assistance, or
3. Ex-gratia payments.

i. Restitution

Individuals

We have examined the possible grounds for restitution and have recommended that the affected individuals should claim restitution based on the existing contracts between themselves and those from whom they purportedly bought the properties. Mavoko Council and the Ministry of Lands should refund back to the various groups all irregular charges levied and received from the affected persons in respect of the parcel of land in Syokimau. Since the Government was not a party to the sale of the parcels of land, there is no legal basis for

payment of restitution by Government. There are other Kenyans who have lost money through similar schemes e.g. the pyramid schemes and have not received any compensation payments from Government. Such a payment would send the wrong message as it would amount to rewarding and encouraging wrongdoing.

Government and public body

KAA may have a claim on the land that was compulsorily acquired by Government and reserved for the use of aerodrome at JKIA as well as the land that had been developed by the erstwhile Aerodrome Department at Wilson Airport on which titles have been issued to certain persons. The double allocations of land at JKIA and disparate individual titles within JKIA and Wilson Airport should be revoked and KAA should secure and repossess the land and the buildings thereon. KAA land at JKIA and Wilson should be resurveyed under the supervision of the Land Commission and/or the Auditor General to establish the boundaries and ensure that it corresponds to the measurements indicated in its title.

Some of the land held by the MAB and the former buffer zone thereof was irregular allocated to certain individuals including certain then military bosses. The Land Commission should assist the MAB to recover this land, resurvey the same and obtain a title through PS Treasury.

ii. Humanitarian assistance

We note that the Government has in the past moved in to resettle affected persons in the cases of the Mau Forest evictions in 2008 and the PEV victims displaced after the 2007 General Elections. The Government also paid ex-gratia payments to some of the PEV victims. We could not find any legal basis to support these payments. The affected persons in both instances were victims of situations that were not of their own making, and the trauma suffered is not comparable to the victims of evictions and demolitions in the aerodrome areas.

Unlike the victims in the Mau Forest evictions and the PEV victims, the victims of the above evictions and demolitions were either trespassers or had violated the Physical Planning Act regulations by their constructions. If the Government were to make any payments to these affected persons, who as stated before had no legal basis, it be construed as rewarding irregularities and wrongdoing. This may set a bad precedence and would encourage encroachment and invasion of private property by individuals in hope of getting similar treatment from Government.

Noting that most of the affected persons in the informal settlements were already vulnerable and economically deprived the demolitions would have aggravated further their already disadvantaged conditions. There may also have been people in the formal settlements who lost their property and life savings and as a result were rendered destitute in the process. In view of the foregoing, the Government should use its internal mechanisms to identify any genuine and deserving cases of persons that may have been rendered homeless and destitute, and in line with Article 43 of the Constitution, the Government may consider integrating such persons into the already existing and ongoing resettlement programmes of IDPs and other existing social programmes designed for the aid of such persons.

iii. Ex-gratia payments

From our investigations and findings we note that the Government has no legal obligation to make any form of restitution or other form of payments to the affected persons. However, it may consider making ex-gratia payments to the affected persons at its discretion. The only caution is that such discretion should be based in law and should not appear to be a reward for wrongdoing.

8.3. Recommendations and next steps

On the basis of the work undertaken in this investigation, we set out below a summary of our recommendations under the following subheadings:

i. Culpability and further investigations;
ii. Institutional reform and management of public assets;
iii. Legislative and judicial reform, and
iv. Other recommendations.

8.3.1. Culpability and further investigations

1) Investigations leading to possible prosecutions

The Director of Public Prosecutions should direct the CID to conduct further investigations on the culpable individuals identified and named in the Report with a view of obtaining further evidence and where appropriate prefer criminal charges. These include current and former:

- officials of representative groups in Syokimau (Uungani, Jumbo, Mulolongo Brothers, Foster, Ungani Enterprises)
- public officers at:
  - Mavoko Council.
  - MoL (Lands, Department of Surveys, Department of Physical Planning).

2) Investigations and consideration of assets freeze

The Ethics and Anti Corruption Commission should liaise with the CID and if appropriate move as a matter of urgency to identify and freeze the assets of group officials in Syokimau area who have received large sums of money from their members in what appear to be fraudulent circumstances. From the computed guesstimate figures above, the officers of the representative groups may have received in excess of Kshs 180m (Uungani (KShs 73m); Jumbo (KShs 65m); and Mulolongo Brothers (KShs 42m)).

3) Involvement of professional bodies

OAG should write a letter of complaint to LSK and the Institution of Surveyors of Kenya, asking them to investigate the actions of the professionals named in this Report as potentially being culpable.

8.3.2. Institutional reform and management of public assets

1) Integrated Land Information System ("LIS")

The existing LIS at the MoL is manual. This outdated system is grossly inadequate and is no longer fit for purpose. We understand that previous attempts to improve and modernise the system have failed for various reasons including a lack of financial resources and insufficient coordination and will for change. Its manual nature means that:

- Document preparation, storage and retrieval relies primarily on human memory;
- Key processes and procedures lack audit trails;
- Record maintenance and updating are often frustrated and delayed through the interference of interested parties;
- Verification and authentication of information and documentation coming from different departments within the land management system is difficult, and
- There is no backup system or adequate system for maintaining duplicate copies of key documents.

Resulting from these weaknesses, we found that:

- Land management processes are slow resulting in delays in concluding land transactions;

- The delayed processes provide an opportunity for corrupt practices;
- Confidence in the land management regime and the sanctity of property rights in Kenya is low which is likely leading to reduced investment and economic growth.

We therefore recommend that the National Land Commission should establish an integrated LIS that caters for the needs of public and private stakeholders. We further recommend that the National Land Commission should do this in consultation with the ICT Board and other relevant stakeholders like KRA. This will require investment and the political will to drive through change and unlock vested interests in the status quo.

In establishing a suitable integrated LIS there will be need for preparatory studies to properly identify the needs of the various stakeholders from the public and private sectors and the unique situational risks and challenges around land administration in Kenya. In addition, there is need to provide for appropriate storage of information and documentation that is accessible and secure.

2) Institutional reform at MoL

Reform at the MoL is urgently required. In particular:

- Computerisation of all records generated in the land administration process should be accelerated as a matter of priority. Land searches should also be computer generated.
- Certificates of Titles should be serialised for record and security and issuance process and time frames be documented and predetermined.
- Allegations of bribery and undue influence within Lands should be investigated by the CID. In addition, we noted that even though Lands had denied the existence of some files, some of the groups (e.g. Foster and Uungani) were discovered by CID to have files at the department. The CID should investigate how these files (some containing forged documents) found their way into MoL and who was responsible. The CID in consultation with MoL should also investigate criminal groups engaged in the issuance of fake documents of title and have them dismantled.
- The Land Commission should create the necessary institutional linkage between the Lands, Physical Planning and Surveys in order to guard against the risk of role overlap and improve efficiency in land administration.

3) Management of assets held by KAA, MAB and other public bodies

Following the confusion that ensued and the resultant loss of assets that occurred during the transition and transfer of assets and liabilities from the Department of Aerodromes to KAA, the Government should institute proper mechanisms to avoid such scenarios in future transfers. This is especially critical for the envisioned transfer of assets from the central Government and Local Authorities to the County Governments.

The likely mechanisms to be instituted include:

- Timely publication of a vesting order transferring assets to the newly formed public bodies;

- To deter misappropriation of assets, the content of the vesting order should sufficiently describe the assets being transferred for ease of identification, i.e. it should list the assets being vested and clearly identify and define their particulars, and in the case of land, the order should include particulars of LR numbers and the acreage so as to mitigate the risk of contemporaneous excisions;

- Due to the apparent confusion and shrinkage in the size ("shrinkage" of KAA land between 1982 and 1996) and change of boundaries of KAA land at JKIA and Wilson Airport and cases of double allocation of KAA land ("attempted shrinkage" of KAA land between 1996 and 2002), Government through OAG should resurvey all KAA land for purposes of verification of its boundaries and size. Moreover, as a

mitigating measure, all Government agencies and departments should resurvey their land, obtain title and physically secure the land by fencing to prevent illegal encroachment and excisions.

- For ease of identification and to guard against encroachment, all protected areas under the Protected Areas Act should be sufficiently described including the particulars of their LR Nos and acreage. The National Lands Commission should ensure that titles are issued for all the protected areas.

- To ensure compliance to the relevant aviation laws including ICAO regulations, the mandate of KCAA, KAA and DoD to control developments within and around aerodromes should be enhanced. In line with this, MoL should consider adding a special condition in the Certificates of Title of land around aerodromes and in flight paths prohibiting developments without approvals from KCAA, KAA or DoD around aerodromes.

4) Alienation of Government land

a) Irregularly allocated land: The National Land Commission should institute investigations on the alleged irregular land allocations to private persons referred to in this Report involving:

- Land that was compulsorily acquired by Government in 1971 and 1982 for use of JKIA and which was excluded from the 1996 JKIA title i.e. the "shrinkage" of KAA land between 1982 and 1996;

- Double allocations of KAA land in JKIA and Wilson i.e. the "attempted shrinkage" between 1996 and 2002;

- Land at Wilson that may have been excised and allocated to private individuals in the period prior to the issuance of the 1996 Grant, and

- Land reserved for MAB and surrounding buffer zones that appears to have been irregularly excised between 1963 to date.

b) **Letters of Allotment**:

- LoAs should be serialised and copies circulated to all relevant departments as is provided for in the document.
- There should be strict enforcement of the conditions specified in the LoA e.g. the lapsing of the offer after the specified days and development conditions.
- Issuance of LoAs must be brought under control. Pursuant to the new Land Act, any public land that is being alloted should be surveyed and subjected to a public auction in advance.
- Allotment should be done for specific purposes which purposes should be stipulated on the document and the parcels being allotted be subject to a public auction as stipulated in the new Land Act.

5) Strengthening of the Department of Surveys:

There is a need to strengthen capacity at the Department of Surveys. In particular:

- Survey plans should be scanned as soon as they have been authenticated. A database should thereafter be created to facilitate ease of searching of records of maps at the Department.
- Some key controls must be intrinsic to the process with appropriate audit trails and authorisation protocols, including:

    - All new surveys must be cross referenced to existing surveys covering the relevant parcel(s) of land.
    - Approval of a survey by the Director of Surveys should only be done after confirmation that cross referencing has been completed and charting has been authenticated.
    - a Deed Plan can only be issued by the Director of Surveys once it is confirmed that the approval in (ii) above has been obtained.

- A Deed Plan register must be maintained by the Director of Surveys and include, inter alia, full particulars of (i) the person in whose favour the document has been issued (ie the owner of the land); (ii) the Surveyor who prepared the survey.

- Plans should be digitized and geo referenced (in a National Spatial Data Infrastructure) as part of the LIS as discussed above.

6) Strengthening of capacity of planning authorities e.g. Local Authorities, to control land development:

There is a need to strengthen the capacity of Local Authorities in their development control role. We recommend that:

- Local Authorities verify ownership of land before carrying out a valuation for purposes of levying rates. No rates should be levied or collected before valuation and verification of title.
- The Independent Electoral and Boundaries Commission should ensure that Local Authorities and counties have well defined and publicised boundaries. Any changes must be communicated and gazetted in accordance with applicable laws.
- To ensure compliance with the relevant planning laws, all Local Authorities and counties must have qualified physical planners.
- Moreover, there should be a technical committee supported by law that gives development approval with the Town Planning Committee and Full Councils only ratifying such approval. The technical committee should meet frequently and the process should be harmonised for all Local Authorities.
- The technical committee should comprise all relevant stakeholders e.g. Lands, KCAA and KAF for Nairobi etc.

8.3.3. Legislative and judicial reform

1) Judicial reform

As we have discussed in the body of this Report, delays in concluding Court cases may have assisted some of the culpable individuals in the representative groups to perpetuate the fraudulent land transaction schemes. We have also been made aware that some individuals who obtained Court injunctions at the time of the 2011 demolitions have taken advantage of these injunctions to continue and finish constructions, especially around MAB. In our view, this is abuse of the Court process and we recommend that the cases relating to the affected land be heard and determined expeditiously.

More broadly going forward, we recommend that recent trends in dealing with commercial transaction cases expeditiously continues and particularly in relation to land matters that affect groups of individuals.

2) Proposed legislation enactments and amendments

To address the concerns and legal inadequacies highlighted in this Report, we recommend the amendment or enactment of the following legislation:

- Evictions and Demolitions Law: Parliament should as a matter of priority enact this legislation. This law should comply with the Constitution and all relevant international statutes that Kenya has ratified and should also consolidate all laws appearing in disparate statutes on evictions and demolitions.
- The Government, through the MoL, should enact subsidiary legislation under the relevant enabling statutes to make provisions for the regulation of vetting, registering and licensing of any individual, group or company that offers plots for sale to the general public.
- The Physical Planning Act:
    - should be amended to make it mandatory for a Local Authority or other planning committee, while approving developments within a 12.5km radius of aerodromes, to consult aviation regulatory agencies including KAA, KCAA and KAF in line with ICAO regulations.
    - subsidiary legislation under the Act should be put in place to define the composition, quorum, stakeholders, manner of the meetings etc of the technical committee responsible for development approvals.

- The Land Act should be amended to provide that land compulsorily acquired by Government should not be used for any other purpose (other than the intended purpose) or allotted to another person except after re-planning. Such re-planning should be publicised and the previous owners given the first priority to acquire the land.
- The Survey Act and the Physical Planning Act should be amended in line with the newly passed Land Laws.

8.3.4. Other recommendations

1) Monies irregularly collected by public bodies

The Government through the Ministry of Local Government and MoL should facilitate the Mavoko Council and the Department of Lands to refund any monies that may have been irregularly collected from the affected persons.

2) Public sensitisation on land and related matters

The MoL and the National Lands Commission should conduct a sustained civic education and awareness programme to educate the general public and create awareness on land and land laws. Such education and awareness should encompass the provisions of the Current Constitution and the newly enacted land laws on land and natural resources as well as the mandate, composition and functions of the institutions established thereunder.

Of paramount importance, and due to the emotive nature of land issues, the Government should sensitize politicians on the need to respect the established institutions mandated to deal with land issues and to refrain from interfering with legal processes or inciting the public on land matters.

9. Glossary of Terms

Term	Definition
1971 compulsory acquisition	The compulsory acquisition of land for airport use vide gazette notices number 1105 and 1106 of 26 April 1971
Aerodromes (Control of Obstructions) Act	Aerodromes (Control of Obstructions) Act Chapter 396 Laws of Kenya
CA Act	Civil Aviation Act
Cabinet Directive	The Cabinet Directive dated 14 April 2010 that was issued in the interest of aviation safety and security
CCN	City Council of Nairobi
Chicago Convention	Convention on International Civil Aviation of 1944
CID	Criminal Investigations Department
CoL	Commissioner of Lands
Contract	Contract for Consultancy Services dated 19 March 2012 between the Office of the Auditor General and PricewaterhouseCoopers Limited
Current Constitution	The Constitution of Kenya enacted on 27 August 2010
Department of Aerodromes	The former department in the Office of the President that was in charge of aviation before the formation of KAA in 1991
DoS	Director of Survey
Foster	Foster Trading Company Limited
GLA	Government Lands Act, Cap 280
ICAO	International Civil Aviation Organisation
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Convention on Economic, Social and Cultural Rights
IR	Inland Registry
ITPA	Indian Transfer of Property Act 1882 as amended by the 1959 Amendment Act

JKIA	Jomo Kenyatta International Airport
John Abuduba Report	The Report of the Taskforce on illegal appropriation of public and squatters problem in Athi River District of December 2011
Joint Parliamentary Committee	The Joint Parliamentary Committee on Administration & National Security, Lands & Natural Resources, Local Authorities, Transport, Public Works and Housing
Jumbo	Jumbo Community Self Help Group
KAA	Kenya Airports Authority
KAA Act	The Kenya Airports Authority (Chapter 395 Laws of Kenya)
KAAO	Kenya Association of Air Operators
KAF	Kenya Air Force
KCAA	Kenya Civil Aviation Authority
KENAO	Kenya National Audit Office
Kenya Roads Act	Kenya Roads Act (Act No. 2 of 2007)
Knight Frank	Knight Frank Kenya Limited
Land Acquisition Act	Land Acquisition Act, Chapter 285 of the Laws of Kenya
Land Act	The Land Act (No. 6 of 2012)
Land Registration Act	The Land Registration Act, (No. 3 of 2012).
Lands	Department of Lands
Limitation of Actions Act	Limitation of Actions Act (Chapter 22 of the Laws of Kenya)
LoA	Letter of Allotment
LR	Land Reference
LSK	Law Society of Kenya
LTA	Land Titles Act, Cap 282

MAB	Moi Air Base, Eastleigh
Mavicor	Mavicor Ndunda Self Help Community Group
Mavoko Council	Municipal Council of Mavoko
MoL	Ministry of Lands
Mulolongo Brothers	Mulolongo Brothers Association
National Land Commission	The National Land Commission is a constitutional body set up by the National Land Commission Act
National Land Commission Act	The National Land Commission Act (No. 5 of 2012)
Ndung'u Report	Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land of 2004
Njonjo Report	Report of the Commission of Inquiry into the Land Law System of Kenya of 2003
OAG	Office of the Auditor General
OCPD	Officer Commanding Police Division
PC	Provincial Commissioner
PDP	Part Development Plan
Physical Planning Act	Physical Planning Act, Cap 286 of the Laws of Kenya
PPA 1 form	Standard form given by a Local Authority to a developer to guide the circulation of the plan to various offices.
PPA 2 form	Standard form used to communicate approval for development to the developer
Protected Areas Act	The Protected Areas Act (Cap 204 Laws of Kenya)
PSIC	Provincial Security & Intelligence Committee
Public Authorities Act	Public Authorities Act (Chapter 39 of the Laws of Kenya)
PwC	PricewaterhouseCoopers Limited
RDA	Registration of Documents Act, Cap 285
RIM	Registry Index Map

RLA	Registered Lands Act, Cap 300
RTA	Registration of Titles Act, Cap 282
SARPs	Standards and Recommended Practices
SPA	Sichangi Partners Advocates
SPRO	Survey Plan Records Office
SRO	Survey Records Office
Syokimau Farm	The parcel of land known as LR No 7149/11 part of which was acquired during the 1971 compulsory acquisition and the rest was to be acquired in 1982.
The 1996 LoA	LoA Ref No 39711/XXIV of 20 September 1996 issued to Uungani and that was found in the Lands Office
The 1998 LoA	LoA Ref No 39711/XXVI of 5 January 1998 issued to Uungani and that was used to carry out the 2008 survey
The 2002 LoA	LoA Ref No 39711/XXVII of 24 January 2002 that Uungani used to pay rates at the Department of Lands
The Mau Taskforce Report	Report of the Government's Task Force on the Conservation of the Mau Forests Complex
Trespass Act	Trespass Act, Chapter 294 of the Laws of Kenya
Ungani Enterprises	Ungani Enterprises Limited
Uungani	Uungani Settlement Scheme Self Help Group
Valuation for Rating Act	Valuation for Rating Act, Chapter 266 of the Laws of Kenya
Wilson	Wilson Airport

Annex IX

ORGANOGRAM SHOWING THE OFFICES OF THE SPEAKER AND THE CLERK OF THE NATIONAL ASSEMBLY

