

# Police Powers and Environmental Management: Experiences from East Africa—DRAFT REPORT

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## Summary

Land rights are bundles of property rights that may include the rights of access, use and transfer. The number of rights in each bundle varies by tenure type (*e.g.*, the bundle of rights under freehold tenure commonly includes more rights than under leasehold tenure). International attention has focused on securing the bundle of rights<sup>i</sup> and protecting landholders from expropriation—the exercise of compulsory land acquisition authority (eminent domain) extinguishes all rights in the bundle). But all governments also have broad authorities to selectively restrict or extinguish certain rights in the bundle. Often called police powers, these authorities have generally received less attention in Africa yet they can have significant and adverse effects on the wellbeing of smallholder farmers and their families.

These authorities are provided government principally to promote the public interest. While the definition of public interest and therefore the justification for exercising these powers vary by country, environmental management is a commonly recognized and established public interest in Africa and around the world. To achieve such ends, governments commonly restrict the use of privately-held land, although other restrictions are also used (*e.g.*, a restricting on hunting of endangered species on privately-held land). For example, various police powers have long been used by African government (and colonial administrations) to restrict land use in order to safeguard critical habitats (*e.g.*, landholders are restricted from draining wetlands) and protect against environmental degradation (*e.g.*, landholders are restricted from farming steep slopes or riparian areas).<sup>ii</sup>

The social and economic (as well as environmental) impacts of such restrictions vary. While certain land-use restrictions have limited impact on most landholders, other restrictions have profound, adverse effects on some smallholder farmers who make their living off their land. Some private land-use restrictions render certain land essentially useless and valueless, amounting to a “regulatory taking”<sup>iii</sup> Other restrictions might limit farmers or pastoralists to use only a small portion of their land. With few other economic opportunities, such restrictions can lower livelihoods and reduce well-being. Common use of these authorities can also affect the broader public by creating insecurity in land tenure. Weak property rights discourage landholders from investing in their land, lowering agricultural productivity and resulting in environmental degradation.

Rights advocates and other stakeholders have focused their attention on limiting expropriation and involuntary resettlement, and on ensuring fair and prompt compensation for losses. Some attention has also directed at democratizing the authority of eminent domain, ensuring that this authority is only used for genuine public purposes, that the process is open and transparent, and that those people who lose their land are fairly and promptly compensated.<sup>iv</sup> Police powers that restrict property rights are broader in their scope, more commonly used and affect more people, yet considerably less attention has focused on these authorities. This brief focuses on the authorities that restrict or extinguish select land rights, especially land use rights, in Kenya, Uganda and Tanzania. It provides an overview of these powers, focusing on their uses, the procedure for exercising them, and compensation for losses. The brief concludes with some recommendations to democratize these authorities, protect against the misuse of these powers, and strengthen land rights.

## Background

The exercise of police powers to restrict the use of privately-held land is not new to East Africa. The British colonial government routinely exercised police powers to achieve environmental outcomes. For example, in Kenya, the British used various powers to protect soil from wind and water erosion, especially to conserve soil in arid and semi-arid lands, on steep slopes and in riparian zones.<sup>v</sup> From the 1930s until independence in 1963, colonial officers forced villagers to construct bench terraces on their farms and reduce their livestock herds. Officers used stakes and ropes to lay out contours on farms, often without notifying the farm owners, and then forced the farmers to construct the terraces. Kenyans everywhere tried to resist because the forced practices interrupted traditional resource use, threatened local livelihoods, and engendered mistrust and conflicts.

This resistance to the conservation efforts in the 1930s fueled a national anticolonial offensive in the 1950s. World War II put a temporary halt to the colonial government's coercive tactics and the terracing stopped. This in turn led to overgrazing and an increase in soil loss further exacerbated by a severe drought in 1943. When the war ended, the colonial conservation campaign and the villagers' resistance resumed. The impacts of the campaign were felt far and wide, and fueled grievances against the British. Forced soil conservation practices and the use of other police powers to protect the environment contributed to the independence movements in Kenya, Tanzania and Uganda.<sup>vi</sup>

Today, the use of police powers to protect the environment in East Africa varies. Many governments routinely exercise certain authorities (*e.g.*, Environmental Impact Assessments), but most such powers are used less frequently or not at all (*e.g.*, environmental easements). There are multiple reasons for governments not using their authorities or fully enforcing the laws, including weak capacity, political pressure, developer resistance, community resistance and lack of public awareness. Given the adverse implications for rural livelihoods and wellbeing, governments have emphasized voluntary compliance and “self-regulation.” Many environmentalists have criticized—and some civil society advocates have sued—the government for not exercising these authorities to the full extent of the law and for not enforcing the laws. At the same time, some private companies and affected people have sued the government for using these authorities, claiming lost opportunities and demanding compensation. In many cases, the courts of law in East Africa have upheld these authorities, underscoring the authorities of the state to protect the environment for public interest purposes.

For various reasons, many experts believe the use of police powers to protect the environment will increase in the future. For example, as foreign investments accelerate and national economies grow in many African countries, the risks and threats to the environment have also increased. There is now greater urgency for governments to exercise these authorities and better enforce laws to protect the environment. As the use of compulsory land acquisition to establish new or expand existing protected areas for biodiversity conservation purposes becomes more problematic, conservationists are eyeing land-use restrictions (as well as market-based payment for ecosystem services and other incentives) to safeguard wildlife and protecting critical wildlife habitat on privately-held land. These authorities have been used effectively for safeguard biodiversity in the United States and in other countries around the world. Moreover, as the effects of climate change begin to take hold, governments in Africa may use zoning ordinances and other authorities to proactively implement climate-friendly land-use plans and

practices, such as restricting farming on lands that will be more prone to soil loss from severe weather events.

Given the often significant and adverse effects on people, especially poor people with few alternative economic opportunities, these authorities must be carefully exercised. Governments must weigh the costs and benefits to the affected people as well as the public. Four issues regarding these authorities are central to achieving a balanced approach—the justification for using these authorities, the specific restrictions for achieving the desired environmental outcomes, the procedures for exercising these authorities, and the payment of compensation. Each is discussed in more detail below.

### Police Powers

*Purposes.* In most countries in Africa and around the world, police powers are established in the constitution and in national legislation.<sup>vii</sup> For example, in Kenya, the Constitution of 2010 provides government with police powers to restrict private land use: “(1) 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 morality, public health, or land use planning. (2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.”<sup>viii</sup>

Police powers that restrict land rights specifically to protect the environment and ensure sound natural resource management are provided in a large number of laws, including the framework environmental management law and various sectoral laws (Box 1). These national laws provide government with the responsibilities and authorities to achieve various environmental outcomes and to impose specific conservation practices (Boxes 2 and 3).

In Kenya, for instance, the **Government Land Act**,<sup>ix</sup> which applies to land owned by the government but privately leased, places various restrictions on land use, including requirements that the person leasing the land must invest in “improvements,” such as the construction of buildings or installation of irrigation systems.<sup>x</sup> Kenya’s framework environmental act, the Environmental Management and Coordination Act of 1999 (EMCA), in turn authorizes restrictions on land use in the name of environmental preservation. These restrictions include regulations in the name of water protection, pollution control, and wildlife protection.<sup>xi</sup> Meanwhile, Kenya’s Agricultural Act authorizes the government to require farmers to plant certain crops,<sup>xii</sup> follow development orders,<sup>xiii</sup> or restrict land use in the name of land preservation.<sup>xiv</sup> In terms of land use planning, the Physical Planning Act allows the government to control the development of land at local and regional levels. At the local level, the Local Government Act allows local governments at the municipal, city or town level to control development of land.<sup>xv</sup> The Chiefs’ Authority Act, in turn, allows chiefs to restrict the cutting of trees or use of water.<sup>xvi</sup> Meanwhile, acts pertaining specifically to mining,<sup>xvii</sup> forestry<sup>xviii</sup> and water<sup>xix</sup> allow land use controls in order to protect those resources, or to ensure government access to resources for extraction.

The Land Act of 1999 and accompanying regulations allow the Commissioner to place a variety of restrictions on the occupant.<sup>xx</sup> At the village level, certification of occupancy is granted by the village government, which can place restrictions on land occupancy including requirements that the occupant maintain the land in a good state, and apply for permission to erect any buildings.<sup>xxi</sup> The Commissioner of Lands and the village government have the right to enter and inspect lands held under a grant of occupancy, including customary occupancy.<sup>xxii</sup> The framework environmental act in Tanzania is titled

the Environmental Management Act. This act gives power to the National Environmental Management Council (NEMC) to oversee environmental protection in the country through various controls on land use.<sup>xxiii</sup> The Land Use Planning Act of 2007, in turn, creates planning authorities at the national, district and village levels with the responsibility of planning how land can be used.<sup>xxiv</sup> The Forest Act allows the Minister of Forests to, among other things, create national and local forest reserves, and grant any forest concessions over two hundred hectares,<sup>xxv</sup> while the Wildlife Conservation Act empowers the Director of Wildlife to control all capturing or hunting of animals on any type of land in Tanzania.<sup>xxvi</sup>

The Ugandan framework environmental act is entitled the National Environmental Act (NEA). The NEA empowers the National Environmental Management Authority (NEMA) to oversee land use in the name of environmental conservation, and lays out methods through which this power can be implemented.<sup>xxvii</sup> Among other things, NEMA has deemed that wetlands are the property of the public which “cannot be owned by any person or individual.”<sup>xxviii</sup> In addition to the Land Act and NEA, the Ugandan National Forestry and Tree Planting Act empowers the Minister responsible for forestry to set restrictions on the use of forest-covered lands, while the Uganda Wildlife Act allows the responsible Minister to put conservation restrictions on private lands in the name of wildlife preservation.

The laws empower mainly executive branch officials and agencies, but there are some that empower all branches and levels of government. In Kenya (and Uganda and Tz???), easements are ordered by the judiciary (Give the example of easements which go thru the court (Court empowered with private land use restrictions. No voluntary easements). In some cases, the law empowers non-governmental actors, such as chiefs, with the authority to restrict private land rights. For example, in Kenya, the Chief’s Act...

Focus on the determination of whether the exercise of the authority is justified. Some laws give government specific authorities to restrict certain actions, others provide specific environmental outcomes to achieve. Each law interprets public purpose in their sector, but collectively, the laws provide a broad definition of public purpose. Few, if any, laws provide a clear definition or public purpose or establishes public interest test (does the good to the public outweigh the cost to the few affected?). In Kenya, eminent domain requires the govt to explain the costs of implementation. In Uganda interpret it (for eminent domain) more narrowly. Absent a justification standard for exercising many authorities, the govt uses its discretion and relies of establish uses (protected areas).

*Restrictions.* 2-3 paragraphs on the government restricting all land use or mandating specific techniques for achieving specific public purposes. For example, no use of wetlands, no farming of steep slopes and no clearing of riverine forests. This is narrow, because in many cases, the public purpose of soil conservation can be achieved even with specific land uses (wetlands are be maintained while using some wetland products) and using various techniques (bench terracing, tree planting, etc.).

#### **Box 1. Conservation Orders in Kenya, Tanzania and Uganda**

In Kenya, Uganda and Tanzania, government has authorities to issue conservation orders to conserve certain types of natural resources, including over land privately owned or occupied. In Kenya, section 112 of the EMCA allows a court to grant conservation orders in order to preserve, among other things: flora or fauna, open space, quality and flow of water, and geographic features.<sup>xxix</sup> The government authority must apply to the court for permission to use such an order. The procedure for who may request an order and when it should be granted are left unclear however, leaving much discretion to both the requesting authority and the presiding judge. The Agriculture Act, in turn, allows for the issuance of “land preservation orders”<sup>xxx</sup> against the owner or occupier of land. Such orders can either restrict the owner/occupier from doing something on the land, or required that an action be taken. Under normal circumstances these orders are made by the Director of Agriculture after consultation with the appropriate district agricultural committee. The Minister in charge of agriculture

can also issue preservation orders however “whenever it appears to him to be urgently necessary in the public interest to do so.”<sup>xxxvi</sup> The Minister is the “sole judge” of the necessity to take such an action. If the land owner or occupier wishes to protest the order, he or she must appeal to the Agriculture Appeals Tribunal.<sup>xxxvii</sup>

In Tanzania, the framework environmental act allows any public authority to request the Minister responsible for matters relating to the environment to issue an environmental conservation order for land over which the authority has jurisdiction.<sup>xxxviii</sup> A long list is provided of issues that may give rise to an order (very similar to that found in Kenya). The list includes the preservation of flora, fauna, water, open space, land contours, and wildlife migration corridors. The order may also be used to restrict the scope of agricultural activities, mining activities and other activities that may burden the environment.<sup>xxxix</sup> No details are contained in the law as to when such an order can be issued or what it specifically can request of the land owner.

In Uganda, the nation’s framework environmental legislation, the NEA, does not mention conservation orders. Regulation 5(5) of the National Environment (Mountainous and Hilly Areas Management) Regulations, however, empowers the district environmental committee to serve a conservation order upon a land owner or occupier in an effort to prevent soil erosion.<sup>xl</sup> There is little guidance as to the types of activities that can be prohibited or required. Regulation 13 of the same legislation, in turn, allows the local environmental committee to order the planting of trees or other vegetation in order to protect an area at risk of environmental degradation.<sup>xli</sup> Again, there are few details as to how this should be implemented.

### *Procedures.*

Some authorities, often the commonly used authorities, have enabling regulations or administrative rules to guide implementation. For example, many African countries have developed Environmental Impact Assessment regulations. Often these regulations spell out the specific purposes and limits of the powers, procedures for exercising them (e.g., popular participation, access to information) and any compensation for disruptions or losses.

#### **Box 2. Environmental Easements in Kenya, Tanzania and Uganda**

In Kenya, section 112 of the EMCA provides for environmental easements. The law allows any person or group of persons to make an application to the court for the granting of easement over a parcel of land in the name of environmental protection. Such easements may exist in gross – meaning that person seeking to impose the easement does not need to be the owner of a neighboring piece of land (the so-called ‘dominant’ land). Unlike in the case of conservation orders, where an enumerated list of permitted purposes is provided, the same guidance does not exist for environmental easements. Instead, little direction is provided to the court as to when an easement should be granted. The Act states only that easements are to “further the principles of environmental management set out in [the EMCA] by facilitating the conservation and enhancement if [sic] the environment.” The court is free to “impose any such conditions...as it considers to be best calculated to advance the object of an environmental easement.” Easements in Kenya can be created for perpetuity or for a set period of years.<sup>xlii</sup> Only the person or group of persons who requested creation of the easement can enforce its compliance.

In Tanzania, section 156 of the EMA lays out a framework for environmental easements. The law is similar to that in Kenya. Applications to the court may be made by “any person or a group of persons,” and the court is guided only by the direction to grant an easement to further the principles of environmental management set out in the Act. Requirements for enforcement are the same as well – only the person or group seeking the easement may apply for its enforcement.<sup>xliii</sup> A primary difference between the Tanzanian and Kenyan law, however, is that the Tanzanian EMA does not mention the validity of in gross easements. Such easements are thus seemingly not allowed.<sup>xliiii</sup> If this is the case, only owners of adjacent land may be granted an easement.<sup>xliiii</sup>

Uganda’s laws concerning environmental easements are found in the NEA, section 72-76. As in Kenya and Tanzania, the court in Uganda is to grant an application for an easement if it furthers the principles enumerated in the act. Unlike in Kenya and Tanzania however, the Act also enumerates uses for which an easement may be granted. These including preservation of flora and fauna, water, views and open space, and geological features.<sup>xliiii</sup> The court is explicitly allowed to limit agricultural and mining activities, and the building of “works” on the land subject to the easement.<sup>xliiii</sup> Easements can be in gross, and so applications can be brought by anyone, including non-neighbors.<sup>xliiii</sup> The applicant is later responsible for enforcement.<sup>xliiii</sup>

For most of the police powers, however, regulations or administrative rules have not been established with the only formal guidance coming from the principal national law. The powers without regulations

are often those that are not commonly used or exercised or that have not attracted much public attention. For such authorities, the empowered or responsible official or agency has considerable discretion in when and how the power is exercised. In some cases, the empowered agency exercises his/her discretion often resulting in consistency application and creating risk and uncertainty for landholders. In other cases, procedures have been established through practice and implementation is based on past experiences and there is more consistency in its use.

The exercise of police powers without enabling regulations is often problematic with the powers used for purposes that stretch the justified uses in the national law, the exercises not open or transparent, and compensation not paid for losses or disturbances to the land rights. Such circumstances are ripe for abuse. Fundamental democratic principles, such as participation, transparency and accountability, are not embedded in the actual exercise of these authorities. In some cases, citizens have sought redress in courts, but courts have usually upheld the powers (see Jane Dwasi's report which has court cases)

### *Compensation.*

Compensation for losses from the exercise of eminent domain in Kenya, Uganda and Tanzania are required under the constitution and spelled out in the Land Acquisition Act and in other legislation. This, however, is not the case for most police powers. For most police powers, the law is either silent on whether associated losses must be compensated or they explicitly provide for no compensation.

#### **Box 3. Compensation for Environmental Easements in Kenya, Tanzania and Uganda**

All three of the acts allow for compensation to the party whose land is being subordinated. Clear directions regarding how much compensation is to be given, and the timing of that compensation, are lacking however.

In Kenya, any person who has an environmental easement imposed upon their land has a right to compensation. This compensation is to come from the person requesting the easement,<sup>xlv</sup> unless the easement is found to be in the "national importance," in which case the government is to cover the cost.<sup>xlvi</sup> The court is directed to "take into account the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land"<sup>xlvii</sup> when considering an appropriate amount. Notably, the Constitution and other laws such as the Land Acquisition Act are designed to compensate for the full value of the land in question.<sup>xlviii</sup>

In Tanzania, a person whose land becomes subject to a Conservation order has a right to compensation "commensurate with the lost value of the land"<sup>xlix</sup> in accordance with the Tanzanian Land Acquisition Act of 1967 (LAA) and the Land Act of 1999.<sup>l</sup>

In Uganda, Section 76 requires compensation to be paid to person with a legal interest in the land subject to the easement "commensurate with the lost value of the use of the land."<sup>li</sup> The compensation is to be paid by the person requesting the easement, or the government in cases of "national importance." In determining appropriate compensation, the court is to take into consideration the Constitution of Uganda and "any other laws" relating to compulsory land acquisition.<sup>lii</sup>

The laws governing land use plans in East Africa<sup>liii</sup> give significant power to Ministers and other government authorities to create, change or approve such plans. In Tanzania and Kenya, stakeholders have an explicit right to give input on the plans, but their comments can be overridden by the authority in question. In Uganda, no such right to participate is included in the laws. On the other hand, Uganda is alone in mentioning any right to compensation, an element that the Kenyan and Tanzanian acts ignore.

The impact of police powers on land and people can vary considerably, depending on the specific restriction, what land is impacted and how dependent the landholder is on the existing land uses. For example, Uganda's restriction on the draining of wetlands will likely have significantly more impact on people whose land is primarily wetland and who must drain the wetland in order to practice farming or pastoralism than those whose land has no wetlands or only a small wetland, or who make their living on wage labor. For rural people, however, who are dependent on their land for their livelihood,

even a small impact can have a large repercussion on the livelihood and wellbeing of farmers who have few alternatives and other economic opportunities.

The exercise of some police powers are so significant to render the land useless (and valueless) for the landholder. The exercise of such powers is often referred to as a “regulatory taking.” Unlike the exercise of eminent domain in which the landholder lose his/her land, in a regulatory taking, the land remains in the hands of the holder, but he/she cannot use it. Some such powers require the payment of compensation. For example, environmental easements in Kenya. But not always - no compensation for mining on private property in Ghana.

### *Conclusions and Recommendations*

The power of a public official to order conservation on private is important to control land use and ensure protection of natural resources. However, as written the laws provide little safeguards against abuse from government official or private persons. Few guidelines are given as to when the authority can be exercised, and few procedures are in place to ensure that conservation orders are made only when proper.

The environmental easement clauses also though present opportunities for future abuse. The lack of guidance as to when such an easement can be implemented leaves much discretion to the court, and to persons or organizations contemplating asking for such an easement.<sup>liv</sup>

Governments must balance the public purpose benefits from the use of eminent domain and police powers against the associated costs to both those directly affected and to the public at large. On the one hand, governments must pursue public interests to the good of their citizens and sometimes for the good of the world. On the other hand, they must secure property rights to protect its citizens from expropriation, to encourage investment by landholders and foreign companies, and to provide collateral for loans.

Few laws, however, require the government to conduct cost-benefit analysis to ensure the use is justified. In Kenya, the govt must state the costs to the affected for ED. Many experts believe that the power of eminent domain has been so widely used in East Africa that it has created tenure insecurity among rural people.

While certain police powers were used extensively in colonial period to create tenure insecurity and threaten rural livelihoods, this may not be the case for most police powers today which are not utilized to the full extent of the law and, as environmentalists have argued, are under-utilized. A broader use of police powers as currently exercised now would create significant problems for many people, both those directly affected by the powers and the broader public for the further loss of tenure security. Simply relying on the government’s reluctance to use or weak capacity to implement these authorities is insufficient protection for rural people. There is need to improve the use and exercise of these powers and to reform the law to codify improvements. Four broad recommendations are proposed:

*New Research.* More research is needed to better understand the law and practice of police powers. Information is needed on what the law provides, how police powers are used, and on the short and long-term social and environmental impacts. Research is also needed to document whether the public

purpose justification is realized by the exercise of police powers and whether the costs to the directly affected and to the public at large are justified.

*New Regulations.* Enabling regulations are needed to provide more specific guidance on the use and exercise of the many police powers that limit private property rights and restrict land use. With codified procedures, the exercise of each authority will become more consistent, reliable and more predictable to citizens. The regulations should address four central aspects of each police power: the justified uses of each authority, the procedure for exercising each authority, and the compensation for losses and disturbance of private property rights.

- *Justified Uses.* Given the often significant, adverse effects of restricted land use on rural populations, the regulations should clearly provide that the use of police powers should be limited to genuine public purposes. The regulations should develop robust, unqualified public purpose requirements for use of powers, ensuring that they are not used for ordinary government business, such as... The exercise of police powers should be used as a last resort, only when there are no alternatives for achieving the needed public purpose. The regulations should establish high justification standards and provide for a public interest test or a cost-benefit analysis to establish if the benefits of the desired public purpose outweigh the costs to both the people directly impacted and to the public (e.g., tenure insecurity).
- *Procedure.* The regulations should articulate clear, step-by-step procedures for exercising each police power. The procedures should institutionalize fundamental democratic principles into the exercise of each authority. Building on the rights enshrined in the constitution, the procedures should include the right of access to government information, both through citizen requests and, more appropriately, proactive disclosure by government. They should provide for the right of public participation in each step of the process, including the determination of whether the proposed exercise is for a genuine public purpose. The procedures should also provide for recourse, including access to the courts of law as well as administrative review and dispute resolution.
- *Restriction.* If the power is to be exercised for a recognized public purpose, the regulations should provide the affected people with some flexibility and discretion to how to manage their land to achieve the declared public purpose. For example, if the public purpose is soil conservation, the affected people should be provided the opportunity to achieve this result either through bench terracing, tree planting or other means. Some practices might be more compatible with the farmer needs and interests than others. The choice of technique should be the farmers. The government should ensure that the public purpose is achieved and not mandate specific techniques.
- *Incentives.* As currently provided for, easements are designed to be imposed involuntarily on land owners or occupiers.<sup>lv</sup> The African Wildlife Foundation has suggested that procedures be put in place in Kenya to allow for voluntary easements.<sup>lvi</sup> Modeled on conservation easements in other nations, such easements would allow land owners to voluntarily give up rights to their land in exchange for certain benefits. AWF has piloted a project of using voluntary easements for conservation in Kenya. Entitled “Easements for Education,” the program provides funds for educational expenses in exchange for easements restricting land use in the name of conservation.<sup>lvii</sup> All three countries would do well to reform their laws to allow for voluntary environmental easements, and eliminate the opportunity to impose such easements involuntarily.

- *Compensation.* Finally, the government should provide compensation to the landholder for any and all disturbances to his property rights as well as any losses and harms caused by the exercise of police powers. Compensation should be based on market value of the losses and a premium should be provided for the compulsory nature of the restriction. Compensation should be paid at least annually (or more frequently) and for as long as the restrictions are in place. Landholders should be provided with alternative forms of compensation, such as money or other land.

**Box 1 – Sample of Laws with the Potential to Restrict Rights to Land**

Kenya

Constitution  
 Agriculture Act  
 Chief's Compulsive and Coercive Orders  
 Constitution  
 Environmental Management and Coordination Act  
 Forest Act  
 Government Land Act  
 Land Control Act  
 Mining Act  
 Petroleum (Exploration and Production) Act  
 Physical Planning Act  
 Registered Land Act

Uganda

Constitution  
 Agriculture Seeds and Plant Act  
 Animal Breeding Act  
 Constitution  
 Investment Code Act  
 Land Act  
 Land Acquisition Act  
 Mining Act  
 National Environment Act  
 National Forestry and Tree Petroleum (Exploration and Production) Act  
 Planting Act  
 Plant Protection Act  
 Prohibition of Burning Grass Act

Tanzania

Constitution  
 Environmental Management Act  
 Forest Act  
 Land Act  
 Land Use Planning Act  
 Local Government (District Authorities) Act  
 Mining Act  
 National Parks Act  
 Petroleum (Exploration and Production) Act  
 Urban Planning Act  
 Village Land Act  
 Water Act  
 Wildlife Conservation Act

**Box 2. Agriculture Act in Kenya**

Authorizes government to issue land preservation orders to:

- Prohibit or control clearing or breaking of land for cultivation
- Prohibit grazing or watering livestock on land
- Prohibit or control burning or destruction of vegetation for protection of land against storms, winds, rolling stones, floods and landslides, soil erosion and for maintaining water
- Undertake afforestation and reafforestation of land
- Protect water catchment areas

**Box 3. Environmental Management and Coordination Act of 1999 in Kenya**

Authorizes government to issue orders to:

- Protect hill tops and sides, mountain areas, forests (Sec. 44, 46, 48)
- Protect environmentally-significant areas (Sec. 54)
- Protect coastal zones (Sec. 55)
- Develop and apply environmental quality standards (Sec. 70)
- Develop and apply noise standards (Sec. 101, 102)
- Issue restoration and conservation orders (Sec. 108, 109, 111, 112)
- Impose environmental easements (Sec. 112, 115)

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<sup>i</sup> For example, by documenting, registering and titling land rights.

<sup>ii</sup> Eminent domain has long been used by African governments to acquire private land in a compulsory manner to establish new protected areas or to expand the boundaries of existing parks.

<sup>iii</sup> Regulatory taking refers to a situation in which a government regulates a property to such a degree that the regulation effectively amounts to an exercise of the government's eminent domain power without actually divesting the property's owner of title to the property.

<sup>iv</sup> Veit et al; but include at least one other piece

<sup>v</sup> The British acquired considerable land in a compulsory manner to protect critical habitat, such as important wildlife habitat, and also restricted the use of natural resources on and below the land, such as outlawing the hunting of many species of wildlife.

<sup>vi</sup> See my FGU study ([http://pdf.usaid.gov/pdf\\_docs/PNACA745.pdf](http://pdf.usaid.gov/pdf_docs/PNACA745.pdf)) . FGU – Kenya Katheka 1991. Traditional Village Institutions In Environmental Management: Erosion Control In Katheka, Kenya by Barbara Thomas-Slyter Charity Kabutha and Richard Ford ([http://pdf.usaid.gov/pdf\\_docs/PNACA559.pdf](http://pdf.usaid.gov/pdf_docs/PNACA559.pdf)) and Munro, J.F. 1975. Colonial Rule and the Kamba. Oxford: Clarendon Press.

<sup>vii</sup> The constitutions also provide government with the authority to acquire land in a compulsory manner (referred to as eminent domain. Guidance on the exercise of eminent domain authority is captured in Kenya, Tanzania, Uganda and other countries in a national Land Acquisition Act. Veit et al., Protected Areas and Property Rights, 2008

<sup>viii</sup> (Article 66); <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf> . The Constitution also provides government with the authority to acquire privately-held land in a compulsory manner but only “for a public purpose or in the public interest” (Article 40(3)(b)) and with “prompt payment in full, of just compensation” (Article 40(3)(b)(i)).

<sup>ix</sup> See Government Land (Appeals) Rules.

<sup>x</sup> Government Land Act, secs 32-33.

<sup>xi</sup> Environmental Management and Coordination Act of 1999.

<sup>xii</sup> Agriculture Act of 1955 (Chap. 318), secs 100-108, 186A.

<sup>xiii</sup> Agricultural Act of 1955 (Chap. 318), secs 64-75.

<sup>xiv</sup> Agricultural Act of 1955 (Chap. 318), secs 48-62.

<sup>xv</sup> Local Government Act of 1963 (Chapter 265), sec 166.

<sup>xvi</sup> Chiefs' Authority Act, Sections 10(g), 13.

<sup>xvii</sup> Mining Act (Chapter 306).

<sup>xviii</sup> Forests Act of 2005.

<sup>xix</sup> Water Act of 2002.

<sup>xx</sup> Land Act of 1999, parts 5 and 6.

<sup>xxi</sup> Village Land Act of 1999, sec 29.

<sup>xxii</sup> Lands Act sec 170; Village Land Act sec 29(4).

<sup>xxiii</sup> Environmental Management Act of 2004.

<sup>xxiv</sup> Land Use Planning Act of 2007.

<sup>xxv</sup> Forest Act of 2002, sec 21.

<sup>xxvi</sup> Wildlife Conservation Act of 2009, sec 57(4).

<sup>xxvii</sup> National Environment Act (Chapter 153) of 1995.

<sup>xxviii</sup> The State of the Environment Report 2004/2005 ( NEMA 2006) [Greenwatch Report]

<sup>xxix</sup> Environmental Management and Coordination Act of 1999, 112(4)(a)-(k).

<sup>xxx</sup> Agriculture Act of 1955 (Chap. 318), secs 48, 50. A “land development order” may also be issued under sec 64.

<sup>xxxi</sup> Agriculture Act of 1955 (Chap. 318), sec 51.

<sup>xxxii</sup> Id. (See also Environmental Management and Coordination Act of 1999 (section 44 & 46)).

<sup>xxxiii</sup> Environmental Management Act, sec 161.

<sup>xxxiv</sup> Environmental Management Act, sec 161(2)(a)-(k).

<sup>xxxv</sup> National Environment (Mountainous and Hilly Areas Management) Regulations, sec 5(5)

<sup>xxxvi</sup> National Environment (Mountainous and Hilly Areas Management) Regulations, sec 13.

<sup>xxxvii</sup> Environmental Management and Coordination Act of 1999, sec 112(3).

<sup>xxxviii</sup> Environmental Management Act, sec 158.

<sup>xxxix</sup> This reading of the law that is enforced by the requirement that the benefited land be specified in the court order. Environmental Management Act, sec 156(5).

<sup>xl</sup> Similarly, sections 148(5) and 156(1) of the Land Act of 1999 require payment for the creation of easements for the benefit of private individuals, government agencies and members of the public. Check out section 19 with regard to Forest covenants. Also... note the use of adjacent land for conservation easements in Costa Rica.

<sup>xli</sup> National Environmental Act of 1995, sec 72(4)(a)-(j). Notably, these requirements are the same as for conservation orders in Tanzania.

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<sup>xlii</sup> National Environmental Act of 1995, secs 72(4)(h)-(j).

<sup>xliii</sup> National Environmental Act of 1995, secs (6), 73.

<sup>xliv</sup> National Environmental Act of 1995, sec 74.

<sup>xliv</sup> Environmental Management and Coordination Act of 1999, sec 116(3).

<sup>xlvi</sup> Environmental Management and Coordination Act of 1999, sec 116(4).

<sup>xlvii</sup> Environmental Management and Coordination Act of 1999, sec 116(5).

<sup>xlviii</sup> Constitution of Kenya (2010), sec 40; Land Acquisition Act, sec 11.

<sup>xlix</sup> Environmental Management Act, sec 160(1).

<sup>1</sup> The most detailed description of adequate compensation is contained in the LAA sections 11-18, which cover when and how payments should occur, and rights to appeal. Section 14 directs compensation to be given based on the value of the land at the time of the extermination of the land rights in question. However, this is subject to certain limitations. For instance, full compensation is not provided for land that is vacant, or land that has been “inadequately developed.” If compensation is not paid at the time of relinquishment of rights, interest is to be paid on the compensation due. Land Acquisition Act of 1967, secs 11-18

<sup>ii</sup> National Environmental Act of 1995, sec 76.

<sup>iii</sup> National Environmental Act of 1995, sec 76.

<sup>iii</sup> In Kenya, the Physical Planning Act of 1996; in Tanzania, the Land Use Planning Act of 2007; and, in Uganda, the Physical Planning Act of 2010.

<sup>iv</sup> Even though Uganda provides an enumerated list of when an easement may be created, the list is very long and broad.

<sup>iv</sup> R. Watson, K.H. Fitzgerald & N. Gitahi, “Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements,” African Wildlife Foundation (AWF) Technical, March 2010. Note that maybe they could be imposed voluntarily.

<sup>vi</sup> R. Watson, K.H. Fitzgerald & N. Gitahi, “Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements,” African Wildlife Foundation (AWF) Technical, March 2010, p. 2.

<sup>vii</sup> Patrick J Bergin, Africa Wildlife News, Spring 2008, p2.