

# PROPERTY RIGHTS AND FOREST MANAGEMENT - WHOSE REALITY COUNTS?

## A POLICY BRIEF



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## Introduction

Land tenure may be defined as the terms and conditions on which land is held, used and transacted. In most parts of Africa, colonial powers imported systems of common and statute law for their own purposes in relation to tenure rights. These colonial 'masters' operated these laws alongside the existing customary law. In Kenya, the postcolonial governments have continued to operate under this legal dualism where both customary and non-customary (modern) land rights are recognized.

In most African settings, customary land laws establish usufruct rights but also limit an individual's right to dispose off land or to inherit. Most policies affecting land reforms in Africa are politically motivated and although they may be created to secure and protect common lands, they often tend to bring tension and challenges. Policies which may be opposing the formal recognition of indigenous common property tenure systems might need to be re-organized to benefit local/indigenous communities.

## Kenya's land history

A big percentage of Kenya's population lives adjacent to forests and dependence on the natural resource is very high. This has often led to conflicts regarding the availability, use, access to, quality and distribution of natural resources and especially land.

Kenya's land question has roots in the colonial situation and was shaped by three distinct events.

- The alienation and acquisition of land as a prelude to the establishment of a colonial state.

- The imposition of English property law and its acclamation of title and private property rights in the alienated areas.
- The swynnerton plan which saw to land tenure reform in the native reserves

The colonial government took up land and assumed ownership under the crown. After independence, the government took up ownership of these lands and took up the right to invest them in other holders as it deemed. Based on this, the 're-Africanisation in the white highlands began in the early 1960s and an ethnic dimension to an already crippling land tenure problem began.

It is against this background that the government's policy on forestland takes root. Soon after independence, the government took control of all the forest land and has continued to govern almost all Kenyan forests. As a result, many communities in Kenya have been directly affected by the link between politics and land ownership. A majority of those living adjacent to forests such as the Tugen have had to give up rights to ancestral lands from the beginning of the colonial era to date.



A view of Tugen Hills with Lake Baringo at the background

### *The study Area: Tugen Hills Forest*

- *Located in Baringo district of the Rift valley province.*
- *District is classified as arid and semi but the hills have high agricultural potential and are characterized by well drained and fertile soils*
- *Main crops-cash-pyrethrum, wheat; subsistence-maize, beans, vegetables*
- *Lake Baringo is the largest source of water in the district and is also one of the two important fresh water lakes in the Kenyan Rift valley*
- *Major ethnic group-Kalenjin (Tugen). Others are Pokot, Njemps, Turkana*
- *Land ownership: Mostly individual tenure*

### The importance of tenure in forest management:

Kenya's land tenure system can be characterized as private/modern, communal/customary, public/state and open access. Ownership of land in the country is vested in the government, county councils, individuals and groups. Forested landscapes also fall under these categories although the government owns most. The many changes in forest tenure is directly linked to changes in forest management.

The close relationship between land ownership, political power and ethnic dominance has increased especially during the closing decade of the last century. In Kenya poverty is defined by the millions of people who face exclusion from access to land and other resources.

Most communities across the country measure wealth in terms of land ownership. Those who have no land (squatters) are often regarded as the poorest of the poor. This is further complicated if the land in question is within government forests as the case in Tugen Hills and Gathiuru forest in Mt. Kenya.

Like in many other forests across the country, the main problem in Tugen hills stems from property rights issues. Many families claim land within the

forest and have been displaced (squatters). This has increased tension between the government and different members of the community and also the level of dependence on the forest due to poverty. A large number claim to be right holders of land within the forest and blame the government (both colonial and post colonial) for their 'squatter' status. Major evictions occurred during the colonial era and in 1988. Although some community members were re-settled elsewhere, there are complains that those who were re-settled were not the rightful owners of the land.

The increase in population growth has brought about intensified property rights problems. This has led to an increase in social and economic demands on the forest thus creating shortages of many resources.



Encroachment into forest land

Other external influences such as the petroleum crises and the increasing prices of petroleum products have forced many households in the lower economic brackets to rely more on renewable biomass fuels. With all these developments, the pressure on land has risen to colossal levels thus increasing the problem of squatters among this forest adjacent community.

### **POLICY CONSIDERATIONS**

The sensitivity and complexity of tenure issues and concentration on land redistribution especially those considered common pool resources such as forests call for a more integrated approach in solving the issues.

The livelihoods of communities have been adversely affected by either the slow process of justice or the

government's inertia in dealing with sensitive land issues. Changes in ownership structures should be put in place and where the law (modern or customary) proves ownership, the rightful owners must be re-settled or compensated.

Property rights issues especially with regard to forested landscapes must be flexible enough to take into consideration the role of local institutions. The Tugen Hills forest has been well preserved mainly due to the community's belief and total regard for the traditional forest laws.

Land tenure reforms should also be closely linked to other non-land based development reforms to give communities a 'basket of choices' concerning livelihood improvement. Financial incentives and other entrepreneurial skills must be integrated into the reforms.



A typical squatter's hut

## CONCLUSIONS

To achieve sustainable development, policy makers need to use laws on property rights to improve environmental governance through channels or ways that benefit local people. The use traditional and/or local institutions must be promoted to better understand the complexities surrounding land issues. Tenure dualism can therefore be acknowledged as a resource rather than an obstacle in changing livelihoods of the poor. The indigenous management system that is governed by customary

laws, rules, and local institutions has strong roots based on ethics and moral values.

The potential for including communities in decision making to resolve property rights conflicts at the community level remains strong. If these were to be combined with the professionalism of the current forest governors, the situation would probably improve. Most of the farmers interviewed also advocated for joint or collaborative management of the forest. With the new forest policy, it is hoped that some visible change will take place.

The land question that has plagued Kenya for a long time starting from the colonial periods through the late president Kenyatta's government remains unsolved. The former President's government also disregarded the communities' land problem and aggravated the problem by rewarding loyalists through land allocations that sometimes included forest excisions. These actions reduced the country's dwindling forest further and increased conflict with the local groups. It is hoped that given the problems faced by the community in this study, there might be a conscious move towards addressing the eviction problem. There is therefore need to lobby for policy changes that will positively address the needs of local communities, especially those living at the forest peripheries.

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