

### **3 Policy Briefs from STAKE:**

**PB I: FOREST GOVERNANCE**

**PBII: POLICY ON FOREST RELATED CONFLICT RESOLUTION IN  
KENYA**

**PB III: FOREST RELATED LIVELIHOODS**

## POLICY BRIEF – FOREST GOVERNANCE

### WHAT CAN BE LEARNED FROM THE STAKE PROJECT? PROPOSALS FOR THE FUTURE

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#### Executive Summary

It is clearly stated in the Kenyan constitution 2010, section 69 and the newly enacted Forest Management and Conservation Act 2016 and the Forest Policy, that the vision and aim of Kenyan forest regulation is to *protect the future generations* of Kenya, to *protect the forests* and to *secure public participation* in forest management = inclusive governance.

However, there is still lack of alignment between different laws and institutions regulating natural resources resulting in competition, power struggles and lack of implementation; also lack of respect for local knowledge and understanding of the necessity of active engagement of the civil society remains as obstacles for making inclusive governance a reality.

Thus, empowerment is needed both for lawmakers to gain sufficient theoretical and practical tools for formulating effective laws, for managers on all levels to gain insight and experience in good governance and constructive conflict resolution, and for civil societies to understand and actively engage in participatory and democratic decision-making processes.

#### Introduction

The 2005 Forest Act was a milestone and the 2015 Bill carries the vision further as contained in the Constitution forest policy and vision 2030. One of the key initiatives was the setting up of local institutions CFA and KFS.

However, despite the promising process as described in FA 2005, conflicts have remained or even increased in the Mau Forest. The aim of the STAKE-project was to strengthen our understanding of forest related conflicts in Kenya, specifically in the Eastern Mau.

During the project, a number of problems and challenges were revealed:

- a. Lack of alignment between regulations and institutions protecting other natural resources, (such as water, wildlife etc.) and different institutions authorized to take care of each of their areas, create uncertainty and conflicts between communities and competition and power struggle between different institutions.
- b. Gaps in the forest governance system, lack of clarity in competencies and tasks, lack of knowledge about forest governance and different institutions' tasks plus lack of respect for local knowledge, leads to conflicts.

All these challenges lead to shortcomings in the implementation of forest governance and cries for a system in place, which can monitor implementation and the related challenges.

## Background

In search of stability and prosperity, a new Forest Act (2005) was enacted aiming at improving natural resources management by decentralizing responsibilities and rights of forest management to civil society bodies, called Community Forestry Associations (CFA). Such reforms can be seen as an exercise of State building through adherence to democratic principles, whereby State-led governance becomes inclusive in the sense that it recognizes civil society based governance. In practice, however, the reform resulted in further conflict and destabilization.

In STAKE we wanted to improve our understanding of the drivers of forest related conflicts and of the role of inclusive governance to provide for mutual recognition between State-led and civil society based governance in alleviating conflicts. This required a top-down/bottom-up approach. Also we applied state-of-the-art theories and related methods on legal pluralism, conflict and conflict resolution mechanisms, decentralization, and livelihoods, to investigate (i) the degree to which the implementation of the FA 2005 was fulfilling the theorized conditions for efficiency and equity and (ii) how the FA 2005 implementation had affected human welfare as observed through changes in patterns of conflict and livelihoods.

## Results

Essential for inclusive governance, as also addressed in the newly enacted **Forest Management and Conservation Act 2016**, is communication between law-makers, managers and people on the ground. During the data collection, we learnt that informants gave isolated and disjointed information. The data collected on conflicts indicated broken communication lines among community groups/stakeholders/law makers. To address this, we decided to hold joint workshops for individuals from different respondent categories comprising of forest managers, local administrators, community forest association (CFA) and local community, rather than hold four separate meetings that would have made a total of eight meetings. The combining was found to facilitate cross learning and establishment of communication lines. This has helped to not only break barrier, but build bridges for the sake of implementation of inclusive governance in the future.

Also the National Conference was organized inclusive, with, so called, high level and low level participants, and draft STAKE-policy briefs were discussed jointly.

## Conclusions

The findings of STAKE with regard to FA2005 have been tested with regard to the FOREST GOVERNANCE and Conservation Act2016. The test shows that

\*the 2016 Act, as it (still) primarily covers forests, an **overlap** remains towards wildlife, water etc.

\*The task of each institution is spelled out in more detail, but some **gaps** still remain in terms of capacity building, transparency, knowledge, information sharing and funding of County Governments and CFAs who are key in implementation.

\*The biggest problem remaining is, however, the **implementation**: The Act gives the Cabinet Secretary the responsibility to prepare Forest User Guidelines, but there is no time-frame.

Considering that some of these guidelines are crucial for PFM-implementation it poses a big challenge. A key example is the benefit sharing, which was discussed throughout the development of this Act 2016, but it was not concluded.

The crucial questions and challenges in the Act 2016 when compared to the findings in the STAKE project seem to be the following:

*Who will fund or are there provisions for funding implementation agencies other than KFS?*

*Who will oversee the implementation of the KFS (so that KFS is not overseeing itself)?*

*How will Counties be brought on board and how will their connection to KFS be cleared?*

*The overall question is: How can the ambitions for implementation of inclusive forest governance be fulfilled?*

## Implications

Empowerment is needed for:

- Lawmakers require the theoretical and practical tools to formulate, assess, enact and implement effective laws to facilitate good governance and effective people-oriented economic development.
- Managers on all levels require empowerment in constructive conflict resolution, basically through understanding how all parties can gain from cooperation rather than through competition.
- Civil societies require empowerment to actively engage in and take responsibility for participatory and democratic decision-making processes

## Recommendations

Part II in the Act deals with administration and part III with financial provisions. The key institution is Kenya Forest Service (KFS), having the task of protecting and managing the public forests and prepare and implement management plans, grant licenses and prepare forest status reports.

- The provisions on KFS are numerous, including required qualifications for the Chief Conservator of Forests (section 14,1) for KFS.
- In section 17 the Kenya Forestry College shall provide forestry education, and management and sustainable utilization of forests. By the Cabinet Secretary (section 18) honorary foresters may be appointed and forest conservation committees be established – also with legally secured allowances. Moreover, A Forest Conservation and Management Trust Fund is established - and payment of allowances is provided for - together with a Board of Trustees. The County executive committee member responsible for forestry in each county has the task of supervising the implementation of national policies on forest management and conservation and shall prepare an annual report. The Kenya Forestry Research Institute is the agency in forestry research and development. A new provision makes it possible to prescribe a member from civil society working in forest conservation to be member of KFS.
- *However, the Act still lacks institutions that will regulate the sector as KFS is one of the implementer and thus cannot and shouldn't regulate itself.*
- In section 21 Forest functions of County Government are spelled out in details, however, in section 21,3 the responsibility of these functions remains unclear when the act is stating

that KFS “may if requested collaborate, partner or offer assistance to the County Government for the better carry out of the provisions of the Act”.

- In section 31, the Act gives the responsibility of managing the forests to KFS with no clear provisions for the county government, cfr. Section 31, meaning that an important issue is left out of the act. As long as the ACT does not provide financial provisions for managing forests in the county it may be unsure how the counties will make priority. Section 23 shows that financial provision is given only to KFS.
- In Part V community participation is dealt with. These provisions are very vague compared to part II and III. The Community Forest Associations (CFA) are voluntary and there are no provisions on management, finances etc. A member of a forest community may, together with other members or persons resident in the same area, register a CFA. If registered the CFA may apply to KFS for permission to participate in the conservation and management of public forests. There are conditions in relation to the formalities (Constitution, financial regulations etc) and the CFAs are to present proposals regarding use of forest resources, methods of conservation of biodiversity and of monitoring and protecting the forests.
- Finally, KFS may impose conditions. The duties are explicitly mentioned and the right to collect and harvest etc. So again CFAs are given opportunities but there are no clear benefits, incentives or financial support spelled out in the Act 2016 which make the ‘lives’ of CFAs very unsure. *Some activities that CFAs are expected to do, like developing a forest management plan, are responsibilities of KFS, which means that CFAs are required to do KFS work without financial support.*

Inspiration regarding public participation can be found in:

OECD Guidelines for due diligence including conflict resolution

UNESCO material on capacity building regarding bioethics

Danish Forestry Council advising Government consisting of independent stakeholders

Danish procedures of inclusive governance regarding the environment

Danish Consensus Conferences creating information and debate on difficult societal questions.

Principles of Corporate Social Responsibility to obtain funding for public participation

### POLICY ON FOREST RELATED CONFLICT RESOLUTION IN KENYA

Forest Related Conflicts Management and Capacity Building- **Strategies for resolving forest related conflicts in Kenya, based on research in Mau Forest**

**Raphael Kweyu, Thuiti Thenya, Jens Embor and Joran Kagombe.**

#### EXECUTIVE SUMMARY

Kenya is largely a dry country with 75% of the country falling under arid and semi-arid ecosystem, which means that forested ecosystem are limited and utilisation is characterised by high competition. It is this coveted use of forest resources that contribute to conflicts in natural resources. The Eastern Mau forest ecosystem, which is part of 21 blocks of Mau forest ecosystem, has in the past received high number of people settled after illegal excision driven mainly by need to solidify politic base by politicians. Analysis of conflicts associated with government agencies allocation, self-allocation by local community and resource management using multi-disciplinary approach provided a learning platform for addressing and resolving conflicts. This is essential possible as STAKE project undertook analysis of manifestation, actors and policy gaps. The key highlights in addressing conflicts are that

- Management approach of natural resources including forest, water and land is crucial
- Government agencies and other stakeholders coordination is also important
- Triggers and manifestation are predictable and can be arrested if early warning system are in place
- Long term mediation system at local level backed by legal legislation is crucial ingredient

#### INTRODUCTION

Kenya's recent past has been marred by violent conflict. Most of these conflict situations have involved different ethnic groups antagonizing each other. The conflicts range from minor skirmishes occurring sporadically in different parts for the country to major clashes involving high magnitude property destruction and loss of lives during national elections. There seems to have been an increase in escalation of ethnic conflict after the introduction of multi-partyism in the early nineties. Ethnic skirmishes in Kenya have resulted into loss of lives and injury as well as destruction of property. Major clashes have also led to outmigration of communities to other

geographical areas. The aim of STAKE was to undertake analyse of the types and manifestation of conflict associated with natural resources using Eastern forest Mau as case study.

It is evident that Kenyan ethnic clashes are closely related to access to natural resources. In the Rift Valley, for instance where ethnic conflict has been prevalent, resource competitions has been witnessed in land, pasture, water as well as livestock raids. Forest resource competitions have also been a source of tension among different ethnic communities in particular in the Mau Forest. The forest harbors tree products such as timber, firewood and poles, pasture and water for livestock, honey, medicinal herbs among other products. Forestland is also an important resource offered by water towers. All these resources can be a subject of disputes and competition if the forest is not properly managed can escalate into violent conflicts.

There is a relationship between social conflict among forest adjacent communities and forest degradation. For example, when forest land is excised and used to settle immigrants, there is always a perception that more land could be accessed from the forest by different groups. In some cases, forest adjacent communities who are left out in the resettlement felt uncomfortable with those allocated land from outside that area. Thus, there is a likelihood of different groups to encroach into the forest leading to degradation as well as competitions on resources like water, grazing and farming area as witnessed in Eastern Mau.

Stakeholders of forest conflict are varied; for instance conflict between the government (managers of the forest) and the community, between different communities, and at times between government agencies managing the resource. Where the government is conflicting with the community, it is common to find that the policies of managing the forest are not being well communicated, well understood or maybe unsustainable. Lack excision in eastern Mau and allocation was done by government institutions due to low safe guard in then Cap 385 of the forest legislation. This was because Cap 385, which was later reviewed to Forest Act 2005 lacked basic tenets of good governance such as participation and equity. Whenever the community feels that they do not 'own' the forest, they are likely to engage in activities that may destroy the forest as they did in eastern Mau. On the other hand, socio-cultural and socio-economic drivers can lead the community to destroy the forest and as such lead to conflict with the government. Political infiltration in forest management in terms of settling voters in excised land and sub-sequent self-allocation of forest land by local community escalated the conflicts in the forest area. This was also facilitated by lack of coordination of different government agencies such as forestry and land leading to loss of natural resources and triggering conflicts. This highlights the need to improve natural resources governance and inter agency coordination.

## BACKGROUND

Conflicts in Eastern Mau are caused by a combination of these factors combining institutions, policy, politics and implementation. Under the STAKE project, the aim was to study the sources of forest related conflicts in Eastern Mau, Kenya. The study documented the sources of conflict in the

Mau as socio-cultural factors; natural resources and other geographical factors as well as policy and institutional factors. This was done through use of multi-disciplinary approach geographical documentation through transect walks, focus group discussion and key informant discussion preceded by analysis of policy documents related to forest and natural resources management.

## RESULTS

Perception is important in triggering and managing conflicts and it contributes in manifestation of any type of conflict. Indigenous people such as the Ogiek have had claim of being the original owners of the forest resources and so perceive others communities as intruders and so expect special treatment in resource management. This contributes to conflict with other communities. While other communities inhabited land around Mau forest, the forest excision and allocation by government agencies without properly following excision procedure trigger a wave of self-allocation leading to perception of intruders and competition of resources.

From the research findings, it is evident that forest excisions by the government and subsequent adjudication of land have played a major role in conflict over natural resources in Eastern Mau. The government's decision to excise parts of the forest with the aim of resettling communities provided an arena for ethnic competitions over land and other natural resources. The conflicts that were witnessed in the Likia extension area in Mau Narok division in the 2000s present a case where groups of individuals from different communities competed over land. Further, research showed the loss of 60% of forest land was lost to agriculture and settlement between 1995 and 2014, which again caused conflicts over the use of common pasture on forest land, like between the Maasai and Kalenjin communities within Longman forest station. A strong underlying factor was politics and each community was pushed by politician to assert their right of the resource in the process the politician hoping to gain from votes. The question is if such conflicts could have been detected, prevented or addressed in earlier stages?

## CONFLICT RESOLUTION MECHANISMS AND PRACTICES

In the past, conflict intervention in Kenya has been often through cure and not prevention. For instance, whenever different communities have been involved in violent conflict across Kenya, attempts have been made to quell the violence first (through such actions as arms disarmament in case guns were involved), then peace meetings are held and/or commissions of inquiry into the cause of the clashes are set up by the government. Whereas these initiatives are significant in providing short term solution to the conflict, quite often than not, long term follow up conflict transformation initiatives are lacking in Kenya.

The most prevalent conflict resolution mechanism in Kenya has been through court cases. However, in the recent past, attempts have been made to move away from the traditional litigation as a way of resolving conflict. For example, during the 2007/2008 post-election conflict it



took the intervention of an international mediator to mediate-arbitrate (med-arb) between the two competing parties who were involved in an election dispute that had escalated into violence involving supporters of the two sides and had claimed many lives . Also, other mediation efforts on land-issues are on the rise across Kenya., e.g. the Olkaria Geothermal Project, in which dispute between KenGen and four Maasai communities who were displaced to give room for geothermal mining was amicably settled through third party mediation and an agreement was signed between the parties. These efforts are commendable as they are inclusive and the various parties to the conflict are actively involved in the process. Also, unlike court processes, there is not a “winner takes it all” perception. However, a policy on conflict resolution that could support such efforts is still lacking in the Kenyan legal frameworks.

Forest management in Kenya has undergone transformation especially with regards to policy. This is covered well in the Forests Act, 2005, the recently enacted Forest Management and Conservation Act 2016 and the National Forest Programme 2017. These legislations have enshrined certain good practices such as participatory forestry management (PFM) which if well implemented can help minimize forest related conflicts. Thus, a policy on forest conflict resolution and management could anchor itself on the best rules that are found in existing forest laws and regulations. The Forest Management and conservation Act 2016 give elaborate process of engaging community and stakeholders but its weak on how to solve conflict that emanates from the engagement process. It gives prescriptions of the powers of KFS to terminate management agreements. Considering the need for coexistence with community and other stakeholders, it would be important to explore alternative conflict management strategies. Such strategies could include, but not limited to mediation, arbitration and traditional (local) conflict resolution mechanisms.

The Constitution of Kenya, 2010 aspires a situation where citizens can live in any part of the country without any form of discrimination. It established a National cohesion and integration commission aimed at bringing conflicting communities together. The commission aim is to facilitate and promote peaceful coexistence between persons of different ethnic and racial communities of Kenya and advice the Government on all aspects thereof. The Constitution has also a whole chapter of rights the Kenyans should enjoy and another chapter on integrity values. The Constitution did establish a truth justice Commission to address historical Injustice some of which has contributed to conflict in the past. The report of this commission is now in Parliament for discussion and adoption. Since the constitution is the supreme law of the land, the process of community and stakeholder engagement should take onboard principles provided for in the constitution.

Conflict management is handled by several legislative means. National security is a national government functions in which Kenya Defense Forces should ensure safety of life and property. Internal security is mainly a function of Kenya Police Service. Police work closely with ministry of interior and coordination through the establishment of administrative framework that goes all the

way to the grassroots. Any case of breach in security is reported to police or representative of Nations government. Police are responsible for law enforcement. Judiciary have key role as cases that are not sorted out end up in Court. While some cases of conflict management could be handled under the Forest Act, most were beyond the Act. The law enforcement agencies needs to come together to address conflict issues.

Part of Conflict management in Kenya involves traditional methods of solving conflicts. All the communities had traditional cultural systems of solving problems. Elders in a community used to determine disputes amongst members. This practice got eroded over time but we still have communities where this practice prevails. This is the case in point for Njuru ncheke in Meru and Maasai elders. There is need to integrate traditional conflict management styles with modern legal systems. This can be supported by County legislations that would give accepted traditional conflict mechanism a legal status. Legal systems of solving conflict is prevalent in Kenya though not the desired route for most communities. The process is lengthy and expensive and leads to distrust and enmity amongst the litigants. As a result most Kenyans would prefer settling issues out of court. This calls for other conflict management methods like mediation. However, capacity for mediators should be enhanced to offer alternative conflict management.

## CONCLUSIONS

The government through its agencies have a key role in management of conflict within the forest sector. Key driver of conflict is competition for resources in which the government and other regulators should harmonize utilization and harvesting in a sustainable way (Ongugo et al., 2008). *Participatory Forest management* approach has been used in forestry since 2007. This has led to communities feeling they own the resource in their forested areas. This approach should be enhanced in all forested areas with special focus on community based conflict management strategies. Forest communities should be involved in protection and management of resources in their area. This will happen when the communities are involved in forest management plans development as well as implementation through forest management agreements.

*Capacity building in conflict management* is key to solving natural resource related issues. Participatory forest management training should be enhanced in all areas with a special focus on conflict management. Such training through STAKE has proved useful for coexistence of different communities and creating working harmony of forest managers and adjacent communities.

*Early Warning systems* – concrete suggestions on how to establish early warning systems should be explored. Conflict prevention requires careful monitoring of indicators of rising tensions and taking measures to ease them. It consists of data collection, risk analysis and providing information with recommendations to targeted stakeholders. Mobile phones, social media, crowdsourcing, crisis mapping, blogging and big data analytics are increasingly being used in early warning and early response. Results from the study in Mau could be used as basis for developing

early warning system. This could further be integrated in the conflict management training that takes participants through various stage of conflict.

*Conflict management* should be embedded in existing policies and legislations. While the constitution of Kenya has clear articles of coexistence and national integration, the related legislations need to be reviewed to enhance conflict management. The roles played by different actors should be specified. To strengthen the role of traditional conflict management systems, the County Assemblies should enact legislation that can legalise some of the community based conflict management approach. This will link traditional approached with legal approach and enhance the enforcement of the same. The devolved county government could be useful if devolvement was up to the grassroot level. In this case the village government would solve local related conflict. This would be enhanced by training local leaders in conflict management. This is the case in Tanzania where village government can pass by laws guiding use of natural resources. This would be supplemented by building of institutions at local level that can solve conflicts

*Training programs on PFM* – as a way of enhancing working relationship between community and government in forest, self-actualization in their capacity to handle forest issues, self-reflection on their strengths, weakness and opportunities in handling conflicts, improve their advocacy in natural resource management, create wealth and livelihood based on forestry. Training in PFM targets community Forest association leaders, forest station level managers, forest guards and civil society leaders. Contents of training include understanding policies and legislations in NRM, concepts and process, Governance and leadership enhancement, transformative leadership, Livelihoods issues, monitoring and evaluation. Trained officers and community leaders are capable of handling conflict related issues emanating from joint resource. *Training of trainers* approach could be adopted in order to reach out more members.

## IMPLICATIONS

From the conclusion above a change of approach will ensure that *community empowerment* take place and local actions to address conflict are possible. That is increasing community resistance and resilience to unrest and violence, react and address if youth idle, ingroup/outgroup dynamics develop or similar signs of potential threats. Empowering the community to be resilient generally would serve to help them guard against falling victim to incitement. For example, where people contest over water and pasture, can we have each village having access to a water point? Can we have communal grazing grounds? Can the youth be empowered i.e through support to start businesses, farm forestry? The youth are easy prey for ethnic violence especially if they are idle

*Increasing local understanding* and acceptance of the governance requirements of modern society. They also need to learn about and accept the society developing into more modern, mixed and interdependent societies which requires governance of a more general character. In terms of policy, there is need to ensure that mediation is supported by policy and there are local

institutions involved in mediation. Improvement of resources governance by increase participation of local community in annual resource planning and ensuring that benefits accruing to them are visible and tangible. At the moment participation although provided in law does not translate to involvement in forest management and benefit sharing mechanism in vogue.

## RECOMMENDATIONS

It is evidently clear that the genesis of conflicts in Eastern Mau like in most other forest areas can be predicted, managed and resolved. The following steps should be taken to managing conflicts. *Locally trained community groups* and local leaders in documenting triggers and signs of conflict. A response mechanism embedded in mediation team to trouble shot and mediate between potential conflict actors. Training of local community who are potentially likely to engage in conflict on how to report and manage conflicts, if locally not possible how to escalate to the next level. This is possible if a national legislation on mediation is enacted so as legalise such institutions.

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### STAKE POLICY BRIEF – FOREST RELATED LIVELIHOODS

Enhancing livelihood related benefits accruing from forests

**Raphael Wahome, Thuita Thenya , Jane Mutune and Karatu Kiemo**

#### Executive summary

Forestry policy has evolved over the last 100 years from whole community managed forests, through community accessible protected forest areas, strongly blockaded areas under forces for command and control to the current co management with community forestry associations. Success of the current policy has been limited by low participation of members of the forest adjacent communities in CFA activities, thought to result from poorly defined or low-level benefits emanating from participation. It is also reinforced by unlimited access to forests through prescribed levies despite lack of CFA membership.

Members of the communities, therefore, can see little difference between members and non-members. However, it is possible to enhance participation to a level where majority of households are involved. A few such CFAs exist. This can be done by prescription for CFA organizational management and facilitation towards greater effectiveness.

The management prescriptions suggested include holding of regular elections, periodic community briefings, submission of returns to members, communities and KFS. In addition, legislation should be made to entrench participation, types of benefits and level of sharing within the body of the act. Further, legislation should provide for clarity of what activities constitute participation and connect them to anticipated level of benefits.

Finally, legislation should empower members of the community who feel disenfranchised from participation to seek legal redress.

#### Introduction

STAKE results indicate that the range of monetary benefits, accruing to community members, was low, while the other types of benefits were not easily discerned. There is also an additional benefit accruing to CFA leaders and selected members in attending training and consultative seminars, workshops and conferences. Overall, little evidence was adduced to the effect that belonging to and participating in CFA activities conferred any great advantage over those that did not.

The key policy challenges can therefore be simply enumerated as follows:

1. Poor organization management and culture of the CFAs

2. Low level of participation by the FACs in the CFA activities
3. Low range of benefits accruing from forests
4. Low size of benefits accruing to CFA

## Background

From as early as 1891, a non-written forestry policy became manifest through rules ordinances and finally legislation that identified, marked and set out (delineated) areas, called forests, in which trees would be kept safe (protected). Areas under “protection”, during those times were still accessible to individuals, who could even, under special circumstances, benefit from dead wood. Governance changed from community based regulations to command and control after colonization.

Policy progressed to “exclusion” of all from the forests with exception of forest authorities, largely represented by “forest guards”. From 1910, community members were brought in to provide labour for converting natural forests to plantations for purposes of providing sustainable timber supply. They benefited largely by license to live in “forest” villages and to grow food crops within the plantation in development. This system was then known as the *Shamba* system and now known as PELIS (Plantation Establishment and Livelihood Improvement Scheme.)

Eventually inappropriate political intervention caused the arrangement to fail, “elites captured” forests, overexploited and sometimes degraded them completely. The resulting degradation and community empowerment through civil society, led to rediscovery of the role that forest adjacent communities could play in restoration, conservation and protection of forests. The need for benefit sharing became apparent, within community and legislative regulatory frame work. Some innovative and forward-looking forest officers even went ahead of legislation and implemented some form of participatory forest management.

With that in mind, the government enacted legislation in 2005 to among other things, regulate participatory forestry management, using community forestry associations (CFAs) as vehicles and promising benefits for community members. To date, only a few CFAs have completed management agreements and arrangements for their implementation to effectively co-manage forests. Also, CFAs only represent a minority of the forest adjacent community they purport to represent. Thus, in effect the good legislation has been made ineffective by poor implementation procedures and the same elite it sought to regulate appear to have captured the “forests once again”.

## Methodology

Using the CFAs in Eastern Mau Forest Block as case studies, the STAKE project studied the operations of CFAs, trying to understand their purpose, their operations, their successes and their failures. The approach used addressed the organizational management, culture and structures of CFAs, its use as a vehicle in accessing forest resources, the level and reason of participation by community members, and the livelihood impacts they have had on the FACs. There was also a comparative study on benefits accruing from forests to CFA and non-CFA members.

## Results

The results indicate poor organization management culture, with founding officials remaining in office long after establishment and yet having achieved minimal developments for the CFAs, none of which have concluded the management agreements. Few kept membership registers and those that did revealed a very low level of participation. They all had constitutions that expressed expected management behavior. However, adherence to them was low.

There were three types of benefits that could be realized from the forests by FACs. These included:

1. Common good benefits (water catchment protection, carbon sequestration, nutrient recycling, soil protection, biodiversity conservation and air purification). These were not evaluated in monetary terms and were clearly not obvious benefits to the FACs
2. Cultural /social benefits (sacred sites or trees, shrines and ethnic pride in the natural heritage). These were important only to some individuals or ethnic groups and portended potential conflict with non-benefiting individuals or ethnic groups. They could not be valued in monetary terms
3. Benefits that had potential monetary value summarized as:
  - a. Wood products (Timber, firewood, charcoal)
  - b. Wild harvest (food, herbal medicine, pharmaceuticals)
  - c. Grazing /fodder collection (Considered a major benefit and source of conflict)
  - d. Honey (though food, its monetary value was far greater than the other foods)
  - e. Water (Never really conferred monetary benefits to the communities or CFAs)
  - f. Employment (tree nurseries and pruning work in the forest)
  - g. Tourism (wildlife habitats, scenic recreational sites). These were poorly developed and offered little benefits to the communities
  - h. Water extraction
  - i. Roads passing through the forests members areas
5. Indiscernible difference on benefits accruing to members and non-members
6. Lack of transparency on the part of CFAs and KFS on the range and size of benefits

## Proposals on how to address policy challenges

The challenges are mainly of three types, namely, participation, benefits and benefit sharing and transparency. We have addressed them through these categories.

### Participation

The PFM philosophy requires that all members of forest adjacent communities participate in the co-management of forests. In turn, access to forests and forest resource is assumed to come through membership. If that were the case, then nearly all households would be represented in CFA activities. Indeed such is the case in a few CFAs outside the study area (e.g. Gathiuru in Imenti forest) where access to forests depends on membership and the CFA has over 9000members.

However, from STAKE results, there is need to increase participation of FACs. This can be done through a policy benchmark for establishment and operations of CFAs. The benchmarks could be set in prescriptions of rules, regulations and guidelines to establish, maintain and operationalize CFAs; reinforced and ring fenced by administrative procedures. While setting the benchmarks, support would be provided to facilitate CFA organization and activities. This has been observed to

happen in WRUAs. The facilitation would ensure regular free and fair elections and good procedures for managing meetings and other activities. The governance systems established would enforce observance of the CFA constitutions and verify accurate reporting and submission of returns.

It is an obligatory constitutional duty for citizens to participate in use and conservation of the environment. This may be done through:

- Speaking for the environment to neighbours, private interests and the government
- Speaking against environmental degradation to neighbours, private interests and the government
- Observation, taking corrective action and reporting matters that affect environment. In this duty, use of the media is an asset
- Cooperate with other citizens and state organs in management of the environment
- Share in the benefits bestowed by the environment. Active sharing enjoins beneficiaries in conservation. This is because, the environment attains a fiscal value and consequently is worthy of preservation.
- Other aspects of participation specific to forest management need to be explored

There is also need to re-evaluate and clarify admission into the CFA membership to avoid duplicity. Current membership may be individual or through membership to community based user-groups or other community based organizations. The prescription suggested above would address this.

### Benefits and benefit sharing

There was no defined system of sharing benefits between KFS, CFAs, communities and even among community members. Benefits accruing from forest were few and low, and over time have become a disincentive to community participation. Attempts made in the past to create legal framework for benefits sharing have not borne fruits.

Such arrangements were placed in the current draft bill but subsequently dropped in the act (without reasons or explanations). Subsidiary arrangements (legal notices) need to be formulated to enforce sharing. Such subsidiary legislation depends on the nature or whim of the minister in charge.

Most management plans and agreements only consider customary rights to benefits. These are defined as grazing, firewood, religious and cultural rights to forests. There is need to go beyond them: such that other monetary benefits accruing to forest management agencies are negotiated and available to members. Since ideally every household should be a member of the CFAs, clear rules on benefit sharing from (but not limited) the following list should be agreed on and set.

- a. Sharing of revenue from grazing, firewood, employment, etc
- b. Sharing of revenue from timber harvesting (the main revenue source of forests). Community members are involved in initial stages of plantation establishment through PELIS and later participate in other silvi-cultural practices as well as protection. To ensure their continued interest in the resource the management agreement ought to provide a method of sharing revenue from the final crop (timber), which is the main source of funds in the entire cropping system



- c. Flow of shared benefits from Forests to CFAs officials through to CFA members. A benefit-sharing framework should explicitly state how benefits will flow to CFA members to provide their equity.

The current Forest Management and Conservation Bill 2015 has made an attempt address this challenge, enabling the cabinet secretary to set rules and regulations for sharing. There is also an attempt to speak to it in the Natural Resource and Conservation Bill. Our opinion is that such an important aspect of conservation should be in the body of the act, to eliminate variation through whims of seasons and times.

There is need to think of new diversified and better ways of enhancing forest related incomes in order to diversify and increase potential benefits. Rewards may be made available to persons who make innovative suggestions and follow-up arrangements that can be put in place to ensure implementation. Incentives to broaden the basis for sharing of the benefits should also be considered.

To enhance equitable sharing of benefits,

1. Sharing of benefits should emanate from recorded participation
2. CFAS should enumerate the types of participation that qualify one for sharing.
3. A proportion of private and public-sector revenue going to the CFAs should be used under framework agreed on for participation and sharing. Such proportion should be obtained from recognized ecosystem services (including diversified forest incomes e.g. (guest houses, lodges, cabins, campsites, etc) in a continuous levy, as the community will also continuously protect the forest in form of a service charge)
4. Agreements to be entered in include such services
  - a. Fire prevention
  - b. Fire watching
  - c. Fire fighting
  - d. Reporting unusual activities
  - e. Occasional patrols

### Transparency

Being co-managers of forests, KFS and CFA should openly share information on resources expended and costs incurred during implementation in delivery of their mandate. Information on revenues accruing to forests is not generally available to CFA members. The CFA constitutions, management plans and agreements should incorporate a book inspection clause, to enable member potential information enhancement. However, this by itself is not enough. Members of the communities need to be empowered to avail themselves of such an opportunity. As a matter of policy, regular briefings should be given periodically, by the KFS and the CFAs, on activities carried out including revelations on accounts. At local forest station, KFS will give a community feedback on forestry activities on quarterly basis. The KFS officer in conjunction with CFA secretary should report to KFS HQ on the CFA activities for the period to assist in activity based budgetary allocation. A budgetary allocation is therefore required for financing of community engagement activities.

Apparently forest managers and CFA officials are expected to be aware of the letter and the spirit of the Forestry act 2005. They are also assumed to subscribe to both. Results do not bear this out. There is need to capacity build forest officers, CFA officials and members on the National and CFA constitutions; forestry acts and county bye-laws, development and use of management plans and agreements, in order to invigorate member participation, and to break the gate keeper syndrome.

In cases where, the CS, the KFS and the CFAs are not aware of the full implication of participatory management; and where they do, but do not believe in its necessity, co management may never take place. Individuals belonging to forest adjacent communities currently have no legal redress. The Kenyan constitution 2010 (article 69 (2)) guarantees participation of the willing citizens, generalize the issue of participation as prescribed by an act of parliament. But the government is not compelled to cooperate, since section 40 of the act does not compel the station to make such an agreement. The body of the bill then should provide for legal redress, to enable enforcement of relevant sections for participatory management by the government institutions at the time being responsible for management of a forest station.

County governments are custodians of communities' wellbeing and good order in addition to their being direct managers of local forests. There is need to encourage the county administrations participation in co-management of forests, in order to provide direct links for community empowerment, and thus enable them demand for fair distribution of their forests.

### In conclusion

Democratic procedures, transparency and reporting can help in securing public participation. Sharing of information could enhance it.

Sharing of benefits should be taken into account in a more direct way. Explicit norms should be established. Moreover, structures that guarantee transparency and explicit responsibility for individuals to report and for authorities to follow up are required. These can be provided in form of extra guidelines.

On top of these suggestions some more general living conditions and community choices should be taken into account. The possibility of investing in alternative energy forms, the need to combat corruption, and to fight poverty are examples.

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