

## REPUBLIC OF KENYA

Kenya is a post-colonial country of Eastern Africa. It lies astride the Equator on the east coast of Africa. It borders Somalia to the east and northeast, Ethiopia and Sudan to the north, Uganda to the West, Tanzania to the South, and the Indian Ocean to the southeast. It covers an area of 583,000 square kilometers.

The country has diverse ecosystems. There are many laws and organizations that are committed to protecting the environment, wildlife, and fisheries and to preserving the forests. However, a unique feature of most of the laws on natural resource management has been their state-centeredness and concentration with dealing with the utilization of resources. Most of the legislations and policies have by and large not recognized community rights in the management and use of natural resources. The trend is slowly changing in several key sectors and legislation as evidenced by the Wildlife laws and policies, the framework environmental legislation, the efforts to enact new forest legislation, and more fundamentally the proposals emanating from the ongoing constitutional review process in the country.

### COUNTRY DATA:

#### Population (in 2000, per 1000)<sup>1</sup>:

*Total:* 30,549

*Rural:* 20,355

*Urban:* 10,194

*Natural Resource Dependent Populations:* 23,523

*Indigenous (Original Long-Term Occupants):* 98%<sup>2</sup>

#### Land Use<sup>3</sup>:

*Permanent Crops (1000 Ha, 1998):* 520

*Permanent Pasture (1000 Ha, 1998):* 21,300

*Forests and Woodlands (1000 Ha, 1994):* 16,800

*Forest Cover (1000 Ha, 1995):* 1,220<sup>4</sup>

*Protected Areas (1000 Ha, 1996):* 3,504<sup>5</sup>

*Non-Arable and Non-Permanent (1000 Ha, 1998):* 52,394

*Agricultural Area (1000 Ha, 1998):* 25,820

*Arable and Permanent Crop (1000 Ha, 1998):* 4,520

*Arable Land (1000 Ha, 1998):* 4,000

**State Owned Land:** 100,000 Ha are classified as Trust Land. The Ministry of Local Government through county councils holds the land in trust on behalf of the local people. 1,640,000 Ha are classified as gazetted Forest Reserves under the Forestry Act (cap 385) and are managed by the Ministry of Environment and Natural Resources.<sup>6</sup>

<sup>1</sup> Food and Agricultural Organization, FAOSTAT Agriculture Data, population statistics <<http://faostat.fao.org/?alias=faostatclassic>>.

<sup>2</sup> "Kenya." *Encyclopædia Britannica*. 2004. Encyclopædia Britannica Online.

Viewed 15 September 2006 <<http://www.britannica.com/eb/article-37530/Kenya>>.

<sup>3</sup> FAOSTAT Agriculture Data, land use statistics <<http://faostat.fao.org/?alias=faostatclassic>>

<sup>4</sup> Kenya Indigenous Forests Conservation Programme. Kenya Forest Working Group Website. Viewed 15 September 2006 <<http://www.kenyaforests.org>>.

<sup>5</sup> UNEP World Conservation Monitoring Centre, Protected Areas Information: 1996 Global Protected Areas Summary Statistics. Viewed 15 September 2006 <[http://www.wcmc.org.uk/protected\\_areas/data/summstat.html](http://www.wcmc.org.uk/protected_areas/data/summstat.html)>.

<sup>6</sup> Kenya Forest Working Group. Viewed 15 September 2006 <<http://www.kenyaforests.org>>.

**State Land Classification:**

*Protected Areas (1000 Ha, 1996): 3,504<sup>7</sup>*

**Environmental and Human Rights International Agreements:**

Kenya is a party to the following international environmental agreements: UN Convention on Biological Biodiversity, The Convention on Climate Change, Desertification Convention, Convention on Trade in Endangered Species of Wild Fauna and Flora, Law of the Sea Convention, Marine Dumping, Marine Life Conservation, Nuclear Test Ban, Vienna Convention for the Protection of the Ozone Layer, Ship Pollution, Wetlands, and International Convention on the Regulation of Whaling. Kenya is also party to the major international human rights treaties specifically, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

**CONSTITUTION<sup>8</sup>**

**The Constitution of Kenya at Chapter Five contains provisions dealing with fundamental human rights and freedoms. Two Sections are particularly relevant:**

**Section 70**

Protection of fundamental rights and freedom of the individual regardless of race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest

**Section 75: Protection from deprivation of property**

- (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied –
- a. The taking of possession or acquisition is necessary in the interests of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefit; and
  - b. The necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property; and
  - c. Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

There is also a provision in the Kenyan constitution dealing with Trust Lands. This is in Chapter IX of the Constitution.

**Chapter IX (Section 114-120)****Trust Land**

Trust Land is held by County Councils in trust for the benefit of persons ordinarily resident on that land in the area of the county council. The county council is to give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force and applicable thereto, be vested in any tribe, group, family or individual so long as it is not repugnant to any written law.

<sup>7</sup> UNEP World Conservation Monitoring Centre, Protected Areas Information: 1996 Global Protected Areas Summary Statistics. Viewed 15 September 2006 <[http://www.wcmc.org.uk/protected\\_areas/data/summstat.html](http://www.wcmc.org.uk/protected_areas/data/summstat.html)>.

<sup>8</sup> Kenyan Website, <<http://kenyan.8m.com/kenconstitution.htm>>.

Kenyan constitution is currently under review and the draft that has been produced so far has extensive provisions on management of land, environment and natural resources and community-based property rights<sup>9</sup>

## **POLICIES AND LAWS**

The relevant policies and laws can be categorized into five: Land, Forestry, Wildlife, Environment, and Fisheries Resources.

### **a. Land**

The relevant legislation dealing with land includes the Registered Lands Act, the Government Lands Act and The Trust Lands Act. There has been no comprehensive national policy on land in Kenya. However, there is currently a process spearheaded by the Ministry of Lands to develop a national land policy.

Although it is written into the constitution that all people should have equal rights regardless of their background, the Registered Land Act gives preference to those who have the ability to register land. Essentially, this gives individuals the right to seize land from the original occupants by simply registering with the state. There are partnerships that have been proposed that could provide greater equality in terms of property rights.

#### ***The Registered Land Act (Cap. 300)***

The Registered Land Act (Cap. 300, Sections 27, 28, 30) provides inter alia that the rights of an individual proprietor are not liable to be defeated by anything not shown in the register. Although the Constitution provides for the protection from deprivation of property, this right is mainly recognized only in respect to land that has been registered in accordance with the provisions of the Registered Land Act Cap.300 of the Kenyan laws. Indeed, the act goes so far as to convert all "customary rights of occupation" into tenancies from year to year, thus giving the registered owner the power, upon giving one year's notice, to terminate such occupation. This leaves several communities and individuals, who have occupied the land over a long period of time, without any rights over the property. This makes them easily subject to eviction from their ancestral land by a new registered owner.<sup>10</sup> The Act also makes a first registration under it not challengeable. The upshot is that one who owns land but has never had it registered, as is the case with many communities, can have their land taken away by a person who has the land registered under the Act.

#### ***The Trust Land Act, Chapter 288 Laws of Kenya***

Although the Constitution and the Trust Lands Act vest power on the county councils to hold trust land in trust and for the benefit of people resident in such areas, the power to alienate trust land lies with the Commissioner of Lands who is a direct representative of the President. This has resulted in irregular alienation of trust land to individuals or companies in total disregard of the needs of local residents. Indeed, there is no law that requires the State or Commissioner of Lands to prioritize local residents or local people's interests.

<sup>9</sup> See the website for the Constitution of Kenya Review Commission, [www.kenyaconstitution.org](http://www.kenyaconstitution.org)

<sup>10</sup> See Okoth-Ogendo, H.W.O. 1986. The perils of land tenure reform: the case of Kenya. <[www.unu.edu/unupress/unupbooks/80604e/80604E0c.htm](http://www.unu.edu/unupress/unupbooks/80604e/80604E0c.htm)>.

<sup>11</sup> International Environmental Law Research Centre. 1999. Biological Diversity Management in Africa: Policy Perspectives. <<http://www.ielrc.org/content/w9902.pdf>>.

***The Government Lands Act Chapter 280 Laws of Kenya***

Although the Government Land Act does imply the existence of public land tenure systems, the vesting of power on any person to alienate such land threatens to extinguish the notion of public land tenure. There must be a place for public tenure to serve both the present and future generations as a national heritage. The current situation has led to the president allocating public land to private individuals without considering the public interest.

**b. Forestry*****The Forest Act***

The current legislation does not promote sustainable forest management. It was inherited from the colonial era and more concerned with control and distribution rather than management. It does not give room for collaborative forest management and does not take the lifestyle of the forest dwellers into consideration. It further fails to clarify issues of forest resource ownership, accessibility, and mechanisms for public approval and redress in its judicial and administrative procedures. The policy is enacted through the Forest Act, which vests a significant portion of power in the hands of the Minister for Natural Resources.

An amended forest legislation based on the Kenya Forestry Master Plan that recommends the development of several forms of partnerships and involves all forestry stakeholders in forest management was tabled in parliament in the middle of 2004. However the Bill was defeated in parliament for what is mainly considered to be internal fighting in the ruling coalition. The Bill is set to be reintroduced, and although there is still controversy over one of the clauses it is hoped that the Bill will be passed in parliament.

**c. Wildlife*****Wildlife Conservation and Management Amendment Act (1989)***

“...Kenya has the Wildlife Conservation and Management Act (amended in 1989) to control illegal access to and exploitation of wildlife resources. Individuals and/or institutions have no right to extract wildlife or parts thereof protected by law without authority of the national agency in charge of wildlife. The Act requires that any person and/or institution seeking access to wildlife or parts thereof shall obtain prior consent of the relevant authorities; currently the Minister of Natural Resources (Since changed to the Minister for Tourism and Wildlife) and the Kenya Wildlife Service (KWS). The Act does not however contain provisions requiring the sharing of benefits arising from access to and utilization of wildlife resources. It is also silent on participation of local people in determining access to wildlife, particularly that found on private lands.”<sup>11</sup>

There has been a lot of lobbying to change the law on wildlife management to ensure that local communities participate in the management of and share in the benefits that derive from wildlife and also to address the issue of human-wildlife conflict and compensation for loss arising from destruction and death caused by wildlife. A motion seeking these changes has already been discussed and approved and soon the amendments will be discussed in parliament

**d. Environment*****National Environmental Action Plan (NEAP)***<sup>12</sup>

After signing Agenda 21, Kenya came up with a strategy for sustainable development through the NEAP in 1993, which would provide a framework for integrating environmental

<sup>12</sup> < <http://www.rri.org/envatlas/africa/kenya/ke-index.html>>.

considerations into the country's 5-year development plans. The NEAP would identify major environmental problems, lay out an overall strategy to deal with the problems and include a very specific plan for action to be taken by government and the private sector, as well as NGOs.

***The Environmental Management and Coordination Act, Act No. 8 of 1999***

This is Kenya's framework environmental law. It was adopted by parliament in 1999 and came into force in 2000. Before then all that existed were sectoral laws governing different aspects of the environment but not one was a comprehensive legislation dealing with the environment as a whole. The legislation provides a new approach to environmental management and recognizes modern environmental principles and concepts like public participation, international cooperation, the precautionary principle, and cultural and social principles traditionally applied by any community in Kenya for the management of natural resources.

The government has created the Ministry for Environment and Natural Resources.

**e. Fisheries**

Kenya has both inland and sea fish. Lake Victoria is the biggest single source of inland fish not just for Kenya but the whole of the East African region. The Fisheries Act and fisheries policies are state centered and do not recognize the proprietary rights of local communities over the fisheries resource or their effective participation in management. In the context of the East African community a review of the process of management and utilisation of the fishery resource of Lake Victoria is currently ongoing. The government has in the past year established a specific ministry responsible for Fisheries and Livestock management.

**RELEVANT INSTITUTIONS**

***Kenya Wildlife Service (KWS)***

The Kenya Wildlife Service is a state corporation charged with conserving and managing Kenya's wildlife resources. It is custodian of Kenya's twenty-six National Parks and thirty National Reserves. KWS also looks after wildlife on private and trust lands, outside of protected areas, where more than 70 percent of Kenya's wild animals live. In all of these areas, KWS is responsible for preserving ecosystems and biodiversity and ensuring that these resources remain in most favorable condition for the multiple activities of the government and local people.<sup>13</sup>

***Memorandum of Understanding for the Joint Management of Selected Forests (1991)***

This MOU was between the Kenya Wildlife Service and the Forest Department for the joint management of forest with the primary objective of conservation of the flora and fauna. The aim of KWS is to conserve the natural environments of Kenya and their flora and fauna, for the benefit of present and future generations as a world heritage, to protect households and plantations adjacent to areas with wildlife from damage by wildlife, and to develop sustainable uses of wildlife.

***Forestry Department (FD), Ministry of Natural Resources***

The Forestry Department (FD) of the Government of Kenya's (GOK) Ministry of Natural Resources has been actively involved in the administration of a project called "Conservation and Management of Indigenous Forests" (COMIFOR). COMIFOR was established in 1992, with co-funding by the Government of Kenya and the European Union. The general objective of COMIFOR is to strengthen Kenya's Forest Department (KFD) of the former Ministry of Environment and Natural

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<sup>13</sup> Kenya Wildlife Service, <<http://www.kws.org>>.

Resources by assisting in design and implementation of management plans in ten primary forests and surrounding areas taking into account a population participatory approach. Their goal is to contribute to the conservation and sustainable use of the indigenous forests of Mount Kenya and the mangrove swamps in the Lamu District.

COMIFOR was also to form the key component of the Comprehensive Forest Development Project, financed by the World Bank, Overseas Development Agency (ODA), Finnish Development Association (FINNIDA), Swiss Development Cooperation, European Union, and the Government of Kenya. It was to be complementary to ODA supported Kenya Indigenous Forests Conservation (KIFCON) by utilizing their outputs of institutional strengthening, forest inventories, policy development, and community participatory models, and outline management plans. In addition, COMIFOR was to draw upon the results of the FAO/KWS Ecological Survey of Kenya's Mangroves.

### ***Kenya Forestry Research Institute (KEFRI)***

KEEFRI is another player in the Kenya mountain ecosystem conservation and development. KEFRI's mission statement is to enhance the social and economic welfare of Kenyans through user-oriented research for sustainable development of forests and allied natural resources.

KEFRI's research initiatives are implemented through the following four core-research programs: Farm Forestry, Natural Forestry, Dry Land Forestry and Forest Plantations. Farm forestry aims to enhance the supply of forest products, improving productivity and enhancing environmental conservation in farmlands. Natural forest research is for the conservation and management of Kenya's natural forests. Research priorities for this program have identified policy research as crucial for determining values of natural forests, improvement and utilization of less known indigenous species for wood and non-wood products. Dry Land Forestry research aims at enhancing sustainable management of forest/woodland resources in arid and semi-arid areas. Forest Plantations focuses in research to improve management and productivity of forest plantations. Priority research activities are: improving the supply of high quality propagation material; reducing losses of plantations due to pests, diseases, human interference, fires and game damage; determining economic/financial analysis of silvicultural operations; improving the harvesting and utilization of wood and non-wood products; and diversifying plantation species.

### ***The Department of Fisheries***

The Department of Fisheries is charged with the task of overseeing the management of Kenya's fisheries and fisheries policies. Recently the department has been engaged in the process of overseeing the formation of beach management units as institutions to enable local communities to participate in the management of fisheries resources in Kenya.

### ***The National Environmental Management Authority (NEMA)***

With the enactment of the Environmental Management and Coordination Act in 2000, the National Environmental Management Authority was formed as the principal organ to supervise and coordinate all matters relating to the environment and acts as the principal government agency in implementing all policies relating to the environment.

### ***Non-governmental Institutions***

- **Institute for Law and Environmental Governance (ILEG)** is a non-governmental organization based in Nairobi and working in the area of research and advocacy for better laws and policies that promote community involvement in natural resource management and in environmental governance and sustainable development.
- **International Center for Research in Agroforestry (ICRAF)**. ICRAF is an international research center on agroforestry belonging to the CGIAR system. Dealing with agroforestry

throughout Africa and other parts of the world, and leader of the CGIAR Highland Initiative in Africa, they are definitely relevant for the promotion and animation of mountain networking. They have well-established experience both in networking proper and in the in the promotion of sustainable livelihoods for rural communities including in mountain areas. ICRAF would seem to be a key partner in all regional cooperation initiatives on mountain resources conservation and development.

- **The World Conservation Union, IUCN Eastern Africa Regional Program**, located in Nairobi, is active on issues of mountains and the mountain communities. Their work deals with the Ruenzori of Uganda and Mount Elgon, the Ugandan side. Sustainable use of natural resources is determined by the communities, for they are the ones who know how best to harvest resources including trees without interfering with the ecological balance. IUCN determines the levels of off-take as well as the diversity of crops and trees to replace the harvested trees. This way, communities own the solutions to environmental issues.
- **Kenya Forest Working Group (KFWG)** is a gathering of individuals and organizations (government and non-government, local, national and international) concerned with forests, their conservation and management. KFWG was formed in 1995 to provide a forum for exchanging and sharing information and experiences among members. It exists legally as a sub-committee of the East African Wild Life Society. <[www.kenyaforests.org](http://www.kenyaforests.org)>
- **Forest Action Network (FAN)** is a private NGO, which is locally-based and active in the issues of forest conservation.
- **Worldwide Fund (WWF) for Nature Eastern Africa Regional Program Office (WWF: EARPO)** is actively involved in conservation of mountain ecosystems with particular interest around Lake Nakuru and its flamingos. WWF works through four programs namely: the environmental, education, assessment and planning programs.
- The **Greenbelt Movement** led by the 2004 Nobel Peace Prize winner, Wangari Maathai, who is currently an assistant Minister in charge of environment, is a very active NGO in conservation of mountain ecosystems.
- **African Mountain Research and Evaluation (AMRE)** is a non-profit consultancy involved in social, cultural and economic research on communities in the mountain ecosystems of Kenya and South Africa. <<http://www.mtnforum.org/mtnforum/archives/reportspubs/library/njire99a2.htm>>.
- **International Environmental Law Research Centre.** [www.ielrc.org](http://www.ielrc.org)
- **The Kenya Land Alliance** is a network organization active in the field of advocating for effective land policies and laws in Kenya.

## COMMUNITY INITIATIVES

### *The Samburu Wildlife Easement*

This was entered into between the group ranches in Samburu and tour operators. The agreement grants tour operators the legal right to enter certain property for recreational purposes in exchange for payments and promises about appropriate conservation conduct. Thus these agreements can be considered a type of "wildlife easement." (Leslie Johnston, USAID)

This was entered into between the Kenya wildlife services and the Forest Department for the joint management of forest with the primary objective of conservation of the flora and fauna. The measures to be taken with respect to the objective are among others, joint patrols and protection including reporting and communication arrangements (using VHF radio systems etc), protective fencing of areas with threatened species and where necessary monitoring the impact of the fencing and forest isolation.

The African Wildlife Foundation has also promoted the development and signing of several other wildlife easements between local communities and tour operators and other developers both in Laikipia and at the Coast Province.

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