

**ACCESS TO LAND AND LAND BASED RESOURCES AMONG WOMEN  
IN PASTORALIST AND FOREST-DEPENDENT COMMUNITIES IN  
EAST AFRICA: EXPLORING MULTIPLE EXCLUSIONS AND THEIR  
IMPACTS ON WOMEN'S CITIZENSHIP**

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## **ABSTRACT**

The security of women's entitlement to land and land-based resources in the East Africa region has been compromised by a combination of unfavourable laws and government policies, socio-economic change toward greater commoditization of and competition for land and land-based resources, and exclusionary practices defended as 'customary'. Law, policy, and practice have excluded women in land ownership and control and made their access tenuous. Yet land and resources linked to it form a critical part of pastoral and forest dependent communities' life lines and lack of access to these resources can lead to the decimation of the affected communities because their livelihoods are linked to particular landscapes. For women in such communities, this exclusion is exacerbated by the marginalisation of the entire community polity in national policies generally. Gender within this context comprises an additional layer of exclusion.

This research sought to explore access to land and land based resources among women in the Hadza, Batwa, Maasai, Ogiek and Karamojong communities (representing pastoralist and forest-dependent communities in East Africa) while exploring multiple exclusions and their impacts on women's citizenship. It specifically sought to understand and make proposals on how best to secure the rights to land and land-based resources for women in these communities, in view of the fact that they have to negotiate between multiple citizenships.

The research was carried out using desk-based (review of literature) and field-based methods (social mapping, surveys, interviews and focus group discussions) to elicit a contextual understanding of how women's marginalization among the Hadza, Batwa, Maasai, Ogiek and Karamojong is generated, entrenched and rationalized. The deepened and contextual understanding was to help us inform advocacy initiatives and engage with government policies both at local, national and regional levels.

**KEY WORDS:** Access; control; participation; citizenship; exclusion; land; land-related resources; women

## **I. SUMMARY OF PROJECT**

This report describes activities undertaken and outputs generated by the project entitled ‘Access to land and land based resources among women in pastoralist and forest-dependent communities in East Africa: exploring multiple exclusions and their impacts on women’s citizenship’ over the period October 2010 and June 2012. The project funded by the International Development Research Centre aimed at bringing understanding and offering lessons on how best to secure the rights of women in pastoralist and forest-dependent communities to land and land-based resources, in view of the fact that their entitlements are threatened on two counts: first, as members of minority groups facing economic marginalization and unfavourable government policies, and second, as a weaker social group within these marginalized groups and therefore, relative to men, less able to mobilize social legitimacy for their claims. Its overall goal is to assist countries to institute systemic policies, laws and institutional arrangements that will enable women in pastoralist and forest-dependent communities to secure their entitlements to and capitalize on their labour investment in land and land-based resources the East Africa region.

The project was implemented through related clusters of activities involving literature review, concept development, development of questionnaires, fieldwork, researchers’ meetings, national workshops, regional workshop, publication and dissemination of information. A narrative report for the period between January 2010 and September 2010 was submitted in October 2010.

The project came to an end in June 2012 but the collation of reports and finalization was only achieved in December 2012.

We learnt seven main lessons in the implementation of the project. On broad project administration and implementation, we learnt that:

- It is important to develop links with policy makers so as to contribute to national policy and legal reform processes. In Kenya and Uganda, the research teams were able to contribute to ongoing policy processes (Implementation of the Constitution and substance of the national land use policy respectively).
- Working with regional teams on multi-country studies can delay the implementation of projects because of the dynamics at play in each country. Our experience with the Tanzania research and the overall delay in delivery of project outputs are evidence of this.
- Building research capacity for doctoral candidates within a research project needs to cover only specific aspects such as proposal preparation and data collection as the finalization of a doctoral degree depends on varied factors that are not within the control of the team leader and principal researchers in the project.

On access to and control of land and land based resources, we learnt that:

- It is important to engage with both formal and informal institutions, and with debates on decentralization and reform of formal institutions whose mandate may not be directly related to land and land-based resources or with gender.
- In designing institutions to implement laws and policies governing land and land-related resources, informal community-based institutions are important because they are the ones that people actually use.
- Over-reliance on informal institutions does not discount the need for formal institutions. The latter are still important and where they exist, are accessible and enjoy social legitimacy, they enable people to operate outside of informal institutions that are ineffective and obstructionist – a very critical issue for women.
- Beyond legislating gender-balanced membership of institutions dealing with land and land-related resources, securing social acceptance of women's participation in the long term is also necessary.

Over the last two years (October 2010 and June 2012), the following activities have been undertaken:

- (a) Identification of research team for Tanzania;
- (b) Further review of the literature;
- (c) PhD candidate: Proposal Finalization and Progress;
- (d) Revision of research instruments in line with lessons from pre-tests;
- (e) Field work in Kenya, Uganda and Tanzania study sites;
- (f) Data entry and checking;
- (g) Analysis of data;
- (h) Preparation of research reports;
- (i) Feedback sessions with researched communities

## **II. OVERVIEW OF OBJECTIVES, SCOPE AND METHODOLOGY**

The project was founded on the premise that security of women's entitlement to land and land-based resources in the east Africa compromised by unfavourable laws, government policies, socio-economic change toward greater commoditization and competition for land and land-based resources and exclusionary practices defended as 'customary'. Law, policy, and practice have excluded women in land ownership and control and made their access tenuous. This exclusion has far reaching implications because land constitutes the main productive resource in many communities. For pastoralist and forest-dependent communities, these resources are at the core of the communities' life lines and lack of access to them can lead to the decimation of communities. Indeed pastoralist and forest dependent communal land uses are viewed as incapable of providing the basis of rational and sustainable use of pasture land.

While national land and natural resource laws and policies have conceded to the need to recognise community rights, they however stop short of recognising peculiar communal tenure and management needs of pastoral and forest dependent communities. They also fail to disaggregate members of these communities along gender lines. While a lot has been written about how women's rights lose out in the interaction of law/policy with customary practice, in the context of dynamic socio-economic change, there is little understanding of the specific experiences of women in pastoralist and forest-dependent communities.

### **A. PROBLEM STATEMENT**

This research sought to understand and make proposals on how best to secure the rights to land and land-based resources of women in pastoralist and forest-dependent communities, in view of the fact that they have to negotiate between multiple citizenships. The research was concerned with a contextual understanding of how their marginalization is generated, entrenched and rationalized.

## **B. OBJECTIVES**

### **1. General Objective**

To understand and offer lessons on how best to secure the rights of women in pastoralist and forest-dependent communities to land and land-based resources, in view of the fact that their entitlements are threatened on two counts: first, as members of minority groups facing economic marginalization and unfavourable government policies, and second, as a weaker social group within these marginalized groups and therefore, relative to men, less able to mobilize social legitimacy for their claims.

### **2. Specific objectives**

- a) To map women's experiences regarding rights of ownership and access to land and land-based resources in selected pastoralist and forest dependent communities.
- b) To review and document the laws and government policies and other interventions on land and related resources which have had the most relevance and impact in the selected areas of study.
- c) To interrogate land tenure arrangements in the three countries and identify the extent to which national laws and policies provide for flexibility to facilitate land uses of pastoral and forest dependent communities and the extent to which on-going legal and policy initiatives have incorporated the interests of these communities.
- d) To examine the land regimes currently operating in pastoralist and forest-dependent communities, assess the validity of the perceived benefits for women under those land regimes, and propose solutions to concerns relating to potential loss of benefits arising from outside interventions or policies.

- e) To review and document the range of state, local government and local community institutions central to the governing of land and related resources in the selected areas of study.
- f) To examine the specific ways in which the formal and informal norms and institutions interact and the impact of this interaction on pastoralist and forest-dependent women's entitlements to land and land-based resources.
- g) To interrogate the narratives at work in contemporary struggles for community property rights, and in women's articulation of their interests, and how all of these narratives are embraced, resisted, or distorted in state policies, and the effect of both the narratives and state responses to them in shaping women's access and control of land and land-based resources.
- h) To build research capacity within CASELAP and, further, to build capacity for a graduate student working on issues of gender and access to resources.
- i) To make informed proposals on relevant and appropriate approaches to advocacy, policy formulation and legal and institutional reform to address the exclusion of pastoralist and forest-dependent women both as individual rights-bearing citizens and as members of economically marginalized communities.

### **C. SCOPE**

The study selected a total of five cultural communities spread across three East African countries. The sample included one pastoralist and one forest-dependent community in each of the three countries, as follows:

<b>Country</b>	<b>Pastoralist</b>	<b>Forest-dependent</b>	<b>Population statistics</b>
Uganda	Karamojong	Batwa	Karamojong: 966,245 Batwa: 6,000
Kenya	Maasai	Ogiek	Maasai: 350,000 Ogiek: 22,000

Tanzania	Maasai	Hadza (Hadzabe'e)	Maasai: about 50,000* Hadza (Hadzabe'e): about 1,000*
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*Note: \* Tanzania does not indicate ethnicity in its national population censuses and therefore these estimates are based on secondary sources.*

The sample selection allowed us to draw comparisons across cultural communities (and therefore customary norms and practices) as well as across systems of livelihood/ socio-economic organization. In addition, all the communities are actively involved in contemporary struggles for rights to land and land-based resources, articulated as 'community property rights', therefore allowing the detailed gender analysis of narratives envisioned in the study in each community, as well as at a comparative level.

All of the communities selected also share a history of government policies and laws affecting land and land-based resources. They therefore enabled a comparison of government interventions and their impact in specific areas, most importantly in management of forests, wildlife, and land administration. Insights that the study generated regarding comparison of government interventions are particularly timely and useful given the intention of the East African Community to harmonise policies in key areas, of which environmental policy is one.

#### **D. METHODOLOGY**

The research will combine desk-based and field-based methods and will have the following key components:

##### **1. Desk-based:**

- Comprehensive review of literature on women's multiple citizenship and the challenges that this poses for the securing of their rights to land and land-based resources in the larger sub-Saharan African context. This enabled the research team to position the study within the larger context and therefore articulate a broader conceptual framework for the study.

- Comprehensive review of literature on the selected communities, covering ‘thick description’ ethnographic accounts as well as official studies/surveys and advocacy material.
- Comprehensive review of legal instruments and policy documents in Kenya, Uganda and Tanzania relevant to women’s entitlement to land and related resources, with particular attention to those that apply to women in pastoralist and forest-dependent communities.
- Textual analysis of past and current court cases on community property rights claims by the selected communities. In addition to court cases, analysis of representations made in public forums such as commissions of enquiry and any other interventions in public debate, for instance in Kenya’s and Uganda’s on-going policy processes toward developing national land policies.

## **2. Field-based**

- Community-level field research in the selected pastoral and forest-dependent communities in Kenya, Uganda and Tanzania. As outlined under ‘Scope’ these communities are: the Ogiek and Maasai of Kenya; the Batwa and Karamojong of Uganda; and the Hadza (Hadzabe’e) and Maasai of Tanzania.

### **Methods and tools**

- (a) Social mapping of entitlements, land uses and users, as well as the norms guiding the land uses and users, so as to identify the full range of stakeholders and interests.
- (b) Relationship mapping of land users to identify relationships that impact on access to land and land based resources.
- (c) Survey among a cross-section of women and men in the selected research sites, balancing for factors such as age, marital status, socio-economic status and level of formal education. The survey will be crucial in answering questions concerning women’s perception of their own entitlements, men’s perceptions of women’s entitlements, the

expectations that men and women have of formal and informal institutions, their respective experiences in using these institutions, as well as their respective views about how to secure their entitlements.

- (d) Semi-structured interviews with key informants such as national level officials in the relevant agencies, local administrators and other local-level officials, leaders of women's groups, and decision-makers in customary governance institutions.
- (e) Focus group discussions and workshops with selected groups of men and women.
- (f) Observation of relevant processes, such as local land dispute proceedings, family dispute proceedings or relevant deliberations by local institutions both formal and informal.
- (g) Using women's law approach as a tool to interrogate law and uncover the lived realities of women in pastoralist and forest-dependent communities. This approach, rather than beginning from the law takes women as the starting point of an inquiry into their interactions with plural legal mechanisms.
- (h) Actors and Structures approach to interrogate women's interactions with law enforcement and rights delivery mechanisms such as government administrative functionaries, courts, land and environment tribunals and traditional governance institutions.
- (i) The Human Rights Analytical Framework to interrogate women's multiple citizenships and rights to land and land-based resources, evaluating the rights and responsibilities of rights' holders and duty bearers, and the various norms and institutions that mediate the definition and realization of the rights in question.

### **III. ACTIVITIES UNDERTAKEN IN THE PROJECT**

#### **A. ACTIVITIES UNDERTAKEN (JANUARY TO SEPTEMBER 2010)**

##### **1. Selection and assemblage of Country Study Teams**

The first cluster of activities to be undertaken in the course of 2009 included identification and communication with the study team members in the three countries, a thorough search, acquisition and review of literature on land and an analysis of laws, policies, programmes and interventions on land and land based resources in the countries and study sites. In addition, paperwork for application of research permits was prepared for submission to the relevant authorities.

##### **2. Meetings of researchers at country and regional levels**

To launch the research project and to effectively prepare country teams for the studies/assessments, national meetings were held to discuss the proposal and agree on work plans between January and February 2010. A regional meeting of principal researchers from Kenya, Uganda and Tanzania was held in Nairobi in March 2010. At that meeting, the researchers looked at the objectives and broke them down into research questions, the type of data needed to answer the questions, the potential sources of the data (people, places etc), requisite research tools/instruments and the methods of collecting the data. (See Annex 1: Worktable on research methodology).

##### **3. Development and discussion of research instruments**

The following research instruments were developed: survey questionnaire; key informant guide; focus group discussion guide; and data extraction form. A regional research methodology workshop was held on 20-21 May 2010 at which the Kenya and Uganda research teams presented draft research instruments. These were discussed and proposals for changes made. The country teams also prepared work plans for pre-tests of research instruments, data collection and analysis. The general agreement was that pre-tests be done between August and September and Fieldwork carried out before the end of 2010.

#### **4. Reconnaissance and Pre-tests**

In September 2010, the researchers in Kenya and Uganda pre-tested the research instruments. They then reworked the instruments to incorporate the lessons learnt from the pre-test. The East Mau reconnaissance was in September 2010 enabling the researchers to make contacts with the community and understand the community governance structure. During this visit, the researchers made links with Environmental Resource Mapping Information Systems (ERMIS) - Africa who have worked extensively in both Kenyan study sites. They provided useful information on East Mau and Mukogodo. The researchers also used the resource centre of the Kenya Land Alliance's in Nakuru and got contacts for interviews from them.

#### **5. Preparations for fieldwork**

From the reports of the reconnaissance visits and consultations, the country research teams prepared for field work which was carried out between October 2010 and December 2011. Data from the countries was received by February 2012.

#### **6. Identification of Research Partner in Tanzania**

The researcher identified from Tanzania dropped off from the research in March 2011 and consequently the country was not aptly represented in the methodology workshop in May. The Research Management Team decided to hire research assistants in Tanzania and carry out the research themselves with those assistants. The Tanzania research could therefore only take place after the Kenya research because one principal researcher in Kenya had to be involved in that work.

#### **7. Identification PhD candidate and commencement of studies**

Among the objectives of the project was to build research capacity within CASELAP and, specifically, to build capacity for a graduate student working on issues of gender and access to resources. We identified a PhD candidate Monday Businge. She completed her concept paper focusing on climate change and the experiences of women in forest dependent communities, specifically the Ogiek in the Mau Forest. She got provisional registration for PhD at the School of Law University of Nairobi in July 2010 and embarked on the preparation of her full proposal. During this period, she participated in a PhD students' Colloquium organized by the University of Warwick and the Southern and Eastern Africa Regional Centre on Women's Law where she and other African doctoral students registered in Zimbabwe and universities in the United

Kingdom made presentations of their work and had discussions with a panel of Scholars. Monday's supervisors comprised Dr. Celestine Nyamu Musembi and Prof. Patricia Kameri-Mbote. Monday was hired as a tutorial fellow at the Centre for Advanced Studies in Environmental Law and Policy to facilitate her work on the doctoral thesis and transition into the academy.

## **B. ACTIVITIES UNDERTAKEN (OCTOBER 2010 TO JUNE 2012)**

### **1. Identification of Tanzania Study Team**

After the Regional Methodology workshop in May 2010, we had great difficulty getting to work with the selected members of the Tanzania team. Their participation at both the regional researchers' meeting and the methodology workshop was minimal. At the methodology workshop, for instance, only a research assistant attended on the third day of the meeting despite confirmations from the two researchers and procurement of their tickets and accommodation. We made a decision to work with two researchers who would be working under one Kenyan researcher, Kamau Mubuu. We also identified some of our best research assistants in Kenya to work with the team in Tanzania.

### **2. PhD candidate: Proposal Finalization and Progress**

During this time, the candidate attended a Dphil Colloquium at the Southern and Eastern Africa Research Centre on Women's Law at the University of Zimbabwe from 31<sup>st</sup> January to 11<sup>th</sup> February 2011. She also completed and presented her doctoral proposal in February 2011. It was accepted in March 2011 and she was granted full registration as a doctoral candidate at the School of Law, University of Nairobi.

The Candidate was however unable to join the research team in East Mau in June 2011. She subsequently fell out of the purview of project timelines and had to be dropped from the plans. Dr. Celestine Nyamu Musembi and Prof. Patricia Kameri-Mbote ceased being her supervisors on account of unaccounted for delays and general unresponsiveness. She is working on the same proposal under the guidance of new supervisors.

### **3. Further review of the literature**

The search, acquisition and review of literature on land and an analysis of laws, policies, programmes and interventions on land and land based resources in the countries and study sites

continued in this phase. We had fallen behind in reviewing literature, laws and policies for Tanzania, but the Tanzanian researchers we worked with helped us to remedy this situation. Because we were starting with a new team, the literature review for Tanzania was carried out afresh and the research permit applied for and procured during this period.

#### **4. Reconnaissance and Pre-tests**

A Reconnaissance trip was made to Mukogodo in April 2011 during which the researchers made links with Centre for Training and Integrated Research in Arid and Semi-Arid Development (CETRAD) and got materials from their resource centre. The researchers agreed with CETRAD that the latter would second two researchers with prior research experience and links in Mukogodo to the research team. Meetings were held with the District Commissioner and the District Development Officer. The researchers also got resources from the District Resource Centre.

#### **5. Revision of research instruments in line with lessons from pre-tests**

The survey questionnaire was pre-tested in East Mau at the start of the fieldwork in May 2011, and the survey itself conducted between the last week of May and mid-June 2011. The gaps identified were addressed, and the revisions used to update the questionnaire for use in the Mukogodo site. Similarly, lessons learnt from the administration of the questionnaire in Mukogodo were incorporated in revising the questionnaire used in the Tanzania study. For instance, when we realised we had not put 'marital status' into the questionnaire, we informed all enumerators to do so by hand; and then we revised this on the questionnaires we used for the next site. Another change we made was with respect to the sequencing of some of the questions on 'perception of community customs.' The Tanzania field work was done last and therefore the Tanzania questionnaire is the most up-to-date.

#### **6. Field work in Kenya, Uganda and Tanzania study sites**

- Field research in East Mau, Kenya was carried out between May and June 2011. The research team was expanded by recruiting locally-based enumerators, ten in number, plus a total of ten village guides engaged as necessary at various points in the research. Field research in Mukogodo was carried out between July and September 2011, the reconnaissance visit having been made in April 2011. The research team was expanded by recruiting two research assistants seconded by CETRAD, along with locally based

enumerators, six in number, plus a total of six village guides and one fieldwork coordinator.

- The field work in Uganda was carried out during this period in two pastoralist communities in Karamoja region and two locations among the currently displaced forest dependent communities of Bwindi and Mghahinga forest reserve in Kisoro district. Two researchers and four field research assistants were involved in the data collection at each site.
- The Tanzania component of the research focused on two districts: Ngorongoro and Mbulu, occupied by the Maasai and Hadzabe communities respectively. It was carried out between October and December 2011. The research team included a Principal researcher from Kenya, two Tanzanian research assistants, one Kenyan research assistant and four enumerators from the Mukogodo site in Kenya. The Mukogodo enumerators were recruited to work in Tanzania on account of their proficiency in the Maa language which is also spoken in the Ngorongoro district of Tanzania. As they had already been trained in the administration of the questionnaire, this helped to save time.

### **7. Data entry and checking**

Data entry and checking was done in Kenya for both Kenya and Tanzania between December 2011 and March 2012. Data entry clerks were hired to work with one of the researchers Kamau Mubuu. The survey data in all the country studies was processed and analysed using the Statistical Package for the Social Sciences (SPSS). The survey questionnaires for the Kenya and Tanzania study were organized thematically, according to the study's research questions. The data was tabulated for analysis and appropriate charts and diagrams were used as necessary. In the Uganda study, a two-tailed chi-square was done where possible to detect statistical differences between genders in the survey data was. The data generated through Focus Group Discussions and Key Informants interviews in Uganda was coded by theme and condensed for content analysis and was used to triangulate the survey data. With respect to the qualitative data for Kenya, all KIIs, life histories and FGDs from the respective interviewers were used to highlight and excerpt thematic issues for inclusion in the research report. Ideally there should have been complete coding of all of the qualitative data, but time did not allow. Information from literature review was used to put meaning to what was observed from field data as well as analysis on the implications of the various legislations on the general livelihoods of the two communities and those of women in particular.

### **8. Interim Data Analysis Workshops**

Interim data analysis workshops were held in Kenya and Uganda during this period. The Kenya meeting addressed data from both Tanzania and Kenya while the Uganda meeting in August 2011 dealt with the Uganda data. Follow up research was carried out in Karamoja in October 2011.

### **9. Feed back sessions with Researched Communities**

These were held in Kenya and Uganda between March and June 2012. The feedback obtained from the communities was used to beef up the research reports as well as shed new light into some salient issues.

### **10. Preparation of Research Reports**

A write-shop was held by the Kenya researchers in early July 2012 which also enabled them to further analyze the data generated in the research. The researchers used this opportunity to check the completeness of the data (both quantitative and qualitative) as well as the accuracy. A format/outline for the final report was generated at the meeting and shared with the Uganda counterpart. The aim was to have draft country reports at the end of the write-shop, but only partial drafts for Kenya and Tanzania were generated and these were only completed in early December 2012.

The Uganda team also prepared their research report between June and December 2012.

#### **IV. PROJECT OUTPUTS**

A number of project outputs were generated from the research. These include:

- a. Research reports on the Kenya, Tanzania and Uganda country studies. These monographs document each researched community's experiences on women's citizenship and access to land and land-based resources.
- b. Two journal articles for a special Issue of the *Nomadic Peoples' Journal* entitled Mobility, Marginality and Tenure Transformation in Kenya: Explorations of Community Property Rights in Law and Practice (by Patricia Kameri-Mbote & Celestine Nyamu Musembi); and Mobility, Marginality and Tenure Transformations: Assessing Opportunities and Challenges in Natural Resource use and Management for Karamoja Women under the Uganda Land Use Policy (by Abby Sebina Zziwa).
- c. A book titled '*Ours by Right: Law, Politics and Realities of Community Property in Kenya*', Patricia Kameri-Mbote, Collins Odote, Celestine Musembi and Wilson Kamande, (forthcoming from Strathmore University Press, 2013) which includes the east Mau Case Study.
- d. Kameri-Mbote P. and E. Nyukuri, "Climate Change, Law and Indigenous Peoples in Kenya", in Abate Randall S. & Elizabeth Ann Kronk, eds., *Climate Change, Indigenous Peoples and the Search for Legal Remedies*, Edward Elgar, London (Forthcoming 2012) which uses examples of the Ogiek and the Maasai.
- e. Abstracts for papers on "Emerging from the shadows of the Law: Constitutional and Policy Protection of Community Rights to Land in Kenya" by Prof. Patricia Kameri-Mbote and Dr, Celestine Musembi and 'Unpacking 'Community Property Rights' in the East African Region: What's in it for Women?' by Celestine N. Musembi & Patricia Kameri-Mbote. These abstracts were presented for various conferences and we hope to get publications out of them.
- f. The researchers were also able to develop links with organizations/networks in the field study areas. In East Mau, the organizations were: the Kenya Land Alliance; ERMIS Africa, Ogiek Welfare Council, Ogiek People's Development Programme and Ogiek Women's Network. In Mukogodo, links were established with CETRAD and Yaaku Cultural Museum.
- g. Influencing the advocacy agenda of organizations working to secure rights to land and

land-based resources for pastoralist and forest-dependent communities, with a particular emphasis on securing the rights of women in these communities. Examples of specific organizations whose work benefited from this study include the Kenya Land Alliance.

- h. Contribution to legislative initiatives in Kenya's implementation of the 2010 Constitution- the researchers generated a draft National Land Commission Bill that was used by the Ministry of Land to draft the law implementing Article 67 of the Constitution establishing the Commission. The researchers also commented on draft Land and Land Registration Bills before enactment in March 2012.
- i. We built the capacity of members of the local community who participated in the research by training them and also creating employment for them for the duration of the research. We also contributed to the enhancement of the capacity of community members by exposing four of the Mukogodo enumerators to work in Tanzania when we recruited them to work in Ngorongoro on account of their being conversant with the Maa language.
- j. The researchers engaged the community in a number of ways to assist them in dealing with issues confronting them:

- 
- a. Helping Ogiek Women's Network to understand the process of registering as a Community Based Organization (CBO), and helping in preparation and lodging of the necessary documents.
  - b. Helping the Yaaku (Mukogodo Maasai) prepare a memorandum to the Interim Independent Electoral Commission IIEC (now Independent Electoral and Boundaries Commission, IEBC) and the Commission for the Implementation of the Constitution (CIC) on their political representation as a minority group. The memorandum was presented to the two institutions in August 2011.
  - c. Helping to market the Yaaku Cultural Museum ([www.yaakuculturalmuseum.org](http://www.yaakuculturalmuseum.org))
  - d. The Mukogodo research co-ordinator has decided to vie for a Ward Representative seat and the research team reviewed his election manifesto and gave feedback.

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- k. We facilitated a dialogue on a Community Land Rights law where the Ogiek case was presented. One member of the research group is on the taskforce established by the Ministry of lands to develop a Community Land Rights Act. (See Annexed Gazette Notice)
  - l. We had intended to generate Policy briefs to share with government and civil society actors and organizations but this has not materialized.
  - m. We had also intended to host a Regional conference bringing together academics, policy

makers and advocacy organizations which we were not able to host during the project duration. We will however be hosting an international meeting on Community Land Rights with support from the Ford Foundation in conjunction with the Kenya Land Alliance in May 2013 and the research results from the country studies will be presented at this meeting which will draw participation from all over Africa, Brazil and the United States of America.

- n. We built the capacity for a graduate student working at CASELAP on issues of gender and climate change. Though the candidate was not able to complete her doctorate during the duration of the project, she was able to develop a proposal and to interact with other doctoral candidates in Africa and in the United Kingdom, enhancing her research skills and helping her to augment her data search and literature review.
- o. We also built the capacity of our Research Assistant Wilson Kamande who had not taken part in field research before during the course of his law study. He was one of the authors of the book on *Ours by Right* listed above. During the course of the project, three interns working under the Team Leader, were engaged in the project. These were Hellen Hilda Onyango from Catholic University of Eastern Africa; Elise Regairaz, a graduate student from Madrid University and Grant Wilson from Lewis & Clarke University in the United States of America. Grant was engaged in the field work in Mukogodo.
- p. Contribution to teaching materials of:
  - a. The international human rights course on the Master of Laws programme at the School of law, University of Nairobi and at the Southern and Eastern Africa Research Centre on Women's Law (SEARCWL) at the University of Zimbabwe.
  - b. The Women, access to resources and the law course at the Southern and Eastern Africa Research Centre on Women's Law (SEARCWL) at the University of Zimbabwe
- q. The study also provided insights for Patricia Kameri-Mbote's Inaugural Lecture titled: *Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourses* which will be presented at the University of Nairobi on 24<sup>th</sup> January 2013.

## **V. ANNEXES**

### **ANNEX 1 ABSTRACT ON UNPACKING ‘COMMUNITY PROPERTY RIGHTS’ IN THE EAST AFRICAN REGION: WHAT’S IN IT FOR WOMEN?**

**Celestine N. Musembi & Patricia Kameri-Mbote**

The international discourse on indigenous peoples’ rights has unleashed a contemporary wave of struggles for ‘community property rights’. In the East Africa sub-region these struggles are being articulated largely in pastoralist and forest-dependent communities. These struggles couch ‘community property rights’ as though belonging to an undifferentiated group of people with identical or at least compatible interests.

Yet there are indications that while claims for community property rights may benefit women as members of these communities by safeguarding their use rights vis-à-vis outsiders (perceived invaders), they also portend the simultaneous rolling back of gains that women may have made through gradual increase of their exercise of control or authority through day-to-day management of the resources. This is because claims for community property rights have often been framed by narratives of ‘authentic’ identity, and therefore a drive toward the ‘authentic’ expression of custom.<sup>1</sup> Such narratives inevitably exclude groups of people or varied lifestyles that do not fit the narrative.

For instance, framing of the Ogiek<sup>2</sup> land claim to the Mau Forest Complex (Kenya) in terms of hunting and foraging might secure women’s rights to gather tree products, but it makes invisible the fact that many Ogiek women have come to rely more on small-scale farming, both as a food source and as a means to meet cash needs such as children’s education. Micro-level informal norms on entitlement that have developed around this recent (and often subtle) change in lifestyle risk being swept away by the dominant narrative, and women stand to lose relative to men who appear to attach less value to small-scale farming.

This paper is a study of harmony and tension between the framing of community property rights in contemporary struggles in the East Africa sub-region, and local expressions of women’s need for socio-economic security around land and land-based resources. How the latter comes to be spoken of in the language of rights and entitlements is also an issue of interest for the paper: in other words, how do women in these contexts acquire rights consciousness with regard to land and land-based resources? The paper will draw from empirical research conducted by the authors among pastoralist and forest-dependent communities in six research sites: two in Kenya, two in Tanzania and two in Uganda.

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<sup>1</sup> These narratives of authenticity are in turn driven by the pressure to fit labels such as ‘indigenous’ or ‘hunter gatherer’, so as to establish a priority interest for the community, a phenomenon that is not unique to the East African communities discussed here. See, for example, Robins 2001).

<sup>2</sup> The Ogiek population is approximately 22,000 people. The national census classifies Ogiek in the category of the small and unknown communities in Kenya ([www.ogiek.org](http://www.ogiek.org))

## **ANNEX 2: ABSTRACT TITLE: MOBILITY; MARGINALITY AND TENURE TRANSFORMATION IN KENYA: EXPLORATIONS OF COMMUNITY PROPERTY RIGHTS IN LAW AND PRACTICE**

**Patricia Kameri-Mbote & Celestine Nyamu Musembi**

Kenya's Constitution of 2010 provides- for the first time- official recognition of community land rights. The Constitution anticipates that communities will be identified on the basis of 'ethnicity, culture or similar community of interest'. Within this context we interrogate the various narratives around definitions of 'community' and claims to community property ownership that have emerged in national and local discourses.

Foraging and other non-agriculturist communities' engagement with the law on land tenure has been marked by struggles for recognition and accommodation of mobility and land-use forms that defy the prevailing emphasis on individualized tenure and sedentary land uses.

This article draws from a case study of a Kenyan community- Ogiek in the Rift Valley- in which tenure and land use are changing rapidly. Tension exists between individualized tenure and community-based tenure, as well as between various manifestations of community-based tenure. This tension makes it difficult to predict what precise form the new-found formal legal recognition of community land rights might take, in contexts where the very bases for defining community are heavily contested. At the same time, land uses and the interests that underpin them are multiple and will influence the direction and form of community land rights.

**Key Words: Land; Rights; Tenure; Community; Land use; Resources; Belonging**

## **ANNEX 3: ABSTRACT ON MOBILITY, MARGINALITY AND TENURE TRANSFORMATIONS: ASSESSING OPPORTUNITIES AND CHALLENGES IN NATURAL RESOURCE USE AND MANAGEMENT FOR KARAMOJA WOMEN UNDER THE UGANDA LAND USE POLICY**

**Abby Sebina-Zziwa**

The Uganda government has objectives to achieve accelerated growth rates targeting not less than 6% per annum. To achieve this, a multitude of sectoral policies have been developed and many of them are under implementation. This paper argues that for the policies to achieve their objectives due cognizance must be given to the marginalized areas and groups to ensure they benefit from the development. Taking an example of the land use policy currently under implementation in the country but more vigorously in the marginalized Karamoja region, the study conducted in the agro-pastoral community of Napak district showed that marginalized women have the capability to participate in the protection of protected natural resources (forests and wildlife) if they are sufficiently sensitized about their rights, obligations, dangers and benefits. The study further shows that marginalized groups are more likely to benefit from government programmes if the policies are introduced as a package (rather than in piecemeal – the silos approach) to be able to draw synergies from one another.

The assessment concludes that given government commitment to poverty reduction through targeted projects particularly in marginalized areas, together with the increasing number of non-government organizations with educational programs in the region, women in Napak district

have a wide window of opportunity to participate and manage natural resources within their locality.

**Key words:** *Women, policy reforms, natural resource use and management, agro-pastoralism and marginalization.*

#### **ANNEX 4: EMERGING FROM THE SHADOWS OF THE LAW: CONSTITUTIONAL AND POLICY PROTECTION OF COMMUNITY RIGHTS TO LAND IN KENYA**

**Patricia Kameri-Mbote & Celestine Musembi**

Before the promulgation of the 2010 Constitution of Kenya in August 2010, land in Kenya was classified as individual or private, government, and group or community (trust land and group ranches), and governed under different laws. Customary land rights had not received adequate attention in law. However, the more policy and law sidelined customary tenure systems, the more resilient these systems became, raising the need to reform land relations in Kenya. Group/community ownership in Kenya has been dealt with under trust land and group ranches. The notion of trust land was a way of giving recognition to group and native rights. Trust land consists of areas occupied by the natives during the colonial period and which have not been consolidated, adjudicated, and registered in individuals' or groups' names; and native land that has not been taken over by the government. With respect to such land, every tribe, group, family, and individual has all the rights that they enjoy or may enjoy by virtue of existing African customary law or any subsequent modifications of that law. These rights relate to occupation, use, control, inheritance, succession, and other disposal of land. There is an elaborate procedure to follow in the event that the government or the County Council wants to set aside trust land for public purposes, thus protecting the rights of residents from expropriation without compensation. Tenure to trust land has however increasingly changed from the trust status. The implications of this change are significant. In most instances of such change, access for communities previously occupying the land is curtailed significantly.

With regard to group ranches, the Report of the East Africa Royal Commission of 1953–1955, concluding the policy on land tenure in the East African Protectorate as Kenya then was, noted that individualization of land ownership should be the main aim. It noted, however, that such ownership should not be confined to individuals but could also be extended to groups such as companies, co-operatives, and customary associations of Africans.

It is within this broad context that this paper analyses the implications of the provisions of the 2010 Constitution of Kenya and the first ever land policy in Kenya (Sessional Paper No. 3 of 2009) which provide for the recognition of community rights to land alongside public and private land. The paper will explore the tensions that arise as different notions of property struggle to subjugate others. Indeed as community rights emerge from the shadows, social conceptions of property will need to be addressed in a context where economic, legal and political conceptions have dominated.