

Mau Forest: Killing the goose but still wanting the golden eggs

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The Mau forest complex measures approximately 400,000 hectares. It is the largest block of forest cover in Kenya. Located in the central parts of the Rift Valley province, Mau is a key water catchment area and the source of 14 out of 15 major rivers found in the western side of the larger Rift Valley, which runs almost across Africa. The forest feeds 5 major lakes, three of which are cross-boundary. Among the lakes is Lake Victoria, shared by Kenya, Tanzania and Uganda. Named after the former Queen of England, Lake Victoria is the world's largest tropical lake and the second largest freshwater lake.

Mau forest is also key to 8 conservation areas, including the Lake Nakuru National Park, which has been declared a Ramsar site.¹

Among the conservation areas that depend on the Mau forest are the world famous Maasai Mara and Serengeti game reserves. The Serengeti game reserve is found in northern Tanzania and is a world heritage site. In Kenya alone, over 5 million people and millions of domestic and wild animals depend on the Mau for water. Mau forest is a trust land managed by five local authorities on behalf of the communities that live adjacent to it. The five local authorities are Nakuru, Koibatek, Kericho, Bomet and Narok county councils. However, the forest has been home to the Ogiek people since time immemorial. The term "Mau" is borrowed from the Ogiek word "Moou" which means "the coolest of the coolest place".

Biggest threat: logging

Logging in the Mau forest must be understood against the background of forest excisions whereby the government periodically hives off large chunks of forest land, ostensibly for "landless" Kenyans but actually for distribution to powerful, well connected individuals. Under Kenya's Forest Act, which was in force from colonial times until mid-2005, when a new forest law was enacted (read more about this below), all forests belonged to the state and were managed on its behalf by the Forest Department. By all accounts, the Forest Department has made a mess of managing forests. Huge chunks of forest areas were routinely excised. During the colonial period, and for a couple of decades after independence, large chunks of the Mau forest were destroyed in order to establish tea plantations in the parts of the forest under Kericho and Bomet county councils. This resulted in the largest tea-growing areas in Kenya being found within the forest.

From 1973 to 2003, 36,780 ha were lost in the Eastern Mau forest and, as recently as 2001 for example, the government excised over 67,000 ha for logging and to settle agricultural communities. Excisions have also taken place in various other parts of the forest, including the Transmara area where, in a Gazette Notice of 3 March 1989, 937.7 ha were set aside for timber and tea plantations. The gazette notice was not accompanied by a legal notice - a mandatory requirement. From 1996 to 2003, over 30% of the Maasai Mau forest was lost to logging and agricultural activities. Maasai Mau measures approximately 46,278 ha.

Excisions continue to this day for political reasons. With the next scheduled elections in December 2007 fast approaching, the government, through the Ministry of

Lands, is considering excising a further 7,000 ha from Maasai Mau for the settlement of “landless” potential voters. The government action is illegal, against the well-being of the country’s environment and the economy, and will definitely result in conflicts of jurisdiction and interests between the Ministry of Lands and the Ministry of Environment and between the central government and local authorities.

Ban on logging not respected

In the year 2000, Kenya had around 1.7 million hectares of indigenous forest. This constituted around 30% of its land mass, according to UN Food and Agriculture Organization (FAO) figures.² This assessment reckoned that the country lost 93,000 hectares during the 1990s. The loss has been linked to severe water shortages and famine in the country.

Nearly five years ago, the government imposed a ban on logging in order to curb deforestation and to conserve the country's major water catchment areas. Despite the ban, there is alarm at the rate at which the country's forest cover continues to be depleted through logging activities. Camphor and cedar trees, which produce prized varieties of wood products are said to be particular targets for loggers. Other types of wood are also used for carving artefacts for the tourism industry.

The Mau forest complex is the most heavily logged forest in Kenya. When the government imposed the ban on logging in the country, it exempted three multi-national logging companies: Pan African Paper Mills, Raiply Timber and Timsales Ltd, the biggest loggers in the Mau forest. According to government explanations, the three firms were exempted because Raiply and Timsales employ over 30,000 Kenyans, while “the government has shares in [the Pan African Paper Mills] and it is important to the economy,” explained Kimaiyo Towett, a leading Ogiek activist. While the ban subsists, the three companies continue to cut down thousands of trees every month from Eastern Mau for the national and Middle East market.

On 20 August 2006 for example, Ms Letitia Zobel, a UNEP (United Nations Environment Programme) policy adviser visited the Mariashoni area of Eastern Mau. “In the one hour that I stood there on a Sunday morning, I counted 7 ten-ton trucks ferrying logs to the three companies’ plants in Elburgon town,” she explained in shock. “The swamp that is the source of the Mara River is drying up!” she added. The Mara River waters both the Maasai Mara and Serengeti game reserves and drains into Lake Victoria.

Eastern Mau is also the water catchment area for Lake Nakuru, which supports one of Kenya’s most visited wildlife parks with the biggest concentration of flamingos in the world. In a press conference on 17 August 2006, the Director of Kenya Wildlife Service and the top civil servant in the Ministry of Environment expressed concerns that, at the current rate of Eastern Mau forest destruction, Lake Nakuru would no longer be there in 20 years' time. Ironically, a major daily newspaper featured a leading story the next day in which forest and other government officials in Nakuru district were demanding that loggers immediately pay the US \$ 450,000 royalty fees they owed the government for timber harvested in Eastern Mau. The officials particularly accused a local politician of owing the government in excess of US \$ 115,000 in logging fees royalty arrears! Both Lake Nakuru and Eastern Mau are located in Nakuru district. By allowing logging that is destroying one of Kenya’s prime tourist destinations, the government is systematically chopping off the hand that feeds it.

Logging activities are also rampant in other parts of the forest. Logging in parts of the forest found in Kericho district is undertaken to supply the tea industry. Tea factories daily need undocumented large quantities of timber to roast tea leaves. In Maasai Mau, logging is mostly done by small-scale poor locals desperate to put food on their tables. But when small-scale loggers are many, they add up to something big. In a 2005 report prepared jointly by UNEP, Kenya Wildlife Service, Kenya Forestry Working Group and Ewaso Nyiro South Development Authority on the status of the Maasai Mau, “logging was so intense in the western parts of the forest that it was impossible to count the number of trees cut. In the eastern part, some 2,343 recently logged indigenous trees were counted, in addition to some 573 hectares on which logging was so heavy that individual trees logged could not be counted,” stated Mr. Koriata, the then Principal Administrative Officer of Narok county council. The government authorities in Narok district, where the forest is found, are alleged to be deeply involved in the logging activities. The biggest culprits are said to be officials from the forestry department and Narok county council. But when they take action and arrest a few private loggers and impound their timber, the court fines are small and not an effective deterrent. The impounded timber is often channelled back into the black market by the very same government officials who impounded it.

The Ogiek peoples

The Ogiek peoples are a hunter-gatherer community. They have been living in the Mau forest since time immemorial and there is no historical or anthropological evidence to disprove their claim. Honey, wild fruits, roots and wild game, selectively and sustainably hunted, formed their diet. To Mr. Peter Cheruyiot, a fellow in the UN Indigenous Fellowship Programme, “the Ogiek are the forest and the forest is the Ogiek people.” Their traditional honey economy demands the protection rather than the destruction of forests. “For every beehive, we need a tree to hang it. So if we want 1 million beehives, that means 1 million trees,” adds Mr. Kobei, the Executive Director of the Ogiek Peoples’ Development Program. But like other forest communities in Kenya, the Ogiek peoples are not recognized as distinct and separate peoples. The non-recognition begun way back in the 1930s when the colonial government constituted a land commission headed by a Mr. Carter to look at land issues in Kenya. The Carter Commission considered that forest peoples were “barbaric savages who should be assimilated into the communities they neighbour.” Post-colonial governments have continued this policy of non-recognition and assimilation in the name of national unity. This has led to political, social and economic marginalization and domination of hunter-gatherer communities by agricultural and, to some extent, pastoralist communities. This is despite the provisions of various instruments, including the African Charter on Human and Peoples’ Rights, which Kenya has ratified. Article 19 of the African Charter states that “Nothing shall justify the domination of a people by another.”

The Ogiek peoples have consistently attempted to protect the Mau forest by all legal means. In East Mau Forest, there has always been conflict between the government and logging companies on the one hand, and the Ogiek people and organizations supporting them, on the other. The Kenyan government frequently forces the Ogiek out of the forest, insisting that the area is environmentally protected under the country's

Forest Act. But, at the same time, it is allowing powerful logging companies to cut down trees in the forest. For years, Ogiek representatives have been asking the government to take action to protect them. In 1997, when these requests continued to prove unsuccessful, the Ogiek went to court to stop Kenyan officials from surveying and allocating Ogiek land to others. The Ogiek's lawsuit eventually went to the Kenyan High Court, which dismissed the case in March 2000. Several other cases by the Ogiek against the government have also been dismissed by the courts. In the few instances that the courts have ruled in favour of the Ogiek, the government has simply ignored the courts' decisions. By defying its own courts, Kenya's government has shown a callous disregard for the rule of law.

The Forest Act of 2005

Prior to the enactment of the new forest law in 2005, the old forest law had been in place since colonial times. It championed an exclusionist policy whereby forests were owned and protected by the state through forest officers assisted by warders with guns to keep forest communities out. The law prohibited entry into forest areas, as well as use of forest produce. Hunting was also completely banned under express provisions contained in the Wildlife Act. These laws thus effectively criminalised the traditional lives of hunter-gatherer communities. Successive post-independence regimes did not do much to change the situation, despite Kenya having ratified various international conventions, including the Convention on Biological Diversity (CBD).

The new Kenya Forest Act of 2005 was enacted to improve the forestry situation in Kenya and address international commitments that Kenya had entered into, especially the Convention on Biological Diversity. Although the new forest law is not anything to write home about, it is a major improvement compared to the old forest law. It provides for community management of forests and for traditional hunter-gatherer communities to practise their customary lifestyles inside forests. It also allows forest communities to use forest products for purely consumption purposes. But despite these windows of opportunity for hunter-gatherer forest communities, the Act has several shortcomings. Just as before, it will be the government that has the final say as to who owns forests and how they will be used. The drafters of the new Forest Act have also avoided recognising hunter-gatherer forest communities as indigenous peoples and have instead opted to address them as "forest communities". But for a community to be recognised as a forest community entitled to forest management rights, it must have registered as a forest association with the Kenya Forestry Board. It must also present a forest management plan to the board. It will be at the discretion of the board to accept or reject the community management plan. Literacy levels - especially legal literacy - among forest communities are critically low. They are not aware, therefore, that they are supposed to register as forest associations and come up with a management plan in order to be given rights to manage their ancestral forests. They may therefore soon find their forests being managed by informed forest activists from other communities who have registered themselves as forest associations. Besides, why should forest communities enter into management agreements concerning forests that they have lived in and managed for centuries? Are the members of the Kenya Forestry Board better informed about forest management than the communities who have lived in the forests for years? Forest communities will not be fully represented on the Kenya Forestry Board - a presidentially appointed board. Past

government practices give reason to believe that these positions will be given to the president's political cronies.

The Forest Act also prohibits the sale of forest produce by communities. Honey, an important item in the forest communities' traditional lifestyles, is included in the definition of forest produce. Will community members therefore be arrested for selling honey nurtured and harvested from the forests? This does not make much sense, since the use and sale of such honey and wild fruits is actually a powerful incentive to protect the forests.

The Forest Act identifies corporations among the potential owners of forests. But, like all potential forest owners, the corporations must register themselves as forest associations and enter into forest management agreements with the Kenya Forestry Board. Logging companies will definitely be the most interested, for obvious reasons. Cutting and replanting trees will surely be a prominent feature of the management agreements logging companies will want to enter into. This will constitute a major threat to indigenous forest biodiversity because logging companies will only replant areas they have cleared using fast-growing exotic trees rather than the normally slow-growing indigenous ones.

Empowerment of forest communities

Despite these shortcomings, the Act is still the best means that forest communities can use to regain control of their forests. But, for this to happen, all will depend on whether the forest communities can quickly be sensitized and assisted to register as forest associations. When they have control/management of the forests, they can then negotiate the recognition of their right to a livelihood, which is implicit in the trade in honey and other non-timber forest produce, as trade in these products constitutes a viable economic activity. They can also negotiate sustainable hunting rights in their forests. And because their forests constitute the goose that lays the golden tourism egg, it is only fair that they should also get a share in the profits that accrue from tourism activities downstream.

Hunter-gatherer forest communities have a right to practise their cultures. And, because their cultures rely on the continued existence of the forests, they have no reason to destroy them. Logging and forest destruction are generally caused by business interests and agricultural communities. Yet nature is proving that these activities are not sustainable, as evidenced by increased desertification, water scarcity and climate change. The fight against logging and forest destruction must therefore start with the recognition of forest communities as distinct separate peoples with sustainable forest-based cultures that must be allowed to continue to exist. Forest-friendly cultures are essential if we are to preserve the goose that lays the golden egg – our forests!

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Note

¹ A Ramsar site is a wetland of international importance because the water found therein is the primary factor in controlling the environment and associated plant and animal life. Under the Ramsar Convention of 1971, contracting parties have clear obligations to protect Ramsar sites. Kenya became a contracting party to the convention on 5 May, 1990. So far, 153 countries have ratified the convention and 1,629 sites have been identified as Ramsar sites.

² FAO Forestry Department's country page on Kenya:

<http://www.fao.org/forestry/foris/webview/forestry2/index.jsp?siteId=5081&sitetreeId=18308&langId=1&geoId=73>.