

**Making woodland management more democratic:
Cases from Eastern and Southern Africa**

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CONTENTS

THE CONTEXT	1
Participation or devolution?	3
Changing roles and powers	4
DECISION-MAKING POWERS OF COMMUNITIES IN PRACTICE	5
Benefit sharing approaches	6
Local communities as forest users	9
From beneficiaries to managers, from benefit-sharing to power-sharing	9
Making devolution of authority the main strategy	10
The Duru-Haitemba and Mgori Forest Cases	11
AN EMERGING NEW CIVIL RIGHT TO OWN FORESTS	14
A NEW ROLE FOR COMMUNITIES AS FOREST MANAGERS	16
COMMUNITY SOCIO-LEGAL FORMATION AND POWERS	17
CONCLUSION	18
REFERENCES	19

THE CONTEXT

The new millennium is witnessing evidence of a social and political watershed in Africa, and one which is marked by a potent alteration in the relations between government and people (Alden Wily 2000a). Through one mechanism or another, ordinary citizens are beginning to play a greater part in the management of society and its resources. The change is uneven, hesitant, contentious and contradictory, but nevertheless underway in a fundamental and unstoppable fashion.

This paper looks at changing power relations in an arena where shifts in state-people relations are acutely felt in agrarian societies: land and natural resources. In particular, it focuses upon forests and woodlands. These, like many pasture lands, wildlife areas and wetlands, typically sit astride some of the more acute tensions in land relations today: the tension between state law and local, often customary systems of land ownership; the tension between holding resources as individuals and as a collective group; and the tension between government and local populations over how these resources will be managed and who reaps the benefits.

When it comes to forests and woodlands, the main questions concern: to whom do these resources really belong, or to whom *should* they belong in order to halt their loss and degradation? And at what level of society is control over these resources best vested to achieve this objective?

Eastern and Southern Africa provide the setting for discussion. In these regions, more than 95 percent of the forest resource is of the drier woodland type, mainly held outside government reserves (Alden Wily & Mbaya 2001). Two fields of enquiry constitute the base of discussion. *First*, how far are local communities gaining authority over woodlands, including rights of ownership, and *second*, to what extent are community level institutions emerging to support these altered patterns of forest ownership and control? I shall examine changing practice in the field and the provisions of new forestry laws.

Two background points need to be made. *First*, the shift in resource relations is by no means confined to Eastern and Southern Africa, but is apparent in the rest of Africa – and beyond. A number of Asian states, for example, have enacted important new forestry legislation of broad if uneven devolutionary intent: Lao PDR (1996, 1997), Vietnam (1991, 1994, and 1995), Indonesia (1999), Cambodia (1996), Nepal (1993) and the Philippines (1995).¹ In West Africa,

¹ See Enters et al. 2000 and Poffenberger (ed.) 2000 for up-to-date details.

similarly orientated new forestry laws have been passed in The Gambia (1998), Cameroon (1994), Senegal (1993), Mali (1994) and Burkina Faso (1997).²

Second, while the change in relations surrounding woodlands is proving a pivotal arena for socio-political democratisation, this by no means exists in isolation. Instead, it both gains from and promotes further change. Immediate spheres of interaction are found in the new wave of programmes promoting the decentralisation and devolution of governance, and in the land reform processes occurring widely in Africa and beyond (Alden Wily 2000a). In some states these three spheres are being tackled in conscious conjunction.³

Change in these areas is partly driven by increased demand for civil rights, as embedded in a surprisingly large number of new Constitutions. Table-1 lists the main laws covering the constitution, local government reform, land and forest tenure in Eastern and Southern Africa. Whilst reform in each sector has been largely discrete in its origins, once embarked upon, shared concerns and impacts are quickly felt. A common output in each case is new acknowledgement, enhancement and empowerment of community-level organisation. Whilst in both law and practice this is only partially and erratically delivered in new grassroot institutions, windows of opportunity are opening to enable local communities to act as legal persons and to influence, if not always control, how local natural resources are governed. The dramatic rise in ‘community participation’ projects for forest and woodland management both marks and carries this trend.

² See Sonko & Camara 2000 for the Gambia, Egbe 1997 for Cameroon and Ribot 1999 for Sahelian states.

³ This is the case for example in the 1981 Three Clarifications of China, and in the inter-linked land, forest and governance laws of the Philippines and Laos. This is also seen in The Rural Land Plan of Cote D’Ivoire (1998), the Agrarian and Land Reform of Burkina Faso (1996), the Rural Code of Niger (1993) and the pastoral charters of Mali (2000) and Mauritania (2000).

Table-1: Key legal texts supporting democratisation of natural resource management in Eastern and Southern Africa

Country	New constitutions	New local government laws	New land laws	New forest laws
Eritrea	1996	1996	1994, 1997	-
Ethiopia	1992	?	1997	1994
Kenya	<i>UOR</i> *	<i>UOR</i>	<i>UOR</i>	Bill 1999
Uganda	1995	1997	1998	Bill 2000
Tanzania	<i>UOR</i>	1982 (1992, 1999)	1999	Bill 2000
Zanzibar ⁴	1992	?	1992	1996
Rwanda	<i>UOR</i>	1999?	<i>UOR</i>	-
Malawi	1994	1999 (?)	<i>UOR</i>	1998
Zambia	1991	?	1995	1999
Zimbabwe	(1980) ⁵	(1998) ⁶	1992 & <i>UOR</i>	<i>UOR</i>
Namibia	1990	?	1995, Bill 2000	Bill 2000
Mozambique	1990	(1997) ⁷	1997	1999
South Africa	1996	1993 (1995, 1996)	8 laws 1994-97	1998
Swaziland	<i>UOR</i>	<i>UOR</i>	<i>UOR</i>	<i>UOR</i>
Lesotho	1993	1996	<i>UOR</i>	1999

* *UOR* = Under Official Review, usually with new National Policy in draft or approved.

Participation or devolution?

Local participation is a meaningless term on its own. Does it mean that civil society is consulted from time to time, that it is represented in decision-making forums, or that citizens are empowered to make those key decisions themselves? If it means the last, what kind of decisions may they make and how significant are the powers which the state or its agents retain? In the now ubiquitous fields of “joint forest management” (JFM), and “community-based natural resource management” (CBNRM), in whose hands does authority over the future of forests really lie? How far are these matters of participation in decision-making distinct from those of forest tenure? Do national governments distinguish clearly between the ownership and management of forests, devolving the latter

⁴ Although a member of the United Republic of Tanzania, Zanzibar makes its own land and forest laws among others.

⁵ Although strictly speaking not new, the Constitution has been significantly amended 16 times and most dramatically in 2000.

⁶ Traditional Leaders Act 1998 which alters functions of local leaders in governance but is not a local government law per se.

⁷ In parenthesis because the law (2/97) excluded rural areas, providing only for municipal councils.

but retaining the former to ensure ultimate control? And if real authority does accrue to the community level, how may communities exercise those powers? What are the structures and institutions through which they can make, implement and enforce decisions, and to what extent are these structures democratic and accountable to their membership? These are the kind of questions which practitioners and community members are beginning to ask themselves and state administrations. The response from the latter is by no means unambiguous.

Changing roles and powers

Still, the fact that these questions arise at all is a sign of changing times. For there may be no doubt that forest management relations are entering a period of transition leading to greater social benefit. Each step towards local empowerment acts as a foothold from which to make greater demands and achieve a more enhanced role for citizens in future. This transition is occurring against the backdrop of the last century during which local communities were held to be the main agents from which forests and woodlands were to be protected, a position routinely enshrined in terms of forest laws. Local tenurial, custodial and other interests in forest resources were recognised as constituting no more than access rights, and limited usually to those of minor importance.⁸ Exercise of more significant customary rights was criminalised, or re-framed into fee-paying permit regimes beyond the means of those who had been the original custodians of the resource. This dispossession was primarily achieved through the legal act of “reservation”, essentially an act of land appropriation that removes authority and usually ownership of a forest from local hands and vests it in the state.

In some countries, state take-over of forests was more or less total by century-end, especially where substantial government revenue could be earned from their subsequent leasing to the private sector.⁹ In Africa, the trend has been less marked given the low regard with which dry woodlands have until recently been held. A certain duality has resulted, in which moist and montane forests have been relocated tenurially as reserves and parks, leaving lesser value woodlands under local customary tenure, and with the widespread expectation that these would diminish over time – as indeed they have.

⁸ Documented review of the processes outlined in this section are provided in Alden Wily & Mbaya op cit.

⁹ As is the case in Indonesia, where 75 percent of forests were taken over by the state by 1980, for largely private concessions (Banerjee in Enters et al. op cit.).

Accelerating loss of these woodlands and greater appreciation of their multiple values, combined with state failure to secure the condition and boundaries of reserves, have prompted widespread alteration in forest management strategies world-wide, and the way in which those communities neighbouring forest areas are now perceived.

Broadly speaking, the common trend has been greater acknowledgement that forest security depends upon the support of those populations who live close to these resources. Projects designed to reduce local dependence on forest resources have abounded, with tree planting programmes, environmental education and buffer zone developments widespread. More recently, local populations have been presented as being legitimate forest users, whose co-operation may be secured in exchange for their subsistence needs being considered; an approach greatly encouraged by the current donor-led focus upon sustainable rural livelihoods.

Now, as the new century opens, a new strategic shift is discernible. This embodies a movement away from recognition of forest-local communities as having rightful access to the forest towards a position which acknowledges their right to help determine if and how the forest should be used in the first instance. It is this important if often still inchoate movement which is the subject of this paper. We look now first to the development as evidenced in tangible shifts in the grounds upon which forest-local communities are being involved in forest management, and then to the extent to which new positions are finding reflection in the terms of new forest laws.

DECISION-MAKING POWERS OF COMMUNITIES IN PRACTICE

Practical efforts to involve local populations in woodland management are rarely more than five to ten years old in Eastern and Southern Africa. They have largely arisen in the context of donor-funded projects, and have benefited from their special level of resources and expertise.¹⁰ Few countries have reached the point of integrating new approaches into nation-wide programming, and those which have are still at the earliest stages of implementation (Malawi, Lesotho, Tanzania).

¹⁰ Refer Alden Wily & Mbaya op cit. Ch. One for documentation and analysis of cases in twelve states. See FAO 2000 for examples in West Africa and Enters et al. op cit. and Poffenberger (ed.) op cit. for Asian examples.

The number of such projects varies widely, involving several communities only (Namibia, South Africa, Zimbabwe), ten or more (Uganda, Ethiopia, Zambia, Malawi), more than forty in Mozambique and more than 500 in Tanzania (Alden Wily 2000b). Projects often have their origins in management either of Forest Reserves or Parks (Uganda, Madagascar, South Africa, Kenya), or unreserved woodlands (Malawi, Tanzania, Zambia), a difference which shapes subsequent strategies. As the projects advance, developments in one sector tend to spill over into the other and with an increasing degree of commonality (Tanzania, Malawi, Mozambique).

Benefit sharing approaches

Of main interest here is the extent of local decision-making that pertains to these initiatives. Although there is overlap, these projects fall broadly into first, those that seek to share forest access and benefit with local people, and second, those that seek to share management functions with communities. Local input into decision-making is largely restricted to the latter with varying degrees of power-sharing (TABLE 2).

Taken as a whole, benefit-sharing projects are more common at the moment. These are often described as “revenue sharing”, especially in southern Africa where the renowned CAMPFIRE wildlife revenue-sharing programme has proved highly influential in all natural resource sectors (Campbell et al. 1999). CAMPFIRE, which now operates in more than 25 districts in Zimbabwe, does not share authority with communities at all, its objective being to channel part of the revenue generated by private safaris and hunting to district councils and, thence, in part to inhabitants of woodland areas (ibid.).

The earliest community forest projects in Mozambique, Botswana, Namibia and Kenya had similar origins (Table-2).¹¹ The receipt of agreed benefits engenders and sustains participation and, should these decline, through, for example, declining tourism, local support tends to dissipate. Even where this is not the case, a tug of war over the share of benefits being delivered to different parties tends to provoke continuing tension. Costs of supervising the distribution of benefits may be substantial and cause forest management costs overall to rise, in part defeating one of the desired objectives of community participation, which has been to reduce costs.

¹¹ For descriptions of revenue-sharing initiatives referred to here and below, refer Campbell et al. op cit. and Vudzijena 1998 for Zimbabwe, Negrao 1998 and Filimao et al. 2000 for Mozambique, White 1998 for Botswana, Jones 1999 for Namibia and Kiiru 1996 for Kenya.

The management roles given to local people rarely extend beyond providing forest guard services, such as reporting intruders to government foresters, who alone possess the power to apprehend and fine illegal users. Local decision-making is confined to determining the distribution and use of revenue received, usually through committees set up for this purpose. These committees provide a forum through which the forest managers inform local people of their future plans and over time may spearhead increasing local demand for power-sharing (Filimao et al. op cit.).

Another mode of project falls into the general category of benefit-sharing; that which seeks local co-operation not through sharing income but through conferring legality on certain local uses of the forest. This is now the more common paradigm. A prominent early case is Zimbabwe's Mafungabusi Forest Reserve where adjacent communities have been assisted to establish Resource Management Committees to manage relatively minor permitted uses of the local forest: beekeeping, grass cutting, wild food collection and grazing in defined parts of the Reserve (Vudzijena op cit.). In other such cases, such as Malawi's Chimaliro Forest Reserve, Ethiopia's Adaba-Dordola Forest and Uganda's Bwindi and Mgahinga Forests, the level of permitted extraction is yet lower, and more rigorously limited to certain zones (Dubois & Luwore 2000, Kafa-Sheka Project 2000, Wild & Mutebi 1996). Again, local user group committees may be established, in this instance to supervise the exercise of agreed access rights and be held accountable for transgressions.

Whilst most of these projects refer to themselves as collaborative or joint management programmes, they are in reality little more than licensing initiatives which attempt to be sensitive to local needs whilst at the same time bringing local forest use under clearer control. Local committees pay for their access to the forest by reporting strangers or clearing firebreaks. The focus is upon user groups, not forest-adjacent communities per se, and support from those not included in the user groups may be grudging and difficult to secure. Communication between the forest manager and user groups generally does not amount to managerial partnership. On the contrary, the right to determine the status of the forest, how and where it shall be used, remains firmly with the government agency that also retains regulatory, licensing and fining powers.

The recent demise of the Muzama initiative in North Western Zambia illustrates just how far removed such proclaimed community participation may really be from decision-making. The Muzama project began more than a decade ago, to assist beekeepers and pit-sawing groups to export bee and wood products, bringing considerable local benefit (Uchi Makula Trust 2000). Harvesting was undertaken along guidelines that conform to international forest certification principles within some 800,000 ha of prime miombo woodland. But, in practice,

the relationship between the Forest Department and the user groups is manifested only in the issue of harvesting licences. The right to refuse to renew these licences was exercised by the Forestry Department in 1999 when it decided to offer these same woodlands to more lucrative commercial concerns. The Muzama initiative collapsed with enormous loss of livelihoods and seemingly futile protest (ibid.).

Finally, there are a handful of buffer zone programmes operating around forest areas. These are traditionally designed to reduce high rates of forest loss by investing in alternative product use or income-generating opportunities. Managers of Arabuko-Sokoke Forest Reserve in Kenya, for example offer beekeeping, butterfly pupae farming and on-farm planting (Alden Wily & Mbaya op cit.). The managers of Menagesha-Suba Forest in Ethiopia invest a share of plantation revenue in local projects (Kafa Sheka Project op cit.). On-farm tree planting dominates at least five of the eighteen so-called community based forest management projects of Mozambique (Mushove 2000).

Given their product-centred focus, it is not surprising that community participation has developed along the above lines in those forest and woodland areas which are perceived as either too degraded or too valuable for their biodiversity or catchment functions, to sustain more than the most minor extractive activity. A tendency towards the 'middle' may result, as is also the case in South Asian community forestry, where governments allow neither their most valuable forests nor those of commercial potential to be subject to community involvement (Banerjee op cit., Shrestha 1999). Signs of this are evident quite widely in Africa, from Cameroon to Zambia, with governments firmly defining by law where community involvement in forest management will be permitted.

The terms upon which communities are involved are rarely those of their choice. It may take some time for local communities to recognise that, by entering user agreements, they are in effect accepting the government's representation of their interests as limited to their rights of use. As a result, they may be abandoning more profound custodial or tenurial claims to woodlands. 'Through co-management we gained the right to collect fuelwood and some other products but we lost the forest' is a not-infrequent sentiment of those engaged in many such projects.¹²

¹² As for example recorded in the Urumwa and Gologolo co-management initiatives of Tanzania (Alden Wily 2000c) and in Mafungabusi in Zimbabwe (Mamamine 2000).

Local communities as forest users

Whilst the conditions under which a forest is managed may see improvement through benefit-sharing modes of participation, there is little alteration to the regime itself or to the locus of ownership and jurisdiction over the resource. Nor does change in this area appear to be the principal objective. The intention is rather to secure local acquiescence and support, by conferring a few benefits.

Ultimately, the fundamental premises of 20th century natural forest management continue to apply in such arrangements. These are, *first*, that local access to woodlands needs more, not less, control and regulation and *second*, in contrast to the first, that there is a social obligation to allow local inhabitants some access to resources. There may be little alteration in the perception of local rights or roles but increased managerial willingness to acknowledge local forest dependence and to recognise and use this to achieve certain management objectives. Indeed the perception of local populations as but forest users remains entrenched.

The rise in household incomes that may occur through benefit-sharing projects is not disputed. At issue here is whether such approaches to community involvement yield the transformation required to secure and manage the region's disappearing forests. Will this limited form of participation and focus upon use-rights provide sufficient incentive for a sustainable, democratic and accountable system of forest management for the 21st century?

From beneficiaries to managers, from benefit-sharing to power-sharing

As experience with community participation accrues, there is growing awareness that it is only by thoroughly reconstructing the authority underlying forest management that a useful and lasting consensus among forest, people and conservation interests can arise. This means addressing the core question as to where ownership of the forest is vested and to move firmly towards its devolution into the hands of those people with the most rooted stake in the future of the forest. Given its proximity and long-term relationship with the resource, and the protection and management that may thereby most efficiently and cheaply be carried out, ownership is best transferred to the local community neighbouring the forest area.

Accordingly, project by project, objectives are slowly being reshaped towards the empowerment of local communities as forest managers in their own right. Foresters and advisers look increasingly to customary stewardship, not customary access, as the basis upon which local parties are involved and their

roles sustained. In the process, the user-centred focus gives way to a focus upon the wider local community, irrespective of whether every member is an actual forest user.

Signs of this transition are detectable throughout the community forestry management world (Kumar 2000, Shrestha op cit., Ribot op cit., Negrao op cit., Campbell et al. op cit., Hesse & Trench 2000). In Eastern and Southern Africa, a plethora of projects are adjusting their strategies. In Uganda, for example, earlier access-sharing projects are giving way to a new set of pilot projects conducted by the Forest Department itself, in which communities around seven Forest Reserves are being designated managers of adjacent areas (Scott 2000, UFD 2000). Older projects are themselves more consciously sharing elements of authority with communities (Hinchley et al. 2000).

In Mozambique, newer projects are setting out to work with communities as partners in forest management, in marked departure from the revenue-sharing objectives of earlier developments. Local institution building through which such powers may be exercised has become a priority in several projects (Anstey 2000, Mushove in Alden Wily & Mbaya op cit.). Even in Kenya, where power sharing has up until now been firmly resisted, NGOs are investigating the involvement of communities as managers (KFWG 2000).

In Namibia, both wildlife conservancy and woodland management now pay more attention to securing community rights and powers than to the benefits which may accrue through private investment in those areas (Corbett & Jones 2000). In South Africa, willingness to involve local communities in income-generating activities has shifted sharply towards assisting these same communities take on ownership of certain Forest Reserves, a strategy driven in part by the realities of claims for land restitution, affecting a significant number of forest reserves (Alden Wily & Mbaya op cit.). In Ethiopia, as well, several projects are redirecting their objectives to increase local management roles (Kafa-Sheka op cit.).

Making devolution of authority the main strategy

In one or two countries, power sharing has from the outset been an objective and *modus operandi* of state-community forest developments. The devolved forest management programme of the Gambia is the clearest example in West Africa (Sonko & Camara op cit.), while Tanzania provides the most striking case in Eastern and Southern Africa (Alden Wily 2000b).

The latter arose from early recognition that patterns of forest-use, over-use and depletion, are a direct function of where ownership of the resource is vested (ibid.). Put most simply, villagers adjacent to Government-controlled forests in Tanzania tend to regard reserves as “fair game” and exploit them without constraint. By contrast, access to those under their own accepted tenure and guardianship is often regulated rigorously. A critical factor in practice has been the capacity to organise themselves at the community level, itself a direct output of the introduction in the mid-seventies of village-based local government. Unusually in Africa, these village governments possess the capacity inter alia to control resource access within village areas, even to the extent of promulgating statutory by-laws (ibid.).

The Duru-Haitemba and Mgori Forest Cases

The central role of power-sharing to forest futures is well illustrated by community-based forest management in Tanzania. At issue in 1994-95 was not if and how local communities adjacent to Duru-Haitemba and Mgori Forests could use the intended new National Forest Reserves being set up, but whether government had the right to co-opt those forest lands in the first place (ibid.). By that point, demarcating of the new reserves and deployment of forest guards had led directly to the destruction of previously intact forests within the space of a mere three years. In short, local people were determined to secure what they could before the forests were lost to them entirely, a process in which outsiders also played an important part. Resolution came not through the legalisation of forest uses, but in charging people with control of the forests themselves. This task they undertook with alacrity and success, returning the forests to good condition and banning the very forest uses which they had previously argued were indispensable to their livelihoods, when the forests had been moving into government hands (ibid.).

Matters of jurisdiction are now established as essential arenas of negotiation in state-people forest management in Tanzania. Recognition of local forest ownership, or devolution of authority to local communities, has become a prime objective. The argument is increasingly made that this combines the need to

Table 2: Examples of differing levels of community authority in current participatory projects

Country	No decision-making powers Community as beneficiary of management			Varying decision-making powers Community as actor in management		
Community	Gains developments via ICDP/ Buffer zone projects	Gains share in revenue or other benefits	Gains legal access to defined parts of forest or products	Gains some powers as co-manager (usually lesser than those of main partner)	Gains most management powers as designated manager	Gains virtually all authority as owner/ manager
Kenya	Arabuko-Sokoke FR	Golini-Malungani CR		Kaya		
Uganda			Mt. Elgon NFP Kibaale NFP Bwindi NFP	Namatale FR Tororo FR		
Tanzania				Shume-Magamba NFR Kitulango NFR Numbe Valley NFR Shagayo NFR	Ufiome NFR Baga NFR	594 Village Land Forest Reserves 26 Community Forest Reserves 881 Household Forest Reserves
Ethiopia	Menagesha-Suba For. Bale Mt. Forest Harenna State Forest		Adaba-Dordola Forest	Kafa-Sheka Project Chilimo State Forest	SOS Sahel Oromiya Project	
Malawi			Chimaliro FR		Mwanza Project	
Zambia			Chinyunyu Forest Muzama NW Province Chiulukile Forest			

Country	No decision-making powers Community as beneficiary of management			Varying decision-making powers Community as actor in management		
	Mozambique	Gorongosa Reserve Licuato	Tchuma-Tchato/Daque Mecula Reserve Zambezi Delta Project Elephant Reserve		Aim of new Mecuburi FR project	Aim of Narini Forest project
Madagascar			Marojejy Andringitra Nat. Park			
South Africa						Dwesa-Cwebe Reserves
Zimbabwe		Campfire Programme	Mafungabusi FR Pumula Forest Block			Ntabazinduna Communal Lands
Botswana		Sanyuku, Gweta & Tswapong Projects				
Namibia		Most conservancies			Uukwaluudhi CF Okongo CF	

bring management operations to a level where it may be most effectively implemented with the need to locate control in the hands of those now acknowledged as possessing the greatest stake in the future of the forest (Alden Wily & Mbaya op cit.). Other governments in the region are now slowly moving in this direction, as in Lesotho where divestment of government Forest Reserves to communities has become the lead strategy (ibid.).

AN EMERGING NEW CIVIL RIGHT TO OWN FORESTS

Intimations of a shift towards new civic rights are apparent in forestry laws in the region. Whilst donor pressure has indubitably played a role in the flurry of new legislation, the content of these new laws is just as clearly building upon emerging lessons from the field. Perhaps less obviously it also gains impetus from shifting state-people relations in constitutional, tenure and governance spheres (Alden Wily 2000b).

The most radical point of departure in the forestry sector is in innovative provisions for ordinary citizens to create their own forest reserves, to be owned and managed by themselves. This constitutes a main objective of new forest laws of Malawi (1997), Lesotho (1999) and Mozambique (1999) and forthcoming legislation in Uganda, Namibia and Tanzania. The process is particularly well elaborated in Tanzania, where the draft Forest Bill makes the devolution of forest management a stated objective.

The critical role of current tenure reform

Such strategies have been greatly facilitated by the radical change in the status of customary land rights beginning to occur in the region (Alden Wily 2000c). New land acts in Mozambique (1997), Uganda (1998) and Tanzania (1999) make customary tenure a fully legal regime through which to acquire, hold and transfer land rights, and provides for these to be made registrable entitlements, should their owners so wish. Malawi, Swaziland and Zimbabwe propose similar developments in their pending new land policies. In South Africa, interim legislation directly protects customary rights whilst new land laws are devised.

The immensity of this development cannot be over-estimated. Arguably it represents the most radical departure of tenure strategy for a century, during which period most Africans have held land in conditions which are legally extremely vulnerable. Once these new land laws have been brought into force, customary owners will gain the constitutional protection associated with private property, only available previously to that minority in each state with freehold,

leasehold, granted and other formal titles; such European-derived regimes, by virtue of their individualising character, tended to exclude common property's such as forests.

For modern forestry, it is the capacity being provided by new land laws to acknowledge and even title local commons as private group property that is proving the most critical outcome. This renders common properties just as secure (in law) as customary rights held by individuals. In some countries, new land laws also are encouraging non-customary groups, such as tenants, to secure land as group-owned estates, through commonhold constructions, such as Communal Property or Communal Land Associations (South Africa, Uganda). This means that local communities, either by normal certification or special commonhold arrangements, can acquire private property rights over neighbouring woodlands without having to subdivide these estates into individual plots. In addition, the new status of customary rights in law makes it difficult now for unregistered customary lands to be appropriated or reallocated by the state.

Finding other routes to forest conservation

The effects of these developments in new forest law are very clear. First, governments are now a good deal more careful creating new Forest Reserves, since these are only now possible if substantial compensation is paid to customary owners. New ways of conferring protected status on forest resources have had to be found, most widely realised in the above-mentioned provision for Community Forest Reserves. In the process, the conventional assumption that only government may reserve or own a reserve and that a reserve equates with state property, fall away. A more nuanced conception of 'government reserves' and 'non-government reserves' is appearing.

Most notably in Tanzania and Namibia, every means possible are now being sought to assist local inhabitants to create Community Forests, while new government reserves are only created as a last resort. Thus, declaration of new National Reserves in Tanzania has given way to creation of Village Forest Reserves. In Namibia, demarcation of four vast woodland areas to create State Forests has similarly been abandoned in favour of their declaration as Community Forests (Alden Wily & Mbaya op cit.).

Retrieving Forest Reserves for community-ownership

Perhaps even more radically, new laws are providing legal opportunities for communities to retrieve forests co-opted as government reserves. The case of Lesotho has been mentioned, where divestment is a main objective of the new

Forestry Act 1999. The National Forests Act 1998 of South Africa also opens the way for such divestment, as do the Zambia Forest Act 1999 and the draft Tanzania Forest Bill 2000. Given the commitment of the Uganda Land Act 1998 to allow communities to demand review of the tenure status of reserved lands, the final Ugandan Forestry Bill is likely to follow suit.

A NEW ROLE FOR COMMUNITIES AS FOREST MANAGERS

The above laws also deliver a great deal more opportunity for community *management* of forests than has previously existed in policy or law. The possibility for local communities to be designated autonomous managers of all or part of a government forest reserve is most developed in the Tanzanian Forest Bill, and for which a new class of protected forest is in effect provided.¹³ The forest laws of South Africa, Zanzibar, and Mozambique also allow the government to designate full management authority to local actors. The draft forest laws of Uganda and Kenya contain such proposals as well.

Communities are also being granted rights of *co-management* with the government, although the powers they may attain are various. The Zambia Forestry Act 1999 provides the least room for local involvement in so-called Joint Forest Management Committees, which are heavily dominated by government officials. Moreover, joint management may only be undertaken in Local Forests, not National Forests.

The powers available to community level forest managers are offered erratically in new forest laws. In some cases, the act of creating a Community Forest lies in the hands of government, as if it were a paternal gesture, undertaken for but not by the community (Namibia). A greater constraint lies in the uneven levels of authority held by communities to enforce the management regimes they design and put in place. Powers which government forest managers would take for granted are not necessarily passed on to community forest managers. These include the right to determine the kind of forest uses which will be permitted and by whom, the power to issue permits, apprehend and fine illegal users, retain revenue from fines and permits, and to control how this money is used. Often new laws only imply that such powers might be awarded but are vague as to the details and make little attempt to set out the constructs or procedures through which such developments might be realised (Namibia, South Africa, Mozambique, Kenya). Others reserve these functions to government (Zambia, Malawi).

¹³ A Village Forest Management Area, to distinguish this from a Village Land Forest Reserve which denotes village ownership of the forest.

Perhaps most critically in implementation, new legislation provides few means by which community forest managers may make rules which will be enforceable beyond their own social membership, and upheld by local courts when challenged. Whilst Malawian communities may make rules in relation to their own declared Village Forest Areas, even the most minor of these rules are subject to Ministerial approval, and part of the revenue obtained through fines must be forwarded to the central government. In Zambia, management plans devised by Joint Forest Management Committees must be approved by the Minister and gazetted, while in Namibia, state-appointed foresters, rather than community-appointed managers have the task of guarding forests and apprehending and fining illegal users in Community Forests.

COMMUNITY SOCIO-LEGAL FORMATION AND POWERS

The new forest laws in Lesotho, Mozambique, South Africa and especially Uganda and Tanzania suffer fewer constraints, since more effort has been put into identifying and developing the procedures through which community level managers may operate and also be held accountable to their constituencies. This has been greatly facilitated by the existence of formal local government structures at community level in Uganda and Tanzania, whose institutional machinery and powers are now being incorporated into community based forest management.

The instructive case of Tanzania has been touched upon above. As an outcome of villagisation and the creation of village level governance, the legal capacity to promulgate village by-laws has been in place for some time and has begun to be used by communities who seek control over local forests. Through this statutory mechanism they are able to embed their forest management regime in law, and their own powers of management. These include the right to levy fines upon illegal users, to charge and collect fees for uses that they have determined to allow, and to control the use of these revenues. All persons, not only community members, are legally bound to adhere to the by-laws once enacted. Their promulgation is also a means by which the community may hold its appointed forest managers accountable – and be held accountable itself as a declared forest manager (Alden Wily 2000c).

With such organisational and socio-legal facilities to hand, it is hardly surprising that village-based forest management has taken off quickly in Tanzania, and deals directly with matters of jurisdiction and managerial process. Uganda also proposes to use the capacity of villages and parish communities to

promulgate by-laws as a means through which forest management may be exercised. New Village Councils in Lesotho may well take on comparable roles.

Conversely, where devolved governance is poorly developed, empowerment of local forest management in new legislation is demonstrably constrained (Mozambique, South Africa, Namibia). As a consequence, new forest laws face two choices – either to create new local level institutions themselves into whose hands powers may be devolved, or to expect communities to take on the operational burdens of management but without the powers they reasonably need to do so with conviction. For the most part, new forest acts fall somewhere between the two. Thus the Forests Bill of Kenya provides for Forest Associations to be created but is ambivalent as to their legal status or likely powers. The Management Associations and Committees in the new or draft laws of Mozambique, Namibia and Malawi are similarly afflicted. All are removed from formal or democratic local government machinery (where it exists) and do not provide clear avenues through which to exercise control. In addition, these proposed community-level agencies tend to be more accountable to government Forest Departments than to local people.

CONCLUSION

Nonetheless, the fact that such agencies are being created at all is an important step forward and highly indicative of the nature of strategic change that is beginning to occur in the field of forest management. Such committees may, in time, provide a platform through which genuinely empowered local level resource management is sought and secured. Through this in turn, ‘community’ itself is likely to gain clearer identity and institutional form, and authority. It could well be the case that management bodies of such ilk come to form the vanguard through which governance more broadly is instituted and devolved. In many countries in sub-Saharan Africa, local government is not yet democratically constituted. Important steps in the forest and woodland sector could help bring democratisation and devolution closer to the ambitions laid down in new constitutions at national level.

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