CMI CHR. MICHELSEN INSTITUTE

U4 ISSUE

March 2014 No 3

The political economy of REDD+ in Kenya

Identifying and responding to corruption challenges

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U4 Anti-Corruption Resource Centre
www.U4.no

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U4 is operated by the Chr. Michelsen Institute (CMI) – an independent centre for research on international development and policy – and is funded by the Australian Department of Foreign Affairs and Trade, BTC (Belgium), Danida (Denmark), DFID (UK), GIZ (Germany), Norad (Norway), Sida (Sweeden) and the Ministry of Foreign Affairs Finland.

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Abstract

The government of Kenya, led by the Ministry of Environment, Water and Natural Resources, is developing a national REDD+ programme. The success of this initiative will depend in part on Kenya's ability to address political challenges in forest governance, including control of corruption and forest crimes and protection of the human rights of forest-dependent communities. This U4 Issue, based on primary research in Kenya, describes the main corruption challenges in the forestry sector and concerns regarding the integrity of a national REDD+ initiative. Strategies for political reform of REDD+ in Kenya include improving transparency and information sharing, creating accountability and grievance mechanisms, and deepening participation and democratic processes.

About the REDD Integrity Project

This U4 Issue forms part of a three-year project entitled "REDD Integrity." Funded by the Norwegian Agency for Development Cooperation (Norad), the project provides research and analysis on the governance and corruption risks for REDD+ at the national level and derives policy implications for development practice. The country case studies examine the ways in which corruption and poor governance in the forestry sector affect the development of REDD+. Existing corruption poses risks to REDD+ goals, while the financial resources associated with REDD+ may create additional opportunities for corrupt activity. Through this project, U4 is considering the importance of land tenure for REDD+, the integrity of benefit-sharing mechanisms, the role of the private sector, and the strength of anti-corruption and governance policies being supported by development agencies.

Series editors: Aled Williams and André Standing

Acknowledgements

This U4 Issue is based on a study commissioned by the Kenyan Ministry of Environment, Water and Natural Resources in partnership with the UN-REDD Programme and the U4 Anti-Corruption Resource Centre. The research and writing has benefited from considerable support and comments from Alfred N. Gichu (National REDD+ Coordinator in Kenya), Josep Gari (UNDP, UN-REDD Africa), and Estelle Fach (UNDP, UN-REDD Geneva). The authors would also like to thank Alain Karsenty (CIRAD), Elizabeth Hart (independent consultant), and Aled Williams (U4/CMI) for their extensive review and comments on an earlier draft. All remaining errors of interpretation or omission are the responsibility of the authors.

Acronyms

ALRMP	Arid Lands Resource Management Project
CFA	Community Forest Association
CPA	Charcoal Producers Association
DRC	Democratic Republic of the Congo
EAC	East African Community
EIA	environmental impact assessment
FD	Forest Department (Kenya)
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	free, prior, and informed consent
IFC	International Finance Corporation
IFM	independent forest monitoring
KEACC	Kenya Ethics and Anti-Corruption Commission
KEFRI	Kenya Forestry Research Institute
KFS	Kenya Forest Service
KFWG	Kenya Forests Working Group
KSh	Kenyan shillings
KWS	Kenya Wildlife Service
MEWNR	Ministry of Environment, Water and Natural Resources (Kenya)
MOU	memorandum of understanding
MRV	monitoring, reporting, and verification
NEMA	National Environment Management Authority (Kenya)
NGO	nongovernmental organisation
PFM	participatory forest management
REDD	Reducing Emissions from Deforestation and Forest Degradation
TI	Transparency International
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
VAT	value added tax
WWF	World Wildlife Fund

1. Introduction

REDD+ (Reducing Emissions from Deforestation and Forest Degradation) provides financial incentives to developing countries to protect, better manage, and wisely use their forest resources, contributing to global efforts to address climate change. REDD+ strategies go beyond deforestation and forest degradation to include the role of conservation, sustainable forest management, and enhancement of forest carbon stocks in reducing emissions.[1]

There is a growing literature and international debate on political barriers to the successful implementation of REDD+ schemes. It is widely recognised that corruption and poor governance are important factors that contribute both to deforestation and to marginalisation of forest peoples. These challenges must be tackled if REDD+ is to be successful. At the same time, it is well established that the process of implementing REDD+ will impact the political economy of forestry, and REDD+ initiatives at the national and project level are vulnerable to various forms of fraud, embezzlement, conflict of interests, and human rights abuses.

The U4 Anti-Corruption Resource Centre is exploring these issues in order to provide insights that can help development practitioners with their work on forestry sector governance and REDD+ activities. This Issue Paper on Kenya is part of a series of country-based case studies produced as part of this project.

The paper is organised as follows. Following this introduction, section 2 describes the evolving nature of forest management in Kenya, highlighting the most important points of conflict and criticism in the political economy of forestry and showing how responses to these problems have influenced government policies. Section 3 considers contemporary challenges in forest governance, and section 4 examines their implications for REDD+. The focus here is on the need to combat corruption and promote human rights in the implementation of a national REDD+ strategy and various projects that seek to trade carbon credits through REDD+ related activities. Finally, section 5 explores key policy implications in three areas: increasing access to information, establishing accountability mechanisms, and deepening decentralisation and democratic participation.

1.1 Methods

This paper is based on a study commissioned as part of REDD+ readiness activities by the Kenyan Ministry of Environment, Water and Natural Resources (MEWNR) in collaboration with the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD). Carried out by the two authors, the MEWNR/UN-REDD study involved interviews with government representatives, nongovernmental organisations (NGOs), the private sector, and other stakeholders in Nairobi. The authors also undertook brief fieldwork in Kwale District, an area of Kenya's south coast bordering Tanzania, where charcoal is produced for national and local consumption. Preliminary findings were discussed at a workshop in Nairobi hosted by the MEWNR in July 2013. In addition, an online survey developed for the study asked questions about the nature of corruption in Kenya's forestry sector and elicited views on appropriate policy responses in the context of implementing REDD+. Approximately 40 people filled in some or most of the survey.

The time spent researching the MEWNR/UN-REDD corruption risk assessment precluded in-depth case study work at the local or community level. This is unfortunate, given that a core theme of this paper is the political implications of decentralisation and devolution. An important recommendation is

[1] For more information, see the UN-REDD website at http://www.un-redd.org/.

that in developing an understanding of and response to corruption and REDD+, development agencies should be able to draw on more focused and localised political economy research within countries to inform decision making. The paper highlights some of the important gaps in knowledge.

1.2 A brief introduction to the forests of Kenya

Kenya has experienced considerable deforestation over the past century, although historical data lack accuracy; even today, estimates of forest cover in Kenya are complex and to some extent contested. According to Kenya's *REDD Readiness Preparation Proposal* (KFS 2010), in the early 1900s it was thought that some 12% of the country was covered in closed canopy forest. By the late 2000s forest cover had been reduced to about 1.5%, or approximately 3.5 million hectares, including indigenous forests, open woodlands, and tree plantations. Indigenous closed canopy forest is reported to be at just over 1 million hectares, but not all of this can be considered primary forest, characterised by only indigenous trees and a healthy forest ecosystem, because of selective logging, poaching of wildlife, and the presence of invasive species of trees and plants. There are five large mountain forests that function as important water catchment areas, commonly referred to as Kenya's "water towers." These are the Mau Forest Complex, Mount Kenya, the Aberdares, Mount Elgon, and Cherangani.

Although Kenya has 3.5 million hectares of closed canopy forest, there is a much larger area of arid and semi-arid land characterised by sparse tree cover. Around 24.5 million hectares of land falls in this category, mostly in the drier western and northern regions. Twenty-five percent of Kenya's population lives on such land, which is considered particularly vulnerable to the effects of climate change, water shortages, and deforestation.

It should be noted, however, that official estimates of forest cover are subject to considerable change due to revisions in the definition of a forest and new survey methods. In a recent report by the Kenya Forest Service (KFS), based on a broader interpretation of forests as well as improved satellite technology, the total forest cover in Kenya was estimated at 6.6%. The revision from less than 2% to nearly 7% is significant, given that the Kenyan Constitution states that Kenya should ensure "tree cover" of 10%.

Official estimates on rates of deforestation are likely to be unreliable and should be seen as merely indicative of trends. However, according to the REDD readiness document, Kenya loses an estimated 12,000 hectares of closed canopy forest each year. The United Nations Environment Programme (UNEP) reports that between 2000 and 2010, deforestation in the water towers affected about 50,000 hectares, or 5,000 hectares per year. The cash value of trees felled during this time is roughly estimated at 1,362 million Kenyan shillings (KSh) per year (UNEP 2012).

Although Kenya is not as heavily forested as other countries in East Africa, its remaining forests play an important economic, social, and cultural role. Ten percent of Kenya's population lives within 5 kilometres of forests and relies on forest resources for their livelihood (Geller, McConnell, and Wanyiri 2007, 1). In 2007, it was estimated that direct revenue from exploitation of forests contributed 1% to Kenya's gross domestic product (World Bank 2007). That figure, however, is likely to be a considerable underestimate given the large informal economy that relies on forest and forest-based products; 90% of all wood harvested in Kenya is thought to be for fuel, with over half of this being for subsistence and non-commercial use (KFS 2010). The commercial charcoal sector is substantial, estimated to have a first point of sale value of KSh 135 billion per year.

In addition to the direct value of wood products, the importance of tree cover for maintaining water catchment areas is increasingly appreciated in the country. Water is a scarce and valuable asset, used for direct human consumption, agriculture, and energy; 70% of power in Kenya is hydroelectric (KFS 2010). It has become a matter of national concern that deforestation has directly threatened water security in the country, including in Nairobi. The abovementioned study by UNEP attempted to value

the economic contribution of forests to Kenya's economy, noting the important linkages between forests and various ecosystem services. UNEP estimates that deforestation in 2010 cost the Kenyan economy approximately KSh 5.8 billion, and that the value of ecosystem services provided by forests is nearly three times more than the direct cash revenue from timber sales (UNEP 2012).

Calculating the value of forests in Kenya is not straightforward. For some communities living adjacent to gazetted forests, there are also negative externalities. These include, for example, crop damage from forest wildlife (elephants, buffalo, baboons) and forest-dwelling pests, such as the tsetse fly that harms cattle. Moreover, forest-adjacent communities have seen their ability to directly benefit from exploiting forests enormously restricted by conservation policies. Consequently, forests are not always viewed as precious resources. Among communities living within 5 kilometres of the Arabuko-Sokoke Forest Reserve on the coast, for instance, studies have revealed that the majority of people do not support forest conservation and would rather be allowed to clear forest areas for small-scale agriculture (Matiku, Caleb, and Callistus 2013). While forests may have enormous value for mitigating climate change, providing timber and non-timber resources as well as regulating water supplies, conservation policies also impose costs, and these costs may be distributed unevenly.

2. Trends in forest governance in Kenya

In the mid-1970s Kenya had a reputation for having a relatively well-run forestry sector, inherited from British colonial administration in 1963. Some scholars, however, disagree with this positive characterisation and have criticised the system of forest governance established by the British for its high degree of centralisation and dominance of a "preservationist" approach (Mwangi 1998; Wass 1995). The colonial era saw the allocation of vast areas of forest to European settlers, with harsh and harmful evictions of indigenous forest peoples. Responses to deforestation in protected areas tended to exclude local communities. There was a surge in deforestation during and after each of the world wars, when timber production and deforestation were accelerated to serve British industry.

Yet by the 1980s Kenya was arguably one of Africa's leading countries in managing indigenous forests and tree plantations (World Bank 2007). Kenya's forestry sector was seen as relatively stable, with a large and well-funded Forest Department (FD) benefiting from a high degree of technical proficiency among state foresters. The colonial administration had also established sizeable state tree plantations through community agro-forestry, reaching a peak of 170,000 hectares by the mid-1970s. This meant that Kenya produced a surplus of timber and began increasing exports both within East Africa and to Europe (KFWG 2013, 35).

This relative stability in the forestry sector began to unravel in the 1980s, and various problems became more severe during the 1990s, leading to what some describe as a period of crisis. The FD came to be regarded as "one of the most corrupt institutions in the country" (MMMB 2009). It is not clear what caused this decay in forest governance, but an important context was the enormous increase in population in Kenya. When the British established the basic framework for a centrally planned forestry sector and the development of extensive tree plantations, the population in Kenya stood at about 2 million people. By the late 1970s, according to the official census, it had reached 15 million, and by the end of the 1990s it was close to 29 million. It is now over 43 million. Outside Nairobi, this phenomenal surge in population was concentrated in the fertile regions of central and western Kenya, where the most substantial indigenous forests and state plantations are located. Pressure on the land increased, as did demand for timber products, not least charcoal, which is the main source of fuel for the majority of Kenyans.

But it was not simply the pressure of a burgeoning population that challenged Kenyan forest governance; the rampant corruption that began to define Kenya's forestry sector reflected wider transformations in governance. The late 1980s and early 1990s saw political corruption become pervasive in Kenya. According to some observers, contributing factors include structural adjustment (because of the downsizing of state departments and the rapid introduction of privatisation) and the introduction of a competitive multiparty political system. It has been argued that these changes led to an increase in patronage and nepotism, which in turn exacerbated the abuse of natural resources by the country's leaders (Sundet and Moen 2009).

2.1 Corruption and the history of crisis in forest management, 1980s to 2000

A wider understanding of Kenya's descent into political corruption is beyond the scope of this paper, but it is worth noting that problems of corruption in the forestry sector appear symptomatic of wider political developments in the country. Several dimensions of forestry sector corruption during this time illustrate this, and these are essential to understanding the policy changes that occurred in the mid-2000s.

Land grabbing and the loss of state forests

One of the emerging problems in the early 1990s was the transfer of public forests to private ownership. This was not a new problem in Kenya, as excisions of forests were reported throughout the post-independence period, and also in the latter years of colonial rule. But it was during the 1980s and particularly the 1990s when an increase in state forest excisions occurred. In 2003 the government appointed the Ndung'u Commission to inquire into illegal and irregular allocations of public land and land reserved for public purposes. In its report, published in 2004, the Commission noted that nearly 300,000 hectares of state forest had been excised by the early 2000s. This meant that the process of de-gazetting state forests – that is, transferring them to private ownership – was a major contributor to deforestation in the country.

The process of changing the legal status of state forests began principally as a means of resettlement of landless people, either to provide them with fertile land for small-scale agriculture or to build community facilities such as schools, hospitals, or churches. In reality, the majority of de-gazetted forests ended up being transferred to political elites, and some of this forest land was then resold by the new owners to other state organisations at a massive profit. The process of forest excision was at times illegal, but in many cases it was nominally legal; notices of decision to convert public forests into private land were given in the government gazette, which in theory allowed responses within a 28-day period. Yet there was no realistic way for the public or opposition parties to contest these decisions. The details of benefactors were kept confidential, and any due consideration of the environmental and social impact of these land excisions was ignored. Only towards the end of the 1990s and in the early 2000s did efforts to contest decisions – mostly led by NGOs – become more successful. By 2004 about 70,000 hectares of public forests proposed for excision were being contested in court.

Escalating irregularities in the allocation of public forests by central government also encouraged similar behaviour by county authorities, which caused a significant reduction in the forested areas put aside as "trust lands" for communities. The Ndung'u report stated, "Instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources … the most pronounced land grabbers in these areas were the councillors themselves … The corruption within central government has been replicated at the local level through the activities and omissions of county and municipal councillors" (cited in Southall 2005).

The loss of forested lands through these irregular processes worsened prior to national and regional elections, with the most contentious losses occurring in the periods leading up to national elections in 1997 and 2002. Forests were used to influence rural voting and reward supporters of the Daniel arap Moi government. One of the most important parts of the country where this occurred was the Mau Forest Complex in the Rift Valley, a region that includes the historical land of the Ogiek people. Approximately 107,000 hectares of formally gazetted forests were excised during the 1990s and early 2000s, with over half of this lost in 2001. Although the official justification for the excisions was to give land rights to the displaced Ogieks, most of the excised land either was allocated for the resettlement of non-indigenous groups, who were falsely reported to be Ogieks, or was awarded to politicians and civil servants, who converted some of it into tea or wheat plantations. For example, approximately 1,000 hectares was transferred to the ownership of Kiptagich Tea Estates Limited, owned by Moi. By the early 2000s, forest cover of the Mau was reduced by approximately 25% of what it had been less than a decade earlier.[2]

[2] Information on the Mau Forest evictions and land grabbing is contained in a report prepared by the Prime Minister's Task Force on the Conservation of the Mau Forests Complex (2009).

In light of such examples, several Kenyan commentators have argued that forests are one of the key commodities that the state has used to influence voting behaviour (Klopp 2012; Ongugo 2007), and that the illegal appropriation of public forest land has been critical to the formation and consolidation of Kenya's political elite (Southall 2005).

Collapse of the shamba system

Alongside the problem of irregular land excisions, another important development was the mismanagement of state-owned tree plantations. The British administration, based on experiences in Southeast Asia, had established tree plantations in Kenya through a system of agro-forestry that became known as the *shamba* system. In essence this involved an informal arrangement whereby local farmers were provided land free of charge in state plantations to grow food crops. In return, they were expected to tend tree saplings. For several decades this system worked well, and it became an important source of food security, providing an estimated 10% of food production in the country for some years in the 1960s and 1970s. But for various reasons the system lost credibility. This led to its collapse by the end of the 1980s, although it was briefly reinstated in the 1990s, only to be banned again in the early 2000s.

One of the factors that led to the demise of the shamba system was a policy change implemented in 1975, during an era when the intellectual class in Kenya was challenging the legacy of colonialism. The shamba system was depicted as exploitative, and the state was decried for relying on cheap labour to restock and tend its plantations. So in 1975, farmers involved in the shamba system were formally employed within the Forest Department as civil servants and paid a nominal wage. The system of renting land became formalised, and employed farmers were expected to pay for their shambas. The allocation of land was also opened up to non-local residents. As the shamba system became more expensive to run, an informal market in shambas emerged, and those who had secured land by paying rent began to sublet this land to others. Shambas became commodified, and their allocation became vulnerable to forms of patronage; local elites, and many who had never been involved in the shamba system before, identified it as a source of extra income. Those given authority in the FD to allocate shambas and collect rents became vulnerable to forms of bribery and embezzlement.

Because of these developments, it became increasingly difficult for the FD to provide a supervisory role, and substantial land allocated for crop plantations was never properly planted with trees. Encroachment on areas of indigenous forest was allowed for agriculture, cattle and goat grazing, and even the production of marijuana. According to its critics, the system became a source of deforestation rather than a solution to it.

In 1979, following revelations of these abuses, a presidential ban sought to prevent the shamba system from encroaching on indigenous forests. This was unsuccessful, so in 1986 a presidential ban was imposed on all logging of indigenous trees, followed a year later by an outright ban on the shamba system. The implication was that FD was expected to manage state plantations alone. This it struggled to do: while the previous system was a relatively affordable arrangement, the alternative of contracting labour was more expensive. Large numbers of people employed through the shamba system also lost a vital source of food security and income. Many of them either left these rural areas under eviction notices or lingered and were reclassified as illegal squatters on state land.

The shamba system was restored in 1994, rebranded as Non-Resident Cultivation. But the authority to allocate land was transferred to District Development Authorities, who were highly politicised and who were believed to have continued, and even extended, problems of patronage and abuse in the allocation of forest lands under this scheme. Poor supervision by the local forest guards also continued. The situation was compounded by the legacy of structural adjustment policies: between 1994 and 1998 about 6,000 FD staff members were retrenched. Donors pulled out from funding the FD because of worsening corruption, and the allocation from the central state to the FD also shrank;

this reduced funds for plantation management from KSh 390 million in 1996 to only KSh 25 million in 2000 (Wanyiri et al. 2001). Finally, there was a sustained campaign against the environmental impact of the shamba system by prominent conservationists in Kenya as well as by the Kenya Wildlife Service (KWS). The shamba system was banned again in 2004.

Abuse of commercial logging and the informal logging ban in state plantations

The end of the shamba system exacerbated other negative trends in the administration of commercial logging in state plantations. By the mid-1990s the management of forests suffered from decreasing economic efficiency, lack of transparency in licensing, political interference, and various conflicts of interests. A significant problem was the emergence of so-called "briefcase sawmillers." These unlicensed operators, typically represented by politically connected individuals or government functionaries, were awarded contracts for timber harvesting, which were used for short-term speculative ventures. Many of these contracts were given with favourable terms, and full payments to the FD were not forthcoming. Between 1995 and 1999, annual government revenues from forests decreased from KSh 240 million to KSh 135 million, which was yet another cause of financial collapse in the state forestry sector. By 1999, 75% of all timber licenses were given to unregistered operators, and bribes or kickbacks were reported to be commonplace. In the same year it was estimated that the FD was owed some KSh 93 million in uncollected royalty fees (World Bank 2007).

The widespread fraud in government plantations was widely condemned, leading to the decision in 1999 to impose another presidential ban, this time on all logging activities in state-owned plantations. The intent was to allow the FD an opportunity to restock the plantations, undertake inventories, and impose better systems of regulation. The ban was initially supposed to last for 90 days, while a review study was undertaken, but the study took longer to complete, so the ban was extended for a year; then, for reasons that remain obscure, it continued throughout the 2000s and was only lifted (partially) in November 2011. In fact, this ban was never formally gazetted, so it is generally referred to as an "informal ban."

Large numbers of small to medium-size sawmilling firms that relied on state contracts folded, causing the loss of some 300,000 jobs and a further reduction in revenues for the FD. The ban also limited the activities of the FD (and then the KFS) in carrying out routine management and pruning of the forest plantations, which led in turn to degradation of the stock, with increased problems of disease and fires. One element of the informal ban became particularly controversial: it was not applied to all companies, and some of the larger sawmill companies were exempt. They included the Pan African Paper Mills, Raiply (although Raiply subsequently acquired majority holdings in two other large timber companies), Timsales, and Comply. These companies, even before the ban, represented the largest logging firms in Kenya, and the common ownership of Raiply, Timsales, and Comply established something close to a monopoly.[3] In total, the four companies were given extensive concessions to continue to manage timber plantations, particularly in the Mau Forest and areas of western Kenya, amounting to about 50% of the state's plantations.

The official reasons for exempting these companies from the ban were that they employed a large number of people, that just prior to the ban each firm had invested heavily in new equipment, and that there was still a need to supply the domestic market with timber and timber products in the short term. Another view is that the companies were treated differently because of their ownership. Pan African Paper Mills was a joint venture established in 1974 between the Kenyan government, the International Finance Corporation (IFC), and the Birla Group, an Indian firm. The IFC is reported to have invested in the company through nine loans totalling US$86 million, and the Kenyan government retained a

[3] Some reports, but not all, also name another company exempt from the ban, Homa Lime Limited. It has a subsidiary company, Mazao Yetu, that provides timber for fuel in lime production.

10% shareholding. The company was shut down in 2009 due to massive debt, prompting the IFC to write off US$36 million of its investment. The other private companies counted senior political figures among their leading shareholders; the chief executive officer of Raiply (and also of Timsales) held a position, until recently, on the board of the KFS, which has added to allegations of conflicts of interests. Some speculate that this beneficial arrangement has slowed the process of lifting the ban.

An additional impact of the informal logging ban was to stimulate tree plantations on private land. But this has not been able to compensate for the decreasing availability of timber in Kenya amid growing demand, which in turn has caused an increase in imports and rising domestic prices. This has been further identified as a factor driving illegal logging in public forests. A report by the Kenya Forest Working Group on the impact of the ban also noted that in the past, legitimate sawmillers had worked collaboratively with the Forest Department to control poaching in state forests, but this relationship disappeared (Kagombe, Gitonga, and Gachanja 2005).

Demise of the Forest Department

With the loss of the shamba system and with the logging ban in state plantations, the public credibility of the Forest Department, particularly in rural areas, was hard hit. Indeed, this period of crisis in the forestry sector had profound implications for the functioning of the FD, which eventually led to its rebranding and reorganisation.

As noted above, the department had financial woes. From the late 1980s into the 1990s, the income for the FD dwindled due to mismanagement of state plantations combined with the impact of public sector downsizing in general. As a result, the number of FD staff was roughly halved during the 1990s (KFS 2007). Further financial and reputational damage came later in the decade as the most important foreign donors to Kenya's forestry sector discontinued funding and support for the conservation and improved management of forests in the country. This was largely because donors realised that political interference and corruption had escalated to the point that donor-assisted programmes were unlikely to have a positive impact. Political interference in the running of the FD led to dubious appointments of senior staff members, with more qualified individuals being overlooked. This contributed to low morale within the FD and ensured that some of the department's most committed staff resigned (World Bank 2007).

Acknowledging that corruption had become systemic in the FD, a new minister of environment issued orders in 2003 for the suspension of over 800 regional forestry officers on grounds of alleged corruption and for the removal (or redeployment) of senior management in the FD. This may have been done for public relations reasons, as most of the suspended staff were subsequently reemployed.

During this time, public dissent over the loss of forests also gained momentum. The work of the Green Belt Movement had the highest profile internationally, although many others, such as the Forest Action Network and the Kenya Forests Working Group, were involved in political protests and advocacy. International media coverage culminated with the awarding of the Nobel Peace Prize to the Green Belt Movement's leader, Wangari Maathai. Such efforts to expose corruption and illegal deforestation were countered aggressively by the authorities, with allegations of human rights abuses and false arrests (Klopp 2012).

2.2 Responding to the challenges: Reforms in forest governance from the early 2000s

The problems in forestry sector governance outlined above influenced considerable changes in forestry management from the mid-2000s. Another impetus to change was the occurrence of successive droughts in Kenya in the early 2000s that were widely understood to be linked to deforestation in the water towers. In 2002, also, Kenya voted in a new president, Mwai Kibaki, and a

new majority political party, the National Rainbow Coalition, whose manifesto centred on combating corruption, including in land administration. It was an era characterised by rising awareness of the importance of forests, and, more broadly, by a new enthusiasm for governance reform. Although efforts to combat elite-level corruption in Kenya have been largely ineffective, there were more concerted debates on political reform, which eventually led to the new constitution promulgated in 2010 and the enactment of government devolution.

By the mid-2000s the government began to implement new policies in the forestry sector. Some of these had been developed in writing years before but had been shelved and left unfunded, due partly to disengagement by multilateral and bilateral donors. The most important was the Forests Act of 2005, enacted in 2007. This law is also the basis for a new draft Forest Bill, expected to be finalised for parliamentary approval in 2014.

The Forests Act of 2005 and forest decentralisation

The Forests Act was a milestone in forest governance and brought about considerable change, at least in official policies and management arrangements. One of the first developments came in response to the growing allegations of irregular excisions of state forests. The Forests Act strengthened parliamentary oversight and imposed more stringent environmental impact assessments (EIAs) for any conversion of state forests. The National Environment Management Authority (NEMA) was also given more powers of oversight of these EIAs.

The Forests Act established the conversion of the discredited Forest Department into what is now the Kenya Forest Service. A semi-autonomous corporate body with an independent governing committee, the KFS is situated under the overall responsibility of the Ministry of Environment, Water and Natural Resources (previously the Ministry of Forestry and Wildlife). The KFS was established with a long-term objective of becoming entirely self-funded through income accrued from managing state-owned forests and tree plantations. For the time being, the KFS remains largely dependent on donor assistance (which gradually resumed in the mid-2000s as an outcome of positive reforms) and contributions from the central government budget. At present, the KFS is responsible for most of the 1 million hectares of remaining indigenous forest in the country and about 140,000 hectares of state-owned tree plantations.

Most importantly, the new Forests Act established the legal and institutional arrangements for the decentralisation of forest management and the implementation of participatory forest management. The preservationist ideology of forest management that had been a feature of forest governance in Kenya was seemingly reversed. This had been a demand of many civil society organisations in Kenya for decades. Indeed, in East Africa, Kenya was the last country to formally adopt policies of decentralisation in forestry, with Uganda and Tanzania having done so in the 1990s.

Forest decentralisation in Kenya has several aspects, of which the formation of Community Forest Associations (CFAs) is perhaps the most significant. These are self-governing community-based groups that have the right to be involved in the co-management of public forests with the KFS and other government agencies. The CFAs produce Forest Management Plans, which set out joint responsibilities and benefit-sharing arrangements. Although the first CFA was established in 1997 as a pilot in anticipation of the new Act, the formation of CFAs gained momentum in the mid-2000s, with at least 120 active by the end of the 2000s.

The Forests Act contains other provisions that can also be viewed as part of the decentralisation policy. It provides for outsourced management of state indigenous forests and the awarding of long-term concessions to private organisations wishing to undertake income-generating activities, particularly ecotourism, in these areas. Another policy seeks to regularise charcoal production, which prior to the Act was almost entirely unregulated. The Act set out the basic framework to change this,

leading to the development in 2009 of new "Charcoal Rules." Under these rules the government has mandated the establishment of Charcoal Producers Associations, which issue permits and collaborate with the state to achieve sustainable charcoal production (described in more detail below).

Another milestone in the shift towards decentralisation was a decision in 2008 to reintroduce the shamba system, rebranded as the Plantation Establishment and Livelihood Improvement Scheme (PELIS).

Devolution

A final issue to consider in the changing governance landscape is the effect of devolution. The period after independence saw considerable centralisation of power, and the system of local government in Kenya prior to devolution was exceptionally complex. Kenya had eight provinces governed by a provincial administration, which in turn was run by the president's office. There were also 175 local elected authorities and, additionally, the constituencies of Members of Parliament (MPs), for which MPs implemented various programmes funded through budgets allocated by central government. Local authorities became emaciated through funding cuts and interference from above. The Constitution of Kenya Review Commission noted in 2007 that "the whole nation feels alienated from the government and [its] structures of authority. The people consider they have no control over their destiny and, outside the general elections, participation is almost non-existent" (cited in Sundet and Moen 2009, 17).

It was frustration with this state of affairs that led to devolution and the establishment of 47 more autonomous, elected county governments that are intended to promote improved participation and accountability. The first election of new county governors and assemblies was held in 2012.

Prior to devolution the only function in the forestry sector that was not controlled by the central state was the management of community forests, or "trust lands," which were nominally placed under the responsibility of local authorities. By all accounts this situation was not effective: local authorities lacked both resources and management competence in forestry, and there was widespread corruption in land administration at the local level. Although the Forests Act of 2005 introduced decentralisation, there was in fact no expanded role for local authorities.

The precise role and powers of county governments in the forestry sector remain to be finalised. However, according to the draft Forest Bill, which is already influencing policy, the new county governments will establish a county office for the management of community and private forests, most likely under a county department for the environment. The draft Forest Bill also sets out the need for county administrations to establish a county forest conservation committee, with representation from NGOs, the private sector, and other devolved government departments. The responsibilities of the county governments in the forestry sector include the development of subsidiary forest legislation and management plans, which in turn will seek to achieve reforestation, protect fragile ecosystems, and promote income-generating activities. In 2012 the KFS headquarters deployed staff on a three-year basis to advise new county governments on developing this capacity for forest management.

There are still some grey areas in the role of county governments in forestry. According to the MEWNR and KFS, the management of public forests and state plantations in counties, including the collection of revenues, will not be devolved at all, but will continue to be controlled by the KFS and the Ministry. This confirms that although there have been policies allowing for community participation in forestry through user groups (the CFAs), as well as privatisation to some extent, democratic and economic decentralisation of state authority in the forestry sector remains extremely limited. The centralised system of public forest management established under colonial rule will be largely preserved for the time being.

3. Contemporary challenges of forest governance in Kenya

Against this backdrop of changes in forest governance, which were clearly a response to political failure and corruption in the past, we can now consider existing forms of corruption in the forestry sector. While it would be almost impossible to demonstrate empirically a quantitative change in the extent of corruption, a qualitative change in the nature of corruption, particularly as an outcome of decentralisation and privatisation, is apparent. There are numerous issues to consider, many of which require far more study to understand in detail.

3.1 Land tenure and forests in Kenya

Issues of land tenure, as well as allegations of "land grabbing" and corruption in the governance of land, continue to be among the most sensitive political issues in Kenya. Corruption in land administration remains highly prevalent, and such grievances were at the heart of the post-election violence in 2008. The 2010 Constitution established a new Land Commission with a mandate to conduct investigations into past and present corruption in land allocations. Detailed information on corruption in the allocation of public forests was contained in the Ndung'u report published in 2004. Much of this information was updated in a report compiled in 2013 by the Truth, Justice and Reconciliation Commission, which was set up to investigate and advise on actions pertaining to human rights abuses in Kenya from the late 1960s through 2008.

Over the past decade, however, contentious decisions with regard to the excision of public forests have been absent in Kenya. There have been no obvious examples of the government de-gazetting state-owned forests since late 2001. The opportunities for irregular excision of public forests have diminished markedly because of the 2005 Forests Act and heightened awareness of the importance of forest conservation for averting and mitigating the effects of droughts. Indeed, the KFS has recently managed to expand the total coverage of public forests by gazetting new areas, mostly from community forests that have been degraded, or by extending the boundaries of existing protected forests. In February 2013 the minister of forestry and wildlife published a list of 22 areas that have been gazetted since 2012 as new public forests. These new areas represent over 120,000 hectares, with the largest new forests established in the northern coastal area of Tana River District and close to the port of Lamu.

Such cases may be good evidence for improved integrity of forest land tenure in the country, but the situation is not straightforward. It is widely understood that the substantial areas of forest illegally allocated to elites in the 1990s are not going to be recaptured by the state; powerful vested interests will prevent such a reversal. Furthermore, the process of gazetting new forests (as well as promoting conservation of existing ones) comes with potential consequences such as evictions of people, including indigenous forest communities, and restrictions on land and access rights for local communities. There are several aspects to consider further here.

Forced evictions from forests

A legacy of the colonial management of forests, forced evictions from forest lands continued after independence and are a source of considerable tension in Kenya today. Although irregular excisions of public forest lands seemed to have ended in the early 2000s, a global survey of forced evictions undertaken by the Centre on Housing Rights and Evictions in 2006 stated that in the preceding two years, approximately 100,000 people in Kenya had been forcibly evicted from six forest areas (COHRE 2006). More recent examples include the forced evictions of Samburu people in central Kenya, caused by the establishment of the Laikipia National Park on the foothills of Mount Kenya

forest. This case has been controversial because the land was initially bought by two US conservation organisations from a private landowner for US$4 million, then donated to the Kenya Wildlife Service to manage. The process of evicting Samburus from the area apparently involved violence and harassment (Wafula and Chege 2012).

There are also difficulties related to managing people classed as "squatters" in public forests. One example is the eviction of approximately 3,000 people from Embobut Forest in the Cherangani Hills. The Kenyan government recently agreed to compensation of about KSh 400,000 per family, although this process was marred by allegations that local civil servants and politicians attempted to get on the list of squatters to receive compensation payments and that some rightful beneficiaries were excluded (Lesiew 2013).[4]

Kenya has also faced litigation by rural communities seeking to reclaim lost forest lands and receive compensation. The most significant case involves the application by the Endorois people, who were evicted from ancestral lands by the state in 1973 to make way for the establishment of a wildlife conservancy and mining ventures. The Kenyan Constitutional Court initially dismissed the claim on the grounds that the communities had been adequately compensated. But the Endorois subsequently submitted their claim to the African Commission on Human and Peoples' Rights under the African Charter, to which Kenya is a State Party. This resulted in a landmark decision in 2010, upholding the Endorois claim and ordering the Kenyan government to recognise the ancestral land rights at issue, provide unrestricted access to the land, and ensure adequate economic benefit sharing from the reserve (Korir Sing'Oei 2012, 9–10). Progress on implementing the Commission's legal recommendations has been slow, however, and the matter remains unresolved. Similarly, the Ogiek people in the Mau Forest Complex have lost forest land through irregular excisions. After failing to receive a positive outcome in the national courts, the Ogiek brought the case in 2009 to the newly established African Court on Human and Peoples' Rights, where it remains pending.

From such examples, it is clear that the Kenya Forest Service faces extremely difficult situations when it attempts to promote forest conservation and manage relocations of people, for whom the label of "squatters" is inherently problematic. There is a long-standing tension between conservation and the rights of rural people. Indeed, it is a matter that has generated criticism of bilateral and multilateral donors, who stand accused of promoting forest conservation without sufficient support to the rights of indigenous peoples in Kenya. Some of the most celebrated successes in forest conservation in recent years have involved erecting fences around indigenous forests (see, for example, Lang 2009; Purvis 2013).

Devolution and community lands

While it is unlikely that Kenya will again witness the sort of corrupt excisions of public forests that have occurred in the past, irregular allocation of land in community forest areas is thought to be a continuing problem. The institutional mechanisms for public deliberation and oversight on these areas are much weaker than those for public forests, and insecure land tenure for citizens, including indigenous forest people, creates considerable vulnerabilities. Generally, Kenyan citizens living in community forest areas have limited land rights and lack secure title deeds.

The management of community forest lands could be improved by the process of devolution, outlined above. Indeed, some believe devolution will lead to more effective participation, greater respect for human rights, and stronger ownership of forest lands by local citizens. Others are less optimistic: they

[4] In another example, people displaced by evictions in forests near Mount Kenya were supposed to be provided land from 15,000 acres bought from the Solio game ranch, but media reports suggest that substantial areas of this land were instead given to local politicians and other undeserving people (Weru 2013).

worry that devolving power to counties may undermine accountability and increase the likelihood that forests will be exploited unsustainably for short-term economic and political gain. It is often noted that despite the assistance provided by the KFS, civil servants given the responsibility of running newly formed forestry units at the county level may have very limited expertise on sustainable forest management.

More importantly, these new administrations are expected to generate the vast majority of their income locally. In February 2012 the newly formed Commission on Revenue Allocation announced that only 15% of national revenue will be directed to county administrations. The fear is that county governors will view community forest land as "open land" that can be used for patronage purposes or to provide short-term income that can fund budget shortfalls or even be looted for personal enrichment. According to some sources, this is already happening, and it is a matter of concern that reports have surfaced of systematic financial irregularities by county governments. According to the *Daily Nation* (Leftie 2013), a report by the Controller of Budget (yet to be published) has raised alarm over substantial funds spent by county administrations without approval from county assemblies, as well as exaggerated spending on salaries, vehicles, and new office buildings. Only 8% of the KSh 25 billion transferred to counties from the central government in 2013 was spent directly on development activities.

Although the county governments have been given responsibility for managing community and private forests, their mandate does not include management or direct sharing of income from public forests. This situation may be contested, and it is expected that county governors may seek to increase their control over public forests in their areas as well.

Infrastructure development and industrial expansion

A further source of potential corruption in forest land tenure, relevant to both public and community forests, stems from management of infrastructure development and extractive industries that can cause deforestation, forest degradation, and the displacement of forest-dependent communities.

A high-profile case involves the allocation in 2008 of over 90,000 hectares of forested area to a Canadian company, Bedford Biofuels, in Tana River District. The company planned to farm *Jatropha curcas*, a biofuel feedstock, on 60,000 hectares. The process of allocating this land was marred by allegations of corruption and conflicts of interests and was blamed for causing conflicts within communities. International and national environmental protests erupted, and the National Environment Management Authority refused to accept the EIA. This effectively stopped development of the plantation (Smalley and Corbera 2012).

Another example is the development of the Lamu Port–South Sudan–Ethiopia Transport Corridor, which is being driven by oil discoveries in the region and the aim of exporting this oil from Lamu. There are concerns regarding the environmental impact on forests, potential evictions of forest people, and allegations of land grabbing (Sena 2012). It should be noted that the largest areas of forest that were gazetted by the government in 2013 are in this area of Kenya. It is not yet clear whether gazetting will protect forests and the people living in them from infrastructure development or whether it will facilitate the state's ability to provide companies with authorisation to clear forests. This subject requires more research and monitoring.

Still another example, occurring in a gazetted public forest, is the decision to allow exploratory mining for niobium in the Mrima Hill Forest Reserve on the south coast. In 2010 the then Ministry of Environment and Natural Resources awarded a prospecting license to a South African company, Cortec Mining (a Canadian company later acquired 70% of the operation). Some people living in the area reportedly supported the project based on expectations of new jobs and local investment. However, there have also been protests from other community interests and conservation

organisations, who contend that the environmental restrictions placed on the mining company, set out in the prospecting license, are too lenient and have been ignored by the company (see, for example, KFS 2014). NEMA did not approve the full environmental and social impact assessment, which would be required for the company to obtain a long-term license for expanded mining operations. The new minister for mining temporarily revoked the company's prospecting license, and the situation remains in flux. Another 46 mining licenses were also revoked because royalty payments by the mining companies, agreed by the previous minister, were thought to be too low.

The overall point is that contentious decisions on allowing construction and extractive industries in community forests and (perhaps to a lesser degree) public forests remain an important potential cause of deforestation and forest degradation in Kenya. We should avoid seeing these cases simply as an outcome of corruption: there are various ways in which these difficult decisions can be influenced by abuse of power and conflicts of interests. The ideal of free, prior, and informed consent from the local communities affected is far from straightforward to achieve, particularly where land rights are insecure and where investors and government boosters of these developments manipulate communities' expectations of economic benefits.

While we cannot arrive at a clear picture of the extent of corruption in the allocation and management of land in forest areas, it is noteworthy that in the MEWNR/UN-REDD online survey, 40% of respondents thought irregular conversion of forest lands for resettlement and agriculture, including in community forests, was "high and widespread." A further 40% thought it was "prevalent and significant, but decreasing." Somewhat unexpected in this survey was that the same response was given about illegal or irregular allocation of land to powerful individuals in public forests. The latter problem has been evident in the past in Kenya, but it is almost certainly not as prevalent now. This anomaly in the survey may be explained by the legacy of abuses in the 1990s and early 2000s, which continue to inform public sentiment. But more research is needed on human rights issues, and possible corruption, related to evictions and resettlements of rural people from forest lands.

3.2 Illegal logging

In international publications, Kenya is regarded as a country basically free of large-scale illegal logging, suggesting that the larger commercial timber firms rarely act beyond the law. It is difficult to substantiate this, but it is probably correct that illegal logging in Kenya is primarily undertaken not by a few large companies but by many people striving to meet subsistence needs and by various small enterprises serving domestic timber markets.

In addition to illegal felling of trees, various other forest crimes occur: poaching of forest wildlife for the local bush meat trade, illegal cattle or goat grazing by herders, and clearing of forest areas for small-scale agriculture or, as in some parts of the Aberdares and Mount Kenya, for the cultivation of marijuana (Lambrechts et al. 2003; KTN 2013). These activities are reported throughout the country and collectively are probably the most immediate threat to indigenous forest conservation. This is recognised in several official documents, including in Kenya's REDD readiness proposal (KFS 2010) and in a report by the Kenyan government on forest law enforcement and governance, which describes illegal logging as "rampant" (KFS 2007).

Most people who spoke with the authors recognise that the KFS and other law enforcement agencies have limited resources, meaning that many forest crimes probably go undetected. Corruption facilitates or drives these problems in various locations. In some cases bribes may pass between illegal loggers, poachers, or grazers and forest guards or KWS guards. Other instances involve collusion, that is, illegal and secretive agreements, directly involving government officials. This suggests that in some areas, corrupt officials are engaged in what amounts to an organised criminal

activity.[5] These reports include allegations that senior staff at KFS at the district level control the illegal trade in timber from public and community forests, as well as trade in wildlife, including instances of ivory trafficking.

While Community Forest Associations have a role in working with the KFS and other government authorities to reduce illegal activities, there are also reports that some CFA leaders are complicit in these activities. In one example described to the authors, a CFA leader in Kwale District was suspected by other members of dealing in illegal timber in collusion with the regional officer of the KFS. In this case, members of the CFA acted by voting the head of the CFA out of his position. However, we cannot be sure of the prevalence of collusion or involvement by CFAs in forest crimes, and this remains worthy of further study.

Alongside allegations of corruption in activities such as illegal logging, there are suggestions that forest crimes may sometimes go unpunished because forest guards have sympathetic or at least tolerant attitudes towards members of local communities whose livelihoods depend on these activities. They may "turn a blind eye" as a result. Moreover, arresting local people for these activities may be viewed as contentious and as a source of community friction in the long term, another reason for possible leniency. Despite the criminalisation of many types of activities in indigenous forests, it is likely that in many locations such activities are viewed as merely a "social crime," that is, a transgression tolerated because of its contribution to poor people's lives and because the laws criminalising these activities lack local legitimacy. Understanding the nature of corruption at this level requires an appreciation of the difficulties faced by law enforcement officials and the blurred boundaries between direct collusion, empathy, and incompetence. Ethnographic research to better understand these issues has not yet been attempted in Kenya.

In addition to illegal logging in its own forests, Kenya's importation of illegal and legal timber from other countries has raised issues. Kenya has become a key consumer market for timber sourced from throughout East and Southern Africa, including from eastern Democratic Republic of the Congo (DRC), Uganda, Tanzania, Malawi, and Angola. In 1999 timber imports to Kenya had an estimated value of US$62,000, but this has now increased to some US$37.5 million (Mutai 2010). There is ample reason to believe that with increasing population and construction pressures, this trend will continue, as it is doubtful that domestic production of timber can increase sufficiently to replace imports in the short to medium term. Several reports on the regional trade in timber products in East Africa express increasing concern over unsustainable logging, particularly in the DRC and Tanzania (Forests Monitor 2007; Chevallier and du Preez 2012; Milledge, Gelvas, and Ahrends 2007; EAWLS/TNRF 2012).

Official data on timber imports to Kenya may not be reliable, and there are considerable discrepancies in available reports (Chevallier and du Preez 2012). The 2010/2011 annual report of the KFS stated that a total of 29,100 cubic metres of softwood timber was imported from Malawi and Tanzania and 5,900 cubic metres of hardwood from the DRC and Southern Sudan (KFS 2012). Yet the World Wildlife Fund in Kenya estimated that Kenya imported some 33,100 cubic metres of timber from eastern DRC alone in 2011 (WWF 2012). This suggests an increasing cross-border trade considerably above levels reported by the KFS. Similarly, a study undertaken for Forest Law Enforcement, Governance and Trade (FLEGT) in 2012 estimated imports of timber from Tanzania at three border posts to be about 25,000 cubic metres, not including substantial quantities of poles, furniture, wood carvings, paper, and charcoal. The report noted that this figure was certainly an underestimate given that other border crossings were not covered in the research (EAWLS/TNRF 2012).

[5] Such cases appear in media reports (see, for example, Njeru 2012).

Whatever the precise figures, the overall increase in Kenya's timber imports is commonly explained as driven by shortages of supply in an economy that is stronger than others in the region. Many blame shortages on the informal logging ban. Kenya also offers a favourable tax arrangement for timber imported from the DRC, choosing to adopt 16% VAT and zero duty as set out in the Common Market for Eastern and Southern Africa (COMESA) free trade agreement. Kenya could, however, impose an 18% VAT and 10% duty under the terms of the East African Community (EAC) Common External Tariff, which is the approach adopted by other EAC members for timber imports from the DRC. This may increase the relative importance of Kenya as a destination market for timber originating in the DRC.

The FLEGT study on cross-border trade between Tanzania and Kenya described considerable problems of illegalities and corruption. There are also convoluted rules and procedures for trade in timber between the two countries, which has led to fraud, underreporting, and use of false documents (EAWLS/TNRF 2012).

3.3 The charcoal sector

In 2005 a national charcoal survey estimated that at least 200,000 people in Kenya were engaged in the production of commercial charcoal, and a further half million people were engaged in its transportation and sale. The survey also reported that over 80% of domestic energy for cooking in urban areas of Kenya comes from the burning of charcoal, as well as about 37% in rural areas. The amount of charcoal produced annually was estimated in 2005 to be 1.6 million tons, with a retail value at that time of approximately KSh 32 billion (US$376 million) (Mutimba and Murefu 2005). However, a more recent study commissioned by the MEWNR in 2013 (not yet published) suggests that annual production of charcoal has grown substantially since 2005 and may now be as much as 2.5 million tons. Prices of charcoal have also nearly doubled since 2005, meaning the sector is worth an estimated KSh 135 billion. These figures need to be treated with caution given the inherent difficulties of measuring an informal sector. Nevertheless, it is clear that the charcoal sector is substantial, involves large numbers of people, generates considerable profits, and represents a critical energy source.

The production of charcoal in Kenya, as in many African countries, is an important contributor to deforestation and forest degradation. It is produced commercially throughout the country, although the largest production is in the semi-arid areas of eastern and central Kenya, and the highest-quality charcoal is produced from indigenous hardwoods. A considerable amount of charcoal is produced from privately owned land, but there is also a large production from both community lands and public forests; indeed, an estimated 20% of all charcoal in Kenya comes from gazetted forests and is therefore illegal. Production of charcoal can be done on a sustainable basis, but it is quicker and cheaper for producers to adopt unsustainable methods. Moreover, common methods of charcoal production can be highly inefficient. The conversion efficiency of charcoal production in poorly made kilns is roughly 10% (ratio of charcoal produced to wood), whereas some modern techniques achieve an efficiency ratio nearing 40% (Mugo and Ong 2006).

Until the late 2000s, the commercial charcoal sector was entirely unregulated and essentially criminalised. This created extensive opportunities for corruption: the production, transportation, and sale of charcoal has been, and possibly continues to be, a process in which systematic bribe payments are made to various authorities along the supply chain. For example, people engaged in transporting charcoal from the coast to Nairobi describe a rather predictable system of bribes to traffic police throughout the journey; these payments in turn operate as an informal tax that inflates the price of charcoal for the end consumer. It is normal for a truck carrying charcoal to pay KSh 1,000 at police roadblocks, of which there may be many along the way. There are some allegations of officials confiscating charcoal and simply reselling it. Moreover, the charcoal sector, particularly at the point of final sale, has been organised by what some people describe as mafia-like structures that provide

"protection" and extract the corresponding rents. The urban market is thought to be regulated by a combination of violence, or the threat of violence, as well as the ability to manage corruption. As a result, the charcoal sector may have created substantial wealth for a small number of actors.

There is widespread recognition in Kenya that this situation needs to change. The 2005 Forests Act contains provisions aimed at further developing laws and systems to manage the charcoal sector. As noted above, the Charcoal Rules, finalised in 2009, establish a new governing structure intended to regularise charcoal production and ensure that it is done sustainably. Under this structure, groups of charcoal producers form Charcoal Producers Associations (CPAs). Each CPA applies for a license to operate from the director of the KFS, and must also produce an environmental impact assessment approved by NEMA. The primary role of the CPAs is to issue certificates of origin for bags of charcoal and to facilitate activities that ensure charcoal production is sustainable. Although not mandated in the Charcoal Rules, producers in some areas of Kenya have also formed charcoal producer groups, informal associations that act as intermediaries between charcoal producers and the CPAs. There is also the emergence of Charcoal Transporters Associations, which are not mentioned in the Charcoal Rules either.

The rules stipulate that anyone engaged in the transportation of charcoal must obtain a permit of movement from the zonal office of the KFS, paying KSh 20 per bag to the KFS. This permit is only issued when the transporter has obtained a certificate of origin from the CPA, for which the transporter pays a fee of KSh 10 per bag to the CPA. Sellers of charcoal must keep copies of both the certificate of origin and the movement permit in order to satisfy the authorities that the charcoal is legal.

So far, the Charcoal Rules have led to the establishment of at least 120 CPAs throughout the country, with about 80 of these registered by the Registrar of Societies. Some have produced EIAs that have been approved by NEMA, but exact figures are not available and there is considerable doubt about the reliability of these EIAs, given the dearth of empirical knowledge on tree regeneration after charcoal production. Information on the income of these groups is also limited, but fieldwork undertaken for this study in Kwale revealed that for three CPAs, their income from issuing certificates of origin was reported to be in the region of KSh 200,000 a month. Producer groups pay additional fees to become members of CPAs, ranging from about KSh 2,000 to 5,000. For each bag of charcoal, producers also pay KSh 10 to the CPA. About 75% of the total income of the CPAs is spent on administrative costs, including salaries for CPA employees and office rentals; the remainder is set aside for investment in activities that support sustainable charcoal production, including producing seedlings and planting trees.

The full implementation of the Charcoal Rules is some way off. Although many CPAs have been legally formed and some have approval through NEMA, the KFS has not issued any formal licenses for CPAs to operate. Thus, although CPAs issue certificates of origin, which in turn are used by transporters to generate movement permits from the KFS, there is still no licensed commercial charcoal production in the country. Some CPAs have obtained a letter of authorisation from the KFS to operate, but this is a short-term arrangement; formal licensing procedures will be managed later through collaboration between the KFS and district-level charcoal licensing committees. The function of these committees is not clear, but they may have an influence in recognising the legality of CPAs and presumably taking away the authorisation of CPAs in the event of noncompliance with sustainability criteria.

The strategy employed by the KFS is first to organise the sector into legalised associations and then later address the issue of how to assist producers with sustainable practices, a task that will involve district-level institutions and NEMA. However, according to the KFS, it may be extremely hard for CPAs to obtain licenses to operate in the future, given the difficulties of demonstrating that charcoal production among members is sustainable. The regularisation of the charcoal sector is therefore an ongoing task.

The new rules for charcoal production also raise governance challenges. The system of validating the source of charcoal is open to abuse that is difficult to counter. The CPAs issue documents for the origin of charcoal, but they have limited capacity to actually check where charcoal is produced and through what methods. Indeed, there is an obvious incentive for CPAs to increase their own income, which may discourage CPAs from denying producers and transporters the necessary paperwork. In one interview with a CPA, an informant revealed that certificates of origin were provided for charcoal smuggled in from Tanzania. As the head of the CPA put it, "Why should we not take charcoal from Tanzania? Kenyans benefit." Further problems may be found with how the CPAs administer funds. Although CPAs are expected to invest revenue in activities that support sustainable charcoal production, oversight and accountability of this function is probably weak in most cases.

The KFS also faces enormous capacity constraints in checking the sources of charcoal, and there are obvious conflicts of interests, given that issuing permits of movement generates significant income. If the charcoal sector has been a source of informal rents for large numbers of people in public office, then it seems unlikely that these practices will simply disappear as a result of the new Charcoal Rules. In its 2010/2011 annual report, the KFS states that 498 bags of charcoal were confiscated by the authorities, which would seem a very small number (KFS 2012). The new Charcoal Rules do allow authorities to ban charcoal production and trade in specific areas, and this has occurred, for example, in Kitui District, where temporary bans on charcoal production were attempted in 2010 and 2012. The last ban was thought to have cost the government some KSh 160 million in lost revenues, although it is not clear that the ban was entirely effective or that unofficial income from the charcoal trade was completely stopped. More recently, in August 2013, the County Assembly in Kitui ordered a new "indefinite ban" on charcoal production and trade, partly motivated by allegations that district commissioners, police, and officials from NEMA and the KFS were implicated in unlawful activities (Nzengu 2013).

In addition to the cross-border trade in timber and wood products, there is a substantial informal cross-border trade in charcoal, mainly charcoal produced in Tanzania. The FLEGT study on illegal cross-border trade estimated that at three border crossings, 1,492 bags of charcoal come into Kenya from Tanzania every day (EAWLS/TNRF 2012). This is surely only a fraction of the total coming in from Tanzania, as charcoal is moved across the border at various points, carried on bicycles or donkeys as well as on vehicles using roads and tracks. As noted above, some of this charcoal is now given false certificate of origin documents by CPAs. There is also cross-border trade in charcoal from Uganda and possibly Somalia, but little is known about the scale. A specific import permit, issued by the KFS, is supposed to accompany all charcoal entering Kenya. Information on the number of these permits, as well as the income earned for the government, is not publically available.

3.4 Management of state plantations

The informal ban on logging in government plantations was lifted towards the end of 2011. The process of lifting the ban was peculiar in that the decision to start issuing licenses for increased commercial logging was done without publicity and media attention. Indeed, some people spoken to for this study still think the informal ban applies. Nevertheless, since late 2011 a greater number of preapproved companies are eligible to apply for tenders to exploit a larger area of these state assets. This has partly improved the perception, among stakeholders involved in commercial timber production, of the integrity of the KFS in managing its commercial plantations.

Some concerns persist. A particular point of criticism is that the KFS has introduced criteria for issuing licenses that favour larger companies; long-term licenses to harvest state plantations are given to those who can demonstrate high levels of capital for investments, efficient technologies, and well-managed accounts. Smaller business enterprises believe this makes it difficult for them to win bids and that the most lucrative opportunities are given to a few larger companies that will achieve market concentration. Where opportunities are available for smaller operators, these seem to be for areas of

plantations that are less profitable due to their remoteness and lack of nearby infrastructure. Moreover, it is thought that the bigger companies will have greater success in gaining long-term contracts from the government, while smaller operators will tend to get short-term contracts.

The tendering process is also described as vulnerable to manipulation and fraud. In some cases companies have collaborated in the tender process, with the highest bidder pulling out after winning the contract so that KFS is forced to provide the contract to a company providing a lower bid. According to a governance assessment commissioned as part of the Miti Mingi Maisha Bora programme (Oksanen, Gachanja, and Blåsten 2011), this practice has been recognised by the KFS, and it may be countered in the future by blacklisting companies or by insisting that companies wishing to tender for contracts provide a nonrefundable deposit to ensure that they will not pull out if their bid is successful. This again could have the unforeseen effect of favouring more capitalised firms.[6]

Other allegations of corruption concern collusion between companies and officials in charge of forest inventories. There is thought to be deliberate undervaluation of plantations in some cases, with "savings" shared between those involved. There are further allegations that the tendering process is not transparent and that conflicts of interests are manifest, as was the case in the era of the briefcase sawmillers. A governance assessment commissioned by the Finnish government as part of its ongoing support to forestry reform in Kenya described these problems and suggested that Kenya adopt independent forest monitoring: "There seem to be irregularities at all levels of timber licensing. These allegations of malpractices are creating a bad image for KFS and the provision for independent monitoring would help to boost the positive image of the institution – as opposed to the image of the previous Forest Department" (Oksanen, Gachanja, and Blåsten 2011, 51).

Alongside the lifting of the informal ban has been the reintroduction of the shamba system. In the mid-2000s the KFS reintroduced the system through "pilots" in 15 forest stations and then extended this in 2008 to a total of 29 forest stations, amounting to 16,000 hectares. Shamba remains controversial and is still viewed with scepticism by conservationists as a potential cause of further encroachment on indigenous forests. However, the system has undergone reforms. CFAs put forward a list of names eligible to receive land, and the subsequent allocation of land to farmers is made on a ballot system (i.e., a random lottery), which is intended to overcome past problems of corruption. There are also stronger mechanisms for oversight and reporting, with KFS headquarters playing a stronger supervisory role.

It was not possible to undertake research for this study that would provide insight into how well the shamba system is performing. However, research in 2009 suggests that the system remains well supported in rural areas and is proving to be a cost-effective way of restocking the state plantations (Witcomb and Dorward 2009). Nevertheless, the same report also notes that some problems from the past persist, that farmers are deliberately damaging tree saplings in order to prolong their lease of land, and that the balloting system has been undermined in some areas by rigging and fraud. Another study published in 2010 in three forest stations reported that only 21% of shambas were allocated by the balloting system (Sinange 2010). Moreover, the system is made less effective because farmers do not benefit from the sale of trees they help cultivate, and the allocation of land is temporary: farmers do not know whether they will receive another shamba after their tree saplings reach sufficient height (normally three years). It is this lack of long-term security and benefit sharing that some feel leads to spoilage by farmers who hope that this will allow them to stay longer on the land.

[6] It is worth noting that only the larger capitalised and professional firms are able to comply with certain quality and sustainability norms, including those required to comply with FLEGT conditions. The authors thank Alain Karsenty for raising this point.

3.5 Community Forest Associations

The experience of participatory forest management (PFM) and the workings of the newly established CFAs have been the subject of several studies. These include two assessments of CFAs published recently: a review of the performance of 20 CFAs commissioned as part of Finnish aid (KFWG 2013) and a study of 12 CFAs over a decade based on collaborative research by KEFRI, the Center for International Forestry Research, and the World Agroforestry Centre (Mogoi et al. 2012). A more in-depth study of the governance of a CFA in Ngare Ndare has also been undertaken by researchers from Denmark (Amrani and Zeeman 2013). From these various studies, and from supplementary interviews in Kenya, it is clear that experiences with decentralisation and PFM are mixed and that the functioning of CFAs has not lived up to expectations.

One of the problems experienced in the formation of CFAs has to do with the working relationship with the government, and specifically with the KFS and KWS. Despite the notion of decentralisation promoted through the 2005 Forests Act, it is reported that the government holds a strong position of authority, which includes maintaining strict supervision over the activities of CFAs and exercising arbitrary powers. There is growing discontent with the slow process for agreeing on equitable benefit-sharing mechanisms between the state and CFAs. As it is, sharing economic benefits from forest management is quite limited, with the majority of benefits being retained by KFS while CFA members are restricted to subsistence forest activities. Some improvements are noted in places where KFS has awarded selected silviculture activities to CFAs, but the main income sources for CFAs continue to be membership fees, donor-sponsored projects, and donations. Mogoi et al. (2012) argue that the government has shown a reluctance to yield centralised control over forest management and that this is leading to disillusionment among CFAs, reflected in decreasing membership. This problem is exacerbated in some areas where CFAs have established Forest Management Plans with the KFS – a costly exercise for CFAs – but the KFS has failed to adhere to these agreements.

In addition to the difficulties linked to benefit sharing and well-defined community rights, the integrity and legitimacy of CFAs themselves have been called into question. In some locations there are concerns about the ability of CFAs to become democratically representative, as their formation and functioning are prone to conflicts of interests and what some refer to as elite capture. It needs to be recognised that many CFAs are umbrella organisations representing diverse communities and interest groups, including in some cases wealthy farm owners or private wildlife conservancies. The interests of their members are at times conflicting, and there is enormous disparity in the agency of members or factions within these CFAs. This has led to claims that CFAs are dominated by men and that they tend to "marginalise the poor and minority groups" among their members.[7] Adding to this problematic tendency is that funding for CFAs is fairly limited, which may mean that leadership positions will tend to be taken by wealthier community members. A lack of material benefits may also contribute to fatigue among some members, and in some cases it is reported that membership fees for CFAs have crept up and are no longer affordable for the poor. Other reports warn that individuals from outside the community, interested in short-term profits rather than sustainable resource management, have been elected to certain CFAs (Ongugo 2007; Walubengo 2007).

Accountability within CFAs shows a mixed record, and there is a fairly widespread concern that CFAs lack transparency. Embezzlement of funds by CFA executives is reported in some locations, though it should be noted that similar problems are reported to occur among KFS rangers (Amrani and Zeeman 2013, 81). While members of some CFAs have removed underperforming or corrupt executives, in other locations we find less encouraging stories, including cases where executives

[7] Midterm evaluation report on Finnish aid to the Kenya Forest Service. The report was made available to the authors but is not yet publically available.

attempt to extend their time in office beyond the term set out in the CFA constitutions. Unsurprisingly, CFAs show a tendency towards splintering of groups and leadership wrangles.

We should not overestimate the prevalence of problems with administrative corruption and unaccountable leadership, and it should be appreciated that some improvements in community benefit sharing have occurred despite them. One of the more positive examples is the Community Based Integrated Forest Resources Conservation and Management (COMIFORM) programme in the Maasai Mau forest area, funded by the Spanish government and managed through a consortium of local NGOs, CFAs, and UNEP. Although detailed evaluations are not yet ready, initial reports suggest this programme has succeeded in establishing considerable community agro-forestry and indigenous forest replanting and that the economic benefits for local communities have been substantial.[8] But as a general observation, and outside isolated cases such as Maasai Mau, one can say that although PFM has been developed to improve accountability and participation in forest management, it can introduce new governance challenges, including unanticipated forms of corruption and political marginalisation. Where these problematic tendencies exist we should expect that the legitimacy of PFM will be weakened among forest-adjacent communities.

3.6 Privatisation

While promoting PFM, the government has also made increasing use of concessions to non-state organisations or associations to co-manage areas of public forests. This has enabled private parties to generate income from non-timber forest products, including ecotourism. The policy shift is motivated partly by the increased revenues that such arrangements can generate at the local level, but also by concession payments, which represent a predictable source of revenue for the state. So far, KFS has entered into co-management agreements through long-term concessions in three areas: in Ngare Ndare Forest in Meru District, in Kibwezi Forest bordering Chyulu Hills National Park, and in Ngong Forest Sanctuary in southern Nairobi. In addition, KFS has a memorandum of understanding (MOU) with the Friends of Karura Forest Community Forest Association for joint activities and revenue sharing in Karura Forest in northern Nairobi, which is also the headquarters of the KFS. More such concessions and MOUs are expected in the next few years. In addition to concessions, special use permits allow private companies or CFAs to operate ecotourism and conservation projects in public forests. In 2011, the then Ministry of Forestry and Wildlife issued calls for tenders for 50 ecotourism ventures, of which ten were approved and another seven were in the pipeline.

The policy of outsourcing management or developing co-management agreements is generally well supported among forest stakeholders in Kenya. It is viewed as a progressive way to improve the efficiency of forest management and make use of entrepreneurial skills that may be lacking in the KFS. It also provides a partial solution to the institutional conflict of interests in the KFS, an organisation that both regulates and benefits economically from forest exploitation. In fact, as noted in some literature on forest governance, when the main government agency for forestry privatises forest management, it tends to enforce stricter social and environmental regulations than is the case when the state itself plays the main management role (Ascher 2003, 128). Yet the awarding of concessions or signing of MOUs in public forests is also subject to some criticisms, again mainly centred on risks of corruption.

In theory the process of allocating concessions involves public tenders and is therefore open to competitive proposals that are approved by the KFS Board. However, the tendering process so far is considered to be lacking in transparency, and the resulting contracts or agreements may be difficult for the public to access. In the MEWNR/UN-REDD survey, 46% of respondents said there is very

[8] Unfortunately, it has not been possible to undertake the necessary research to understand what factors have been important in this programme's success.

little information in the public domain on the granting of concessions in public forests, and a further 40% claimed there is no publically available information at all.

One of the concessions granted has been to the World Wildlife Fund (WWF) in Kenya to co-manage ten hectares in the Ngong Forest Sanctuary for a period of 30 years, during which time they will work to regenerate the forest and plant indigenous trees. The authors were not able to review the agreement between WWF and KFS, although sources involved in developing the agreement report that it allows WWF to construct new head offices in the sanctuary. The concession requires payment of KSh 50,000 per month to the MEWNR, which some feel is a very low payment given rental prices in the region. This is not to suggest that anything irregular has occurred or will occur in this case, but rather that the basis on which concessions are granted remains unclear to many people.

In the existing cases where concessions are granted, these are based on partnerships between local CFAs and private investors. For example, in Kbwezi Forest, the concession is awarded to the local CFA in collaboration with the David Sheldrick Trust. They have invested in fencing the forest with an electric fence and have also constructed a hotel in the forest that generates income, the profits of which (combined with entrance fees) are shared with the community and reinvested in conservation activities. Again, nothing suggests this arrangement is problematic, and the project is generally viewed positively by others involved in the forest sector. However, if such arrangements are scaled up in other public forests, monitoring of investments and profits by communities could well become difficult, and co-management of public forests will be delegated to an increasing number of unaccountable private companies and NGOs, some of whom may enter into benefit-sharing partnerships with CFAs. Some argue that this trend towards decentralised forest management characterised by public, community, and private sector agreements represents the most viable future for conservation of many forests in the country. Others fear that without careful regulation and oversight, such arrangements threaten to undermine rather than promote community ownership of forests. Decentralisation could lead to de facto privatisation of forests, placing them under control of wealthy organisations, and it may introduce new opportunities for off-the-book "facilitation payments" as well as the type of corruption problems noted in connection to CFAs.

4. Identifying and responding to political risks in the implementation of REDD+

This paper has outlined key aspects of the political economy of forestry in Kenya, with a particular focus on issues of political corruption. This provides the necessary context in which to consider the difficulties of implementing REDD+ in Kenya, but we should note from the outset that identifying the potential consequences of REDD+ is difficult given that a national REDD+ programme remains undeveloped in Kenya. Although preparations for such a programme have been underway for several years, and Kenya's REDD readiness proposal was finalised in 2010, a national REDD+ programme is still some way off. Much of the detail on how it will take shape is vague, and the programme remains a work in progress.

In terms of REDD+ and carbon projects, at least eight such projects are either in the implementation stage or undergoing preparation.[9] But several more projects are being developed in various parts of the country, and it is difficult to predict how many will succeed and how many more will be established over the next few years. The existing projects display significant variance in terms of design, ownership, and benefit-sharing mechanisms, although for the UN-REDD study on carbon benefit sharing it proved difficult to obtain detailed information on all of these projects. At least three projects involve collaboration between the government, private companies or NGOs, and CFAs, whereas the others are thought to exist on private lands.

The early stage of REDD+ in Kenya makes considering risks somewhat speculative, although there is an opportunity to carefully consider where problems could arise and to develop appropriate strategies to minimise these.

4.1 Is Kenya ready for REDD+?

One of the concerns surrounding the implementation of REDD+ in many developing countries is that poor governance, human rights abuses, and corruption pose such enormous challenges that REDD+ may become unfeasible and likely to fail or cause further problems. It has been suggested that some countries may be "unready" for REDD+ (Cavanagh 2012; Brown 2012, 237). This poses a considerable dilemma for development agencies wanting to fund REDD+: if REDD+ should only be supported in countries with strong governance and low corruption, then it may only be available to countries that are already managing their forests well. These are arguably the countries that have least need of additional financial incentives for "avoided deforestation," while in countries with significant governance challenges, REDD+ financing could make substantial impacts.

In the case of Kenya, one may ask whether the political economy of forest governance is so problematic as to make a national REDD+ initiative infeasible. We can offer no firm opinion on this, although if REDD+ were being proposed for Kenya over a decade ago, when land grabbing and human rights abuses were rampant, then the answer would be clear. Indeed, this was an era when foreign donors pulled out of funding forestry sector work in Kenya because of corruption. The fact that donors have reengaged since then suggests that the political economy of forestry is improving,

[9] Here we refer to projects established by nongovernment organisations that seek to trade carbon credits from REDD+ related activities, which can be referred to loosely as REDD+ projects. The distinction between projects and a national REDD+ scheme is important, but the two activities are most likely to be closely related in the future, with projects being "nested" in an overall national REDD+ programme. For a discussion of the nested approach to REDD+ and the distinction between projects and a national REDD+ scheme, see Olander et al. (2011).

and certainly there are no signs that multilateral or bilateral donors think REDD+ cannot work in the country now.

Still, Kenya faces enormous challenges that limit the potential of additional financial incentives to reduce rates of deforestation and forest degradation. Furthermore, as will be argued, there are reasons to be apprehensive over the developmental impact of REDD+ financing. Although Kenya has overcome the problem of illegal land grabbing in forests, the remaining public forests still suffer from high rates of illegal logging caused by a combination of corruption, poverty, and high demand for timber, charcoal, and land. There is also a possible threat to the remaining indigenous forests, particularly on community land, from commercial agriculture and extractive industries, which will provide far more state revenue and possibly jobs than REDD+ can possibly offer.

In terms of reducing corruption and improving the integrity of forest management, there are some positive signs but also reasons to be apprehensive, as outlined below.

Protecting land rights of indigenous peoples

As noted above, a range of issues have undermined forest land rights for indigenous people in Kenya. One of the most important at present relates to recovering forest land lost through irregular excisions in the past. While stronger procedures now limit such abuses, people have little confidence that the Land Commission, in collaboration with the KEACC, will have much success in reclaiming public forests already lost. Our interviews suggest a wide belief that vested interests at a very senior level of government are likely to pose a strong barrier to justice. This perception may originate from past experiences in which the criminal justice system has proved ineffective in responding to complaints by forest people related to forced evictions. As one report stated:

> *In response to the problems they have faced, the Ogiek have been fighting back to have their rights to their ancestral land as an indigenous community recognised. But while they have brought numerous cases before domestic courts to challenge the government's actions, this litigation has not been effective. Representatives of the government frequently fail to appear in court and ignore court orders. Furthermore, international experts have found that the Kenyan judicial system is plagued by corruption, excessive delays, and judicial bias. The Ogiek have also appealed to other mechanisms – such as the Truth Justice and Reconciliation Commission established in 2008 – but the government has not complied with their rulings. (Purvis 2013)*

It should be noted that the new Constitution provides substantial protection of the rights of minority groups, including those that have ancestral claims over forests. The Kenyan Constitution and Bill of Rights is thorough and far-reaching, although as described in a report by Minority Rights Group International (Korir Sing'Oei 2012), there are substantial challenges in ensuring that these rights are implemented and upheld.

Increasing recognition of forest conservation and the strength of civil society

At a national level the need for forest conservation has undoubtedly gained prominence, largely because of the established link between forests and water catchment. At the same time, advocacy campaigns increasingly are able to mobilise and give voice to community concerns. In several recent cases, such mobilisation has successfully blocked controversial decisions by the government and private investors that could have had a negative impact on forests. Such cases include mining in Mrima Hill Forest Reserve and the biofuel plantations in Tana River District. Although Kenya has a history of this sort of political activism, the ability of activists to influence decision makers appears to have improved. Speaking out about corruption or challenging corporate interests is considered less

dangerous than it was a decade ago. Still, risks persist, as the reality in Kenya is still that political corruption is entrenched at the top levels of government and political leaders are largely beyond the reach of the criminal justice system.

Addressing corruption and forest crimes

Efforts to reduce corruption within the forestry sector are also subject to considerable doubt. The authors' research suggests that many people working in the forestry sector have little confidence that such efforts will be successful, although feelings are mixed.[10] New senior managers in the KFS are held in high esteem by many people, and the KFS is considered more open than its predecessor, the Forest Department. But whether this shift in management has managed to address entrenched administrative corruption, including among field staff, is unclear. The KFS launched an anti-corruption hotline in 2007, but some NGOs claim the number often does not work, and many see it as tokenistic.

Likewise, the KFS has undergone training with the Kenyan Ethics and Anti-Corruption Commission to develop an anti-corruption policy, but employees of the KEACC suggest that this was not as successful as it should have been. The training reportedly focused narrowly on financial accountability with the KFS rather than addressing the full range of corruption challenges facing the organisation. Although the KFS is obliged to submit follow-up reports on its activities to the KEACC, there are no records of this being done. Similarly, although the KEACC receives regular reports of corruption within the forestry sector, it undertakes almost no follow-up. The Commission does not prioritise forest crimes, and there are no resources with which to carry out necessary investigations and then prosecution if necessary; those registering cases are also unlikely to be contacted for further information.

Improving transparency and participation

The KFS has also taken some steps to improve transparency. The organisation proactively publishes more than the FD did, including detailed annual reports and other online content made available on its website. With Finnish development assistance, the KFS is in the process of establishing a new information centre based at the KFS headquarters in Nairobi, which will contain a public library. The draft Forest Bill has a section on public access to information which provides some rules for the government to follow in disclosing information requested by the public.

Nevertheless, there are substantial shortfalls in transparency, and it is currently extremely difficult if not impossible for a member of the public to obtain detailed information on a wide range of activities by the KFS. These include revenue management and budgeting. Although KFS provides regular reporting on aggregate income and expenditures, matters become less transparent with revenues and expenditures at the district level. Thus, for this report we were unable to gain access to any information on annual and monthly revenues collected by zonal officers of the KFS that derive from issuing permits for charcoal movement. Likewise, there is limited publicly available information on who is granted licenses by KFS for commercial activities in forests; the inventories of forests are hard to obtain, as are the agreements for concessions and permits. A recent midterm independent evaluation of Finnish aid reached a similar conclusion, noting problems of transparency in donor-funded projects: "It is still a challenge to access information from KFS including that on areas, conditions and plans for licensed timber merchants, plantation inventory data and reports produced

[10] The UN-REDD survey shows that 60% of respondents had low or no confidence in the ability of the KFS to combat corruption; among NGO respondents the negative view was over 80%.

under the various donor funded programmes within KFS, including those of the [Finnish aid agency] itself."[11]

In theory, the new Forest Bill may strengthen the public's access to information. However, the wording of the draft bill is ambiguous and open to interpretation. This is because information can be withheld if it is deemed "commercially sensitive" or likely to prejudice the security of Kenya. The notion of commercially sensitive information can be applied to various aspects of forestry management, including all issues relating to licenses, concessions, and revenues. The Forest Bill would be stronger if, following best practice as established by the Aarhus Convention, the ideal of the "public interest" were included, thereby obligating the government to release information if the public benefit of doing so outweighs any other consideration. As it stands, people whose requests for information have been refused by the government have no obvious recourse.

Making decentralisation work

A common view is that the success of sustainable forest governance hinges on the Kenyan government's ability to better distribute the economic benefits of forests and to promote meaningful participation and ownership among forest communities. But as the preceding analysis shows, positive developments have been slow in coming, and the success of existing decentralisation policies is uncertain. A critical issue is whether the limited approach to both economic and democratic decentralisation will gradually be strengthened – or whether, as has happened in many other countries, the government may take measures to recentralise forest management, justified on the grounds that community forest associations and district authorities are failing to live up to expectations.[12] What is more, some question whether the commitment to decentralisation is based on firm ideological support by the Kenyan government. It has been suggested that the progressive policies implemented in the mid-to-late 2000s were strongly influenced by a short-term agenda aimed at averting loss of government credibility and placating foreign donors.

The valid questions of whether Kenya's existing forest governance makes a national REDD+ programme feasible, and whether financial incentives provided through REDD+ can support improved forest management, remain difficult to answer. The other critical issue is whether the implementation of REDD+ itself may be vulnerable to corruption risk, which could threaten the legitimacy of REDD+ in the future.

4.2 Concerns about corruption and the implementation of REDD+

There is a wide range of views about REDD+ in Kenya. It is difficult to know what represents a majority consensus, but probably most people working in forestry, and certainly in the larger environmental NGOs, support REDD+ on the basis that it will provide additional funds for forest conservation and increased data on deforestation and forest degradation. There are others, however, who do not support REDD+ at all.

Those who reject REDD+ argue that it is highly likely to fail and cause costs for local communities, for reasons that will be outlined below. Beyond this, the most important reason for rejection is strong doubt about the ability of REDD+ to have any impact on reducing climate change because of the continued reliance – globally and among developed industrial nations in particular – on fossil fuels. According to this view, REDD+ is a cynical attempt to avoid the necessary reforms in the developed world, instead demanding forestry reforms (which may generate considerable costs for forest

[11] Midterm evaluation report on Finnish aid to the Kenya Forest Service (see note 7).

[12] For comparative experiences in other countries, see Ribot and Oyono (2005), Lund, Helles, and Treue (2007), and Capistrano (2013).

communities) in countries with the lowest per capita carbon emissions. Critics in Kenya also point to policy incoherence among the foreign nations and multilateral organisations that are promoting and funding REDD+ activities. Thus, although the World Bank and European nations are supporting REDD+ in Kenya, they are simultaneously providing funding and capacity building for increased oil, gas, and mining production in the country and throughout East Africa, and within these sectors it is companies from Europe and North America that are among the largest investors and benefactors of exploration and mining contracts. To put it simply, some believe that it is contradictory to incentivise Kenya to protect or expand forest cover to avert climate change while simultaneously expanding the production of fossil fuels in the country.

Another type of criticism was encountered during the research for this paper, although it needs to be further explored. This is based on unease regarding the psychological impact of market-based financial incentives at the community level. This view is articulated by some who have worked for many years with communities and the government to promote forest management based on a model of self-sustaining forest use and agro-forestry. REDD+ payments, they say, represent a commodification of forests that could muddle these efforts. Once it is established that communities should be paid by foreign governments or companies for conservation, it may be difficult to revert to self-sustaining forest use if REDD+ funds dry up or do not materialise to the extent hoped.

There are some smaller NGOs and community-based organisations for which the point of departure for engaging in REDD+ is resistance and rejection. They have yet to become a powerful or coherent movement, but it is quite likely that an "anti-REDD" movement will gain momentum and voice in Kenya. In the process, REDD+ could fuel divisions between civil society organisations.

Despite these divergent views on the legitimacy of REDD+, the authors' experience is that outside of government, and even among those organisations supporting and working with REDD+, confidence in the integrity of a nationally coordinated REDD+ strategy is quite low. This is reflected in the MEWNR/UN-REDD survey on corruption in Kenya's forestry sector, which returned highly negative responses, as will be described below. Confidence in the integrity of the various REDD+ and carbon projects is harder to gauge, as so few people outside these projects are knowledgeable about them.

Six key issues have been raised as potential risks to the implementation of REDD+ in Kenya, summarised below. These sections draw on the study interviews and on discussions at the MEWNR/UN-REDD workshop in Nairobi that the authors facilitated, but many of the findings echo those in the international literature.

Will REDD+ encourage forest evictions and undermine community forestry?

One of the fundamental fears regarding REDD+ in Kenya, and also raised as a key criticism of REDD+ internationally, is that by increasing the value of forests and rewarding avoided deforestation, REDD+ may encourage governments to marginalise forest communities and evict people living in forested areas if they have insecure land tenure. It is a question raised in Kenya, and Kenya has been misleadingly cited in anti-REDD literature as a country where this is happening already.[13] However, it is not entirely clear that REDD+ will play such a prominent role in forced evictions or further gazetting of public forests, as the financial incentives provided by REDD+ may be too low to bring such results. This presents something of a paradox for REDD+, as a "community-friendly" REDD+ initiative may be one with quite low financial incentives, and with a higher level of incentives the risks for communities could increase.

[13] For example, see Global Justice Ecology Project (2014), "Why REDD Is Wrong." This mistakenly links forced eviction of the Ogieks in the Mau with REDD+, although the government's decision to evict the Ogieks was not motivated by REDD+ financing.

The implementation of REDD+ projects may require further restrictions on community use of forests, which will likely generate costs for some people; the concern is that these costs are not going to be adequately compensated. The net result of some REDD+ projects could be negative for certain people, particularly the poorest (Brown 2012, 261). This fear is heightened by concerns about benefit sharing, which are addressed below. Yet the rhetoric that has characterised REDD+ readiness activities and publications in Kenya suggests only winners for REDD+; there has been an absence of discussion on potential losers.

This gives rise to a broader criticism that REDD+ lacks a strong social objective, or rather that the environmental objectives are given far more emphasis than social goals. Thus, REDD+ is viewed as lacking a progressive agenda in terms of promoting social development and economic security for forest-adjacent communities. There is confusion, and therefore anxiety, about whether REDD+ will advance community engagement and empowerment in the forestry sector or whether it will support business as usual and favour an approach to forest conservation where people's engagement is treated cautiously, or even discouraged.

How will REDD+ benefits be distributed?

Probably the greatest concern in Kenya relates to the potential misuse of funds, primarily by the central government, but also by others engaged in REDD+ projects. In the MEWNR/UN-REDD survey, for instance, 79% of respondents said they were "not very confident" that the revenues received by the government from REDD+ will be transparent and well managed. This is consistent with respondents' dissatisfaction with the level of transparency in the government's forestry management in general, as well as dissatisfaction with benefit sharing from public forests.

Analysing potential problems with benefit sharing is extremely difficult, given that a nationally coordinated mechanism for distributing REDD+ benefits has yet to be designed. Nevertheless, the assumption by many people, which also reflects thinking within the MEWNR, is that in a nationally coordinated REDD+ programme the central government will receive payments from a combination of markets and foreign funds. A proportion of these monies will be distributed to the KFS for supporting sustainable forest management; some may go to the KWS for its work in national parks and some to various other government agencies that claim to contribute to forest conservation and for which contributing to REDD+ generates opportunity costs. Further monies will be distributed at the local level to ensure that efforts to achieve REDD+ are rewarded or compensated. It is possible that CFAs may be among the local beneficiaries and may exercise authority over how the money is used within communities, as is the case in several of the REDD+/carbon projects at the moment.

These vague ideas about benefit sharing in a national REDD+ programme immediately raise various concerns. In addition to questions about the formula to be used for revenue sharing, there are worries about potential abuse of power and embezzlement, as well as the prospect of infighting as agencies lobby for their share of the REDD cake. Of course, no one knows how much money will be involved, and it is quite possible that the sums may be less than most people hope: once overhead and administrative fees are discounted, the remainder may not be very significant.

The tendency towards pessimism over the government's ability to manage REDD+ funds is understandable, as there have been many well-publicised scandals involving government embezzlement and misuse of funds destined for poverty alleviation and education. The most recent report by the auditor general, on government spending in 2011/2012, claimed that a third of the annual budget was unaccounted for and only 6% of financial statements were satisfactory, implying that corruption in government expenditure remains an important challenge. But beyond this dire performance of government financial accountability are more specific examples that may be relevant for REDD+. Perhaps the most relevant concerns the World Bank–funded Arid Lands Resource

Management Project (ALRMP), started in Kenya as a pilot programme in 1993. ALRMP evolved into a large and ambitious programme, in two phases, with funding amounting to nearly US$200 million.

A core component of the ALRMP was based on community-driven development, whereby communities establish representative institutions that decide on funding priorities and have a direct role in overseeing project implementation, including financial management. In theory, this arrangement contributes to decentralisation of aid funding. The community-driven development component of the ALRMP was supervised by District Steering Groups at the district level, 28 of which received funding; each group was chaired by the district commissioner with the participation of other district government agencies, NGOs (both international and locally based), and local leaders. Capacity building was included in the project to ensure accountability and good governance at all levels. However, the ALRMP became controversial because of claims of widespread corruption and fraud. The World Bank's Integrity Vice Presidency undertook a detailed forensic audit covering seven of the 28 districts over two years of the project (2007–2009). The findings of the audit, although they were refuted by the government and World Bank project staff, ultimately caused the World Bank to refuse to extend the project to a third phase.

The audit and other investigations show that the ALRMP community-driven development project was undermined by administrative corruption from top to bottom. Various internal checks and balances failed, even those that were prioritised from the outset. It appears that at every level of project implementation, transparency was actively resisted, and there were considerable disincentives to whistleblowing. Each layer of the project depended upon the goodwill of the layer *above* to receive revenues, so any efforts to voice concern were apparently muted by self-interest. Downward accountability was limited. In the documented problems encountered in the ALRMP, particularly alarming are allegations of routine embezzlement and bribery between the village associations and oversight bodies at the district level. What is more, research into the specific projects identified for funding by village-level committees established through ALRMP suggests that many of these projects were ill conceived, designed primarily to benefit the committee members themselves and not the wider community, and that people in communities had no authority to sanction the village committees (Ensminger 2013). Although the World Bank's project evaluation reports give the impression that ALRMP has been successful, the independent audit suggests a different reality, and some doubt that the project's legacy is positive (see, for example, AfriCog 2012). Similar problems have been exposed in another World Bank project, the Western Kenya Community Driven Development and Flood Mitigation Project.

If a national REDD+ benefit distribution system resembles the ALRMP, with multiple layers of administration, including at the county level, then it is understandable that many people will have concerns about corruption risks. The problems with ALRMP also highlight the potential difficulties that could occur among some CFAs that are designated to receive REDD+ funds. These institutions, which face chronic underfunding in many areas, may not always be a reliable conduit for funds intended to benefit the wider community.

While a nationally coordinated benefit-sharing system remains ill defined and probably some way off, there are also concerns about the integrity of benefit sharing within individual privately run REDD+ or carbon trading projects, some of which may also be collaborative projects with the government. The research for the UN-REDD study in Kenya on land-based carbon projects, including existing and planned REDD projects, described a wide range of approaches to community benefit sharing. In some projects almost all of the revenues are disbursed to communities, while in others revenues are shared between the companies implementing the project, the landowners, the KFS as a partner, and communities – with as little as 7% going to the latter. The process of negotiating revenue sharing is therefore open to competitive bargaining and allegations of inequitable arrangements, particularly as no serious cost-benefit analysis for communities is being undertaken (Karsenty, Vogel, and Castell 2014).

Another part of the problem is lack of clarity on project revenues and administrative costs. Actual earnings can be obscured by the fact that the value of REDD+ credits may be hard for third parties and beneficiaries to understand; officially reported market values for credits do not correspond to their actual value because of discounts for bulk buying or for advance purchases, for example. Administrative costs for running such programmes can be variable. There is also uncertainty about the strength of the international market for REDD+ credits: demand is currently low and the market appears saturated.

In all of the projects surveyed, it was found that details of the payments for REDD+ credits by investors are confidential. The UN-REDD study in Kenya on carbon rights and benefit sharing therefore raised considerable doubts about financial transparency in existing projects. It also highlighted the immense difficulties facing the researchers, and therefore communities as well, in understanding incomes and expenditures. Available reports by certifiers also suggest that community expectations have often been raised beyond that which is reasonable, which is an important point in understanding challenges to free, prior, and informed consent.

Will the measured achievements for REDD+ be legitimate and free from manipulation?

Scepticism exists about the reliability of the national data system that will be produced on deforestation, forest degradation, and enhancement of carbon stocks, and which in turn will be used to determine financial rewards. The governance risks stem from the inherent conflicts of interests involved, given that beneficiaries of REDD+ may be the same people who are providing data or verifying its accuracy. In the MEWNR/UN-REDD survey the majority of respondents (65%) had little confidence in the ability of Kenya's authorities to avoid these problems. It is particularly the task of identifying baseline information on rates of deforestation and degradation that some believe offers opportunities for deliberate manipulation of information designed to increase financial rewards. This has happened in other countries. Karsenty and Ongolo (2012, 42) write, "The most rational attitude for a government with little concern for collective interest is, first, to negotiate the worst possible scenario in deforestation terms for setting the best possible reference (that is to say, which allows a high rate of deforestation) and, once this goal has been achieved ... to do nothing."

Such concerns are seemingly countered by the assurance that all data will be made public and that there will be robust independent evaluation of Kenya's REDD+ monitoring, reporting, and verification (MRV) system and database. This is detailed in a study commissioned by the MENWR (yet to be published) that sets out the design and budget for an MRV system.

One of the difficulties in achieving public oversight, however, is that the government will need to convey highly complex data to the public in a comprehensible way. Another problem lies with the integrity of third-party organisations tasked with verifying data. There are inherent risks that such organisations will have financial interests in ensuring positive results, in part to provide an incentive for repeat business. This problem is exacerbated by the fact that evaluation criteria and statistical modelling are vulnerable to vagueness, which allows a great deal of interpretation. Whether independent organisations that want to scrutinise data have the necessary technical capacity, access to information, and political incentives is also open to question.

Reliability of data and calculations for establishing carbon credits within REDD+ projects is also identified as a problem, both in Kenya and internationally. Biased decisions by independent evaluation organisations have been shown to undermine voluntary certification schemes, such as the one provided through the Forest Stewardship Council (Counsell and Loraas 2002). There is also continuing criticism of project verification under the Clean Development Mechanism (Brown 2010). More recently, the same arguments were presented in a report assessing the integrity of voluntary REDD+ projects, including those in East Africa (SSNC 2013).

Two other points of concern have also been voiced. One of these is that it is exceedingly difficult to understand what *additional* achievements can be attributed to any national REDD+ programme in Kenya, given that Kenya has already articulated objectives of increasing forest cover and protecting indigenous forests, including in the new Constitution. For some, this leads to the possibility that funds made available through a national REDD+ programme will be used to remunerate people or organisations for doing what they would be, or should be, doing anyway.

A second point relates to the issue of leakage. As described above, Kenya's imports of timber and charcoal have increased significantly over the past decade because of restricted domestic productivity and rising demand linked to population and economic growth. It is not clear how this will be factored into rewarding Kenya for reducing its rates of deforestation. The ability of any country to reduce rates of deforestation and forest degradation would be questioned if this reduction depended on high levels of imports of timber and timber products from unsustainable or illegal sources in other countries. Similar concerns in Southern Africa have led to the recommendation that a regional MRV be established for REDD+ (Wertz-Kanounnikoff and Wallenöffer 2011), although there is no evidence that this will be undertaken.

Will participation and "free, prior, and informed consent" be achieved?

These potential problems related to benefit sharing and MRV highlight broader concerns about the extent to which people living in or near forests will be able to participate meaningfully in decision making surrounding REDD+.

So far, the process of developing REDD+ readiness in Kenya has involved numerous meetings and consultations, and some see this as a positive development that may be improving relations between different stakeholders. However, there are numerous complaints about the nature and extent of these consultations. One is that "stakeholder" meetings on REDD+ are predominantly controlled by the central government and external consultants or United Nations/World Bank staff, who set the agendas and select the participants. This may limit the scope for analytical debate, and people who are considered critical of the government or REDD+ are not usually included. A related difficulty, experienced in the MEWNR/UN-REDD workshop, is a failure to recognise that some people, particularly from NGOs and community-based organisations, are extremely uncomfortable speaking openly about politically sensitive issues in the presence of government officials. Thus, while it can be assumed that such meetings promote participation to some extent, there are considerable limitations, and the participatory mechanisms for discussing REDD+ developed so far in Kenya are inadequate.

Consequently, many people in Kenya argue that REDD+ is poorly understood outside a small group of government officials, NGOs, and academics. Even within this group the authors found that there are many points of confusion about the technicalities of REDD+, partly because there are still many different models for organising REDD+ at the national and project level. However, it is particularly at the community and district levels where knowledge about REDD+ is thought to be minimal. A number of one-day community workshops were held in the process of finalising the REDD readiness proposal in 2009–2010. Nonetheless, there appears to be limited effort (and little funding) by the government and the larger NGOs in Kenya to undertake in-depth capacity building on REDD+ among CFAs or county and local authorities.

A valid concern in this situation is whether communities that are involved in REDD+ projects, or that will be affected by a nationally coordinated REDD+ programme in the future, are able to provide free, prior, and informed consent (FPIC). Some argue that this is extremely unlikely and that existing approaches to community consultations – not only in REDD+ projects, but in other cases of investments in conservation or extractive industries – can easily be superficial or manipulated. One of the problems is that community organisations that claim to represent the interests and opinions of local communities may not be democratic. Another is that consultations led by external consultants,

who are paid by the organisations needing to satisfy domestic and international regulators that consent was obtained, can be rushed. These consultations are vulnerable to becoming public relations events, where community benefits are excessively highlighted and possible costs are given less, if any, attention. Opportunities for financial inducements, including offering jobs to community leaders, add another dimension to the problem.

Although the standards for certifying REDD+ projects, as set forth by organisations such as the Climate, Community & Biodiversity Alliance and Verified Carbon Standard, provide for ensuring FPIC and community participation, critics argue that challenges persist. Indeed, in the existing REDD+ and carbon projects in Kenya, we see that in the project development and proposal stage, where community participation is required by certifiers, details of how benefits will be shared and of the potential costs for communities are either vaguely outlined or presented as work in progress to be finalised after the start of the project. Both costs and benefits may vary over time, depending on prices paid for credits and changes to project expenses. If neither communities nor project implementers understand the costs and benefits up front, then it is impossible for FPIC to be achieved, as communities may have inflated expectations that cannot be met.

Will accountability be achieved?

A final concern relates to limited mechanisms of accountability in REDD+. The problem of accountability in Kenya's forestry sector was discussed above: both the government and the criminal justice system have shown poor ability and willingness to respond to reported instances of corruption or human rights abuses in the forestry sector. Kenya lacks the institutions and legal processes that would allow communities to seek justice where REDD+ is undermined by corruption or involves human rights abuses. So far, the REDD readiness proposal pays little attention to this aspect, although some plans are in the pipeline for the establishment of an independent grievance mechanism.

Potential conflicts of interests add to the challenge of achieving accountability. The emerging landscape of REDD+ is characterised by initiatives involving collaborative agreements between the government and prominent NGOs in the forestry sector, often working with communities through CFAs. The same organisations that are expected to provide an oversight function for REDD+, and promote community interests, are among the main beneficiaries of REDD+ funding.

To some extent the processes of certification and evaluation in projects should provide a mechanism for complaints and problems to be identified, although as noted already, the incentives for third-party certifiers to actually do this may be weak. The mechanisms for independent peer reviews of project evaluations are inadequate, and for most projects it may well be the case that very few independent organisations or individuals have a sufficient level of information about the projects to enable them to contest and scrutinise the outcomes of evaluations and claims made by project implementers.

5. Strategies for political reform of REDD+ in Kenya

The concerns about potential corruption, community marginalisation, and abuse of power in the implementation of REDD+ activities lead us to a final discussion of appropriate policy responses. It is important to acknowledge that developing strategies for improving the integrity of REDD+ cannot be separated from reforms in the forestry sector, and therefore the following discussion goes beyond simply formulating policies for REDD+. It also comments more broadly on the need for REDD+ to support wider governance transformations in the country.

The following thinking on strategic reforms to REDD+ is based largely on the outcomes of interviews and the research conducted for UN-REDD and the MEWNR, including the outcomes of the corruption risk workshop. A number of practical policy ideas for REDD+ are being discussed in Kenya, and some are being implemented already. These ideas can be grouped under three broad but interrelated headings. The overall thrust concerns a deepening of democratic accountability for REDD+, as well as the need for REDD+ to be firmly oriented towards social empowerment.

5.1 Improving transparency and information sharing

Perhaps the most immediate and easily conceptualised recommendation has to do with improving public access to information on REDD+. Popular discourse on combating corruption in Kenya tends to emphasise the need for improved transparency and information disclosure, even though it is widely understood that transparency alone is not a panacea.

With respect to the political economy of forestry in Kenya, most people interviewed for this study believe that the KFS is more open than was the case with the old FD. Nevertheless, many aspects of forest management are obscured from the public or treated as confidential. Some find it surprising that a comprehensive policy on achieving transparency in Kenya's forestry sector has not been attempted, even though donors are working with KFS on reforming forestry sector governance. Developing such a policy for REDD+ would require a two-step process: establishing the legal right to information, and then developing capacity and obligations for proactive transparency and information dissemination.

With respect to the right to information, the draft Forest Bill contains provisions for freedom of information, but they are weak and leave too much room for interpretation. Although it may be too late to revise this bill, subsequent policies adopted by the government should seek to clarify how "commercially sensitive" information is defined, and there should be inclusion of a public interest clause. There is also a need to identify an appropriate mechanism or ombuds office that can adjudicate in instances where public requests for information are turned down or go unanswered, otherwise the right to information may become unenforceable. Development agencies have an important role in this respect and should also ensure that they have internal policies, clearly articulated, for providing freedom of information on funding and project activities.

Proactive transparency for REDD+ is needed alongside the right to information. "Proactive" refers to the commitment to make certain information freely available without requiring people to ask for it. Many of the documents on REDD+ that have been generated during the readiness phase have not been published at all, or they are available only in obscure places, such as on the websites of the consulting firms involved. There is no obvious online platform for disseminating information on REDD+ in Kenya or for tracking the performance of REDD+ projects.

One idea that was presented in the MEWNR/UN-REDD workshop is for the development of some sort of "REDD+ registry." As conceptualised by the Forest Carbon Partnership Facility, this would be

an online platform that contains comprehensive information on REDD+ projects, policy documents, and information on revenues (O'Sullivan et al. 2011).[14] Some workshop participants called for such a platform to be run by an independent third party. This is partly because of risks that it could be manipulated by vested interests if run by the government, but also because the government has limited expertise and a poor track record in supplying detailed and up-to-date information to citizens. The point has been made that a REDD+ registry website run only by the KFS or the MEWNR, for example, may too easily become a public relations mechanism for REDD+ activities. Others disagree with this idea of bypassing the government in developing a comprehensive REDD+ registry, preferring to support the government in taking responsibility for information gathering and dissemination. Entrusting this function to non-elected third parties also has problematic implications for reliability and accountability.

An innovative idea that may be compatible with both views is to develop a REDD+ registry that allows interactive content management. The public would be able to add content in some areas of the website, which might operate along the lines of a wiki. This would also complement the idea of public participation in REDD+.

A further recommendation is to establish detailed rules and procedures for public reporting by private organisations and NGOs running REDD+ projects; this might include publishing contracts and agreements between them and other beneficiaries, details of audit reports and financial accounts, and so forth. Although many people would like to see this approach to disclosure made mandatory by the government, this may not be possible, as private companies may object that such levels of disclosure are not legally required or mandated by existing certification standards. Increased disclosure may also be contested by their investors. However, the opportunity for mandatory disclosure is more viable for those projects that involve a partnership with the government, that is, projects run on state or community lands.

5.2 Creating accountability and grievance mechanisms

A second approach to strengthening the integrity of REDD+ is to establish and support effective mechanisms that allow people to report instances of malpractice or corruption, to which the state must then respond effectively, including through the criminal justice system if required. In other words, there needs to be a system of independent oversight and accountability.

Transparency International (TI) in Kenya is already developing an online system that members of the public can use to report instances of corruption in REDD+ projects. These reports will then be investigated further by the organisation, working with other NGOs and government departments. The new project is similar to and possibly inspired by a broader project in Kenya known as the Integrated Public Complaints Referral Mechanism, launched in 2012. This is a partnership between TI-Kenya and various government organisations, including the Ethics and Anti-Corruption Commission, the Kenya National Commission on Human Rights, the Commission on Administrative Justice, the National Cohesion and Integration Commission, and the National Anti-Corruption Campaign Steering Committee. The mechanism for reporting instances of REDD-related corruption proposed by TI allows people to complete online forms or send in information via mobile phones. It may not be ideal: for one thing, it is uncertain whether an online system will generate sufficient interest in rural communities. Furthermore, the system relies almost exclusively on reactive reporting, but as noted above, there may be very few people who have sufficient insight into REDD+ activities to enable them to identify corruption.

[14] A REDD+ registry has been established in the Democratic Republic of the Congo, although some sources maintain that it has not been successful in achieving full transparency on REDD+ projects. The authors thank Alain Karsenty for noting this point.

This leads to a second recommendation related to accountability: establishing proactive systems for independent monitoring of REDD+ activities. Two ideas exist for achieving this.

The first is that NGOs and journalists need improved capacity to analyse the data that would be forthcoming from improved transparency, which may in turn help reveal instances of corruption or mismanagement. Several organisations, including Transparency International and the Kenya Forests Working Group, are engaged in this type of work, but they lack the necessary resources to do it at a sufficient level; the problem will become more urgent if and when REDD+ becomes a national programme. This suggests the need for targeted funding and training for long-term analytical and investigative research on the implementation of REDD+ activities, based on a careful approach to community participation.

A second idea is to establish a more formal arrangement for independent forest monitoring (IFM) in relation to REDD+ activities. IFM is a concept that emerged in the late 1990s; more recently, Global Witness has developed guidelines for creating IFM in the context of REDD+ specifically. These guidelines are based on several principles: that IFM should be undertaken by an organisation or association of experts that has no commercial or vested interests in REDD+ activities, to be chosen by the government through an open and transparent tendering process; that the IFM team should report to a multi-stakeholder group; and that the work of the IFM team should be given sufficient resources, full access to information, and access to all forest areas in the county. Moreover, a critical element for success is an official mandate from the government (including clear terms of reference) and governmental support to ensure that the results of the IFM are well publicised and free from censorship.

Finally, it is understood that transparency, independent oversight mechanisms, and public reporting may have limited impact if the prospect of specific cases being addressed through legal sanctions is slim. At the moment, the capacity to investigate and prosecute corruption, crime, and human rights abuses in the forestry sector seems inadequate and lacking in coordination. We find strong support among Kenyan civil society organisations for a more specialised government agency with a mandate to investigate and lead prosecutions for forest-related crimes, including corruption in REDD+ activities. Locating this function within the MEWNR would be problematic insofar as the Ministry, and the KFS, are beneficiaries of REDD+ projects and future financing; conflicts of interests abound. The best-placed organisation to carry out this function may be the KEACC, but at the moment the KEACC lacks the ability to carry out such a mandate; it would require substantial extra financing and technical capacity building to do so.

Kenya's Constitution has established a new Environment and Land Court, which presides over issues relating to the environment, land, and natural resources. The court is not yet fully functioning. However, as a complement to the work of the Land Commission and potentially the KEACC, it offers the prospect of stronger judicial processes that support improved resolution of forest land tenure disputes and the rights of indigenous forest peoples, which could include issues related to REDD+.

5.3 Deepening participation and deliberative democratic processes

A fundamental reform in the forestry sector of Kenya involves improving meaningful participation in decision-making processes and achieving what can be thought of as deliberative democratic processes. Many experts working within the forestry sector identify this as perhaps the central challenge, and "participation" and FPIC are core aspects of the voluntary safeguards developed at the global level for REDD+. However, while the need to improve participation in REDD+ is often stated in Kenya, there is little consideration of what inhibits participation and what practical strategies could be explored to avoid the various pitfalls and hazards. Indeed, there is now a growing literature and evidence base highlighting the myriad problems of implementing safeguards for REDD+ in various

countries. The main problem with safeguards is that they remain *aspirational* and difficult to operationalise.[15]

Improving information sharing as described above may go some way towards strengthening participation. However, several additional elements need to be considered with a view to improving the deliberative democratic processes for REDD+ in Kenya. These reforms are not quick or easy to implement: they require long-term efforts based on continuing reflection and learning.

Strengthening democratic representation within forest communities

Although the policies initiated in the mid-2000s have helped promote community participation in forestry, there is now widespread recognition of the need to strengthen community representation through the CFAs that have been established as a core feature of PFM in Kenya. The problematic tendencies of these groups have been described already: elite capture; failure to integrate marginalised members of the community, including women; and tendency for democratic rules and regulations to be corrupted over time, leading to factionalism and erosion of popular support. Yet CFAs are still positioned as key representative organisations in forest communities and are therefore the main interface for REDD+ planning and projects in many locations.

Among some people studying CFAs, the answer to these democratic failings lies with increased capacity building and funding for both CFAs and the KFS (Mogoi et al. 2012; KFWG 2013). The advice is to increase the involvement in this process of external neutral actors, who can help upgrade administrative procedures and play a role in identifying and managing points of conflict. In various settings outside Kenya, external actors and NGOs have played this facilitation role within communities. In several cases they have used the Community Options Assessment and Investment Toolkit, a methodology developed to assist communities in undertaking long-term data gathering and evaluation of proposed investments in natural resource sectors, including forestry. This toolkit has been used in the DRC, Uganda, and Madagascar, with apparently good outcomes (Brown 2012, 201). It is beyond the scope of this paper to provide a thorough review of this methodology, except to note that the process takes from six months to a year; this suggests that capacity building for improved participation and empowerment is a long-term task. Moreover, external actors must take care to ensure that the process really is led by people in communities.

A complementary approach to strengthening participation calls for rethinking the way in which community representation in forest management is achieved. This requires understanding that problems of democratic representation may be structural or an outcome of how CFAs have been established. It is particularly in the reliance on competitive elections where problems arise. It may therefore be appropriate to consider alternative systems of representation, including the periodic use of civic or citizen assemblies that are tasked with reviewing specific policies and projects, including REDD+ agreements or proposals, in terms of their social feasibility. Members of such bodies are selected by lot rather than election, making it possible to achieve gender equity and avoid problems of elite capture. Time serving on these bodies is also compensated by a modest stipend, which ensures that they are open to the poorest in the communities. Such bodies are not necessarily intended to replace government actors or CFAs, but rather work with them to advise on policy reforms and processes. The basic idea of civic assemblies should also be attractive to those who worry about the top-down approach to organising community or stakeholder workshops, where there is a risk that agendas will be predetermined and representatives carefully vetted.

[15] See the Forest Peoples Programme (2013) e-newsletter on safeguards.

Support to locally elected government bodies

Another aspect to consider in deepening participation is increased support to locally elected authorities. This is a policy with great relevance in Kenya in light of the process of devolution. In Kenya, as in many other developing countries (Ribot and Oyono 2005), the process of decentralisation in natural resource sectors has bypassed locally elected government bodies. Instead the focus has been on establishing distinct single-issue user groups. Community forestry associations are one example, but there are also a proliferation of others, such as community water associations and beach management units. This type of decentralisation in natural resource management has been criticised on the grounds that community user groups tend to be less accountable, and more transient, than locally elected councils. Some contend that community user groups have gained disproportionate powers, which over time erode the legitimacy of locally elected government (Manor 2004). Another feature of community user groups is that decisions on resource management tend to be focused on the immediate community, which excludes others who also have a valid interest and stake in these public goods.

Such problems are evident in Kenya. Indeed, donors in Kenya, while supporting community user groups, have rarely worked with local authorities on governance reforms in natural resource sectors, apparently in the belief that these local bodies are too complex, lacking in capacity, and possibly corrupt (Sundet and Moen 2009). As a result, decentralised governance in forestry involves a collaboration between community groups and the central state; local authorities have been largely left out of the arrangement, and in fact democratic decentralisation in forestry is hardly evident at all.

The process of devolution in Kenya opens up both new possibilities and new risks, increasing the need for capacity building at the district level. As noted above, district authorities are establishing county forest offices and county forest committees, with some representation from civil society and the private sector on these committees. So far the KFS is providing training and advice at this district level, although very little if anything is being done on REDD+ specifically. This is one area where development assistance may be productive, with support for training and capacity building of county forest departments. The would include efforts to better integrate them with the work of the CFAs, although some people may feel that well-functioning locally elected bodies that work actively to provide civic voice should replace CFAs over time. In the short to medium term, financial support may be particularly needed for the development of district policy on reforestation and land use planning, as well as for carrying out basic forest inventories on community land. Here we note the potential synergies between capacity building among district elected authorities and a range of participatory activities in forest communities, including the use of civic assemblies or community mapping of forests.

However, a significant barrier to democratic decentralisation persists in Kenya. For the time being, district administrations have no rights to manage state forests or receive any income from them, and this also limits their role in REDD+ activities. District authorities are only mandated to work on community or private lands. Some suspect that this arrangement will be contested. Indeed, Kenya could follow the example of Uganda, where district authorities have been given 40% of the income from state forests in their area. Such an arrangement could be an important means of strengthening democratic decentralisation.

Addressing benefit sharing

People's participation in the forestry sector is inhibited by the limited approach to benefit sharing, which has been acknowledged as one of the drivers of deforestation by the Kenyan government in its REDD readiness proposal. Some actions have been taken to increase the economic benefits to forest-adjacent communities in Kenya. A significant step has been the reinstatement of the shamba system, although participants still do not have economic rights to the trees they help grow. Beyond this,

benefits given to communities within state forests are considered too limited, described in one study as "acts of benevolence" by the government (KFWG 2013, 29). In this context, the incentive to participate in decision-making processes is undermined. Moreover, CFAs are highly reliant on external funding and membership fees to survive, which places them in a situation of dependency and vulnerability to possible undemocratic influences. Conyers (2002) has also argued that conditional transfers to community-based institutions that resemble privileges bestowed by central governments encourage upward accountability (i.e., to state agents doing the giving) but inhibit downward accountability (i.e., to people in communities).

There is some support in Kenya for increased involvement of communities in public forests, and in particular for a careful lifting of the logging ban in indigenous forests, further promotion of community forestry in public forests, and greater benefit sharing within the shamba system. Although many disagreements persist about this in Kenya and globally, some studies show that community forestry not only increases economic benefits for communities but can also have more positive outcomes for forest conservation than traditional efforts to conserve forests by limiting community activity (Porter-Bolland et al. 2012; Bray et al. 2008; Hayes and Ostrom 2005). The difficulty in further expanding community forestry is that the redistribution of economic entitlements threatens both legitimate government income and, in some locations, the commercial interests of powerful firms and political elites.

Some argue that promoting community forestry is a vital strategy for REDD+ in general (Hodgdon, Hayward, and Samayoa 2013), and this seems applicable to Kenya. This may seem to be a policy objective that falls outside a discussion of anti-corruption and governance issues, but embedding REDD+ in a socially "emancipatory programme" could well be a prerequisite for achieving its wider integrity and legitimacy (e.g., Ribot and Larson 2012; Brown 2012).

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The government of Kenya, led by the Ministry of Environment, Water and Natural Resources, is developing a national REDD+ programme. The success of this initiative will depend in part on Kenya's ability to address political challenges in forest governance, including control of corruption and forest crimes and protection of the human rights of forest-dependent communities. This U4 Issue, based on primary research in Kenya, describes the main corruption challenges in the forestry sector and concerns regarding the integrity of a national REDD+ initiative. Strategies for political reform of REDD+ in Kenya include improving transparency and information sharing, creating accountability and grievance mechanisms, and deepening participation and democratic processes.

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