

A Corruption Risk Assessment for REDD+ in Kenya



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The Ministry of Environment, Water and Natural Resources is vested with the Government mandate to monitor, protect, conserve and manage the environment and natural resources. This mandate is discharged through specialized agencies including the National Environment Management Authority (NEMA), Kenya Meteorological Department (KMD), Kenya Forest Service (KFS) and the Kenya Forestry Research Institute (KEFRI). The Directorates of Environment and Natural Resource based at the Ministry headquarters provide the required policy guidance. Two Departments have been established within the Ministry for efficient discharge of responsibilities; the State Department of Environment and Natural Resources and the State Department of Water. Climate Change response Programmes, including REDD+ are coordinated from the State Department on Environment and Natural Resources.

UN-REDD PROGRAMME



The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest-dependent communities, in national and international REDD+ implementation.



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LIST OF ACRONYMS

ALRMP: Arid Lands Resource Management Project

CFA: Community Forest Association

COMESA: Common Market for Eastern and Southern Africa

CPA: Charcoal Producers Association

DRC: Democratic Republic of the Congo

EAC: Eastern Africa Community

EIA: Environmental Impact Assessment

FLEGT: Forest, Law, Enforcement Governance and Trade

FAO: Food and Agriculture organization of the United Nations

FD: Forest Department

KEACC: Kenya Ethics and Anti-Corruption Commission

KEFRI: Kenya Forestry Research Institute

KES: Kenyan Shilling

KFS: Kenya Forest Service

KFWG: Kenya Forest Working Group

KWS: Kenya Wildlife Service

MEW&NR: (Kenya's) Ministry for Environment, Water and Natural Resources

MMBB: Miti Mingi Maisha Bora project

NEMA: (Kenya's) National Environmental Management Authority

PFM: Participatory Forest Management

TRJ: Truth, Justice and Reconciliation

UNDP: United Nations Development Programme

UNEP: United Nations Environment Programme

UN-REDD Programme: the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries

USD: United States Dollar

VAT: Value Added Tax

WWF: World Wildlife Fund

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EXECUTIVE SUMMARY

This report, commissioned by the National REDD+ Coordination Office in the Ministry of Environment, Water and Natural Resources (MEW&NR) and the UN-REDD Programme, in collaboration with the U4 Anti-Corruption Resource Centre, provides an analysis of how corruption may influence the ability of REDD+ activities in Kenya to have successful economic, environmental and social outcomes. It also provides recommendations by a variety of stakeholders in Kenya to respond to these risks.

Section 1 details the purpose, methodology (and its limitations) and current context of REDD+ in Kenya. Several methods of research have been used to develop this institutional and context analysis: literature review, including published and non-published media sources, over 30 interviews with key governmental and non-governmental stakeholders at the national level and in the Kwale County, an online perception survey filled anonymously by 40 stakeholders, and a data gathering workshop held in July 2013. **Section 2 considers the historical context**, describing how past policy and institutional failures, including corruption, are an important factor in understanding the history of deforestation, forest degradation and the failure of the state to regulate and sustainably manage and conserve forests for the benefit of all. In the 1990s and early 2000s irregular excisions of forests, mismanagement of state plantations as well as corruption in the then Forest Department escalated, leading to a loss of government credibility to manage forests responsibly. This culminated in the presidential moratorium on harvesting timber from state plantations. These developments influenced significant governance changes in the mid 2000s, with the enactment of new forest legislation and the establishment of a new semi autonomous forest agency, Kenya Forest Service (KFS). The Forest Act 2005 provided among others, for stakeholder participation in forest management. The nature of forestry governance continues to evolve through the emergence of the outsourcing of conservation of public forests to the private sector, the lifting of the moratorium for harvesting timber, the regularization of charcoal production, as well as through the process of devolution established in the Constitution.

It is important to acknowledge that many people spoken to for this study reported that in comparison to the ‘crisis’ years – roughly the mid 1990s to the early 2000s – integrity and accountability in the governance of public forests has improved over the past decade. Yet despite this, interviews undertaken for this report highlight a number of areas where corruption still manifests. These interviews also showed that the nature of corruption has changed reflecting the transformation of forest management policies. **Section 3 describes reported corruption issues:**

- The irregular excisions of public forests in Kenya have been effectively addressed through stronger institutional arrangements and legislation. There are however ongoing reported problems stemming from contested land rights and forced evictions of people from forests and further issues related to the authorization of infrastructure, commercial agriculture and extractive industries, mainly in community forest areas. Stakeholders also expressed some concerns regarding patronage and embezzlement and therefore the ability of county administrations to improve management of community forest lands. Collusion and bribe payments are seen as important drivers of illegal logging and other forest crimes, including wildlife poaching, as well as encroachment in protected forests by herders and small-scale farming. Corruption is also thought to manifest in the import of illegal and unsustainable timber and charcoal into Kenya, including from Tanzania and the eastern DRC.
- The charcoal sector in Kenya has been undermined by systematic bribery by police and other officials for years. With the effort to regularize charcoal production and trade through the new Charcoal Rules (2009),

further problems of accountability and fraud have been created, including among the new Charcoal Producer Associations. This poses a threat to government efforts to ensure sustainable charcoal production.

- An important feature of Kenya's forestry sector, dating back to the early 20th Century, is the so-called 'shamba' system, where farmers are allocated land in state plantations to plant food crops in return for tending tree saplings. Despite its importance for food security and restocking plantations, the system suffered various forms of mismanagement and corruption, particularly in the allocation of land and encroachment into indigenous forests. It has therefore been subject to periodic bans in the past. It was reintroduced in 2008, known as the Plantation Establishment and Livelihood Improvement Scheme, with improvements in oversight and accountability and is widely supported, but some reports suggest there are still problems related to the process of assigning plots through a ballot system.
- The lifting of the ban on timber harvesting from state plantations represents a positive development in Kenya that may help address timber supply shortfalls. There are however risks that the procedure for issuing licenses, setting prices, undertaking inventories and collecting revenue is undermined by conflicts of interests and frauds, thus contributing to the marginalization of smaller enterprises.
- Decentralization of forest management in Kenya, which remains contested as it has only partially been implemented, has generated concern about new institutions representing the interests of forest communities. 'Community Forest Associations' (CFAs) in some places have been criticized as undemocratic, unrepresentative and prone to elite capture and poor financial accountability.
- Some apprehension exists, although there is no clear consensus there, that the policy of outsourcing the management of some public forests to non-governmental organizations (NGOs) and CFAs is open to abuse due to insufficient transparency and community participation in decision-making.

Although it is difficult to quantify these various manifestations of corruption in Kenya's forestry sector, it seems justifiable to believe that these challenges pose an obstacle to achieving the economic, environmental and social objectives of REDD+.

Section 4 focuses on policy implications and corruption for the forest sector based on a summary of the views of those interviewed for this study and the results on the online survey. In doing so the report notes that there have been positive developments in improving accountability and participation in forest governance by Kenya Forest Service, as well as a difficulty in addressing corruption directly, given that it is an outcome of complex historical, economic and social developments. Nevertheless demand is strong for several practical policies, summarized under three themes:

First, the need for vastly improved transparency in various aspects of forest management: the draft Forest Bill outlines the obligations for the government in providing public access to information, but it is deemed that this remains too vague, calling for a more robust and detailed policy to be developed.

Second, demand for strengthened accountability mechanisms at the national and county levels, including the prospect of reported instances of corruption leading to judicial follow-up : although the new Constitution provides for addressing corruption at the national level, the existing capacities for responding to the range of corruption issues in the forest sector are limited, both at the national and county levels. These limitations need to be addressed as part of corruption risk management in a future REDD+ regime.

Third, a call for policies that deepen efforts to achieve accountable and effective decentralization: this in turn requires more effort to improve benefit-sharing mechanisms, including potentially increased community forestry, and to ensure more inclusive forms of deliberative participation in forest governance by members of communities, particularly women who are marginalized under existing institutional arrangements.

Section 5 goes beyond the forest sector and into the implementation of REDD+ and summarizes observations on the potential corruptions risks associated with the implementation, of REDD+ at national and project levels. The report also notes positive views on how REDD+ may help improve forest governance, which includes the potential increase in revenues for the government, communities and others engaged in forest conservation, the increase in knowledge regarding deforestation and forest degradation and the potential for REDD+ to contribute to wider civil society participation in the forestry sector. The risks identified are summarized under four themes:

1. Most concern is given to the system of managing REDD+ finance, including both REDD+ revenues and expenditure management. A clear policy is lacking on how this will be approached by the government, but existing lack of transparency and poor accountability in the forestry sector – at the national, county and community levels – raise the risk that REDD+ revenues could be vulnerable to embezzlement and mismanagement. Corruption in other initiatives on community driven development, points to potential risks for REDD+.
2. The implementation of Measuring, Reporting and Verification (MRV) of systems for REDD+ activities, is vulnerable to conflicts of interests, which could lead to biased measurements and reporting of REDD+ performance results.
3. Potential risks that funding for REDD+ activities, and land use planning will favor more powerful interests and political elites, and that decision-making processes may fail to establish the free, prior, informed consent of those affected. In addition, the ongoing devolution process is meant to empower counties in resource management: although an opportunity for a democratically decentralized approach to REDD+, it also represents new corruption risks.
4. Concern about the integrity of NGOs that play a potentially conflicting role as both watch-dogs on corruption as well as implementers/benefactors of REDD+ activities and projects. NGOs can also lack transparency and play a powerful role in representing the interests of communities, which can be a source of abuse for increasing income or advancing political agendas. Additional risks exist in community forests where KFS has minimal management control. Thus, the focus on corruption risks in government needs to be broadened and include corruption risks in the non-governmental sector as well.

All risks above need to be addressed as part of the national REDD+ strategy. **Section 6 therefore considers the policy implications for mitigating corruption risks in REDD+,** based on the recommendations collated through primary research among stakeholders and opinions gathered through the online survey. In doing so it is noted that there must be a synergy between anti-corruption and governance reforms in the forestry sector and REDD+ implementation, and that sustainable and equitable management of forests is a necessity for achieving REDD+ objectives and financial rewards.

The specific policy ideas presented in this report are as follows:

- While options on how REDD+ finance could be managed have been addressed in a complementary study¹, it is important to highlight the need for the MEW&NR to work collaboratively to establish a clear policy on REDD+ benefit sharing mechanisms, which includes an appreciation of the corruption risks outlined in section 5. If communities are intended to be direct beneficiaries, then further deliberation is needed on mechanisms of administering these funds that avoid elite capture, gender bias and possible embezzlement, which could include the promotion of direct cash transfers.
- Demand is strong for a comprehensive policy that ensures information sharing; specifically, developing an online platform referred to by some as a “REDD+ registry”, where information on projects, revenues and MRV can be made publically accessible. In this some information should be linked to the mapping of forests (already being undertaken by KFS), including information on land tenure. An effective platform may incorporate the ability of the public to contribute to its content.
- Exploring community mapping of forests to enhance transparency, improve participation by communities in REDD+ activities and potentially strengthen the integrity of MRV. Existing pilot projects on community mapping should be considered for scaling up under REDD+ activities.
- Although it is recognized that the MEW&NR has proactively engaged a wide range of stakeholders in REDD+ preparation activities, there is still consensus among those well-informed on REDD+ that knowledge is lacking among rural communities and within other areas of government, including at the county level. There needs to be further effort to communicate how REDD+ will be implemented and also what the responsibilities and risks are.
- The need to improve independent evaluation and oversight of REDD+ activities is recognized. This may be achieved through support to NGOs and media for undertaking analysis and investigative work, and/or through a robust Forest Monitoring system for REDD+ activities.
- There is interest in developing mechanisms for public reporting of corruption in REDD+ activities, although there is a risk that several efforts will be developed independently. It is possible that key stakeholders, including the MEW&NR, can work collaboratively to develop a strengthened and harmonized approach.
- The limited prospect of strong responses to reported corruption and human rights abuses in REDD+ activities is raised as an issue of concern. This suggests the need to explore a more dedicated task force and formal grievance and redress mechanism that can work on forest-related corruption, including REDD+. Kenya’s Ethics and Anti-Corruption Commission is considered an appropriate lead agency for this.
- A recommendation is for the development of a code of ethics for governmental and non-governmental implementers of REDD+ activities, which clearly sets out expectations on ethical standards and governance ideals, including on human rights, freedom of information and anti-corruption. The process of developing and agreeing on this code is also considered a beneficial activity that will reinforce trust and participation.
- Finally, the success of REDD+ is dependent on regional co-ordination within East Africa and collaboration between law enforcement and anti-corruption agencies. A recommendation is therefore for Kenya to play an active role in establishing regional cooperation with government and non-government stakeholders in East Africa for REDD+. This could help integrate REDD+ into a Forest Law Enforcement Governance and Trade process.

1 *Carbon rights and benefit-sharing for REDD+ in Kenya*, 2013. Ministry of Environment, Water & Natural Resources and UN-REDD Programme

1. INTRODUCTION

1.1 Objective and purpose of this report

This study has been commissioned by the Ministry for Environment, Water and Natural Resources of Kenya (MEW&NR) and the UN-REDD Programme as part of ongoing work to prepare for the implementation of REDD+ in the country. Specifically, the aim of this work is to advance the knowledge base, national dialogue and capacities on key governance issues for REDD+ in Kenya, particularly on anti-corruption.² The background and motivation for this study lie with concern about the relationship between REDD+ and corruption. Both corruption in the forestry sector and corruption risks in the design and implementation of REDD+ are aspects to this.

Indeed, the international community supporting the development and implementation of REDD+ activities recognises that corruption in the forestry sector can present an important barrier to achieving the goals of reducing deforestation and forest degradation. When corruption acts as an indirect driver of deforestation and degradation, it is appropriate for the implementation of REDD+ activities to be embedded in wider efforts to better understand the nature and impacts of corruption in the forestry sector, as well as contribute to reforms that may reduce these problems. Countries embarking on implementing REDD+ activities but failing to address wider governance and corruption problems are likely to see diminished funding for preparation activities and partnerships, which are critical for its success.

In addition is a growing international recognition that implementation of REDD+ activities is vulnerable to corruption. REDD+ is an ambitious endeavour, involving unprecedented resources and transfer of revenues. Although REDD+ is not always conceptualized as a mechanism to reform the nature of forest governance in countries, it inevitably impacts on the political economy of forest use. Implementation of REDD+ therefore raises concerns about transparency, accountability, equitable benefit sharing and the extent to which those potentially impacted by REDD+ activities have been involved in decision-making processes. If these risks are not well understood and addressed, then the equity, efficiency and effectiveness of REDD+ may be threatened, leading to a loss of international and local legitimacy and support.

The following report offers analysis on these two issues in Kenya and attempts to capture stakeholder views on what are the main policy implications. Three caveats are important to make clear from the onset:

- The aim of this report is not to detail specific instances of corruption. The process of compiling the report has not involved investigative research into allegations of corruption by individuals or companies. The authors of the report offer a broader view of systemic problems or tendencies in the forestry sector.
- Understanding the manifestation of corruption in Kenya's forestry sector is difficult and inevitably contentious. It is also hard to isolate the relative importance of corruption, noting that the reasons for deforestation and forest degradation involve complex historical, economic and social factors, and that stakeholders will have their own theories and ideas on what are the most salient issues. The report therefore does not set out to provide a definitive answer to the relative importance of corruption in driving deforestation and degradation. Rather, it aims to highlight some of the main existing or predicted forms of corruption that could impede the success of REDD+, and describe some of the policy implications with the hope this may stimulate further debates and encourage policy decisions and further anti-corruption initiatives.
- Implementation of REDD+ in Kenya is in its early days, so any understanding about the corruption risks in the country are necessarily speculative. Nevertheless, assessing existing weaknesses can help predict future vulnerabilities, while assessing existing strengths gives rise to consensus on the need and ways to ensure that these risks are mitigated.

² There is no international consensus on a definition for "corruption". UNDP uses the widely-used definition of "abuse of entrusted power for private gain".

1.2 Methods of research

Section 1.2 : Key points

- The findings are a result of desk research and participatory data collection through over 30 interviews, a workshop and an anonymous online survey
- Limitations exist due to the subjective nature of perception data and the complexity of corruption issues

1.2.1 Range of methodologies

In compiling this report the authors have been guided by the methodological approach developed by the United Nations Development Programme (UNDP), referred to as an 'institutional and context analysis'. This approach combines historical perspectives and relationships of power between divergent interests and actors, and how these impact on the outcomes of a given development objective, in this case ensuring economic, social and environmental achievements in the REDD+ initiative.³

Several methods of research have been used to develop this analysis. Part of the work has involved desktop research and the use of both published and unpublished literature and media sources. The authors were also provided access to information by Kenya's Ethics and Anti-Corruption Commission (KEACC) related to reports of corruption in the forestry sector. This information only represents reported alleged cases of corruption, rather than confirmed cases that have been thoroughly investigated and subject

to court proceedings. Nevertheless, this information was useful, giving an insight into the range of issues that are being reported to the KEACC, as well as the difficulties facing the KEACC in responding to these cases.

Primary research by the authors included semi-structured interviews with over 30 people who were identified for having specific insights into forest management. These included employees from government departments, members of professional non-government organizations, representatives of community-based groups, the private sector and various independent academics or consultants. These interviews were used to explore a range of primary and secondary research questions, adapted from the original terms of reference for the study.⁴ Interviews were mostly confined to Nairobi, but the authors also undertook a brief fieldwork visit to Kwale District to understand the management of the charcoal sector, and in particular the functioning of newly formed Charcoal Producers Associations (CPAs). This fieldwork involved interviews with three CPAs, members of local community forest associations, representatives of a 'group ranch' where charcoal is produced, as well as people involved in charcoal transport.

Given the sensitive nature of the issue at stake, all interviewees were guaranteed confidentiality. The number of interviews was limited by the time available for this research, and while a diversity of stakeholders was interviewed, the report could have benefited from a larger number. In addition to these interviews were two other activities, whose outcomes are reflected throughout this report. The first one was a two-day workshop on the theme of corruption and REDD+ to present some preliminary findings from this study and to discuss these issues in more depth with participants, organized in July 2013 by the MEW&NR, in collaboration with the UN-REDD Programme.⁵ The second activity was an on-line anonymous perception survey⁶, drawing from the UN-REDD Guidance on Conducting REDD+ Corruption Risk Assessment⁷, sent to Kenyan stakeholders yet open to anyone

3 UNDP 2013

4 Available here : http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=9245&Itemid=53

5 The July 2013 workshop report may be downloaded here : http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=10797&Itemid=5










6 While only parts of the survey are presented in this report, the full survey report is available here : http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=10946&Itemid=53

7 UN-REDD 2012

to fill in. The response to the survey was limited; only 38 people (25% women and 75% men) answered all or most of the questions, and the vast majority of respondents were non-governmental stakeholders (see Figure 1 below). We therefore use this data with some reservation and hope readers of this report do so likewise. We refer to the online survey as the UN-REDD survey.

Figure 1 : Type of respondents in the UN-REDD online survey

Scoping REDD+ Corruption Risks in Kenya 

Work/Occupation		Response Percent	Response Count
Local Government		2.4%	1
Business Sector		9.5%	4
Community Forest Association		4.8%	2
International Institutions/Groups		4.8%	2
Non-Government Organization		33.3%	14
Indigenous Peoples' Organization		4.8%	2
Academic Institution		26.2%	11
Kenya Forest Service		9.5%	4
Other Administration		0.0%	0
Civil Society		0.0%	0
Anti-corruption agency		0.0%	0
Other enforcement body		4.8%	2
Other (please specify)			4
answered question			42
skipped question			1

1.2.2 Limitations

There are various methodological difficulties in undertaking a study into the nature and potential risks of corruption in a sector such as forestry. It is of course a subject that is politically sensitive with possible negative consequences for individuals; therefore, despite guaranteed confidentiality, people spoken to for this report may have feared speaking openly with the authors. There is also potential for deliberate misinformation that reflects underlying personal or organizational agendas.

We further note a point raised by several people in the process of undertaking this research: that perceptions of corruption in Kenya may be sensational and unrealistic, or based on historical experiences that may not hold true for today. This point is essential in considering what the data from the online survey can reveal. The survey captures people's perceptions about corruption and related governance issues, and the data cannot be taken as reliable indicators of actual corruption problems. Nevertheless, with due consideration to its limitations, the data from this survey is presented in this report, and the results do add weight to certain findings collated from interviews, the workshop and secondary sources.

This study also deals with an immensely complex set of issues; corruption as a driver and within the implementation of REDD+ is multifaceted and necessarily involves understanding a diverse range of aspects of forestry management – from land rights to the production of charcoal, to the dynamics of the commercial timber sector and the experiences of decentralization or participatory forest management. The report tries to summarize findings based on a relatively brief survey of opinions and analysis of secondary sources. There was certainly not enough time to give these issues sufficient in-depth research and analysis, or to visit more than one zone out of 47 in Kenya. The authors therefore acknowledge that there may be important gaps in this report and where appropriate they indicate where uncertainty lies and where more research or debate is needed.

Finally, we should not overlook the fact that although there is a focus on Kenya Forest Service (KFS) in this report, an important role is also played by the Kenyan Wildlife Service (KWS) in managing forests. Regrettably this study was unable to consider the extent to which corruption manifests in KWS and how this contributes to the challenges of implementing REDD+. However, the recommendations for improving the response to corruption in the forestry sector are equally applicable to KWS.

1.3 Trends in deforestation and forest degradation in Kenya

At some point in time Kenya was densely forested. Closed canopy forest once covered most of Kenya's moist and elevated central and western landscape, as well as the narrow band of land stretching along its coast. Before human encroachment, it was thought that some twelve percent of the country was covered by this closed canopy forest.

Existing estimates of forest cover in Kenya are complex and to some extent contested. According to Kenya's R-PP document closed canopy forest cover by 2010 was conservatively estimated to be just over 1.5%, which includes indigenous forests and plantations. Indigenous closed canopy forest is reported to be at just over one million hectares, but not all of this can be considered primary forest characterised by only indigenous trees and a healthy forest ecosystem. Of the main forests in Kenya, five large mountain forests exist as water catchment areas. These are the Mau Forest Complex, Mount Kenya, the Aberdares, Mount Elgon and Cherangani, commonly referred to as Kenya's "Water Towers".

Although Kenya has 3.5 million hectares of forest, arid and semi-arid land characterized by sparser tree cover extend over a much larger area. Mostly found in the drier north-eastern and norther regions, around 24.5 million hectares of land fall under this category. Twenty-five per cent of Kenya's population lives in this region, which is considered an area particularly vulnerable to the effects of climate change, water shortages and land degradation.

It should be noted, however, that official estimates on 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 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 in the Kenyan constitution it is stated that Kenya should ensure tree cover of 10%.

Official estimates on rates of deforestation are also likely to be unreliable and should be seen as indicative of trends only. However, according to the Food and Agriculture Organization (FAO), Kenya is estimated to lose some 12,000 hectares of closed canopy forest each year.⁸ A 2012 United Nations Environment Programme (UNEP) report states that deforestation in only the Water Towers was about 50,000 hectares between 2000 and 2010, or 5,000 hectares per year. The cash value of trees felled during this time is roughly estimated at KES 1,362 million per year. More up to date information on rates of deforestation were not available for this report.⁹

8 As per Kenya's RPP, KFS 2010

9 UNEP in Kenya undertook a study in 2012, the "Kenya integrated forest ecosystem services, *Technical report*", but this is not published.

Although Kenya is not as heavily forested as other countries in the region, its remaining forests play an important economic, social and cultural role. Some 10% of Kenya's population lives within five km of forests and relies on forest resources for their livelihood.¹⁰ In 2007, it was estimated that direct revenue from exploitation of forests contributed one percent to Kenya's GDP¹¹ though this figure is likely to be a considerable underestimate given the large informal economy that relies on forests and forest-based products. Ninety percent of all wood harvested in Kenya is thought to be for fuel, with over half of this being for subsistence and non-commercial use¹², while the commercial charcoal sector is substantial, estimated at 135 billion KES (see section 3.3).

In addition to the direct value of wood products, the importance of tree cover for maintaining water catchment areas is increasingly appreciated. Water is a scarce and valuable asset, and is used for direct human consumption, agriculture, and energy: 70% of power in Kenya is hydroelectric.¹³ It has become a matter of national concern that deforestation has directly threatened water security in the country, including in Nairobi. A recent 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 some 5.8 billion KES, and that the value of ecosystem services provided by forests is nearly 3 times more than the direct cash revenue from forests.¹⁴

1.4 The status of REDD+ in Kenya

Kenya is in the process of implementing its R-PP following its approval in 2010. In Kenya, REDD+ is implemented through coordination from the MEW&NR by a REDD+ Technical Coordination officer recruited in March 2012. At policy level, a Steering Committee has been established. Under the Steering Committee, a National REDD+ Technical Committee has been established to play an advisory role. Six thematic working groups have also been established to drive the REDD+ implementation:

1. Policy and Institutional Working Group: addresses issues relating to policy review and harmonization, forest law enforcement, institutional roles and responsibilities, accountability, transparency, carbon rights, external linkages with other government agencies, etc.
2. REDD+ Strategy Development Working Group: supports analysis of the measures that will inform the design of the strategy. Other duties include creating linkages between REDD Coordination Body and the National Climate Change Response Strategy (NCCRS) and National Climate Change Action Plan (NCCAP) implementation Climate Change Secretariat (CCS) at the Ministry of Water, Environment and Natural Resources and other ministries which are expected to play key roles in REDD implementation and whose policies will be positively impacted by a successful REDD+ implementation.
3. Safeguards Information System and Strategic Environmental and Social Assessment (SESA) Working Group: will play an advisory role in the implementation of SESA. This will include providing advice on terms of relevance for SESA, providing an oversight role in implementation of SESA.
4. MRV and Monitoring System Working Group: will support development of a Forest Reference Emission Level/ Forest Reference Level and a Forest Monitoring system.

10 Geller et al: 2007, p.1

11 FAO 2007

12 KFS 2009

13 KFS 2010

14 UNEP 2012

5. Financing and Benefit Sharing Working Group: will secure a comprehensive understanding of the financial flows that will take place between public and private, central, county and local actors in the implementation of the R-PP to aid in designing financial mechanisms for the full scale REDD+ national strategy. Key tasks will involve discussions on how cost and benefit sharing rules will apply to REDD+ activities, how the policies or measures that require new fiscal measures such as taxes, subsidies, levies, etc. will need to proceed and what requirements exist to establish Fund mechanisms to which participants of a program can apply
6. Communication and Stakeholder Engagement Working Group: Stakeholder Consultation and Participation is intended to increase the inclusiveness, transparency and accountability of decision-making processes during preparatory work leading to REDD+ readiness and REDD+ readiness implementation. Stakeholders also have to be involved to ensure that REDD+ program respect the rights of various stakeholders in compliance with relevant international obligations and instruments.

Stakeholder sensitization through workshops has been conducted, though many Kenyans are still not very conversant with REDD+. Through the support of United States State Department, a programme on Widening Informed Stakeholder Engagement for REDD+ (WISE REDD+) is under implementation to address this gap. A number of studies have also been undertaken to support REDD+ policy framework, including the National REDD+ Strategy. They include the following:

- A stakeholder Consultation and Participation Plan has been prepared and is under implementation
- A study on forest sector background has been completed
- A National Climate Change Action Plan has been formulated and has been rolled out for implementation
- A road map for Monitoring, Reporting and Verification (MRV) has been prepared
- A forest cover map to support forest cover change and monitoring has been finalised.
- Two studies - on carbon rights and benefit sharing arrangements and a legal report - supported by the UN-REDD programme, have been finalized ¹⁵
- A study has been completed on drivers of deforestation and forest degradation
- An analysis of the Charcoal value chain has been completed
- A study on domestic wood demand and supply has been completed
- A study on development of appropriate forest management systems including grazing in Kenya's drylands as REDD+ strategies has been initiated.
- A road map for Strategic Environment and Social Assessment (SESA) has been prepared and SESA process is in the process of being rolled out
- Terms of reference for developing an information and communication strategy for REDD+ have been developed.

The next steps are the assessment of proposed REDD+ strategy options and assessment of Environmental and Social risks and potential impacts of proposed REDD+ strategy options under the SESA process. In parallel to above processes, several REDD+/carbon projects are either at design stage or under implementation. The Kenya Forest Service has entered into Memorandum of Understanding with some of these projects, the largest one being developed between Wildlife Works Carbon and various other non-governmental organizations (NGOs) in the Chyulu Hills. Characteristic of many of these projects is the development of collaborative partnerships between the government and the private sector (and communities), which adds complexity in distinguishing between the national REDD+ initiative and project -based REDD+.

¹⁵ UN-REDD and MEW&NR 2013a and 2013b

2. CONTEXT

Problems of corruption in forest management are described as widespread in Kenya's past, a view that continues to influence existing perceptions and relationships between various different constituents. Historical problems of corruption have also been important in influencing governance reforms in the forestry sector, which will be briefly described in this part of the report as a necessary context to understand the manifestation of corruption in Kenya's forestry sector today.

2.1 The historical role of corruption in Kenya's forestry sector

Since independence in 1963, and up to the early 1990s, Kenya gained a reputation for having a relatively well-run forestry sector. By the 1980s it was arguably one of Africa's leading countries in this regard.¹⁶ However, after independence, the management of public forests inherited from the British colonial administration was characterized by a high degree of centralisation and the ideology of forest management has been described as overtly 'preservationist'; with the tendency towards excluding the involvement of citizens in forest use and management, which also meant both use and access rights of communities in public forests was highly restricted. This is highlighted with the decision to enact a presidential ban of all felling of trees in indigenous forests in 1986, motivated by concerns of escalating deforestation. Moreover, there were numerous instances of irregular excisions of gazetted forests, which often benefited elites and caused forced evictions for indigenous forest peoples, and these problems were on-going throughout the last century.

Nevertheless, it is widely described that poor governance and corruption in Kenya's forestry became more apparent during the 1990s, leading to what some describe as a period of crisis. A programme report published in 2009, commissioned by the Government of Finland for the "Miti Mingi Maisha Bora" (MMMB) project in Kenya put it starkly: "The previous government institution charged with the management of forest resources was poorly resourced, highly politicised, low in capacity and widely considered to be one of the most corrupt institutions in the country".¹⁷

It is not clear what brought about this period of political crisis and high levels of corruption, although several aspects have been well documented. One of these was the apparent increase in political interference in the running of the Forest Department, which enabled political elites to control decisions on transferring public forests into private ownership. As subsequently detailed by the Ndung'u Commission¹⁸ in 2004, during

Section 2.1 : Key points

- Poor governance and corruption in Kenya's forestry became more apparent during the 1990s, leading to a period of crisis
- This was characterized by national and county political elites controlling decisions on transferring public forests into private ownership, which worsened prior to elections; and the mismanagement of state owned tree plantations
- An informal logging ban was established and soon became controversial
- This led to considerable lowering of resources, credibility and morale for the Forest Department
- Public dissent over the loss of forests gained momentum.

¹⁶ World Bank 2007b. Others disagree : see Mwangi, 1998, Wass 1995.

¹⁷ MMMB: 2009

¹⁸ In 2003, the Government appointed a Commission, generally referred to as the "Ndung'u Commission", to inquire into illegal and irregular allocations of public land and land reserved for public purpose.

Political interference in the running of the Forest Department used to enable political elites to control decisions on transferring public forests into private ownership

the mid to late 1990s, significant areas of formerly protected forests and public tree plantations were acquired by citizens, companies and religious organizations. The Ndung'u report described how this acquisition of forested lands involved the very top level of Kenyan society, with high level politicians and their families rumoured to be the largest benefactors. In many cases the process of forest excision was nominally legal, as notices of decision to convert public forests into private land was given in the government gazette, which in theory allowed responses within a 28-day period. Yet there was no realistic way for the public to contest these decisions, the details of benefactors was kept confidential and any due consideration to the environmental and social impact of these land excisions was ignored.

Escalating irregularities in the allocation of public forests from central government also encouraged similar behaviours 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."¹⁹

The loss of forested lands through these irregular processes worsened prior to general elections, with the most contentious losses occurring in the period leading up to the 2002 general elections. During this period, forests were used to influence rural voting and reward supporters of prominent personalities. One of the most important parts of the country where this occurred was in the Mau Forest Complex, including the region that is the ancestral 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 being lost in 2001.²⁰ Part of this land was given to non-indigenous groups requiring resettlement who were falsely reported to be Ogieks. Large areas of forests were also awarded to politicians and civil servants, some of which was then converted into tea or wheat plantations. By the early 2000s, forest cover of the Mau was reduced by approximately 25% of what it had been less than a decade earlier.²¹ Given such examples, several Kenyan commentators have argued that forests have been one of the key commodities used by the state to influence voting behaviour.²² It has also been argued that the illegal appropriation of public land has been critical to the formation and consolidation of Kenya's political elite.²³

The loss of forested lands through irregular processes tended to worsen prior to general elections

Alongside the problem of irregular forest land excisions were other important developments related to the mismanagement of state owned tree plantations, including the collapse of the 'shamba' system and various forms of corruption and fraud in commercial logging.

19 Cited in Southall:2005

20 Mau Task Force Report: 2008

21 Mau Task Force Report: 2008

22 Klopp, 2000, Ongugo, 2007

23 Southall: 2005

The British administration, based on experiences in South East 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 where local farmers were provided land free of charge in state plantations to grow food crops, and 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, which led to its collapse by the end of the 1980s, although it was briefly re-instated in the 1990s, only to be banned again in the early 2000s.

Alongside the problem of irregular forest land excisions was the collapse of the "Shamba" system

One of the factors that led to the demise of the shamba system was a policy change implemented in 1975, influenced by mounting ideological criticisms of it 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 FD as civil servants. They were paid a nominal wage and the system of renting land became formalized; employed farmers were expected to pay for their shambas.²⁴ The allocation of land was also opened up to non-local residents. The upshot was that the shamba system became more expensive to run, and an informal market in shambas emerged, where those who secured land through paying rents began to sublet this land to others. Shambas became commodified and their allocation 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, and those given the authority in the FD to allocate shambas and collect rents became recceptive to forms of bribery and embezzlement.

Because of these developments, it became increasingly difficult for the Forest Department to provide a supervisory role, and as a result substantial land allocated for crop plantations was never properly planted with trees. Areas of indigenous forests were also allowed to be encroached 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.

Revelations of these abuses resulted in 1979 in a presidential ban on allowing the shamba system to encroach on indigenous forests. This was unsuccessful, so in 1986, a presidential ban on all logging of indigenous trees was declared, followed a year later by a presidential ban of the shamba system outright. The implication was that FD was expected to manage state plantations alone, which it struggled to do given that the previous system was a relatively affordable arrangement, and the alternative of contracting labour was so much more expensive. Large numbers of people employed through the shamba system also lost a vital source of food security and income, many of whom either left these rural areas under eviction notices, or lingered on to become 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 now transferred to District Development Authorities, who were highly politicised and believed to have continued, and even extended, problems of patronage and abuse. This included converting unsuitable land in forested areas for tree plantations, much of which ended up being provided as benefits to local supporters. Problems of poor supervision by the local forest guards continued, situation further compounded by the legacy of structural adjustment policies, between 1994 and 1998, about 6000 members of staff in FD were retrenched. Donors then pulled out from funding the FD because of worsening corruption, and the allocation from the central state to the FD also shrunk, resulting in the reduction of funds

²⁴ Kagombe & Gitonga, 2005

for plantation management from 390 million Kenyan shillings in 1996, to only 25 million in 2000.²⁵ Finally, prominent conservationists in Kenya as well as the Kenya Wildlife Service led a sustained campaign against the environmental impact of the shamba system, which was banned again in 2004.

Alongside troubles with the shamba system were escalating problems in the management of commercial logging in state forests. In the 1990s these plantations became mismanaged, which was, characterised by lack of transparency in licensing, political interference and various conflicts of interest. A considerable part of the problem was the emergence of so-called 'brief case saw millers': unlicensed operators, typically represented by politically connected individuals or those in government, were awarded lucrative 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 Forest Department were not forthcoming. It is estimated that between 1995 and 1999, annual government revenues from forests decreased from KES 240 million to KES135 million due to these irregularities and embezzlement.²⁶ 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 Forest Department was owed some KES 93 million in uncollected royalty fees.²⁷ The period also saw a marked decline in responsible stewardship of these plantations, with a neglect of sustainable practices and a failure to maintain these assets through replanting. From 2003, and thanks to changes in Government, the oversight of plantations started to improve; this included the actual enforcement of a moratorium, detailed in the section below.

In 1999, condemnation of the widespread 'mismanagement' of government plantations led to the decision to impose a presidential moratorium on all logging activities in state-owned plantations. The decision was aimed at allowing the Forest Department an opportunity to re-stock the plantations, undertake inventories and impose better systems of regulation. The ban was continued throughout the 2000s and was lifted in November 2011, although as this ban was never formally gazetted, it is generally referred to as an 'informal ban'.

The widespread mismanagement of government plantations led to the decision in 1999 to impose a presidential moratorium on all logging activities in state-owned plantations

Although the ban was based on reasonable objectives, it has been widely denounced as short-sighted, and has not been supported within senior management of the KFS either. It resulted in the collapse of the formal sawmill industry, the loss of some 30,000 jobs, and a further sharp reduction in revenues for the Forest Department, which was compounded by the collapse of the shamba system. What added to the controversy surrounding this decision was the protection of four of the larger sawmilling companies, who were exempted from the ban. These companies, who share a common beneficial owners and include senior political figures as owners/share holders, were provided access to several areas of plantations, mostly in the Mau area, and the cost of royalty payments and stumpage fees was set at below market prices. Some speculate that this beneficial arrangement has contributed to the slow process of lifting the ban, while the fact that three of the companies, until recently, have been represented on the board of the KFS has only

added further to allegations of conflicts of interests. However, it should also be recognized that the lifting of the ban may have been avoided for several years due to resistance from some non-governmental organizations who viewed the ban as an important obstruction to expanding logging in all public forests.

²⁵ Wanyeri, et al, 2001

²⁶ World Bank 2007b

²⁷ World Bank 2007b

An additional impact of the informal logging ban was to decrease the availability of timber in Kenya, causing an increase in imports and rising domestic prices. This has been further blamed on driving illegal logging in public forests, which increased the need for the Forest Department, and then the KFS, to divert more of its dwindling resources towards law enforcement. A report by the Kenya Forest Working Group on the impact of the ban also noted that previously legitimate saw millers had worked collaboratively with the Forest Department in controlling poaching in state forests, but this relationship disappeared.²⁸

This period of crisis in the forestry sector had profound implications for the functioning of the Forest Department. Combined with the impact of public sector downsizing in general, the number of FD staff was reduced from 8,096 in 1992 to 4,216 in 2001 - a reduction of nearly 50%.²⁹ Further financial and reputational damage came in the late 1990s as the most important foreign donors in Kenya's forestry sector, including the World Bank and the Government of Finland, discontinued funding and support to the conservation and improved management of forests in the country, largely due to the realization that political interference and corruption had escalated to the point that donor assisted programmes were unlikely to have a positive impact. What is more, political interference in the running of the FD meant that there were dubious appointments of senior members of staff, with more qualified individuals being overlooked.³⁰ This contributed to low morale within the FD, and led to the resignation of some of the department's most committed staff.³¹ Acknowledging that corruption had become systemic in the FD, in 2003 a new Minister of Environment suspended, for alleged corruption, over 800 forestry officers and ordered the removal (or redeployment) of senior management.³²

The Forest Department's loss of credibility extended to other government departments, including lands, which should, in theory, have been important partners in managing Kenya's forests. This appears to have weakened the FD's ability to act as a responsible steward of forests and plantations.

As the MMBB project inception report claims there were also "sub-optimal" relations with the KWS, which resulted in a duplication of efforts.³³

During this time, public dissent over the loss of forests gained momentum. The work of the Green Belt Movement was arguably the most high profile, although many others were involved in 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 common allegations of human rights abuses and false arrests.³⁴ In summarizing the findings of a strategic environmental assessment of Kenya's forest sector, the authors of a World Bank report argued in 2007 that:

The Green Belt Movement and other protest and advocacy groups arose from the increasing public dissent over the loss of forests

"...the adverse effect which shortcomings in existing legislation and institutional and governance weaknesses of previous administrations have had on forest environments in Kenya, including reduction in forest land cover through inappropriate excision of State Forests, poor standards of management, illegal felling, and lack of replanting of forest plantations. Similar problems have been exposed in areas of dry land tree cover. State Forests have increasingly

28 Kagombe, et al, 2005

29 KFS 2007

30 World Bank 2007b

31 World Bank 2007b

32 BBC News: 2003

33 MMBB 2009

34 Maathai 2006

been viewed as economic liabilities due to the moratorium on timber harvesting. A downward spiral of declining economic activity and corruption has left a demoralised Forest Department with reduced capacity to manage forests efficiently. This, in turn, has allowed excessive exploitation of highly sensitive forest resources by local communities leading to a reduction in biodiversity, pressure on water resources, and increased wildlife-human conflict.”³⁵

2.2 Key developments in forest governance in Kenya from the mid-2000s

Section 2.2 : Key points

- Change in government attitude and policy thinking towards the forestry sector led to decisive action to reverse previous policies and to engage in progressive reforms
- The 2005 Forest Act established the semi-autonomous KFS ; the legal and institutional arrangements for decentralization of forest management and Participatory Forest Management ; and the formation of Community Forest Associations
- The governance impact of the process of decentralization of forest management remains complex and evolving
- The Forest Act sought to address the problem of irregular excisions of state forests by strengthening parliamentary oversight and imposing more stringent Environmental Impact Assessments
- The Act also recognised the need to both strengthen law enforcement in the forestry sector
- The 2009 ‘Charcoal rules’ set out new laws and institutional arrangements for licensing charcoal production
- A Forest Bill is expected to be finalized in 2014

Increasing awareness of the problems outlined above is thought to have influenced considerable changes in the governance of forestry from the mid 2000s - as were successive droughts in Kenya in the early 2000s that become widely understood as linked to deforestation. Thus, an apparent change in government attitude and policy thinking towards the forestry sector led the government to take decisive action to reverse previous policies and to engage in progressive reforms, some of which had been developed before but had been shelved. This culminated in the 2005 Forest Act, enacted in 2007, which is also the basis for the existing draft Forest Bill, which is expected to be finalised for parliamentary approval either this year or in 2014.

The Forest Act was a milestone in forest governance and brought about considerable change, at least in official policies and management arrangements, the implementation of the Act remaining open to differing opinions. Several key developments are important to consider to understand the nature of corruption in the forestry sector today.

First, the Forest Act of 2005 established the Kenya Forest Service. The KFS is a semi-autonomous corporate body with an independent governing Board, now within the Ministry of Environment, Water and Natural Resources. The KFS was established with a long-term objective of becoming entirely self-financing, through income accrued from managing public forests (including tree plantations). For the time being, the KFS remains largely dependent on donor assistance and contributions from the exchequer. At present, the KFS is responsible for most of the one million hectares of remaining indigenous forest in the country and about 140,000 hectares of state owned tree plantations. Further tracts of forest that lie within the boundaries of national parks and reserves are the responsibility of the Kenya Wildlife Service (KWS).

Alongside this transformation of the FD into the KFS was a quite significant shift in official government policy towards

managing public forests. Arguably the most important aspect of the new Forest Act was that it established the legal and institutional arrangements for decentralisation of forest management and Participatory Forest Management (PFM). Efforts to achieve decentralization had been on-going for decades in Kenya, but were largely unrealised and resisted by the government. The New Act provided for the establishment of institutions that conferred greater management responsibilities to forest adjacent communities, a paradigm shift in forestry governance. In particular the Act encourages the formation of what is known as Community Forest Associations (CFAs), i.e. 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. This arrangement includes the production of Forest Management Plans by CFAs, which set out joint responsibilities and benefit sharing arrangements. Although the first CFA was established in 1997 in anticipation of the new Act, the formation of CFAs gained momentum in the mid 2000s, with at least 100 active by the end of the 2000s.

A change in government attitude and policy thinking towards the forestry sector led to decisive action to reverse previous policies and to engage in progressive reforms, which culminated in the 2005 Forest Act

The process of decentralisation of forest management, which some argue remains contested and only partially achieved, has been further influenced by the current process of devolution. This was a fundamental achievement of the Constitution, promulgated in 2010. It has established 47 new county governments with county governors. Prior to this community forests, or 'trust lands', were managed by local authorities, but by all accounts the situation was not effective due to widespread corruption, and a lack of both resources and management planning by local authorities. The new Forest Act sorts to address this by allowing KFS to declare a forest as a "provisional forest" if it is mismanaged by local authorities, and take over the running of the forest until such time as it is deemed "well managed".

Arguably the most important aspect of the new Forest Act was that it established the legal and institutional arrangements for decentralisation of forest management and Participatory Forest Management

In theory, the process of devolution represents an opportunity for community forests to be better managed, although the impact on the forestry sector from devolution is complex and evolving. The new county governments will establish a county office for management of community and private forests, most likely under a county department for environment. The draft Forest Bill also sets out the need for county administrations to establish a county Forest Conservation Committee, with representation from non-governmental organizations, the private sector as well as other government departments. KFS report that 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, protection of fragile ecosystems and the promotion of income generating activities. The KFS headquarters has deployed staff on a three-year basis to advise new county governments on developing this capacity for forest management. The management of public forests and state plantations in counties is, however, thought to reside with the central government.

The new Forest Act also provided for outsourced management of state forests and the awarding of licenses for private organizations to undertake income-generating activities in these areas, particularly ecotourism. The policy is still in its early days, but it represents the trend in government forestry management away from

The new Forest Act also provided for outsourced management of state forests and the awarding of licenses for private organizations to undertake income-generating activities in these areas, particularly ecotourism

centralised management towards both decentralisation and increased private sector collaboration. The same goal of outsourcing and participatory forest management appears to be encouraged for county governments.

Alongside this ideological shift in forest governance are several other important achievements. The Act sought to address the problem of irregular excisions of state forests by strengthening parliamentary oversight and imposing more stringent Environmental Impact Assessment (EIA) process, overseen by the National Environmental Management Authority (NEMA). Furthermore, the new Forest Act recognised the need to both strengthen law enforcement in the forestry sector (achieved by, among others, increased penalties and sanctions), as well as the regularization of the charcoal sector. This led to the development in 2009 of the new 'Charcoal rules', which set out new laws and institutional arrangements for licensing charcoal production (described in more detail below, section 3.3).

Finally, the overall shift towards decentralization also led a 2008 decision to re-introduce the shamba system, although now rebranded again as the 'plantation establishment and livelihood improvement scheme' (PELIS).

Considerable achievements have been made in the face of historical governance challenges. Yet we must stress that the extent to which policies including decentralization have been truly embraced by the government remains open to differing opinions (section 3.4), and the way in which devolved power to county governments will change forest management remains unclear to many.

3. CORRUPTION CONTRIBUTING TO DEFORESTATION AND FOREST DEGRADATION IN KENYA

With the context outlined above, findings are presented on the way in which corruption can be thought of as contributing to deforestation, forest degradation and unsustainable management of forests in Kenya today. In doing so, the inherent methodological and conceptual challenges to researching corruption need to be re-emphasized. Not only is the concept understood differently by different stakeholders, but also its extent is difficult to measure, as some forms of corruption may be locally specific and change over time. This makes it challenging to understand the relative importance of corruption in the political economy of forest management.

With this caveat in mind, several themes in the governance of forests where corruption is reported to be a problem or risk are detailed below.

3.1 Forest land tenure, excisions & evictions

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. The new Land Commission established through the Constitution has the 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 Ngund’u report published in 2005, and much of this information was updated in the recent report issued by the Truth, Justice and Reconciliation (TRJ) Commission, which was set up to investigate and advise on actions pertaining to human rights abuses in Kenya from the late 1960s to the post-election violence of 2008. Political sensitivities surrounding corruption in land are evident in the very experience of the TRJ study, which was dogged by multiple controversies: for example, several authors of the study refused to sign off on the report due to claims that their final report was censored by the Commission before being presented to the President. The section on land in particular was said to be watered down.

Corruption in land administration continues to be regarded as highly prevalent in Kenya, as described in a recent study by the Kenya’s Ethics and Anti-Corruption Commission.³⁶ However, over the past decade, instances of contentious decisions on the excision of public forests have largely been absent from Kenya; there have been no obvious examples of the government de-gazetting state owned forests since late 2001 in the run up to the election in 2002. The opportunities for irregular excision of public forests have diminished markedly, given a combination of improved procedures of oversight by both parliament and NEMA and the heightened awareness of civil society regarding the importance of

Section 3.1 : Key points

- Land tenure and allegations of ‘land grabbing’ and corruption in the governance of land, remain most sensitive political issues
- While there has not been recent contentious degazetting of state owned forest, the KEACC regards corruption in land administration as highly prevalent
- Forced evictions from forest lands has been a source of considerable tensions
- Criticisms have been made promoting forest conservation without sufficient support to the rights of indigenous peoples
- Bilateral and multilateral donors are criticized for promoting forest conservation without sufficient support to the rights of indigenous peoples

36 KEACC 2013

Issues of land tenure, as well as allegations of 'land grabbing' and corruption in the governance of land, remain sensitive political issues in Kenya

forest conservation. Indeed, more recently the KFS has successfully managed to extend the total coverage of public forests through gazetting new areas, mostly from community forests that has been degraded or by aligning boundaries of existing protected forests. In February 2013 the Minister of Forestry and Wildlife published a list of twenty-two areas in the Kenya Gazette that have been gazetted since 2012 as new public forests. This new area declared as public forests represents over 120,000 hectares, with the largest new forests established in the northern coastal area of Tana River county and close to the port of Lamu.

Such cases may be good evidence for improved forest management in the country, although certainly the situation is not simple: 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 of land and access rights for local communities.³⁷ For example, there has been international and national media coverage of forced evictions of Samburu people in central Kenya, caused by the establishment of the Laikipia National Park on the foothills of Mount Kenya forest. The case has been controversial because the land was initially bought by two US conservation organizations for four million USD from a private landowner. The land was then donated to the Kenya Wildlife Service to manage. The process of evicting Samburus from the area apparently involved violence and harassment.³⁸

Difficulties stemming from managing people classed as 'squatters' in forests is still reported in Kenya. One example is with the eviction of approximately 3000 people from Embobut forest in Cherangani Hills Forest reserve. While the government has recently conceded to improved compensation equating to about 400,000 shillings for each family, the process was marred by allegations that local civil servants and politicians have tried to get on the list of squatters to receive compensation payments and that some rightful beneficiaries have been excluded,³⁹ a problem that has been raised in other relocation agreements for people evicted from forests in Kenya.⁴⁰

In this environment, Kenya has also experienced cases of litigation by rural communities for reclaiming lost forest lands. The most significant case involves the application to reclaim land and receive compensation by the Endorois people,

37 Indeed, the problem of forced evictions from forest lands has been a source of considerable tensions in Kenya; a legacy of colonial management of forests that has continued throughout independence and still today. For example, 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, between 2004 and 2006, approximately one hundred thousand people in Kenya were forcibly evicted from six forest areas (COHRE: 2006). It was claimed that government agencies responsible for these evictions have used excessive violence and are guilty of human rights abuses, including burning down homes and schools, and raping and killing women. Difficulties stemming from evictions of people classed as 'squatters' in forests is still reported in Kenya. See for example Ndanyi, M. 'kenya Forest Service to evict squatters from Embobut forest', The Star, April 12, 2013. Available at: <http://allafrica.com/stories/201304121410.html>

38 See the article written by 'First Peoples Worldwide': <http://firstpeoples.org/wp/africanews-com-kenya-minority-group-decries-forceful-eviction/>, and also the blog post by "REDD monitor": <http://www.redd-monitor.org/2011/12/14/a-question-for-african-wildlife-foundation-is-this-what-conservation-is-really-about/>

39 Kennedy Lesiew, 'Fake list from Embobut forest', The Daily Star, September 13th, 2013, available at: <http://www.the-star.co.ke/news/article-136056/fake-list-embobut-forest>

40 For example, people displaced by evictions in forests near Mount Kenya were intended to be provided land from 15,000 acres bought from Solio game ranch, but media reports suggest substantial areas of this land was provided to local politicians and undeserving people. http://www.standardmedia.co.ke/?articleID=2000091050&story_title=squatters-still-crying-out-for-justice-after-being-left-out-of-resettlement

who were evicted from ancestral land by the state in 1973 for the establishment of a wildlife conservancy and mining ventures. The claim was initially dismissed by the Kenyan Constitutional Court on the grounds that communities had been adequately compensated, but the case was subsequently submitted to the African Commission on the basis of the African Charter on Human and Peoples' Rights. This resulted in a landmark decision in 2010: the Endorois claim was upheld and the Kenyan government was ordered by the Commission to recognize the ancestral land rights, to provide unrestricted access to the land and to ensure adequate economic benefit sharing from the reserve.⁴¹ However, progress on implementing the Commission's legal recommendations has been slow, and the matter remains ongoing. Similar developments have been initiated by the Ogiek people in the Mau forest complex, who have failed to receive a positive outcome through national courts regarding the loss of forest land through irregular excisions, and a case (still ongoing) was therefore subsequently brought in 2009 to the newly established African Human Rights Court.

From such examples, and as is the case in so many other countries, it is clear that the KFS faces extremely difficult situations in promoting forest conservation and managing relocations of people for whom the label of 'squatters' is inherently problematic, and that there is a long standing tension between conservation and the rights of rural people. Indeed, it is a matter that has generated criticism against bi-lateral and multilateral donors who stand accused of promoting forest conservation without sufficient support to the rights of indigenous peoples in Kenya, while some of the most celebrated successes in forest conservation in recent years have involved erecting fences around indigenous forests.⁴²

3.1.1 Devolution and community lands

While it is unlikely that Kenya will witness the sort of corrupt excisions of high profile public forests that have happened in the past, irregular allocation of land in community forest areas is thought to be more problematic. In this case the institutional mechanisms for public deliberation and oversight are much weaker than is the case with public forests, and insecure land tenure for citizens, including indigenous forest people, create considerable vulnerabilities. Generally, the situation in Kenya is that citizens living in community forest areas have limited land rights and lack secure title deeds.

The mismanagement of community forest lands in the past could be improved by the process of devolution, outlined above. Indeed, some believe devolved power will lead to more effective participation, increased respect for human rights and stronger ownership of forest lands by

While it is unlikely that Kenya will witness the sort of corrupt excisions of high profile public forests that have happened in the past, irregular allocation of land in community forest areas is thought to be more problematic

Section 3.1.1 : Key points

- Irregular allocation of land in community forest areas, where participation and oversight are weaker, remains a concern
- Weak accountability and capacity in the process of devolution is exemplified by reports of abuses by county governments

⁴¹ Abraham, 2012, p.9–10

⁴² See for example Lang, C., 'Ogiek threatened with eviction from Mau forest, Kenya', 19 November, 2009. Available at: <http://www.redd-monitor.org/2009/11/19/ogiek-threatened-with-eviction-from-mau-forest-kenya/>, and also Purvis, C., 'Displacement and resistance, the Ogiek of Kenya', Think Africa Press, 22 March, 2013. Available at: <http://thinkafricapress.com/kenya/mau-ogiek-displacement>

local citizens. Others however are less optimistic, with concern that devolved power to counties will undermine accountability and increase the likelihood that forests will be exploited unsustainably for short term economic and political benefits. This more pessimistic outlook, underlies that despite the assistance provided by KFS, civil servants given the responsibility of running newly formed forestry units at the county level may have very limited expertise for sustainable forest management. More importantly, however, is that 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 the national revenue will be directed to county administrations. Thus, the fear is that county governors will view community forest land as 'open land' that can be used for patronage purposes as well as the source of short-term income that can fund shortfalls in budgets or even be looted for personal enrichment. According to some sources, this process is already happening, and already reports have surfaced of systematic financial irregularities by county governments. According to the *Daily Nation*⁴³ a report by the Controller of Budget (yet to be published), has raised considerable alarm over substantial funds spent by county administrations without approval from county assemblies and furthermore exaggerated funding on salaries, vehicles and new office buildings, with only 8% of the 25 billion KES transferred to counties from the central government in 2013 being spent directly on development activities.

Another factor to consider is that although the county governments have been given responsibility to manage community and private forests, their mandate does not include management responsibilities or direct sharing of income from public forests. This situation may be contested and there is a view that county governors may well seek to find ways of increasing control over public forests in their areas as well.

3.1.2 Infrastructure development and industrial expansion

Section 3.1.2 : Key points

- Several cases, in public and community forests alike, point to the political challenges, possible abuse of power and conflicts of interest in allocating lands for bio-fuel, oil and mining industries
- This can cause deforestation and displacement of forest dependent communities

Another source of potential corruption in forest land tenure, which is relevant both for public and community forests, stems from the political challenges in managing infrastructure developments and extractive industries that can cause deforestation, forest degradation and displacement of forest-dependent communities.

One of the most high profile cases illustrating these challenges involves the allocation in 2008 of over 90,000 hectares of forested area to a Canadian company, Bedford Biofuels, in the Tana River district, with plans to farm *Jatropha Curus* on 60,000 hectares for producing bio-fuel. The process of allocating this land was marred in allegations of corruption and conflicts of interests (two senior politicians were appointed to the board of directors of Bedford) and also for causing conflicts within communities. In this case, however, international and national environmental protests combined with NEMA refusing to accept the EIA has effectively stopped the development of the plantation⁴⁴.

Another example is the development of the Lamu Port, South Sudan and Ethiopia Transport Corridor, which is being driven by oil discoveries in the region and the aim of exporting this

43 Leftie, P. 'County chiefs risk jail over illegal spending', *The Daily Nation*, Thursday, August 29, 2013.

44 Smally & Corbera, 201

oil from Lamu. This is generating heightened concerns regarding the environmental impact on forests, potential evictions of forest people and allegations of land grabbing.⁴⁵ That some of the largest areas of forest that have been gazetted by the government over the past year are in this part of the country has been highlighted by many.

On a smaller scale, and occurring in a gazetted public forest, is the decision to allow exploratory mining for Niobium in the Mrima Hills Forest Reserve in the South Coast. A prospecting license was given to a South African company, Cortec mining (a Canadian company later acquired 70% of the operation) by the then Ministry of Mines and Geology. Some support from the community living in this area has been reported, based on expectations of new jobs and local investment. However, other community interests and conservation organizations have protested, based on evidence that the environmental restrictions placed on the mining company, which were set out in the prospective license, were both too lenient and being ignored by the company.⁴⁶ In addition, NEMA did not approve the full environmental and social impact assessment, which is required for the company to obtain a longer-term license for expanding mining operations. The situation remains ongoing, and the new Minister for Mining has temporarily revoked the prospective license, as is the case with another 46 mining licenses issued in 2012, on the basis the royalty payments for mining companies agreed by the previous Minister are thought to be too low.

One could list other examples, but the overall point is that contentious decisions on allowing construction and extractive industries in community and (perhaps less so) public forests remains an important threat to deforestation and forest degradation in Kenya. We should avoid seeing these cases as simply an outcome of corruption, but there are various ways in which these difficult decisions can be influenced by abuse of power and conflicts of interests. Meanwhile, free, prior informed consent from affected local communities is far from straightforward to achieve, particularly where land rights are insecure and investors and government champions of these developments manipulate expectations of the economic benefits involved for communities.

While we cannot arrive at a clear picture on the extent of corruption in the allocation and management of land in forest areas, it is noteworthy that in the UN-REDD survey, 40% of respondents thought that irregular conversion of forest lands for resettlement and agriculture, including in community forests, was 'high and widespread', and a further 40% thought it '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. This latter problem is evident in the past in Kenya, but is almost certainly not as problematic 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. More research is needed on human rights issues, and possible corruption, related to evictions and resettlements of rural people from forest lands.

Contentious decisions on allowing construction and extractive industries in community and (perhaps less so) public forests remain an important threat to deforestation and forest degradation in Kenya

⁴⁵ Sena, 2012.

⁴⁶ See for example an article on the KFS web site, available at : http://www.kenyaforestservice.org/index.php?option=com_content&view=article&id=180:experts-raise-the-red-flag-over-coastal-forest-loss-&catid=223:hict&Itemid=98

3.2 Illegal logging and forest crimes

Section 3.2 : Key points

- In both public and community forests, as well as on private land, trees are illegally cut and used for small scale non-commercial and commercial purposes, including charcoal production
- The majority of illegally obtained timber is for local consumption
- While rates of reported illegal logging, as well as other types of forest crimes, have declined over the past few years, limited resources of KFS and other law enforcement agencies likely leave many forest crimes undetected
- While CFAs have a role in reducing illegal activities, there are reports of some CFAs leaders being complicit
- The movement of illegal timber on roads brings with it the practice of traffic police extracting bribes
- Leniency and tolerance of some forest crimes may also stem from acceptance of crimes committed to sustain livelihoods
- Cases of organized criminal activity, including allegations of senior KFS staff at the district level controlling illegal trade in timber from public and community forests (as well as in trade of wildlife) are documented in reports submitted to the KEACC.

As described above, all logging in indigenous forests was banned through a 1986 Presidential Decree, although KFS retains the right to manage indigenous forests including selective pruning and clearing of fallen trees. Ad-hoc permits for logging can also be issued where roads or other constructions are allowed in public forests. Nevertheless, in both public and community forests, as well as on private land, trees are cut down and used for both non-commercial and commercial purposes, including charcoal production (section 3.3 below). This illegal logging is characterized predominantly by small-scale operations, rather than on an industrial scale as is the case in other African countries.

The majority of illegally obtained timber is for local consumption. Some indigenous hardwoods, including ebony/mpingo, have been subject to extensive illegal harvesting for use in the carving industry, to the point where these valuable and slow growing trees have become extremely rare in Kenya. However some high value species of tree, including sandalwood, are in demand overseas and have been subject to illegal export trade. The Kenya Forest Law Enforcement Governance and Trade (FLEGT) report compiled in 2007 estimated total illegal trade in sandalwood of about 80 metric tons, valued then at a first point of sale at about 40 million KES. Approximately half of this may have been exported to markets in Asia. Generally however, Kenya's experience with illegal logging is not as a producer of large volumes for foreign markets. Indeed, Kenya is a net importer of timber products from the region (see below on timber trade).

In addition to illegal felling of trees are various other forest crimes: poaching of forest wildlife for local bush meat trade, illegal grazing, and clearing of forest areas for small scale agriculture, or past clearance of forests for the cultivation of marijuana.⁴⁷

The various activities are reported throughout the country and collectively are probably the most immediate threat to indigenous forest conservation. This is recognized in several official documents, including in Kenya's REDD Readiness proposal and in reports made by the Kenyan government in FLEGT initiative, which describes illegal logging as 'rampant'.⁴⁸

47 Lambrechts, C. Woodley, B. Church, C. & Gachanja, M. (2003) "Aerial Survey of the destruction of the Abedares Forest", UNEP, Kenya. Also, see <http://www.standardmedia.co.ke/ktn/video/watch/2000068481/-police-discover-secret-marijuana-farm>

48 KFS 2007

However, there are no reliable or up to date estimates on the extent of these different crimes in Kenya, and what is reported is anecdotal. According to the Enforcement and Compliance division at KFS, rates of reported illegal logging, as well as other types of forest crimes, have declined over the past few years. This is attributed to the success of Participatory Forest Management and community collaboration in law enforcement initiatives; yet still the 'KFS hotline', which provides the public to report on instances of crimes in the forestry sector, receives an average of 3 calls a day. According to the 2012 KFS Annual Report, 48 tons of illegal timber were seized in 2011, although this probably only represent a fraction of the total illegally obtained timber in the country.

Illegal logging in Kenya is characterized predominantly by small-scale operations

Most people spoken to for this study recognize that the KFS and other law enforcement agencies have limited resources, meaning many forest crimes are probably undetected. However, there are undoubtedly corruption acts that facilitate or drive these problems in various locations. These manifest either as bribes between the illegal loggers/poachers or grazers and forest managers or KWS officers, or collusion (illegal and secretive agreements between two parties) with direct involvement of government officials. Moreover, the movement of illegal timber on roads brings with it the risks of corruption involving traffic police, who have a poor reputation in terms of extracting bribes at roadblocks and through routine inspections of vehicles.

While Community Forest Associations (CFAs) have a role in working with KFS and other government authorities in reducing illegal activities, some CFAs leaders are also reportedly complicit in these activities. One example in Kwale district was described to the authors, where a previous head of the CFA, several years ago, was suspected by other members of the CFA of dealing in illegal timber, in collusion with the then regional officer of KFS. In this case members of the CFA acted by replacing the head of the CFA. Further study would be needed to estimate the actual prevalence of collusion and involvement of CFAs in forest crimes.

Most people spoken to for this study recognize that the KFS and other law enforcement agencies have limited resources. However, there are undoubtedly corruption acts that facilitate or drive forest crimes in various locations

Alongside allegations of corruption in activities such as illegal logging, some view that forest crimes may also go unpunished because forest managers have a sympathetic or ambiguous view towards members of local communities engaged in these activities for their livelihoods, and that there is an incentive to 'turn a blind eye' as a result. Moreover, arresting local people for these activities may be viewed as contentious and a source of community friction over the long term, thus constituting another 'justification' for

possible leniency and tolerance. Despite the criminalization of many types of activities in indigenous forests, one should expect that in many locations such activities are viewed as 'social crime', i.e. a crime tolerated because of its contribution to poor peoples' lives, and because the laws criminalizing these activities lack local legitimacy. Thus, 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/or incompetence. More in-depth ethnographic research to better understand these issues has not yet been attempted in Kenya.

Despite these nuances to understanding law enforcement, several people interviewed for this report describe areas where ongoing collusion between public officials, police and illegal loggers/poachers is occurring, suggesting that in some areas corrupt officials are engaged in what amounts to an organized criminal activity. Such cases are

also described in claims filed with the KEACC and reported in the media.⁴⁹ In the UN-REDD Survey for Kenya, 40% of respondents described the prevalence of bribe taking and collusion by forest managers in illegal logging in protected forests to be ‘high and widespread’, whereas 50% described it as ‘prevalent and significant, but declining’. The remainder (10%) thought it was not very common. Discussions at the MEW&NR and UN-REDD workshop also agreed with this general picture that bribe taking and collusion at the local or district level in relation to forest crimes is common and should be viewed as a significant barrier to combating deforestation and degradation. However, escalating law enforcement for forest crimes committed by the rural poor is a policy that needs to be carefully considered. Indeed, various studies on forest law enforcement highlight the dangers of increased law enforcement in situations of corruption and collusion by those with power – it is so often the most vulnerable in society who are arrested and prosecuted, rather than those ‘higher up’.⁵⁰

3.2.1 Cross border trade

Section 3.2.1 : Key points

- Cross border trade of illegal timber is increasingly of regional nature
- Although there are discrepancies in reports on volumes of timber imports from Eastern DRC, Uganda, Tanzania, Malawi and Angola, it seems to be increasing
- Convoluted rules and procedures for cross border trade in timber has reportedly generated problems of fraud, underreporting, use of false documents and other types of corruption.

Alongside illegal logging in Kenya’s forests is the import of illegal and legal timber from other countries. In 2007 a report commissioned by the United Kingdom (UK) Department for International Development (DFID) argued that a great deal of international attention has been given to the trade in illegal timber from developing countries to developed ones, and that it has been assumed most illegal timber is exported from Africa to Europe and the Far East. However, as the report notes, “it is becoming increasingly clear that much illegally harvested timber never leaves the African continent, being traded from timber-rich to timber-poor countries, as well as to the rapidly expanding urban centers within each. This trade may well exceed the volumes of illegal timber exported to outside the continent”. This intra-African trade in illegal timber may be increasing given efforts to restrict illegal timber entering EU and other markets outside the continent, and also due to increased purchasing power within some African markets.

Kenya has become a key consumer market of timber sourced from throughout East and Southern Africa, including from Eastern DRC, Uganda, Tanzania, Malawi, and Angola. In 1999 it was estimated that timber imports to Kenya had a value of 62,000 USD, but this has increased now to some 37.5 million USD.⁵¹ There is ample reason to believe that with increasing population and economic development, this trend will continue, and it is doubtful in the short to medium

term that domestic production of timber will increase substantially to replace imports. Several reports have been compiled on regional trade in timber products in East Africa, due to increasing concern over unsustainable logging, particularly in DRC⁵² and Tanzania⁵³.

49 The cases filed with the KEACC have been viewed by the authors, and KEACC has requested that the details be kept confidential due to the possibility of further investigations by them. See also: <http://www.illegal-logging.info/content/corrupt-officials-aid-destruction-kenyas-mau-forest>

50 See Downs 2013

51 Article available at the KFS website: http://www.kenyaforestservice.org/index.php?option=com_content&view=article&id=197:direct-shortage-of-timber-forcing-merchants-to-import-commodity&catid=223:hict&Itemid=98

52 See Forest Monitor 2007, and Chevallier & du Preez, 2012

53 See Traffic, 2009, and FAO-FLEGT, 2012

Official data on timber imports to Kenya may not be reliable, and there are considerable discrepancies in available reports.⁵⁴ The 2012 KFS annual report stated that a total of 29,100m³ of softwood timber was imported from Malawi and Tanzania and 5,900m³ of hardwood from Democratic Republic of Congo (DRC) and Southern Sudan. Yet the World Wildlife Fund (WWF) in Kenya undertook fieldwork research into the regional trade of timber from Eastern DRC and estimated Kenya imported some 33,100m³ in 2011.⁵⁵ This compares to estimates by Forest Monitor in 2007 of imports to Kenya from DRC of about 20,000m³, suggesting an increasing cross border trade considerably above levels reported by KFS. Similarly a study undertaken for FLEGT in 2012 estimated imports of timber from Tanzania at three border posts to be about 25,000m³, not including substantial quantities of poles, furniture, wood carvings, paper and charcoal. The report noted that this figure was certainly an underestimate given that there are other border crossings, not covered in their research. Kenya Daily Newspaper cites data from the Kenya Forestry Research Institute (KEFRI) in 2011 that Kenya imports between 13,000 and 21,000m³ of sawn wood from Malawi and between 49,000 and 53,000m³ from Tanzania.⁵⁶

Despite this anomaly in data, the increase in imports is commonly explained as driven by shortages of supply, which many blame on the logging ban, increasing demand and the relatively stronger economy in Kenya in comparison to other countries in the region. Kenya also applies 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 given the terms of the Eastern Africa Community (EAC) Common External Tariff, which is the approach adopted by other EAC members for timber imports from DRC. This may facilitate the relative importance of Kenya as a destination market for timber originating in DRC. It should be noted, however, that Kenya is not only an importer of timber products in the region, but also there is substantial export of processed products as well, including to DRC. Indeed, official data compiled by the FAO shows Kenya as a net exporter of timber products to the DRC, in terms of value, although again, official data seems to be unreliable.

The extent to which cross border trade involves illegalities and corruption is unclear. The FLEGT study on cross border trade between Tanzania and Kenya noted the convoluted rules and procedures for trade in timber between the countries, which has generated considerable problems of fraud, underreporting and the use of false documents. The report further indicated common instances of illicit transactions. In total the report estimated considerable losses of revenue at the two border crossings, although this affected Tanzania more than Kenya – Tanzania's losses were estimated to be over eight million, whereas in Kenya the figure was approximately USD10,000. However, WWF report that there are no problems of illegal trade or fraud in timber exports from Eastern DRC and Uganda. It is not clear why the situation on the Uganda border is described by WWF as so well regulated in comparison to the Tanzanian border, and this may be due to differing research methods applied in the two reports. In the UN-REDD survey the vast majority of respondents indicated corruption was prevalent in cross border trade, with 23% describing it as "high and widespread", and 43% as "prevalent and significant, but decreasing". Only 16% thought it was not very common.

While the assessment could not provide sufficient insight into the nature and extent of corruption in the process of timber imports, what is perhaps more important to note is that Kenya is increasingly relying in imports of timber from neighboring countries that is produced either illegally or at least unsustainably. Due oversight of timber imports seems necessary to reduce leakage risks and raise the credibility of a national REDD+ regime, since the ability of any country to reducing rates of deforestation and forest degradation would be undermined by the coexistence of high levels of imports of timber from unsustainable or illegal sources in other countries. Similar concerns in Southern Africa have raised the recommendation for regional monitoring for REDD+. ⁵⁷ A FLEGT-like

54 Chevallier & du Preez, 2012

55 WWF 2012.

56 See Omondi, G. "Kenyan timber traders held as Malawi changes law". Kenya Business Daily, 24 June 2011. Available at: <http://www.businessdailyafrica.com/Kenyan+timber+traders+held+as+Malawi+changes+law/-/539546/1187904/-/v6n9pm/-/index.html>

57 Wertz-Kanounnikoff & Wallenöffer, 2011

regional process would therefore be a valuable governance measure and would enhance the credibility of Kenya's REDD+ process.

3.3 Charcoal sector

Section 3.2 : Key points

- Commercial charcoal production, transportation and sales engages significant numbers of people, revenues and represent a critical energy source
- The production of charcoal in Kenya, is an important contributing factor to deforestation and forest degradation
- Charcoal is produced on all types of forests; an estimated 20% of all charcoal comes from gazetted forests, and is therefore illegal
- Until the late 2000s, the commercial charcoal sector was unregulated and essentially criminalized, creating opportunities for corruption
- Although the 2009 charcoal rules have led to the establishment of at least 120 CPAs, the regularization of the charcoal sector is an ongoing task
- Survey respondents in an overwhelming majority considered the illegal charcoal trade as widespread
- Although CPAs are expected to invest revenue in activities that support sustainable charcoal production, oversight and accountability is probably weak
- The system of validating the source of charcoal is open to abuse, and the KFS has large capacity constraints to provide effective oversight
- Conflicts of interests arise as issuing permits of movement generates significant income
- The KEACC has received alleged cases of corruption in the charcoal sector involving high level officials.

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 a million people were engaged in transportation and sale. It also reported that over 80% of domestic energy for cooking in urban areas of Kenya relies on the burning of charcoal, with 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 32 billion Kenyan Shillings (USD 376 million). However, a more recent study commissioned by the MEW&NR in 2013 suggests substantial growth since 2005, and that annual production of charcoal may be as much as 2.5 million tons now. Prices of charcoal have also nearly doubled since 2005, meaning that sector is worth an estimated 135 billion Kenyan shillings. 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, involving large numbers of people, generating considerable profits and representing a critical energy source.

The production of charcoal in Kenya, as is the case in many African countries, is an important contributing factor to deforestation and forest degradation. It is produced commercially throughout the country, although the largest production is in the semi-arid areas of Eastern Kenya and the Rift valley region, and the highest quality charcoal is produced from hardwoods. Considerable amount of charcoal is produced from privately owned land, but there is also a large production from both trust lands and public forests; indeed, in the 2005 national charcoal survey it was reported that 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. However, it is quicker and cheaper for producers to adopt unsustainable methods. Moreover, common methods of charcoal production can be highly inefficient, with conversion of wood to charcoal in poorly made kilns being roughly 10%, whereas some modern techniques achieve a conversion rate of nearing 40%.⁵⁸

58 Kagombe et al, 2006

Until the late 2000s, the commercial charcoal sector was entirely unregulated, and largely criminalized. This created extensive opportunities for corruption; the production, transportation and then selling of charcoal has been, and possibly continues to be, a process in which systematic bribe payments are paid to various authorities in the supply chain. For example, people engaged in the transportation of charcoal from the Coast to Nairobi describe a rather predictable system of bribe payments to traffic police throughout the journey, which 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 1000 KES 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 point of final sale, has been organized by what some people describe as cartels that provide 'protection' and extract the corresponding rents. The urban market is regarded as one regulated by a combination of violence, or the threat of violence, as well as the ability to manage corruption. This situation is thought to have created substantial wealth for a relatively small number of players.

The need to change this situation was widely recognized in Kenya, which led to the provision in the 2005 Forest Act for further developing laws and systems to manage the charcoal sector. As noted above, the formulation of the Charcoal Rules was finalized in 2009. These rules establish a new governing structure that intends to regularize charcoal production make it sustainable. This includes the need for charcoal producers to form a 'charcoal producers association' (CPA) that applies for a license to operate from the KFS. The CPAs 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 the sustainability of charcoal production. Although not mandated in the Charcoal rules, in some areas of Kenya producers also form Charcoal Producer Groups (informal associations that act as intermediaries between charcoal producers and the CPAs) and Charcoal Transporters Associations (who also are not mentioned in the charcoal rules either) have emerged. It is not clear what determines the catchment area of CPAs, although it seems that this is based on key distribution points, where charcoal producers bring their bags to be sold to transporters.

Until the late 2000s, the commercial charcoal sector was entirely unregulated, and largely criminalized

The rules also stipulate that anyone engaged in the transportation of charcoal must obtain a permit of movement from the Zonal office of the KFS, for which they pay 20 shillings per bag to the KFS. This permit is only issued where the transporter has obtained the certificate of origin from the CPA, for which the transporter pays a fee of 10 shillings per bag. Sellers of charcoal need to 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, of which about 80 are registered through the Registrar of Societies. Some have produced EIAs that have been approved by NEMA, although exact figures are not available and there is considerable doubt over the reliability of these EIAs, given the dearth of empirical knowledge on sustainable yields from charcoal production areas.⁵⁹ Information on the income of these groups is also limited, but fieldwork undertaken for this report in Kwale revealed that for three CPAs, income from issuing certificates of origin was reported to be about 200,000 Kenyan Shillings a month. There are additional fees for producer groups to become members of the CPAs, ranging from about 2000 to 5000 Shillings (in addition to the 10 shillings per bag). About 75% of this total income of the CPAs is spent on administrative costs, including salaries for CPA employees and office rentals, and the remainder is set aside for investment in activities that support sustainable charcoal production, including producing seedlings and planting trees.

⁵⁹ Axberg, et al. 2013, p. 66

The new rules for charcoal production raise critical governance challenges

The full implementation of the charcoal rules is some way off. Although many CPAs have been legally formed and some have approval through NEMA, 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 no licensed

commercial charcoal production in the country yet. Some CPAs have obtained a letter of authorization from the KFS to operate, which is a short-term arrangement before more formal licensing procedures are issued, which will be managed later in collaboration between KFS and county-level charcoal licensing committees. The function of these committees is not clear but may have an influence in recognizing the legality of CPAs and presumably taking away the authorization of CPAs in event of non-compliance with sustainability criteria.

Thus, the strategy employed by KFS is to first organize the sector into legalized associations, and then later address the issue of how to assist producers in sustainable practices, which is a task that will involve county level institutions and NEMA. However, according to 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 regularization of the charcoal sector is therefore an ongoing task.

The new rules for charcoal production also raise critical governance challenges. The system of validating the source of charcoal is open to abuse, which in turn is tremendously difficult to counter. The CPAs issue documents for the origin of charcoal, but capacity for CPAs to actually check where charcoal is produced and through what methods is extremely limited. Indeed, there is an obvious incentive for CPAs to increase their own income, which may work to discourage CPAs to deny producers and transporters the necessary paper work. In one interview with a CPA, it was openly shared that certificates of origin were provided for charcoal smuggled 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.

There are also enormous capacity constraints for KFS in being able to check the sources of charcoal, and obvious conflicts of interests given that issuing permits of movement generate significant income. If the charcoal sector has been a source of informal rents for large numbers of people in public office, then it would seem unlikely that this will simply disappear given the new charcoal rules. In its 2012 annual report, the KFS state that 498 bags of charcoal have been confiscated by the authorities, which would seem a very low level. The new charcoal rules do allow for authorities to ban charcoal production and trade in specific areas. This has occurred, for example, in Kitui District where temporary bans on charcoal production have been attempted in 2010 and 2012. The last ban was thought to have cost the government some 160 million KES in lost revenues, although it is not clear that the ban was entirely effective and 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, officials from NEMA and KFS were involved in unlawful activities.⁶⁰ Similar allegations of quite senior level corruption in the charcoal sector are included corruption cases in the forestry sector reported to KEACC. In the UN-REDD survey, 53% of respondents described bribery and corruption in the charcoal sector as ‘high and widespread’, with 43% describing it as ‘prevalent and significant, but declining’, and only 3% who described it as ‘not very significant’.

60 Kenya: Assembly Bans Charcoal Trading in Kitui, *The Daily Star*, 3rd August, 2013. <http://allafrica.com/stories/201308050282.html>

3.3.1 Cross border trade in charcoal

In addition to the cross border trade in timber and wood products, informal cross border trade in charcoal is substantial. Predominantly this involves charcoal produced in Tanzania. The FLEGT study on illegal cross border trade estimates that at two border crossings, 1492 bags of charcoal come into Kenya every day. This is certainly an underestimate, as charcoal is moved across the border at various points, carried on bicycles or donkey, as well as via roads and tracks on vehicles. As noted above, some of this charcoal is now given false certificate of origin documents by CPAs. There is also further cross border trade in charcoal from Uganda and Somalia, but there is limited material available on the scale of this trade.

A specific import permit, issued by KFS, should accompany all charcoal entering into Kenya. Information on the number of these permits, as well as the income earned for the government, is not publically available and efforts by the researchers involved in the FLEGT study to obtain this data were unsuccessful.

3.4 Management of government plantation forests

Section 3.4 : Key points

- Since late 2011 a greater number of pre-approved companies are eligible for applying for tenders to exploit a larger area of government plantation assets
- Long term licenses to harvest state plantations is given to those who can demonstrate high levels of capital for investments, efficient technologies and well managed accounts, which may be a result of or promote favoritism of powerful actors
- The tendering process has been described as vulnerable to manipulation and fraud
- Other allegations of corruption concern collusion between companies and officials in charge of inventories of forests, where deliberate undervaluation of plantations allows for the 'savings' to be shared between those involved.

As described above, the ban on logging in government plantations was controversial for several reasons. It led to a marked decrease in timber supply in the country, contributing to rising prices and increasing reliance on both imports and privately produced timber. It further led to considerable unemployment and the collapse of hundreds of small saw milling enterprises. At the same time, the exemption from the ban for three of the largest timber producing companies generated considerable criticism and allegation of favoritism. The position on the KFS Board of a representative from these companies, had further undermined the image of KFS, and raised suspicions that executive decisions on the ban⁶¹, as well as the setting of prices and royalty payments for the three companies, was undermined by conflicts of interests.⁶² The management of revenues from government plantations has long been a source of suspicion and allegations of embezzlement.

The ban on logging in government plantations was lifted towards the end of 2011. The process of this lifting of the ban is peculiar in that the ban itself was essentially an informal arrangement, some plantations were exempt

from the ban, and the decision to start issuing licenses for increased commercial logging was done without publicity.⁶³ Indeed, many people spoken to for this report still think the ban applies. Nevertheless, since late 2011 a greater number of pre-approved companies are eligible for applying for tenders to exploit a larger area of these state assets. This has partly improved the perception among stakeholders involved in commercial timber production about the integrity of the KFS in managing its commercial plantations.

61 Although the view that these companies are allegedly all linked to one family in Kenya was widespread in interviews, further research would be needed to ascertain with more certainty whether this is or remains the case.

62 Please see "Strategy Note for Forest Governance Reform in Kenya" p38.

63 This is not a requirement, but the feedback from interviews has shown demand for more transparency on these processes

Since late 2011 a greater number of pre-approved companies are eligible for applying for tenders to exploit a larger area of state forest assets, which has partly improved the perception among stakeholders involved in commercial timber production about the integrity of the KFS in managing its commercial plantations

However, some concerns remain. A particular point of criticism is that KFS has introduced criteria for issuing licenses that favours larger companies; long term licenses to harvest state plantations is given to those who can demonstrate high levels of capital for investments, efficient technologies and well managed accounts. Smaller business enterprises feel this makes it difficult to win bids and that the most lucrative opportunities are given to a few larger companies who will achieve market concentration. Where opportunities are available for the 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 longer contracts from the government, and smaller operators will tend to get short term contracts.

The tendering process is also described by some as vulnerable to manipulation and fraud. One way this has occurred is with companies collaborating 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 the lower bid. According to a governance assessment commissioned as part of the MMMB programme, this practice has been recognized by KFS, and may be countered by blacklisting companies or by insisting that companies wishing to tender for contracts must provide a non-refundable deposit in the event that their bid is successful. This again could have the unforeseen effect of favouring the more capitalized firms.

Other allegations of corruption concern collusion between companies and officials in charge of inventories of forests; 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 therefore conflicts of interest manifest, as was the case in the era of the so-called brief case saw millers. The MMMB governance assessment described these various problems leading to the suggestion for Kenya to adopt independent forest monitoring: "there seems 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".⁶⁴

In the UN-REDD survey, 46% of respondents had 'low confidence' in the ability of the government to be open and transparent in how companies win contracts to harvest trees on government plantations, while a further 27% had 'no confidence'. The same responses were given on a question about the extent of embezzlement or misuse of revenues from the allocation of contracts for harvesting on government plantations; 46% of respondents thought this was 'high and widespread', with a further 27% considering it 'prevalent and significant, but declining'.

Alongside the lifting of the informal ban has been the reintroduction of the shamba system. It remains controversial and still viewed with skepticism by conservationists as a potential cause of further encroachment of indigenous forests. In the mid 2000s KFS reintroduced the shamba system through 'pilots' in 15 forest stations, and then later, in 2008, extended this to a total of 29 forest stations, amounting to 16,000 hectares. The system is now reformed: CFAs participate in decision-making by putting forward a list of names eligible for receiving land, and the subsequent allocation of land to

64 Oksanen, et al., 2011

farmers is made on a ballot system, which is intended to overcome past problems of corruption. Stronger mechanisms for oversight and reporting are also in place, with a stronger supervisory role played by the KFS headquarters.

For this study it has not been possible to undertake research that would provide insight into how well the shamba system is performing. However, other recent studies suggest the shamba system remains extremely well supported in rural areas and that it is proving a cost effective way of restocking the state plantations.⁶⁵ Nevertheless, these reports also note that some of the past problems 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, with preferential access to those running CFAs. One study published in 2010 in 3 forest stations reported that only 21% of shambas were allocated by the balloting system⁶⁶, whereas a further study undertaken by KFS and KEFRI in two areas found a higher proportion of the land was allocated through the balloting system, but some land was being sub-leased (which is prohibited) and that there was substantial problem in uncollected or unreported revenues for KFS.⁶⁷ Indeed, in one year it was established that only 3% of expected revenues from land rents was accounted for, although in other years, revenue collection amounted to nearly 60%. Moreover, the system is criticized by some because farmers do not benefit from the sale of trees they help cultivate and the allocation of land is temporary, with farmers not knowing if they will receive another shamba after the tree saplings reach sufficient height (normally three years). It is this lack of long-term security and equity in benefit-sharing that some feel incentivizes spoilage by farmers in the hope that this will allow them to stay on for longer.

3.5 Participatory Forest Management and Community Forest Associations

Section 3.5 : Key points

- Recent reports point to mixed experiences with decentralization and PFM; for many forest adjacent communities the functioning of CFAs has not lived up to expectations.
- There is growing discontent reported by several sources regarding the slow process for agreeing on equitable benefit sharing mechanisms between the state and CFAs
- A range of issues are linked to the integrity and legitimacy of CFAs themselves, with concerns about representation, elite capture and conflicts of interest
- When unanticipated forms of corruption and political marginalization occur, the legitimacy of PFM is weakened among forest adjacent communities.
- This in turn becomes relevant in understanding problems of compliance in forests rules and regulations.

The mid-2000s witnessed the emergence of Participatory Forest Management as an ideal for Kenya's forestry sector, which formed a key component of the 2005 Forest Act. The main characteristic of PFM in Kenya is the establishment of Community Forest Associations that are intended to play an important role in the co-management of public and community forests. CFAs are groups established at the community level and legally recognized by KFS and through the Registry of Societies. The first CFA was established in 1997, and now there are thought to be about 120. CFAs and KFS are expected to agree on a Forest Management Plan, which describes permitted activities and benefit sharing mechanisms. About 40 have been finalized, with more in the pipeline.

65 See Witcomb & Dorward, 2009

66 Sinange, 2010

67 KFS/KEFRI. "A case study on the implementation and success of plantation establishment and livelihood scheme at Dondori and Bahati forest stations – Carried out in 2010." Note, this study has not been published and was provided by the MEW&NR for this report.

In addition to concerns about benefit sharing and community rights are issues linked to the integrity and legitimacy of Community Forest Associations themselves

The experience of CFAs has been subject to several studies including two assessments published recently, including a KFS- commissioned review of the performance of 20 CFAs⁶⁸ and a study of 12 CFAs spanning a decade through collaborative research involving KEFRI, the Centre for International Forestry Research and the World Agroforestry Center (ICRAF).⁶⁹ A more in-depth study of the governance of a CFA in Ngare Ndare was also undertaken by researchers from Denmark.⁷⁰ From these various studies, and through supplementary interviews in Kenya, it is clear that experiences with decentralization and PFM are mixed: for many forest adjacent communities the functioning of CFAs has not lived up to expectations.

One of the problems experienced in the formation of CFAs lies with the working relationship with the government, and specifically with KFS and KWS. Despite the decentralization promoted through the 2005 Forest Act, it is reported that forest management still resides with the government, members of CFAs do not have well defined user or access rights, and growing discontent is reported by several sources regarding 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, and members of CFAs being limited to undertaking subsistence forest activities. Some improvements are noted where KFS has awarded selected silviculture activities to CFAs, yet the main source of income for CFAs is through membership fees, donor-sponsored projects or donations. Mogoi et al argue this suggests that the government has shown a reluctance to yield centralized control over forest management, leading to disillusionment among CFAs, evident in the tendency of decreasing membership by communities.⁷¹ This problem is exacerbated in some areas where CFAs have established Forest Management Plans with KFS, but KFS has failed to adhere to the contents of these agreements. In the UN-REDD survey, a significant majority said they either lacked confidence or had no confidence that the government will fairly and transparently share forest revenues with communities (see Figure 2).

In addition to the difficulties linked to benefit-sharing is a range of issues linked to the integrity and legitimacy of CFAs themselves. In some locations are concerns about the ability of CFAs to become democratically representative, conflicts of interests during the establishment and functioning of CFAs of interests, and what some refer to as 'elite capture'. It needs to be recognized that many CFAs represent umbrella organizations from diverse communities and interest groups, including more wealthy owners of farms 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 leads to claims that CFAs are not only dominated by men, but also that they tend "to marginalize the poor and minority groups among them."⁷² What may add to this problematic tendency is that funding for CFAs is fairly limited, which may mean that leadership position will tend to be taken by the wealthier in communities. 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 non-community based outsiders, interested in short-term profits rather than sustainable resource management, have become elected onto certain CFAs⁷³, a concern echoed in interviews conducted for this report.

68 Kenya Forest Working Group 2013

69 Mogoi, et al., 2012

70 Amrani & Zeeman 2013

71 Mogoi et al 2012

72 MMB mid term evaluation, p.9

73 Ongugo: 2010, and also Walubengo: 2007

Experiences about accountability within CFAs are also mixed. Embezzlement of funds by CFA executives is reported in some locations, and concern that CFAs lack transparency is a fairly common one. In the UN-REDD survey for example, respondents were asked about the ability of CFAs to manage their revenues openly and for the benefit of their communities: 23% said they were confident about this, whereas 43% of respondents had partial confidence and 33% said that they were not confident at all. It should be recognized that problems of embezzlement by CFAs occur at the same time similar problems are reported by KFS rangers; the study on the CFA in Ngare Ndare noted this was often reported by community members in this area.⁷⁴

Moreover, while members of some CFAs have removed underperforming or corrupt executives off their CFAs, in other locations we find less encouraging stories, including executives that attempt to extend their time in office beyond that which was set out in the CFA constitutions. Unsurprisingly, another observation about CFAs is the tendency towards splintering of groups and leadership wrangles.

Problems with administrative corruption and unaccountable leadership should not be underestimated. As a general observation, 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 marginalization. Where these problematic tendencies exist, one can expect a weakened legitimacy of PFM among forest adjacent communities, which in turn informs the understanding of problems of compliance in forests rules and regulations.

Capacity building for CFAs in improving accountability mechanisms and internal governance arrangements has occurred and there are further efforts planned for the future; it is an activity that forms part of the MMMB project, for example. Nevertheless, this is an issue that requires more study and it is of course critical for the success of REDD+, as will be discussed in the next section of this report.

Figure 2 : Stakeholders' responses on confidence in various objectives of Community Forest Associations

9. Kenya has promoted the establishment of Community Forest Associations. How confident are you that these CFAs can meet the following objectives?					
	Very confident	Partially confident	Not very confident	Unsure	Rating Count
Manage revenues openly and for the benefit of their communities	23.3% (7)	43.3% (13)	33.3% (10)	0.0% (0)	30
Reduce unsustainable exploitation of forests	36.7% (11)	43.3% (13)	20.0% (6)	0.0% (0)	30
Provide voice for all members of the community, including women	43.3% (13)	46.7% (14)	10.0% (3)	0.0% (0)	30
Work collaboratively with the government	50.0% (15)	36.7% (11)	13.3% (4)	0.0% (0)	30
Collate reliable information on deforestation and forest degradation	44.8% (13)	37.9% (11)	17.2% (5)	0.0% (0)	29
Any further comments?					4
answered question					30
skipped question					8

⁷⁴ Amrani & Zeeman 2013, p.81

3.6 Private concessions or non timber forest products in public forests

Section 3.5 : Key points

- The policy of outsourcing management or developing co-management agreements is generally well supported among forest stakeholders in Kenya; viewed as a progressive way to improve the efficiency of forest management and make use of entrepreneurial skills
- In theory the process of allocating concessions to non-state organizations to co-manage areas of public forests 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 are deemed difficult for the public to access
- In the existing cases where concessions are granted, these are based on partnerships between local CFAs and private investors.

Alongside PFM has been the policy shift to an increasing use of concessions to co-manage public forests, with the ability of private parties to generate income from non-timber forest products, including eco-tourism. The policy is motivated partly by the increased revenues that such arrangements can generate at the local level, but also because concession payments represent a predictable source of increased revenue for the state as well. So far KFS has entered in co-management agreements via long-term concessions in three areas: in Ngare Ndare forest in Meru district, in Kbwezi forest bordering Chyulu Hills National Park and also in Ngong Forest Sanctuary in Southern Nairobi. In addition KFS has entered into an MoU with the 'Friends of Karura Forest Community Forest Association' for joint activities and revenue sharing in Karura Forest in northern Nairobi. More concessions and these types of MoUs are expected in the next few years. In addition to concessions are Special Use Permits that allow private companies or CFAs to operate ecotourism and conservation projects in public forests. In 2011 the KFS issued calls for tenders for 50 eco-tourism ventures of which ten were approved and a further seven were in the pipeline.

The policy of outsourcing management or developing co-management agreements seem generally well supported among forest stakeholders in Kenya; viewed as a progressive way to improve the efficiency of forest management and make use of entrepreneurial skills that may be lacking in KFS. This arrangement also provides a partial solution to the institutional conflict of interests in KFS; being an organization that plays the role of both regulator and beneficiary from exploiting forests. In fact, as noted in some literature on forest governance, when the main government agency for forestry privatizes forest management it tends to enforce stricter social and

environmental regulations than is the case if the state itself plays the main management function.⁷⁵ Yet the awarding of concessions or signing of MoUs in public forests is also subject to some criticisms, which again highlight risks of corruption.

In theory the process of allocating concessions involves public tenders, and is therefore open to competitive proposals approved by the KFS Board. However, the tendering process so far is considered to lack in transparency and the resulting contracts or agreements may be difficult for the public to access. In the UN-REDD survey, 46% of respondents thought there was very little information in the public domain on the granting of concessions in public forests, with a further 40% claiming there is no publically available information at all.

While the policy of outsourcing management or developing co-management is generally well supported, some have highlighted risk of corruption when awarding concessions

⁷⁵ Ascher, 2003. P.128

One example mentioned in interviews is related to a concession granted to the World Wildlife Fund in Kenya to co-manage five hectares in the Ngong forest Sanctuary for a period of 30 years, during which time they will implement work to regenerate the forest and plant indigenous trees. Sources involved in developing the agreement report that it allows WWF to construct new head offices in the sanctuary.⁷⁶ The concession is based on paying 50,000 KES per month to the KFS, which some feel is a low payment, given that land rental prices in the region are far higher than this. This is not to suggest that in this case anything irregular has or will occur, but rather to point that the basis on which concessions are granted remains unclear to many people.

What is more, in the existing cases where concessions are granted, these are based on partnerships between local CFAs and private investors. For example, in Kibwezi forest, the concession is awarded to the local CFA in collaboration with the Daphne Sheldrick Trust, who has invested in fencing the forest with an electric fence and has 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 it is a project that tends to be viewed positively by others involved in the forest sector. However, if these arrangements are scaled up in other public forests, monitoring of investments and profits by communities could be difficult, and co-management of public forests will be deferred to an increasing number of unaccountable private companies and NGOs, some of which may enter into benefit sharing partnerships with CFAs. Some argue that this trend towards decentralized forest management characterized 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, it threatens to undermine rather than promote community ownership of forests, lead to *de facto* privatization of forests controlled by wealthier organizations, and introduce new opportunities for off-the-book ‘facilitation payments’. This adds to the type of corruption problems noted in connection to CFAs; elite capture and the marginalization of some people in forest adjacent communities.

Given that Kenya’s experience in outsourcing management of public forests remains in its infancy, we note these potential problems as something that may require further analysis.

3.7 Common elements and trends

In summary, there are various manifestations to corruption in the forestry sector and the historical changes to the governance of forestry influence both the nature of corruption and its possible impacts.

Generally speaking, corruption (ranging from bribe taking/giving in logging ; to fraud in issuing permits and licenses for commercial logging in state owned plantations ; to deliberate mismanagement of revenues) is seen as widespread by stakeholders interviewed or polled – many even described it as “normal”. This certainly affects the way that these stakeholders engage with government.

However, a key feature of corruption in Kenya relates to gaining political power, and in particular centers on who controls or owns forest lands and who benefits from this position of power. Although experiences with irregular excisions of public forests may have been reduced, are problems or fears regarding evictions, remain, with the abuse of authority in the ownership of community lands as well as the prospect of increasing deforestation through expanding construction, extractive industries and agriculture, which brings with it the risk of conflicts of interests and elite capture. Such abuse of power relates to issues of accountability and democracy, and in turn impedes progress on land tenure security and safeguarding forest user rights. A further point of contention in Kenya, as it is in many countries, is the extent to which the government maintains an essentially preservationist policy towards public forests, or whether the policy of PFM will evolve to better include community forestry practices. Certainly there are those who feel the government’s policy prioritizes conservation, and this inevitably leads to critical discourse on the access rights of rural communities, including some indigenous forest people.

⁷⁶ The researchers were not able to view the agreement between WWF and KFS for this study

A key feature of corruption in Kenya's forest sector relates to gaining political power; in particular, it enters on who controls or owns forest lands and who benefits from this position of power

Another salient observation is that both decentralization and privatization, which may have been conceived to improve oversight and address corruption risks posed by highly centralized government control over forests, has opened up new types of governance and corruption challenges. At the community level PFM, which has been partially implemented, has generated new concerns over democratic representation, conflicts of interests and elite capture. These problems may yet work to undermine the legitimacy of new institutions such as the CFAs, which could undermine the response by citizens who feel let down or marginalized. Likewise, the process of outsourcing and private sector co-management opens another set of problems in transparency, accountability, equity and fairness. In some ways the shift towards both decentralization and privatization make corruption more diffuse and complex to understand. Devolution in Kenya raises further complexity and it can be expected, as some people spoken to for this study believe,

that in the years to come devolution of power will be a critical point of debate, and possibly scandal, in natural resource management. Of course, others are more sanguine, so the issue of devolution and forestry governance remains a matter that divides opinion.

4. ADDRESSING CORRUPTION IN THE FORESTRY SECTOR

It is extremely difficult to quantify the relative importance of the various forms of corruption described in Section 3 in contributing to deforestation and forest degradation. Yet it seems reasonable to suggest that these corrupt acts have to be acknowledged and addressed in order for REDD+ to achieve positive economic, climate, environmental and social benefits in the country. Given this, this section reflects stakeholder's views about the factors that are influencing the ability of Kenya to address corruption in the forestry sector, and what are the policy implications. In doing so it is important to acknowledge that many respondents say that in comparison to the 'crisis' years – roughly the mid 1990s to the early 2000s – integrity and accountability in the governance of public forests has improved. This has been cause and effect of greater national awareness of the importance of forest conservation, as indicated in Vision 2030 and in the Kenyan Constitution. The extent of this improvement remains a matter that divides opinion, and whether there has been a quantitative decrease in corruption is complicated by the proceeding analysis, which suggests a qualitative change in corruption may also have occurred.

Many stakeholders highlight that in comparison to the 'crisis' years – roughly the mid 1990s to the early 2000s – integrity and accountability in the governance of public forests has improved

There is a range of different ideas and thinking on what has improved the situation, and what are the most pressing challenges to be overcome. Most people interviewed recognize that corruption and illegalities in the forestry sector are an outcome of complex historical, cultural and economic developments, so there are no easy solutions. This in turn means that thinking on how to diminish corruption is informed by wider ideas on how forest governance ought to be.

Therefore, in this section the authors proceed with caution. The aim is not to list a set of policies that are straightforward to implement or guaranteed to have immediate success. Rather, what follows is a summary of key policy ideas and reforms that stakeholders in Kenya have put forward, on how to address corruption in the forestry sector, and where appropriate the report highlights some of the challenges in implementing these ideas. A key task is to think about how REDD+ may have a role in achieving these reforms.

To simplify matters we focus on three key themes that have emerged from the primary research for this report: i) transparency and access to information ; ii) strengthening accountability and oversight mechanisms ; and iii) deepening decentralization. Other reforms that may also be relevant include, for example, the need to address shortage of timber supply as this in turn has an important influence on illegal logging and cross border trade, and also to continue work that supports sustainable charcoal production. However, the three themes described below are what many people think are more direct ways to address different types of corruption challenges.

4.1 Transparency and access to information

Section 4.1 : key points


- A common view is that the introduction of PFM has and should continue to improve consultations between the government and communities and more proactive information sharing by KFS
- The draft Forest Bill section on public access to information, provides some rules for the government on disclosure of information, although restrictions apply for “commercially sensitive information ” that may be too broad
- Issues of transparency do not solely lie with KFS, but also with county governments, CFAs and CPAs
- Developing the precise details of what information needs to be published, when and by whom, is perhaps a necessary activity to be led by the MEWNR, in consultation with stakeholders in Kenya
- Dedicated personnel in agencies that have information, strengthened capacity of civil society and media to act upon available information, and commitment and ability of authorities to follow-up are also necessary.

In discussions on corruption in forestry, problems with transparency and public access to information on forest governance are quite possibly the most pressing concern raised by non-government stakeholders in Kenya. There is however recognition that the government is more open than it was before. Indeed, although considerable concerns about the implementation of decentralized forest management exist, a common view is that the introduction of PFM has been a progressive movement and should improve information sharing between the government and communities over time. Notwithstanding criticism that the government has been reluctant to fully embrace decentralized forest management, and that there remain considerable problems regarding the rights of some rural/forest people, it is described that both the MEW&NR and KFS are far more proactive in consulting forest communities and community based groups than was the case before, and there is a more constructive and open relationship with various NGOs. At least, many people who work with KFS describe that their working relationships are much improved from a decade ago, when the Forest Department was deemed unapproachable and disinterested in working collaboratively with NGOs and community based organizations.

The KFS proactively publishes more information than the Forest Department used to, and this information includes more detailed annual reports made available through its website. In 2013 KFS established a new Information Centre. This will now be strengthened to contain a public library, as well as various on-line contents. Finally, it is important to note that in the draft Forest Bill a section on public access to information, if retained in the final version, would provide some rules for the government to follow for disclosure of information where this is requested by the public.

Nevertheless, and despite a general view of increased government openness, considerable dissatisfaction among a broad range of non-government stakeholders remains. In the UN-REDD survey, for example, results were very poor about the degree to which the government is transparent on various aspects of forest management, as shown in Figure 3.

Figure 3 : Stakeholders survey responses about availability of information in various aspects of forest management

Scoping REDD+ Corruption Risks in Kenya 

Considering the following list, how transparent do you think the government is in managing forests?

	Very transparent	There is limited information available	There is no publicly accessible information	Unsure	Rating Count
On reporting about revenues received from managing public forests	3.3% (1)	53.3% (16)	33.3% (10)	10.0% (3)	30
On the tendering process for allocating permits to harvest timber on government plantations	3.3% (1)	53.3% (16)	30.0% (9)	13.3% (4)	30
On the budget and annual expenditure of the Kenya Forest Service	6.7% (2)	56.7% (17)	23.3% (7)	13.3% (4)	30
On the granting of concessions in public forests	3.3% (1)	46.7% (14)	40.0% (12)	10.0% (3)	30
On management of community forests	6.9% (2)	72.4% (21)	20.7% (6)	0.0% (0)	29
Are there any other types of information that may be lacking on the management of forests by the government?					5
answered question					30
skipped question					8

Figure 3 indicates the range of government management functions that require improvements in transparency. This includes revenue management and budgeting: although KFS provides regular reporting on aggregate income and expenditures, matters become less transparent with revenues and expenditures from district levels. Thus, authors of this report were unable to gain access to any information on annual and monthly revenues collected by zonal officers of KFS that derive from issuing permits for charcoal movement. This detailed information appears to be confidential, for reasons that are not entirely clear. Likewise, publicly available information is limited on who is granted licenses by KFS for commercial activities in forests, the inventories of forests is similarly hard to obtain, as are the details and agreements for concessions and permits. This conclusion echoes a recent midterm independent evaluation of the MMB project, which also noted 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 under the various donor funded programs within KFS, including those of the MMB itself".⁷⁷

In theory the new Forest Bill may strengthen the public's access to information. However the wording of the draft Bill, as it currently stands, is ambiguous and open to interpretation. This is because information can be withheld if it is deemed commercially sensitive. The notion of "commercially sensitive" information can indeed be interpreted to

77 Axberg, et al., 2013, p.8

apply to various aspects of forestry management, including all issues relating to licenses, concessions and revenues. The draft Forest Bill could be made stronger if, following best practice as established by the Aarhus Convention, the ideal of the 'public interest' was included, thereby obligating the KFS to release information if the public benefit of doing so outweighs any other consideration. As it stands, there is also no obvious recourse to complaint for people where the KFS refuses information. In addition, Kenya is in the process of formalizing a national freedom of information law, so it is possible this will provide a stronger legal framework for access to information.⁷⁸

Problems of transparency do not solely rest with Kenya Forest Service: as forestry management undergoes a process of decentralization and outsourcing, a number of organizations –including county governments, Community Forest Associations and Community Charcoal Associations - hold information they need to share more proactively

Although the Forest Bill supports improved public access to information, it is also a matter of concern that the Bill does not contain proactive transparency (i.e. obligations by the government to make information available in an accessible way without having people to ask for it) is not contained in the Bill. Interviews with stakeholders, as well as the results of the UN-REDD survey, indicate that people believe very little information is published by the KFS and that what is available can be extremely hard to find. The website of the KFS has been described as limited and lacking in up to date information and data, providing more of a public relations service than a portal for information that would lead to better accountability and public understanding of forest management.

Yet problems of transparency do not solely rest with Kenya Forest Service. This point is exceedingly important as forestry management undergoes a process of decentralization and outsourcing, or privatization. This process expands the number of organizations for which potential problems of lack of transparency can exist.

One aspect of this concerns the new county governments. In the past, public information on land tenure and the management of community forests was widely recognized to be minimal. With the strengthening of county-level forest management, increase transparency could be achieved, although many people fear that

this is not going to happen. The draft New Forest Bill does set out the obligation for county Forest Conservation Committees to make public agendas of meetings and decisions, although, again, the detail of how and when this information is to be made public remains too vague. Moreover, the rules and expectations are ill-defined on transparency for other important types of information on community forest management, such as expenditures and incomes, concessions and licenses and so on. This suggests that work at the county level to improve forest management, which is being assisted by KFS, needs to develop a more comprehensive approach to both proactive transparency and ensuring the rights of people to request information.

Alongside transparency by national and county governments, increasing information-sharing at the community level, and particularly with CFAs, is a considerable challenge. This issue was noted above, and it is reported that for many CFAs members face difficulties in receiving information about activities and expenditures. The same

⁷⁸ Further in-depth analysis on the importance of freedom of information in the context of REDD+, best practices and lessons learned in REDD+ countries, including Kenya, and how these can be applied in REDD+ is contained in a recent UN-REDD Programme study. See UN-REDD Programme 2013

challenges apply to the charcoal sector, where CPAs have the responsibility of reporting to their members and the wider community on income and how this income is used to promote sustainable charcoal production.

Thus, it is evident that throughout the management of forests, information sharing or transparency is sub-optimal. The policy implications would seem straightforward, and far more detailed obligations and procedures for both proactive publishing of information and responding to requests for information should be developed. Determining the details of what information needs to be published, when and by whom, is a task beyond this report, and it is perhaps a necessary activity to be led by the MEW&NR, in consultation with stakeholders in Kenya, as a follow-up to this study. In doing so, are three further points for consideration.

First, the process of achieving transparency does require considerable efforts to shift mindsets among authorities, something that needs to be articulated from a senior level in the MEW&NR. But there is also a need for resources to develop the necessary capacity to actually collate data and make this available in a coherent format. For larger organizations, such as KFS and the county governments, there is a need for dedicated personnel who are responsible for responding to public requests for information. Achieving transparency is a considerable task which requires sufficient expenditure, budget allocation and planning.

Second, the assumption regarding improving transparency is that civil society or the media will have the necessary resources and interest to analyze new data. Yet if there is a considerable increase in public data, we may find, particularly at the county level, that there is very little capacity to do anything with it. Indeed, if increased transparency can help to expose corruption, then the critical task for members of the public is to actually scrutinize data and potentially undertake further investigations about whether reported data is accurate. If this capacity is lacking, data published by the authorities will be left unchecked or can drift towards public relations or 'good news stories'. This suggests that some support to independent organizations and journalists for collating and analysis forest data may be useful, and it is a type of work that development agencies support in their wider programs for anti-corruption and good governance.⁷⁹

Finally, studies on the effectiveness of transparency seem to be influenced by the prospect of accountability.⁸⁰ In other words, if people feel they cannot use information to sanction authorities then the demand for new information is weakened. Transparency without accountability may not be sustainable, as described below.

Achieving transparency and access to information about forest management requires a shift of mindsets; civil society resources and interest to use the information; and a robust accountability system

⁷⁹ UNDP is currently supporting such efforts in other countries, and has developed a guide for journalists to investigate and report corruption.

⁸⁰ See for example Fox 2008

4.2 Strengthening accountability and oversight mechanisms

Section 4.2 : key points

- The capacity of civil society to demand accountability has increased
- Kenya Forest Service has made improvements in tackling corruption internally : a hotline, trainings by the KEACC, more transparent appointments to the Board of Directors are encouraging initiatives that need to be enhanced
- Yet concerns remain that the government responses to reported cases of corruption (at both national and county level) is limited, that oversight mechanisms are ineffective and that vested interests tend to obstruct impartial investigations and prosecutions.

Alongside frustration with public access to information is the sense that the prospect of the government, at both national and county level, to respond to reported cases of corruption is quite limited, that oversight mechanisms are ineffective and that vested interests tend to obstruct impartial investigations and prosecutions.

As is the case with transparency, several positive developments in improving accountability and oversight need to be recognized. Provisions in both the Forest Act and the Constitution have greatly reduced the ability of irregular excisions of public forests. The role of NEMA in providing independent evaluation and oversight on decisions affecting public and community forests is also considered to have strengthened this aspect, although still some reservations remain about the rigor of environmental impact assessments. The new Water Tower Agency may also help to achieve further strengthening of accountability in forest management, as well improved collaboration between different state agencies.

In addition, the capacities and influence of civil society working on forest conservation and on the rights of forest-dependent communities have been strengthened. This reflects a wider recognition in Kenya for the economic, cultural and social importance of forests, but also the improving ability of civil

society to engage in collective political actions and to voice criticism with government performance. Several recent cases where controversial decisions made by the government that could negatively impact on forests have been successfully countered through advocacy campaigns that have also mobilized and given voice to community concerns, such as the case of mining in Mrima Hill Forest Reserve and the bio-fuels plantations in Tana River district. Although Kenya has a history of this sort of political activism, it is generally accepted that this ability to influence decision makers have improved. Speaking out about corruption now is considered less dangerous than it was a decade ago.

Finally, some improvements have been observed in the way KFS is trying to tackle corruption within its organization. Corruption within KFS had been linked with low staff morale in the past and the slow process of transferring staff from the Ministry to the KFS had aggravated this. This was largely because the contracts available by KFS were more favorable than those offered to those as part of the civil service. However, senior management also explain that disciplinary action available to them for dealing with corruption among staff had been restricted for those employed by the Ministry, with options limited to warnings or redeployment. However, the KFS reports that all staff now have been formally absorbed in the KFS, which is a positive development.

KFS has launched a corruption 'hotline' and staff have undergone training with Kenya's Ethics and Anti-Corruption Commission. There have also been internal trainings for KFS staff on anti-corruption, facilitated by the KEACC. Although a useful step, the permanence and impact of such initiative remains to be seen. For example, it only resulted in a narrow focus on financial accountability within the organization, as opposed to the full range of

corruption challenges facing the organization; in addition despite being obliged to submit follow up reports on activities to the KEACC, there are no records of this being done. Strengthening these efforts is thus necessary.

It is also important that in line with new regulations set out in the Constitution, appointments to the KFS board of directors will be made more transparent and competitive. According to KFS internal audit department, a stronger internal code for members of the board to declare conflicts of interests exist, although this is not publically available. At the time of writing the previous KFS board has been dissolved and new members of the board are yet to be appointed, but it has been suggested that there will no longer be such as strong representation on the board for the largest timber harvesting companies.

Thus, there are indications that accountability and oversight mechanisms are stronger than was the case a decade or so ago. Still, interviews show a widespread feeling that impunity for corruption continues in the forestry sector, and that efforts to improve investigations and prosecution for corruption are inadequate.

One of the most important aspects of this relates to recovering forest land lost through irregular excisions. Despite the strengthening of procedures to limit past abuses, the prospect that the Land Commission, in collaboration with the KEACC, will be successful in reclaiming public forests is generally regarded as limited. Our interviews suggest that it is widely believed that vested interests at very senior level of government are likely to pose a strong barrier to justice. This perception may originate from complaints that the criminal justice system has proved ineffective in the past for responding to complaints by forest people related to forced evictions:

“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 recognized. 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.”⁸¹

It should be noted that there are substantial gains through the Constitution in the protection of rights for minority groups, including those that have ancestral claims over forests. The Kenya constitution and Bill of Rights is thorough and far-reaching, although as described lucidly through a report in 2012 by the Minority Rights Group International, there are substantial challenges in ensuring these rights are implemented and upheld.⁸²

Pessimism remains in relation to how KFS deals with corruption in its organization. The UN-REDD survey shows that 60% of respondents (20 out of 33) had low or no confidence while 39% were optimistic. This lack of

Kenya Forest Service has made improvements in tackling corruption internally : a hotline, trainings by the Ethics and Anti Corruption Commission, more transparent appointments to the Board of Directors are encouraging initiatives that need to be enhanced

81 Purvis, C., ‘Displacement and resistance, the Ogiek of Kenya’, Think Africa Press, 22nd March, 2013. Available at: <http://thinkafricapress.com/kenya/mau-ogiek-displacement>

82 Abraham, 2012

confidence may be a legacy of the troubled past. Implied here is that many of the staff that were implicated in past corruption scandals within the discredited Forest Department, have remained employed in the new KFS, and that the institutional culture remains problematic (see Figure 4 below). Perceptions may be lagging behind actual improvements.

The effectiveness of new mechanisms for members of the public, as well as employees of government departments, to report instances of corruption to the government is also thought to be weak. In the case of the reports sent to the KEACC, it has been described that follow-up is slow due to staff constraints and the vast caseload of the KEACC including various instances of grand corruption.

Information on the use and performance of the KFS anti-corruption hotline is difficult to obtain, and we are not aware of the degree of monitoring or public reports on this by KFS. Some NGOs claim the number often does not work and many see it as tokenistic. There is a danger that these reporting initiatives will increasingly be viewed as inadequate, and therefore people will become less likely to use them.

It is perhaps inevitable that in this context other non-government mechanisms for reporting corruption have emerged, including most notably the 'Forest Hotline' established by the Kenya Forest Working Group (KFWG). The experience with this has been positive on some cases, as the KFWG has undertaken follow up activities, including reporting cases to KFS and MEW&NR, and liaising between complainants and other NGOs. The initiative therefore remains well regarded. Those involved in the initiative accept that momentum is difficult to sustain and resources for follow up activities by KFWG are not sufficient. It is probably something that requires more impetus and publicity, and perhaps further training or support for litigation and advocacy strategies.

The policy implications of the weakness in accountability mechanisms – the ability of the government to investigate, respond to and prosecute instances of corruption – are difficult to formulate. Internal government systems for investigations and disciplinary actions will be limited if corruption is both widespread and implicating senior levels of management. This suggests the need to explore an expanded role of the KEACC. One suggestion is that the KEACC could establish a dedicated team, or lead a Task Force, to work on forest related corruption, for which funding may be needed.

Another suggestion lies in enhancing the role of courts, including at the district or county level, in dealing with forest related corruption. The recommendation that magistrates and judges are sensitized to forest related crimes and corruption is often heard, another recommendation for the establishment of so-called 'green courts', set up to only hear cases relating to environmental crimes. This policy has been used in South Africa, for instance. There are a range of arguments for and against such dedicated courts, and although they can be effective, the risks are that they undermine due process and tend to administer harsher penalties for those most easily apprehended. It is important to note here that 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 fully functioning. Yet, combined with the work of the Land Commission and potentially the KEACC, it holds out the prospect for giving strength to judicial processes that support improved forest land tenure disputes and the rights of indigenous forest peoples.

Figure 4: Survey responses about confidence in the government in achieving various objectives

Scoping REDD+ Corruption Risks in Kenya



How much confidence do you have in the government to meet the following objectives?						
	Strong confidence	Optimistic	Low confidence	No confidence	Unsure	Rating Count
To ensure that illegal logging in public forests is effectively monitored and sanctioned	6.7% (2)	33.3% (10)	46.7% (14)	13.3% (4)	0.0% (0)	30
To ensure community forest associations can effectively co-manage forests	10.0% (3)	36.7% (11)	50.0% (15)	3.3% (1)	0.0% (0)	30
To effectively implement rules that make charcoal production sustainable	6.7% (2)	40.0% (12)	40.0% (12)	13.3% (4)	0.0% (0)	30
To combat corruption by employees of government agencies responsible for forest management	0.0% (0)	33.3% (10)	43.3% (13)	23.3% (7)	0.0% (0)	30
To fairly and transparently share forest revenues with communities	0.0% (0)	26.7% (8)	56.7% (17)	16.7% (5)	0.0% (0)	30
To ensure different government agencies working on forest conservation collaborate effectively	0.0% (0)	50.0% (15)	43.3% (13)	6.7% (2)	0.0% (0)	30
To be open and transparent about how companies win contracts to harvest trees in government plantations	0.0% (0)	26.7% (8)	46.7% (14)	26.7% (8)	0.0% (0)	30
To ensure allocation of forest land to companies and private individuals is done openly and for the benefit of Kenyan citizens	0.0% (0)	17.9% (5)	67.9% (19)	14.3% (4)	0.0% (0)	28
To ensure any decisions that impact on communities living in or near forests are made with their free, prior and informed consent	3.3% (1)	30.0% (9)	56.7% (17)	10.0% (3)	0.0% (0)	30
To meet the goal of increasing forest cover in Kenya to 30% in the foreseeable future?	13.3% (4)	50.0% (15)	26.7% (8)	10.0% (3)	0.0% (0)	30
answered question						30

4.3 Deepening decentralization

Section 4.3 : key points

- Two essential elements for further reform are improving democratic accountability and participation ; and improving the redistribution of economic benefits and increasing economic opportunities for communities living in or near forests
- Ideas to enhance accountability and participation in CFAs, which are considered as victim of elite capture, include increased involvement of independent external ‘unbiased’ actors in this process; and alternative systems of representation, such as civic or citizen assemblies
- Improving benefit sharing is deemed for increased involvement of communities in public forests
- More representative system for community voice and deliberation than the existing CFA structures would also allow stronger oversight of the increasing use of concessions in public and community forests for private companies.

A third theme encountered in discussions on responding to corruption in Kenya’s forestry sector lies with improving decentralization, whose objectives are to improve sustainability benefit-sharing, and income security of forest dependent people.

This is thought to be important for two interrelated reasons. The first is to do with the recognition that decentralization (and the related process of privatization) has created new forms of corruption risks and challenges. The second is that without strong democratization and community ownership of forests, trust and reciprocity between communities and authorities is undermined, which in turn weakens the ability of all concerned to respond to corruption and illegalities at national and local levels. Thus, understanding the nature of corruption and the ability to reduce it is bound up in what some feel is the need for ‘deepening decentralization’.

The commitment for decentralization in Kenya remains strong in policy pronouncements and is reinforced by the Constitution. At the same time, as noted above, and is a growing recognition that so far decentralization has been imperfect: it may have been rushed and in many respects is still work in progress, and perhaps most importantly the rights of forest communities have been restricted. This view is not uncommon in other countries, and several studies on decentralization in forestry have described the tendency for governments to recentralize at times and reluctance to relinquish management responsibilities.⁸³ Moreover, the lack of fair or sufficient benefit-sharing can open up decentralization to the criticism that it is no more than a mechanism for central government to outsource many of the costs of managing forests to local communities.

This raises a few fundamental questions: how can decentralization be improved and in what ways can the corruption risks related to decentralization be mitigated? And how can the advantages of

decentralization be used to mitigate corruption risks? There was certainly not enough time in compiling this report to speak with sufficient number of stakeholders, including most importantly community-based organizations and members of CFAs, to develop full answers to these questions. However, two elements appear essential for further reform: i) to improve democratic accountability and participation and ii) to improve benefit sharing, which in turn relates to improved land tenure and access rights.

83 Capistrano, 2013

One view commonly expressed by stakeholders interviewed for this study to improve democratic representation is increased capacity building and funding for both CFAs and KFS, which can help both parties improve administrative procedures. This could be combined with enhancing local capacity to administer and implement REDD+ projects in a transparent and accountable manner, and encourage a culture of disclosure.⁸⁴ Another suggestion is to increase the involvement of independent external 'unbiased' actors in this process. This is clearly an argument that both CFAs and KFS will support, but it is unclear how this will be achieved and whether in situations where the functioning of CFAs and KFS at the local level is characterized by unaccountable leaders and financial mismanagement, further capacity building and funding will always be effective. In addition, placing the responsibility for improvements on external actors, whether these can ever truly be unbiased, risks undermining the ideal of self-governance inherent in decentralization.

In what ways can corruption risks related to decentralization be mitigated? And how can the advantages of decentralization be used to mitigate corruption risks?

Another view lies with rethinking the way in which community representation in forest management is achieved and it is based on the observation that elections of leaders for CFAs could be much improved. As mentioned before, these elections tend to favour those with resources, which can lead to the marginalization of certain constituents, including women.⁸⁵ Although not an idea that is often articulated in Kenya, there is potential to explore alternative systems of representation, such as civic or citizen assemblies, where people are selected to serve on community governing institutions through lot rather than election, and their time is compensated for by a modest stipend. Such bodies are not intended to replace government bodies (nor necessarily CFAs), but rather work with them to advise on policy reforms and processes. In this way civic assemblies may be adequate bodies to work alongside the County Forest Conservation Committees, which according to initial designs have a fairly limited role for community participation.

There is potential to explore alternative systems of representation, such as civic or citizen assemblies

Improving benefit-sharing and increasing economic opportunities for forest-dependent communities is a similarly difficult task, but clearly needed. The existing policy of managing public forests remains characterized by a preservationist mindset, and benefit sharing is limited. The Kenya Forest Working Group has described existing benefits given to communities as 'acts of benevolence' by the government.⁸⁶ Furthermore, CFAs are highly dependent on external funding and membership fees to survive. This places them in a vulnerable situation of dependency and

possible undemocratic influences, and therefore the objective of self-financing is probably a sound one. This points to the need for increased involvement of communities in public forests. Indeed, it is matter of disagreement whether strong community participation in forest conservation in some areas will persist without a careful lifting

84 Generally speaking, local structures government staff often lack the mandate and training to plan, budget, manage, and monitor local forest projects in a transparent and accountable fashion, or to investigate infractions and enforce rules. See UN-REDD 2013b

85 The UN-REDD survey question in Figure 2, for example, yields different results when disaggregated by gender. While women tend to be very confident (50%) or partially confident (50%) that CFAs can "provide voice for all members of the community, including women", only 37% of women versus 52% of men are partially confident that CFAs can "Manage revenues openly and for the benefit of their communities", while 37% of women are "not very confident".

86 Kenya Forest Working group 2013. P.29

of the logging ban in indigenous forests and further promotion of community forestry in public forests. Although there remains a great deal of disagreement about this in Kenya and globally, studies have shown 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 keeping community activity strictly limited.⁸⁷ As such, some argue that promoting community forestry is a vital strategy for REDD+ in general.⁸⁸

In order to achieve improved benefit sharing it is essential that progress is made in clarifying and strengthening use and access rights for communities, which is a matter that cannot be resolved at the local level or through the contents of Forest Management Plans, as it requires policy changes at the national level.

Note that these two objectives of improving representation and improving benefit sharing are interdependent: where communities derive greater benefits from forests, members are more likely to be engaged in institutions that provide management and participation in decision-making. Moreover, with a deepening of decentralization one should expect increased demands from communities for access to information and accountability by county and national authorities.

A final point is the link between decentralization and the increasing use of concessions in public and community forests for private companies. Here improved oversight and participation by communities are needed, since they are – or will be – partners and beneficiaries of such arrangements. Kenya may experience a growth in complex governance arrangements characterized by private, community and government co-management, and this may be successful if done well. But success clearly relies on transparency and strong community participation in these arrangements, and here perhaps is a role for independent periodic evaluations, based on participatory methods. Again, a more representative system for community voice and deliberation than the existing CFA structures, may be needed, as the current one may be vulnerable to elite capture or prone to consent new investments that benefit their own income, rather than those of the most marginalized, stakeholders.

87 Porter-Bolland, et al, 2012, Bray et al, 2008, and Hayes and Olstrom, 2005

88 Hodgdon, et al. 2013

5. PERSPECTIVES ON CORRUPTION RISKS OF REDD+ ACTIVITIES IN KENYA

This section summarizes stakeholders' views on the potential corruption risks of implementing REDD+ in Kenya, and their policy implications. It is important to stress that despite the emergence of voluntary REDD+ projects in Kenya, a national REDD+ programme is still some way from being fully implemented. Therefore many aspects of how REDD+ will be designed and implemented are, as yet, undecided. This makes understanding or quantifying corruption risks inherently difficult, thus the views of stakeholders are largely based on perceptions of anticipated risks that draw from past experiences. Nevertheless, recurring observations from both the UN-REDD survey and interviews with stakeholders lead to some firm ideas of priority actions needed to avert or minimize certain risks.

This section of the report is divided into three parts. The first highlights some of the positive views on how REDD+ may improve forest governance in Kenya. The second part discusses the main areas of concern and the third and final part describes existing policy thinking and the views of stakeholders in terms of what needs prioritizing.

5.1 Positive views on governance implications of REDD+ in Kenya

A nuanced appreciation of potential REDD+ funding among Kenyan stakeholders show an understanding that REDD+ incentives will not be of a magnitude that can change policy decision on land use planning in isolation. Still, there is some optimism that REDD+ may help increase financial resources for community-based organizations involved in forest management and conservation. This is important given the precarious financial situation of CFAs; qualifying for REDD+ payments, either through a nationally coordinated mechanism or through collaborating with private companies and NGOs in the voluntary market, is noted regularly as an important opportunity for giving CFAs greater income security, although there are some contradictions among stakeholders who also remain uncertain about benefit sharing mechanisms (see section 5.2.1).

REDD+ is also viewed as an important way of generating improved knowledge on rates and drivers of deforestation and forest degradation. This in turn is expected by many people to have a beneficial impact on forest stewardship at all levels of government, including at the county and local level, and is in fact seen by a number of interviewees as one with potentially the most governance impact. Those views assert that increased knowledge of forest ecology and cover will help develop accountability among those in positions of authority, including in law enforcement. It may also increase the public spotlight on land tenure issues.

Furthermore, the process of developing, designing and implementing REDD+ activities is considered an important locus of improved citizen participation in forestry. In this way REDD+ is seen as helping to build trust and deliberation between the government and civil society. At the same time, some highlight that REDD+ requires

Section 5.1 : key points

- There is optimism that REDD+ can help increase financial resources for community based organizations
- REDD+ is also viewed as an important mechanism for generating improved knowledge on rates of deforestation and forest degradation, which could help develop accountability among those in positions of authority
- Designing and implementing REDD+ is considered an important locus of improved citizen participation in forestry
- Yet by contrast a smaller number of respondents have expectations on REDD+ having an anti-corruption effect specifically.

Improved knowledge of the drivers of deforestation and degradation thanks to REDD+ is expected by many to help develop accountability among those in position of authority

collaboration between different government agencies and foreign organizations and donors, which can also improve the political will for forest conservation and improved benefit sharing.

Given these broad reasons to be positive about REDD+, it is unsurprising that for some people REDD+ activities may have an overall beneficial impact on addressing existing governance challenges, as seen with the percentage of “very confident” answers in the UN-REDD survey results, shown in Figure 5 below. However, the results of the survey suggest that a much smaller number of respondents have confidence that REDD+ will have a specific anti-corruption benefits.

Figure 5: Survey results about confidence in several possible benefits of REDD+

15. How confident are you that REDD+ may lead to the following benefits in Kenya?					
	Very confident	Partially confident	Not very confident	Unsure	Rating Count
It will improve our understanding on rates of deforestation and forest degradation in Kenya.	65.5% (19)	34.5% (10)	0.0% (0)	0.0% (0)	29
It will provide financial benefits for communities to reduce rates of deforestation and conserve forests.	69.0% (20)	24.1% (7)	6.9% (2)	0.0% (0)	29
It will enhance participation among civil society organisations and the government on forest management	69.0% (20)	24.1% (7)	3.4% (1)	3.4% (1)	29
It will provide the opportunity for innovative companies and NGOs to develop projects to help address deforestation and forest degradation	65.5% (19)	31.0% (9)	3.4% (1)	0.0% (0)	29
It will positively influence senior politicians in Kenya to promote forest conservation	34.5% (10)	34.5% (10)	24.1% (7)	6.9% (2)	29
It will improve forest law enforcement	51.7% (15)	34.5% (10)	13.8% (4)	0.0% (0)	29
It will reduce corruption in the forest sector	28.6% (8)	32.1% (9)	39.3% (11)	0.0% (0)	28
Any further comments?					2
answered question					29
skipped question					9

5.2 Understanding perceptions on corruption risks

5.2.1 Distributing benefits

If we consider the views of stakeholders in Kenya about the specific corruption risks of REDD+, then it is clear that the greatest concern lies with misuse of funds, primarily by the central government, but also by others engaged in REDD+ projects. In the UN-REDD survey for instance, 79% of respondents said they were 'not very confident' that the revenues received by the government will be transparent and well managed. Only three percent (i.e. one person) was confident that benefits would be well managed in a transparent way. This is consistent with the dissatisfaction about transparency in the government for managing forestry in general, as well as dissatisfaction with benefit sharing from public forests.

While a nationally coordinated mechanism for distributing REDD+ benefits remains to be defined and implemented, concerns already exist about the integrity of benefit -sharing within voluntary market projects. Part of the problem stems from lack of clarity on how much revenue is actually earned through these projects, which 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 necessarily correspond to their actual value (because of discounts for bulk buying or for advance purchases for example), and administrative costs in running such programs can be variable. This is highlighted in the "Carbon rights and benefit-sharing for REDD+ in Kenya" report, prepared in conjunction with the present one on the experiences of land-based carbon projects.⁸⁹ Nevertheless, it is important to note that there are no substantive allegations of deliberate fraud in existing REDD+ or carbon projects in Kenya.

At the international level, fears and instances of 'carbon cowboys' or the involvement of organized crime in REDD+ have made headlines. The basis of this fear is that unscrupulous organizations or agents may work to convince local communities to sign over carbon rights in ways that are exploitative, and without achieving free, prior informed consent. Senior management at KFS have described that in the early days of REDD+ in Kenya (2010-2011), there was a flurry of interest from private sector investors (described as mostly Kenyan 'entrepreneurs') trying to launch REDD+ projects. However, for the time being it seems initial interest has faded as people realize that obtaining REDD+ credits involves considerable effort and therefore REDD+ has not offered the promise of quick profits. Indeed, according to other sources, some smaller NGOs complain that start-up costs are prohibitive in getting REDD+ projects up and running. It would seem that Kenya does not present a case validating fears of organized crime or carbon cowboys in REDD+, although one cannot rule out this threat in the future.

Section 5.2.1 : key points

- Some concerns lie with the possible misuse of revenues by the central government, consistent with dissatisfaction about transparency and benefit sharing in the current context
- Concerns also exist on integrity of benefit -sharing within voluntary market projects, stemming from a lack of clarity on how much revenue is actually earned
- Multiple layers of administration including at the district level (or county level), have led to some issues in the past.

⁸⁹ If information is difficult to access for outsiders (such as the evaluators), it appears to be the same for local stakeholders involved in some of the projects assessed (or even worse, if a person is illiterate and do not have any official mandate from the KFS or other body to ask questions). In some instances, local communities met as part of the research for this study did not have clear ideas in terms of costs, benefits or risks associated with each one in their project and lack of precise and accurate figures to understand the choices made by the project developer in terms of benefit-sharing (UN-REDD Programme and MEW&NR, 2013).

The other, perhaps more important issue for people in Kenya relates to how the government intends to approach benefit sharing. Regardless of the decisions on how benefits will be shared between the national, county and local levels (which may feed distrust and conjures fears of “recentralization” of forest governance), the tendency towards pessimism is understandable given that there have been many well-publicized allegations of embezzlement and misuse of funds destined for poverty alleviation and education.⁹⁰ More recent, however, is the case of the World Bank funded Arid Lands Resource Management Project (ALRMP). This could potentially have ramifications for confidence in REDD+, due to the possibility of similar risks of misuse of REDD+ funds.

The ALRMP started in Kenya through a pilot programme in 1993, and was later made into a large and ambitious programme, over two phases, with funding amounting to nearly 200 million USD. A core component of the project was based on what has been referred to as ‘community driven development’, whereby communities themselves have been encouraged to establish representative institutions that decide on priorities for funding and have a direct role in overseeing project implementation, including financial management. The community-driven development project under the ALRMP was also supervised by a District Steering Groups at the district level (of which 28 in total received funding), chaired by the District Commissioner with the participation of other district government agencies, NGOs (both international and locally based), as well as local leaders. Capacity building was built into the project to better ensure accountability and good governance at all levels. However, the ALRMP became controversial because of claims of widespread corruption and fraud, although government officials stated that was not the case, and that widespread corruption was avoided. The World Bank’s Integrity Vice Presidency office undertook a detailed forensic audit covering two years of the project (2007-2009), for seven of the 28 districts. The findings of the audit, despite being refuted by the Government, ultimately caused the World Bank to refuse extending the project to a third phase.

We do not dwell on the evidence of the scale of corruption involved in ALRMP, but we should note that the matter is still unresolved, with counter claims by those in charge of the project that the external forensic audit was misleading. Nevertheless, what appears to have occurred is that the community driven development project was undermined by corruption from top to bottom, and that various internal checks and balances often failed. It appears that at every level of project implementation transparency was actively resisted and there were considerable disincentives for whistle-blowing; each layer of the project required the good will of the layer above to receive ongoing revenues, so any efforts to voice concern were apparently muted by self interests. One of the implications drawn from research into this systemic governance failure was the need for far more rigorous approach to information sharing, public access to key documents and independent evaluation.

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 suggest many were ill-conceived, designed primarily to benefit the members of the village committees themselves and not the wider community.⁹¹ Similar problems have been exposed for another World Bank project, the Western Kenya Community Driven Development Project.

If a national REDD+ benefit distribution system (which still remains to be defined as part of the country’s REDD+ readiness process) resembles the ALRMP, in terms of having multiple layers of administration including at the

90 For example, in 2010 the then Minister of Education, along with other senior officials, were alleged to have embezzled over USD 1.5 million from a dedicated fund to provide free education to poor Kenyan families. This scandal meant that both the United Kingdom and the United States of America withdrew donor funding for education reform in the country (Ross, 2010).

91 Africog, 2012 and Ensminger, 2013

district level (or county level), then it is understandable why many people will have concerns about corruption risks. Indeed, an author of a research report on corruption in the ALRMP notes the negative implications of projects such as the ALRMP for devolution in Kenya⁹², a message given at a World Bank meeting on Corruption in Aid held in February 2013. Recent press coverage of mismanagement of funds directed towards county administrations only adds to this apprehension. What is more, as highlighted in Section 3, there are ongoing problems in some CFAs regarding financial accountability and representation, meaning that these institutions may not always be a reliable conduit for funds intended to benefit the wider community, and particularly women.

5.2.2 MRV

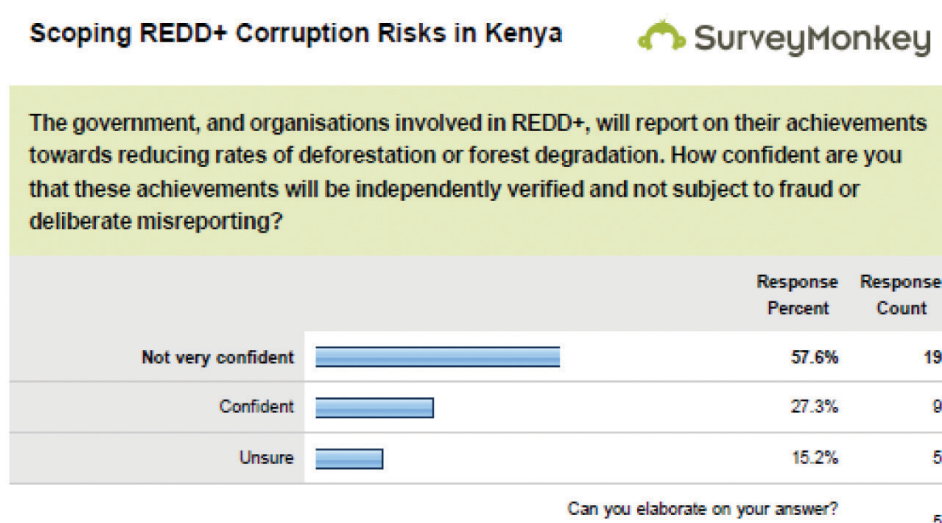
A second area of risk relates to the reliability of data on deforestation, forest degradation, and enhancement of carbon stocks, or what is known as the Measurement, Reporting and Verification (MRV) function of national forest monitoring systems, which few survey participants (27% only, see Figure 6) seem confident about. As part of the preparation for a national REDD+ programme, a detailed roadmap for establishing the REDD+ reference emission level and an MRV system has been developed that shows the vast complexity of the task and the necessity for considerable resources and expertise. The governance risks stem from the inherent conflicts of interests involved, given that beneficiaries of REDD+ may be the same as those providing measuring and reporting data on performance.

Section 5.2.2 : key points

- A second area of risk relates to the reliability of data on deforestation and forest degradation
- Independent validation is clearly stated as a pre condition for success; yet the integrity of third party organizations needs to be secured.

The extent to which conflicts of interests in MRV represent a risk to the development of Kenya's REDD+ MRV system could possibly be overstated. All people involved in REDD+ understand this potential problem and independent validation of data is widely regarded as a pre-requisite for success, and this is stated clearly in the commissioned study by the government. In an interview with a representative from the Survey of Kenya, a government agency mandated to collate and disseminate geo-spatial information on natural resources, that will play an important role in MRV for REDD+, the importance of transparency for data credibility was stressed. The community can also participate in measuring and reporting on performance to add another layer of credibility.

Figure 6: Survey respondents' confidence in data related to reduced deforestation and forest degradation



92 Ensminger, 2013

One problem, however, lies in the complexity of the data and the difficulty in communicating this to the public in a comprehensible way that allows oversight. Another problem lies with the integrity of third party organizations that are usually tasked with verifying data. There are inherent risks that such organizations have financial interests in ensuring positive results, which includes the incentive for repeat business. This problem is further undermined by the fact that evaluation criteria and statistical modeling are vulnerable to vagueness, which allows interpretation. Overly favorable decisions by independent evaluation organizations has been noted as a problem undermining voluntary certification schemes, such as that provided through the Forest Stewardship Council⁹³, and it has been raised as a continuing criticism of project verification under the Clean Development Mechanism.⁹⁴ More recently the same arguments were presented in a report assessing the integrity of voluntary REDD+ projects, including those in East Africa.⁹⁵

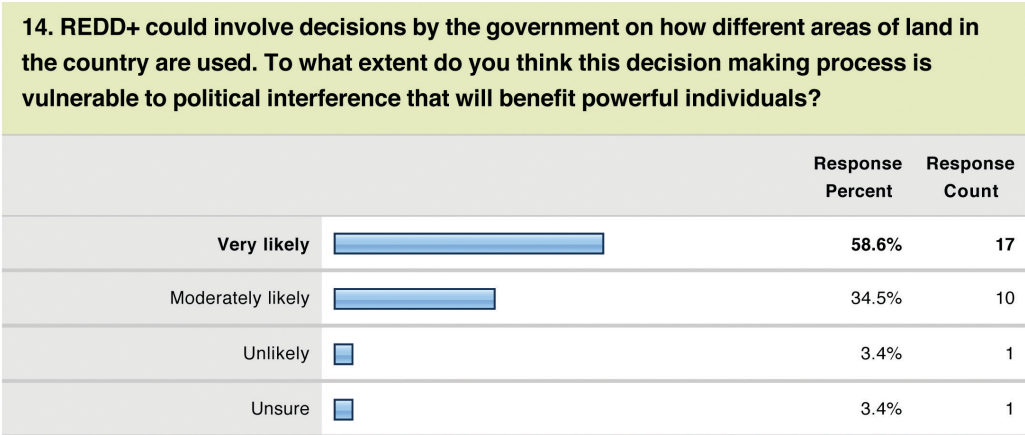
5.2.3 Land use planning, land allocation & free prior informed consent

Section 5.2.3 : key points

- Although not a considerable concern, undue influence on land-use planning for REDD+ has been expressed as a risk
- Collusion of power between certain companies in the sector that have achieved a close relationship with the KFS is raised as a concern
- Failure to appropriately apply free, prior and informed consent could also lead to further elite capture and political marginalization.

A third area of potential risk lies with undue influence on land-use planning for REDD+, through decision-making process that can be used for political ends, or to benefit elites. Again, however, we should note that this concern among stakeholders is not considerable, and that there is some doubt as to whether REDD+ will have a major influence on land use planning given that the financial benefits accrued from REDD+ may not be comparable to other land uses. Still, when asked about this, respondents to the UN-REDD survey clearly thought such problems may arise (Figure 7).

Figure 7: Survey respondents’ perception of vulnerability to political interference on land use decisions



93 Forest Stewardship Council 2002

94 Brown : 2012

95 Swedish Society for Nature Conservation, 2013

A related potential risk in Kenya is that some sectors will be given preferential treatment and funding by the government for the development of REDD+ projects that are integrated into a national REDD+ scheme. The UN-REDD Guidance on Conducting Corruption Risk Assessments in REDD+ notes that during phase 1 of REDD+, i.e. the development of national REDD+ strategies, corruption linked to policies measures could take the form of collusion (secret agreements) to favour certain types of REDD+ activities and therefore a certain sector, or undue influence to determine who is eligible to conduct REDD+ activities, resulting in state capture.⁹⁶ This experience seems relevant for Kenya given that certain companies in the sector have already achieved a close relationship with the KFS, that some believe has been abused in the past to ensure favorable decisions on allocation of licenses and royalty payments.

Underpinning some of these corruption risks could be the lack of adequate stakeholder engagement and their free, prior and informed consent (FPIC). This was mentioned above in terms of the risks stemming from revenue-sharing. Kenyan stakeholders are well aware of the safeguards that are discussed at the international level on REDD+, and there appears to be regular commitment to these in policy discussions at the national level. However, there is considerable doubt whether free, prior and informed consent, which represents a key safeguard, can be achieved in reality, and that people affected by REDD+ activities may either have limited voice or be easily misinformed. This is partly an outcome of low levels of understanding regarding REDD+ activities in rural communities, but also limited experiences with deliberative democratic processes, and particularly the meaningful participation of women. Here we can reflect on the experiences of CFAs, which seem to have improved community agency in many places, but also exposed inherent problems with elite capture and political marginalization. Thus, where communities are approached for approving REDD+ projects and activities, there is a need to obtain consent, or to disengage from an activity if consent is not given, according to agreed upon national FPIC guidelines.

5.2.4 Integrity of civil society

Section 5.2.4 : key points

- Overall, perception is that NGOs are improving their effectiveness in holding the government to account.
- However conflicts of interests among forestry sector NGOs, who are assumed to offer the dual role of oversight and implementers of REDD+ activities

The role of NGOs in performing 'watch-dog' role is of relevance to the integrity of REDD+ activities. The UN-REDD survey returned mixed results (see Figure 8), suggesting many respondents think NGOs and civil society organizations have a good potential to provide accountability for REDD+. This conforms to the overall idea that social accountability in Kenya is improving, and that conservation and anti-corruption organizations are more effective at holding the government to account than was the case before.

The range of views on this subject is wide, as noted in the interviews for this study. While it is not unusual for stakeholders to argue that NGOs lack resources and capacities to function as watch-dog entities, another view is that the NGO sector has its own problems of conflicts of interests and misuse of entrusted power.⁹⁷ Moreover, there are further risks of conflicts of interests among forestry sector NGOs, when they are assumed to offer the dual role of oversight and also implementation of REDD+ activities; a situation where some NGOs may face disincentives for raising the alarm over poor implementation of

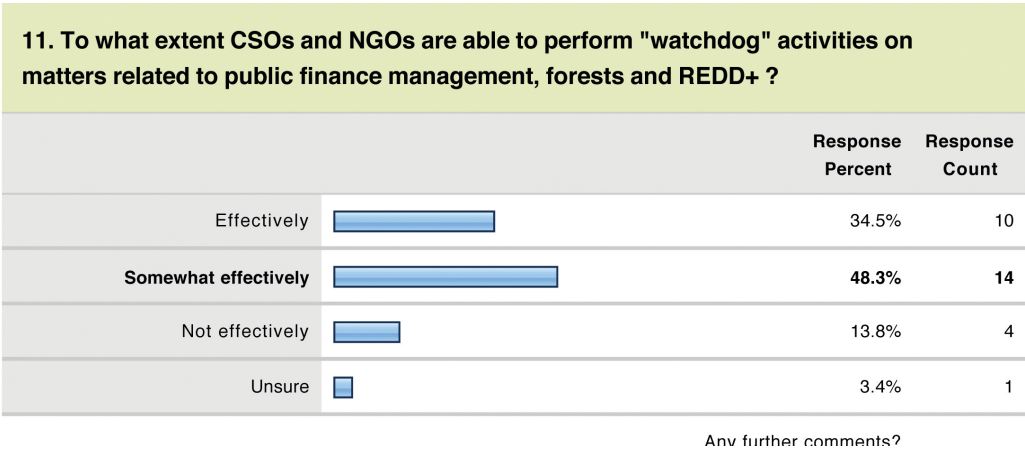
⁹⁶ In the case of REDD+ in Indonesia, the Centre for International Forestry Research has argued that: "[...] it is likely that a substantial portion of the funds could be allocated to large-scale forestry enterprises, pulp and paper producers and oil palm companies. Many of these companies have close ties to state elites and are, therefore, well positioned to secure access to REDD+ funds, particularly those distributed by government agencies." Barr et al, 2010

⁹⁷ Kenyan stakeholders have repeatedly referred to the fact in Tanzania, NGOs provided with funding to undertake pilot REDD+ activities have been accused of corruption and embezzling funds.

REDD+ projects. Again, the experience of the ALRMP highlights potential risks in of assuming NGOs can always act independently.

These concerns, raised by government and non-government stakeholders alike, reiterate the point that if accountability and transparency mechanisms are needed in REDD+ activities, then efforts should not be solely focused on the state, but rather extended to all stakeholders and interest groups.

Figure 8: Survey respondents’ perception of effectiveness of CSOs and NGOs watchdog activities



6. POLICY IMPLICATIONS AND RECOMMENDATIONS

Concerns about potential corruption in the implementation of REDD+ lead us to a final discussion on appropriate policy responses. Here the focus lies with specific actions that may reduce corruption risks in the implementation of REDD+ activities, noting that some of the policy recommendations specific to mitigating risks inherent in REDD+ activities have potential spill-over effects on forest governance in general. Likewise, policies of mitigating corruption in forestry management outlined in section 4 may have a strong influence on mitigating corruption in REDD+.

Policy recommendations for addressing corruption in forestry and corruption in REDD+ are therefore seen as synergistic. This is particularly important in terms of strengthening transparency, accountability and representation within the context of decentralization. A recent paper on REDD+ activities in Central America has argued that:

“The goal is not so much that REDD+ payments generate good forestry practice and livelihood improvement, but rather that such achievements make REDD+ possible in the first place... Conceived as such, REDD+ payments are not a silver bullet that will solve long-entrenched forest governance issues and economic disparities with the injection of more cash. Rather, REDD+ should be viewed as a complement to promising (yet still threatened) strategies that would benefit from additional assistance from a market-based source. Situating REDD+ payments within a framework of diverse income sources also avoids the tremendous risk that will be placed on communities and other stakeholders who rely solely on carbon payments as a conservation strategy.”⁹⁸

This would suggest that a priority for Kenya – as well as for many other countries - in its REDD+ readiness process and to trigger the implementation of REDD+ activities lie in strengthening effective and equitable systems of forest management, as reflected in Kenya’s R-PP.

Below are practical policy recommendations identified by people interviewed for this report, and advanced in other countries addressing these issues, are expected to reduce corruption risks in the implementation of REDD+ activities. Many of these points were also raised in the July 2013 workshop on REDD+ corruption risks, and this in turn was used to design the UN-REDD survey, the results of which shows a strong degree of support for several interrelated policy ideas. Indeed, between 68 and 96% of respondents expressed support for a number of policy ideas to mitigate corruption risks in REDD+ activities, as seen in Figure 9 on the following page.

This survey does not show a clear prioritization. What should be done first and what needs the most urgent attention, and perhaps resources, and remains the prerogative of policy-makers. We therefore present the following list in an order that should not be read as a descending list of priorities.

⁹⁸ Hodgson, et al. 2013, p. 379

Figure 9 : Survey responses on options to mitigate corruption risks

The following are some policy ideas that could help reduce corruption risks in the implementation of REDD+ in Kenya. Can you indicate how important you think each of these are?					
Answer Options	Very important	Moderately important	Not very important	Unsure	Count
Improve citizen participation and consultation in REDD+ process by the government.	26	2	0	0	28
Establish an online or phone-based system for mapping forest land ownership in Kenya	20	7	1	0	28
Increase the capacity of the REDD+ focal office in the Ministry of Forestry and Wildlife	22	4	1	1	28
Strengthen transparency and access to information rules for the KFS	24	4	0	0	28
Introduce and implement a code of conduct for those who work on REDD+	20	5	1	2	28
Increase awareness at the local level on what REDD+ is	27	1	0	0	28
Increase capacity of civil society in Kenya to be able to undertake independent monitoring of REDD+	25	3	0	0	28
Create an online or phone based "REDD registry" in Kenya, with comprehensive information on REDD+ projects, activities and revenue management.	19	9	0	0	28
Establish or strengthen a complaints grievance mechanism at the local level	23	5	0	0	28
Establish transparency portals that track the movement of REDD+ funds and benefit distribution	26	2	0	0	28
Enhance the capacity of the Ethics and Anti Corruption Commission on REDD+	20	8	0	0	28
Train the judiciary to better understand possible REDD+ related conflicts	24	4	0	0	28
Increase understanding on REDD+ and corruption risks at the county level in government	21	7	0	0	28
Clarify the respective roles of the government, CSOs, CFAs, and other stakeholders in REDD+	24	4	0	0	28
Other proposals and/or comments					5
answered question					28
skipped question					15

➡ **Clarity and planning for a benefit-sharing policy**

The policy towards a national system of benefit sharing involves a political decision-making process, which means that it is beyond the terms of reference for this report to comment on what a benefit sharing approach should look like. Nevertheless, having a clear policy on how revenues from REDD+ activities will be managed that also describes the mechanism for this distribution of revenues is considered a critical task for mitigating corruption risks in REDD+ activities. This is the area where people feel abuse of entrusted authority is most likely to occur, both at a national level and at the county and community level.

The process of developing a policy on benefit sharing should be a participatory one, and during this process it will be important to reflect on the corruption risks and how these can be overcome. In doing so it seems useful to consider the faults in similar initiatives, particularly those that have disbursed money to communities, if this indeed how REDD+ revenues will be used. Key points will be robust transparency, minimizing intermediaries, the establishment of independent oversight, and the involvement of beneficiaries in planning from an early stage. Other innovative options that can be discussed further may avoid corruption risks and also ensure benefits are more equitably shared, including with women. One such idea lies in promoting direct cash payments to individuals involved in the implementation of specific REDD+ activities, rather than relying on potentially undemocratic and unrepresentative mediating institutions or entities to decide both on the objectives of spending and the administration of funds. Alternatively, revenue benefit sharing may be improved through strengthening accountability and representation of CFAs, along the lines discussed in section 4.3. A potentially useful exercise would be to organize community meetings to establish what local priorities are and what citizens in these areas deem the best approach to accountability and distribution of funds. Again, this is potentially an activity that could use the civic assembly model for deliberative participation, which could help in overcoming risks of selective representation and elite bias.

The importance of the clarity of the benefit distribution system, stakeholders roles and responsibilities, the system integrity and the resulting confidence in it is also highlighted in the concurrent report on the benefit sharing and carbon rights⁹⁹. To account for this, a rigorous process for evaluating the different options is proposed in the final recommendations of the report.

➡ **Establish policy and mechanisms on transparency and access to information**

Another key theme, which is closely linked to clarifying benefit sharing mechanisms, is the need for improving the collation of data and information sharing. This stems from discontent regarding poor levels of government transparency, although transparency is also regarded as crucial in non-government organizations.

In developing policy to address information sharing, transparency should not be framed as an ad hoc or voluntary arrangement, but rather be based on the recognition that citizens have a right to information. Moreover, some interviewed for this report have highlighted that transparency and public access to information should not be conceptualized principally, or only, to fight corruption; rather, they are more appropriately seen as essential for democratic processes, participation and for learning in general. This may be important to reflect on further as emphasis on transparency to fight corruption may be act as negative incentive for reform, and it may contribute to lack of trust between stakeholders. In other words, transparency should not simply be understood as enabling NGOs to better perform a watch-dog role over the state.

99 UN-REDD and MEW&NR 2013a

Some specific recommendations on how to improve transparency in a positive way and what type of information needs to be prioritized are presented below.

An idea that seems well supported is for the development of some sort of 'REDD+ registry' – an online platform that contains comprehensive information on REDD+ projects, policy documents and also information on revenues. This type of platform could be complemented by a similar one run by an independent third party, partly because it risks being manipulated by vested interests. A point has been made that a REDD+ registry website only run by KFS or the MEW&NR, for example, may too easily become a public relations mechanism for REDD+ activities. Others disagree with this idea of by-passing the government in developing a comprehensive REDD+ registry, and would rather 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 agreeable to both views is that a REDD+ registry could be developed to allow interactive content management; that the public can therefore add content in some areas of the website as well, and perhaps operating along the lines of a wiki-styled website. This would also compliment the idea of effective and meaningful participation in REDD+.

Alongside, or potentially as a component to the REDD+ registry, is the suggestion for on-line mapping of forests linked to information on rates of deforestation and forest degradation, as well as information on land tenure. Elements of this idea are already contained in the report prepared for Kenya's MRV system. The production of accessible electronic information on land tenure is also a recommendation that has arisen from previous reports on 'land grabbing' and human rights abuses in Kenya, and it is a potential task identified for the new Land Commission. KFS has in fact already received funding from the Government of Japan (under the Forest Preservation Programme) to undertake aerial and satellite mapping of forest areas. The results of this work are yet to be completed, and it is not clear yet how much information will be made public and how. However, there is an opportunity for this work to be integrated into a REDD+ registry and to overlay spatial information on land tenure and REDD+ activities and projects, including revenue stream. This is a larger project that could be addressed through collaboration between the MEW&NR, the Land Commission and other non-governmental experts, including UN agencies that have considerable expertise in this field.

National Guidelines on stakeholder engagement and Free Prior and Informed Consent for forest carbon projects, developed through participatory approaches and building on international experience supporting these efforts, would also go a long way in providing clear guidance, and maybe even mandatory standards, for all projects developers to follow, ensuring transparency and thus mitigating corruption risks made easier by information asymmetries. These would not only promote a right, but also level a playing field for different stakeholders embarking on such endeavor.

➡ **Community mapping of forests for REDD+MRV**

A recommendation that links to the last point is with support to CFAs for community based mapping of forests, which in turn can make use of mobile phone technology linked to GIS. Indeed, for many people involved in supporting decentralization it is argued communities are yet to be integrated into the production of data on their forests in any systematic way, which may add to the sense of being poorly integrated into decision making processes. Engaging communities in the production of data and MRV of REDD+ may have wider governance implications than simply improving data collection.

A pilot project for community mapping of forests, based on the use of mobile phone technology, is being implemented in the Mau and supported by ERMIS Africa. The results of this pilot, including an understanding of its costs, will be extremely useful to consider for forest monitoring systems for REDD+, and it may help overcome some of the risks involved in fraud or bias in MRV. However, such community data probably needs to be independent of the estimates generated for reporting through the national MRV system, particularly because of the potential for conflicts of interest could exist with communities responsible for the collation of data also being beneficiaries of REDD+ benefits.

➡ Strengthening participation in REDD+ activities and improving knowledge

Complementing transparency and information sharing are recommendations on enhancing understanding about REDD+ activities. Most people spoken to for this study acknowledge that the government has engaged in public awareness on REDD+ activities and has made a good effort so far at integrating civil society participation in the planning for REDD+ activities in the country. Still, there is a consensus that participation needs to be increased and knowledge on REDD+ activities is probably quite limited in rural areas and among various important government agencies, including at the county level and within the land and justice sector. We therefore find that stakeholders engaged in and knowledgeable about REDD+ activities want to see more resources put into education and sensitization for a broader range of potential stakeholders, and that through this education that corruption risks and anti-corruption policies are clearly articulated. A criticism of existing literature, including government statements and media coverage, is that it tends to promote only a positive image for REDD+, without acknowledging the full range of views about the difficulties and challenges in implementing REDD+ activities. Raising awareness about potential corruption in REDD+ activities, including responsibilities and mechanisms for access to information, may further help prevent abuses of power and frauds.

To increase participation and deepening knowledge on REDD+ activities, more easily comprehensible documentation produced by the MEW&NR and further seminars/trainings at the county level are needed, perhaps targeting first and foremost the newly established county level forest conservation committees. Here the online REDD+ registry suggested above may function as an important resource, particularly if it contains, or links with, the large amount of literature and reports that are being generated in the preparation phase for REDD+ that are currently inaccessible to the public. Capacity building activities on how to use the available information towards increased demand for accountability are also well worth considering.

Capacity building activities on how to use the available information are worth considering to build increased demand for accountability

➡ Supporting independent oversight for REDD+ activities

Transparency and awareness building need to be combined with improving independent oversight mechanisms.

The first idea to achieve this is improved capacity among NGOs and journalists to undertake the necessary analysis of data that should be forthcoming from improved transparency, which may in turn help reveal instances of corruption or mismanagement, not only by the central government, but also at the county level and among community based organizations and the private sector. Several organizations, including Transparency International and the Kenya Forest Working Group are engaged in this type of work, but it is probably correct that they lack the necessary resources and expertise to do this at a sufficient level, particularly if and when REDD+ becomes a national programme. This suggests the need for targeted funding and training for analytical and investigative research on implementation of REDD+ activities, which should include work with journalists as well as NGOs.

A second idea is to establish a more formal arrangement for independent forest monitoring (IFM) of REDD+ activities. IFM is a concept that has been developed since the late 1990s and more recently Global Witness has developed guidelines for creating IFM in the context of REDD+ specifically.¹⁰⁰ These guidelines are based on several important aspects; that IFM should be undertaken by an organization 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 reports to a multi stakeholder group, and that the work of the IFM team is given sufficient resources and full access to information and access to all areas of forests in the county. Moreover, a critical element for success

¹⁰⁰ For further information see the Global Witness principles for Independent Monitoring of REDD+, available at: http://www.globalwitness.org/sites/default/files/library/principles_of_im_redden_0_0.pdf

is the need for an official mandate from the government (including clear terms of reference) and support by the government to make the results of the IFM well publicized and free from censorship.

Supporting IFM of REDD+ activities would be a strong commitment by the Kenyan government to taking issues of corruption seriously, and it is potentially an activity for which donor assistance may be available. Although IFM is often undertaken by external organizations and consultants, a number of Kenyan NGOs and researchers have both competency and in-depth knowledge on forest governance to perform that role, provided that a strong policy on conflict of interest is established. IFM of REDD+ activities could also be implemented by the Kenya Forest Research Institute.

➡ **Harmonizing and strengthening mechanisms for public reporting of corruption in REDD+ activities**

Kenya has witnessed the emergence of numerous government and non-government initiatives to encourage the reporting of corruption by the public, although the success of these initiatives remains uncertain. Nevertheless, stakeholders recommended that something should be developed specifically for REDD+ activities.

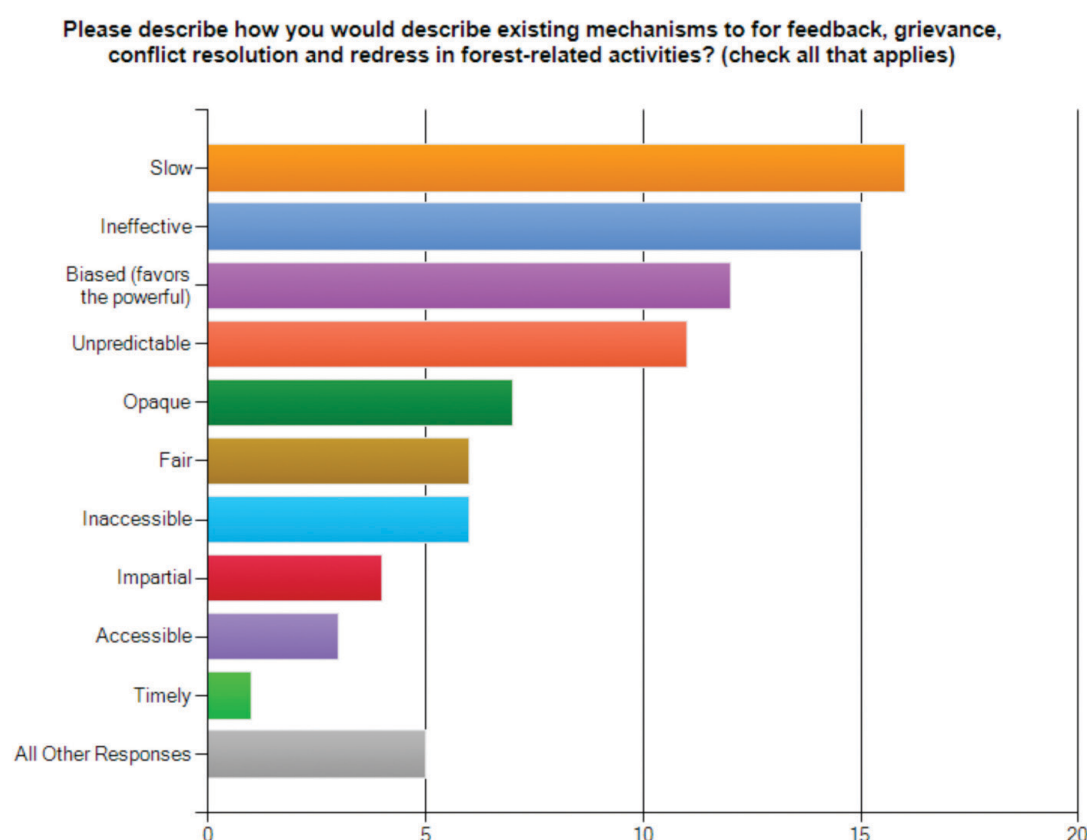
Transparency International (TI) in Kenya is already developing an online system for members of the public to report instances of corruption in REDD+ activities that will then be investigated further by the organization, working in collaboration with other NGOs and government departments. This new project is similar and possibly inspired by a broader project involving TI known as the Integrated Public Complaints Referral Mechanism, launched in 2012. This a partnership among various government organizations and TI, including the Ethics and Anti-Corruption Commission, 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 corruption proposed by TI allows people to fill in on-line forms or send through information via mobile phones. To generate sufficient interest among rural communities, this will need to be accompanied by large awareness campaigns. Of possible concern is the potential duplication of efforts in Kenya given the 'Forest Hotline' run by the Kenya Forest Working Group. It may be worth thinking about how these initiative complement rather than duplicate efforts, to limit confusion among members of the public who also have the option of reporting instances of corruption to the KFS directly and the KEACC. Indeed, the MEW&NR, in collaboration with KEACC and several NGOs working in this field could play a constructive role in streamlining public reporting of corruption in REDD+ activities and the forestry sector more generally, based on the recognition that a corruption hotline needs to be independent and sufficiently resourced to allow feedback to those reporting instances and for follow on activities. Without this, the prospect of people reporting is diminished considerably. We should also note that a harmonized mechanism for reporting could be provided, or linked to, by the further development and implementation of a proposed REDD+ 'grievance and redress' mechanism (see next section).

➡ **Strengthening government capacity to detect and redress corruption in REDD+**

Transparency, independent oversight mechanisms and public reporting may have limited impact if the prospects of specific problems being redressed are slim. Following on from the point raised in section 4, at the moment the capacity and perhaps political will to investigate and prosecute corruption, crime and human rights abuses in the forestry sector seem inadequate and lacking in coordination. This is highlighted well in the UN-REDD survey responses (Figure 10), where participants asked about the strength of existing mechanisms for feedback, grievance and conflict resolution in the forest sector generally described it in negative terms.¹⁰¹

101 Note that under "all Other Responses", the choices were: "efficient"; "transparent"; "safe"; "predictable"; and "equitable".

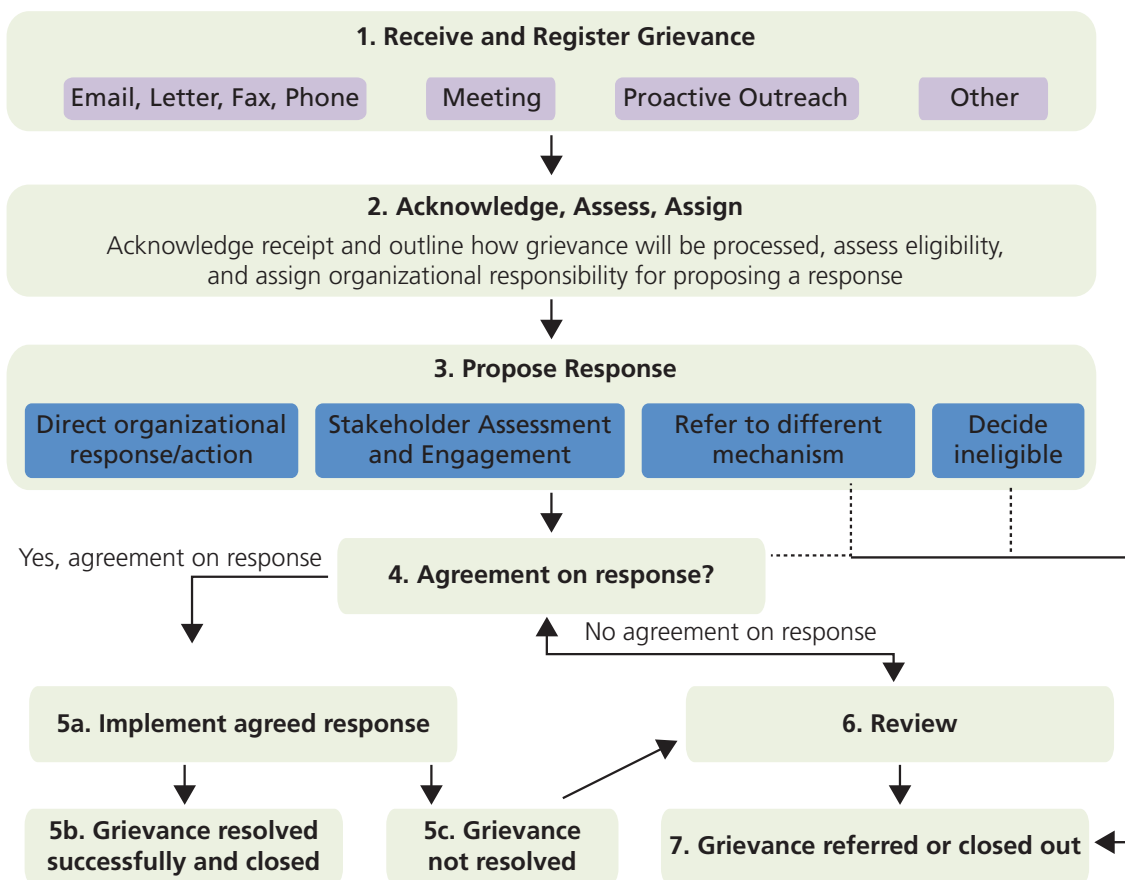
Figure 10: Stakeholders' perception of the existing feedback and grievance mechanisms in forest-related activities

We found strong support among Kenyan stakeholders for not only capacity building on REDD+ activities for law courts, but also for a more specialized agency to have the mandate to investigate and lead prosecutions for forest related crimes, including corruption in REDD+ activities. At the moment the KEACC clearly lacks the ability to carry out this mandate, but it could be the best placed organization to lead a task force on REDD+ integrity, combining both advocacy/capacity building functions as well as investigative work. This would strengthen both national forest monitoring systems and public reporting of corruption.

The combined needs for dedicated reporting and accountability mechanisms could be addressed through a formal REDD+ grievance and redress mechanism, as identified in Kenya's RPP document. Guidance for countries in establishing such a mechanism has been elaborated by UNDP and the World Bank.¹⁰² This described the importance of ensuring the grievance and redress mechanism is accessible, predictable, transparent and grounded with internationally recognized human rights. We note that such a mechanism may cover a range of issues that go beyond corruption, but various concerns that are commonly thought of as examples of corruption would be appropriately be dealt with, at least through the initial steps, through this mechanism. Where instances of criminal behavior is identified, these would necessarily be referred to the court system, as can be seen in step 2 of the following diagram developed by UNDP and the World Bank (Figure 11). Those assessing eligibility will decide whether the complaint should be directed to a different office within the organization, or to a different organization altogether. For example, complaints alleging economic impact as a result of corrupt procurement procedures may need to be referred immediately to the KFS internal audit department, and/or to the KEACC.

102 UNDP and World Bank 2013

Figure 11 : Proposed steps in a grievance and redress mechanism for REDD+.



➡ Establishing a code of ethics for REDD+ activities in Kenya

There has been a suggestion that a code of ethics needs to be developed for those engaged in REDD+ activities. It is a suggestion that may be dismissed as tokenistic and of minimal importance to actually preventing and combating corruption. Nevertheless, some stakeholders argue that clarity on the responsibilities and expected ethical behaviors of people engaged in REDD+ activities may be an important basis for achieving accountability; a basic reference point for advocacy work. This code of ethics could also reinforce the ideal of the right to information, of participation and free prior informed consent. Moreover, an ethical code could be developed in collaboration with a range of stakeholders, which may be a productive activity for enhancing participation and ownership of ensuring improved accountability in REDD+ activities.

➡ Enhancing regional collaboration in law enforcement and anti-corruption

The success of REDD+ is partly dependent on better regional response to unsustainable and illegal trade in timber and timber products, as well as addressing corruption that facilitates this. Therefore, there is a need in the context of REDD+ to strengthen coordination amongst law enforcement and anti-corruption agencies from different countries that serve as a source, transit and export points of illegal/unsustainable timber. Only with regional coordination and national level implementation can effective impact be achieved on the ground, and despite political sensitivities, a number of countries in the region are increasingly willing to address the issues of illegal logging, timber and charcoal trade through enhanced information sharing. This could build on existing regional agreements such as the East African Community Customs Declaration on Prohibited and Restricted Goods, and help further a regional FLEGT process.

7. Conclusion

While still facing some challenges, Kenya's forest governance has seen undeniable improvements. These should be continued and enhanced to counter and prevent new corruption risks and thus ensure an equitable, efficient and equitable REDD+. This requires developing the capacities of a number of stakeholders and information-holders, including the Ministry of Environment, Water and Natural Resources, Kenya Forest Service, the Ethics and Anti Corruption Commission, project developers, Community Forest & Charcoal Associations, local and indigenous communities and civil society watchdogs to prevent, detect and sanction corrupt practices in REDD+. In this, strengthening the collaborative capacities of state and non-state national partners on anti-corruption for REDD+, with an emphasis on institutional capacity and an enabling environment for collaboration underpinned by clear guidelines, transparency and access to information, will be key.

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