

## **NATURAL RESOURCE TENURE IN KENYA – PHYLLIS MUEMA**

Kenya is an overwhelmingly rural country but its inequality in land and income distribution in the rural areas is scandalous. UNDP ranks Kenya as the seventeenth poorest country in the world. Kenya is also the third most unequal country in the world after South Africa and Brazil. (UNPD Human Development Report 2001) Kenyans in general and coastals in particular do not have the rights and control over local livelihood resource. There are no mechanisms to check the exploitation of natural resources, which would otherwise deplete resources, marginalize people, raise unemployment and increase migration. Due to easy acquisition of land for private and public purposes many peoples of the coast have been displaced from their land both in the south and north coast; the example of Kwale where a Canadian firm wants to mine titanium is a case in point; thousands more have been displaced over the years by various development projects while others alienated their land due to indebtedness, mortgage, deception in land transfer not to mention the infirmities of the legal system which is strongly weighted against the poor. There are too natural crops like coconuts, and cashewnuts that the coastals should benefit from even the kayas (natural forests)-but this too is a pipe dream. The sea resources are out of reach of most dwellers of the coast due to private interests that dot the coastline. All these are undeclared emergencies at the grassroots level.

The Kenya Economic Survey for 2006 indicates that:-

- Quantity of fish landed increased by 5.7% from 135.6 thousand tonnes in 2004 to 143.3 thousand tonnes in 2005.
- Total forest plantation area increased by 5.8% from 125.1 thousand hectares in 2004 to 132.3 thousand hectares in 2005.
- Value of mineral production rose by 28.3% with soda ash contributing 55.5% of the total value.
- Tourism earnings increased from KSh 38.5 billion in 2004 to KSh.48.9 billion in 2005, an increase of 27.0%.
- International visitor arrivals increased by 8.7% from 1.4 million in 2004 to 1.5 million in 2005.
- Hotel bed-nights occupancy increased by 18.1% from 3.8 million in 2004 to 4.5 million in 2005. Local conferences held went up from 912 in 2004 to 1,553 while International conferences increased from 145 to 186 in the review period.
- The balance of trade was 364,205 million at the port of Mombasa

## **NATURAL RESOURCE AND MANAGEMENT IN THE COAST PROVINCE**

Coast province is one of the eight provinces of Kenya. There are six districts in Coast province: Kilifi, Kwale, Lamu, Mombasa, Taita Taveta and Tana River. The province is endowed with a wealth of natural resources that have been used by the local population and by outsiders who have visited the region and traded with the coastal people for centuries. For example, mangroves have been exploited along the coast for thousands of years and exported to the Arabian Peninsula as building materials. The coast also supplies a sizeable percentage of fish, lobsters, shrimps, oysters and crabs that are caught and sold nationally and internationally.

The Kenyan coastline extends approximately 600 km along the Indian Ocean from the border of Tanzania in the South to the Board with Somalia in the North. It is estimated that about 17% of the total population of Kenya lives in this coastal zone, which also accounts for about 50% of the country's tourism industry.

The Coast of Kenya has a total land area of 83,359 sq.km out of which 263 sq is covered by water. Under the current legal framework natural resources are properties of the state (with President as guardian) or in restricted circumstances, Local Authorities. Natural resources underpin cash and subsistence economic in Kenya, yet their contribution to wealth creation and poverty reduction remains undervalued. These natural resources and especially wildlife, marine, forests, mines, water and land are being rapidly degraded, with concomitant negative impacts on rural incomes and resultant intolerance. This is greatly attributed to problems of inept policies, reduced incentive to conservation efforts, continued inability of government agencies to integrate, harmonize and enforce land use policies and legislation intended to conserve natural

resources and insufficient funding to implementing agencies – which make them unable to carry out their mandates.

In addition to the rich marine resources, the coastal zone also has a number of forests, which include Shimba Hills, Mwaluganje, Arabuko Sokoke, Mangeda Hill, Kilibasi in Kwale district, the Tana River Forests, Dian, Shimoni, the Boni and the Taita Hills forests. Other forests include the mangrove and the sacred *Kaya* forests. Coastal forests contain 27 plants, four birds and five mammal species that are endemic. These forests are very important for the conservation of plants and animals and it is estimated that 50% of the plants, 60% of the birds and 65% of the mammals that are currently threatened with extinction in Kenya are found in the Coastal forests.

### **Natural Resources and their Exploitation**

The political economy of our state is such that the exploitation of natural resources minerals, forests, quarries, etc is crucial to its growth. The mainstream idea is that natural resources are instruments towards the agenda of industrial growth and economic development - sources of revenue. This is what has led to the systemic disempowerment and exploitation of the coast peoples (by the state, non-coastals and powerful locals) thereby denying them control over the natural livelihood resources such as forest, land and water.

The history of Kenya, like that of any colonized territory, is fundamentally one of land dispossession and subsequent staking out of individual claims of title to property that legitimately belongs to others through a mechanism of land registration. Since the first settlers at the Coast of Kenya to the formalized annexation of the Kenyan hinterland by the British Colonial government to the myth of the sanctity of title at independence, when it was argued that once a person acquires title to land, it can not be questioned even in a court of law! Customary Land Tenure holders inexorably lost their land to Individual or Private registered land holders. The result of which is that Kenya at independence inherited one of the most skewed patterns of land distribution in the world compared only to Brazil, South Africa, Zimbabwe and Namibia, where equally crisis of legitimacy of land rights/titling system and security of tenure is a bewildering variety of tenure arrangements befitting redress.

Forty years of independence is a long time during which any historical injustices regarding land should have been resolved. The fact of the matter however is that there are certain deep rooted injustices which still rankle whole communities in Kenya. The Government's post independence land policies have not resolved or fundamentally addressed these injustices. The politically ignited land clashes of the 1990s are a manifestation of deep rooted grievances which cannot be glossed over in a reform process. The Draft Constitution of Kenya 2004 recognizes this fact and requires the Government to embark upon the task of redressing historical injustices which have persisted through out the Kenyatta, Moi and now Kibaki regimes. They remain sticking points in the efforts to development and nation building. The grievances have served as rallying and reference points for political agitation by various communities in the country. Demands for redress have been voiced during various phases of national discourse as the country seeks a new political dispensation. This became more evident during the constitutional reform hearings conducted by the Constitution of Kenya Review Commission, the Presidential Commission of Inquiry into the Land Law System of Kenya and various commissions set up to look into the matter.. Calls for state intervention in the injustices again resurfaced after the historic 2002 general elections.

The grievances remain unresolved because successive post independence governments have failed to address the land problem in a wholistic manner. In fact, the land policies pursued after independence either exacerbated the problems or only offered artificial and temporary solutions to them. The consequence of this approach by the Government is that there are a number of land problems in the country, which have refused to go away.

Given this country's colonial legacy of land alienation and dispossession of entire local communities from their land, it was incumbent upon the post-independence governments to resettle all the displaced people and restore their rights over land. The political realities at the time however meant that a radical one track land restitution and redistribution programme could not be undertaken without upsetting the platform upon which independence had been negotiated. A cautious, land market- based and hybrid system of resettlement was preferred to a wholesale and massive land restitution programme. This meant that lands which had been lost to white and other settlers could not be entirely repossessed for restitution by the Government. In addition, the Government adopted certain policies and laws that had been introduced into the colony by the colonial government. These policies and laws had fundamentally affected the land rights of certain communities in many parts of the country in a variety of ways. The decision by successive governments to continue with this colonial legacy has meant the intensification of these problems over the years.