

Land tenure and management in the districts around Mount Elgon

An assessment presented to Mount Elgon Regional Ecosystem Conservation Programme (MERECP)

Eija Soini

Eastern Africa



World Agroforestry Centre
TRANSFORMING LIVES AND LANDSCAPES



East African Community



Royal Norwegian Government

About the Mount Elgon Regional Ecosystem Conservation Programme

The Mount Elgon Regional Ecosystem Conservation Programme is a pioneer trans-boundary initiative involving a range of stakeholders working to improve management of one of the most important ecosystems in eastern Africa. The four-year programme that started in 2005 is implemented under the auspices of the East African Community, with funding from the Royal Kingdom of Norway.

The International Union for Conservation of Nature (IUCN) is the lead implementing agency of the programme. Other technical agencies include the World Agroforestry Centre, the Community's secretariat, five line ministries in the two countries, five state agencies and local authorities.

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About the author

Eija Soini has a PhD in development geography from the University of Helsinki, Finland. She has also studied a range of other subjects including biology, African studies, cultural anthropology, education, and Remote Sensing and GIS, all of which she has used in subsequent work. Her PhD thesis focuses on livelihoods, environment and land use interactions in the highlands of East Africa.

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Abstract

This study reviewed historical and current factors and trends affecting land use, land tenure, resource access, human settlement, and conflicts over resource access and tenure in the districts around Mt. Elgon in Kenya and Uganda. Government officials and other sources were interviewed in the districts as well as at the Agricultural Development Corporation (ADC) farms and a development agency, Vi-Agroforestry. Maps on land tenure and general characterisation of the programme area are based on information from a variety of sources such as interviews, paper maps and existing GIS databases. Complex historical processes in Kenya and Uganda have led to the current state of land management in the two countries. In Kenya, most of the small-scale farms in the study area are under freehold tenure as a result of a land adjudication programme that started in the 1950s. On the Ugandan side of the mountain, customary land tenure is common. Although this form of land tenure was recognised in the 1998 Land Act, few customary tenants have obtained certificates of occupancy. Several academic dissertations and papers written in Uganda on the 1998 Land Act were consulted for this report as were various papers about the land reform in Kenya. A common finding from the reviews was that the land policies in both countries have not resolved and will not resolve the land issues they were intended to address (such as low economic growth and agricultural production). A large number of studies conducted in an attempt to find correlations between land tenure types and investment show very few correlations. For instance, spatial differences in tree cover in the Mt. Elgon area are the results of complex issues related to history, ethnicity and tradition, farming practices (such as ox-ploughing) and development projects. The study revealed the following problem areas in the current setting of land tenure and land management: Landlessness, settlement conflicts (Benet and Chepyuk, and Namatale), insecurity on the northern side of the mountain, fragmentation of farmland and small land size due to population pressure affecting land management. Other problem areas are women's lack of tenure rights in practice (tree tenure and land rights), conversion of customary land tenure into freehold (multiple rights to land that are not accommodated by the law, e.g. wife's position), resource access to forest products, especially on Kenyan side where joint management of forests is only starting in 2007, and, in the case of Uganda, land offices that do not function.

Keywords

Elgon, land tenure, land management, land use, resource access, tree tenure, conflicts over resource access, MERECP

Acknowledgements

The author wishes to thank all of those who sacrificed part of their work time and valuable evening hours to meet me. You provided me with valuable insights and a lot of important information and data on land and tree management and related issues of the study area. Thank you for understanding my very busy schedule and for receiving me even without appointment. I also wish to thank Meshack Nyabenge and the technicians at ICRAF's GIS laboratory for scanning and georeferencing all the basic maps of the study area. It was a valuable contribution that considerably speeded up my work. Many thanks also to Jean-Marc Boffa and Aileen Ogolla for facilitating all the practical arrangements for my work. Richard Coe and Jean-Marc Boffa reviewed this report at different stages and provided valuable feedback. To them I say thank you, too.

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Objectives and methods of the study

Terms of Reference (ToR) of the consultancy

This assessment was done within the Mount Elgon Regional Ecosystem Conservation Programme (MERECP) implemented by the World Conservation Union (IUCN), with financial support from NORAD and institutional support from the East African Community. It is a partial fulfilment of an agreement between IUCN and the World Agroforestry Centre (ICRAF), responsible for the research-to-development component.

The following were the Terms of Reference of the consultancy services that led to this report:

1. Review historical and current factors and trends affecting land use, land tenure, resource access, human settlement, and conflicts over resource access and tenure in the MERECP project area. Use that information to establish a typology and characterization of current land tenure types in the MERECP project area.
2. Prepare a land tenure map, or set of maps, for the MERECP project area at the scale appropriate to the information collected, on the basis of the typology and data collected at the national and local levels.
3. On the basis of items 1 and 2, and in collaboration with the person(s) responsible for the study of the 'policy terrain' affecting tree planting and forest resource management that shapes individual and collective incentives for tree planting and forest resource management, develop a joint set of recommendations for modifying and harmonizing policies and institutions effective at the local level that promote sustainable land (and tree) management.

Point 3 will be published in separate Policy recommendation notes.

Thirty days were allocated for the entire work. This necessitated a general approach where details and exceptional cases are given limited attention or omitted altogether. The work was a rapid assessment rather than a thorough study that such a subject would otherwise require. Therefore, this work is meant to guide further efforts investigations of the land issue and the search for solutions for better land management in the project area.

Methods of the study

A quick literature review was done on the Internet and libraries at Nairobi University, Moi University and Makerere University. The study uses the literature on the land issue in Mt. Elgon area, putting it in a broader context of the historical developments of land tenure, from the colonial days to the present state in Kenya and Uganda. Recent literature on the interrelationships between land tenure and land management/ecological, and development/investment on land in Uganda and Kenya (some on Mt. Elgon) is also investigated.

Numerous officials in all the five districts were interviewed on issues related to the current state of agricultural land tenure, tree tenure, land use and crops, forest management arrangements and conflicts linked to land. Interviews were also conducted on Agricultural Development Corporation (ADC) farms and their management. Interviews with Vi-agroforestry staff provided insights into farmers' attitudes to and preferences in tree planting as well as various incentives and user rights to trees (Vi-Agroforestry).

Maps on land tenure for various places are based on maps and information available in the Farm Mechanisation Office under the Department of Agriculture in Kitale (Trans-Nzoia), interviews within the Lands Office (Mt. Elgon), Department of Lands and Surveys in Entebbe (Mbale, Sironko, Kapchorwa), and on former MERECP and MEICDP (Mount Elgon Integrated Conservation and Development Project). Boundaries are aligned and georeferenced using scanned topographic maps of 1:50:000. Other boundaries used in the land tenure maps were taken from existing maps and databases (Survey of Uganda, Survey of Kenya, National Biomass database).

As characterisation has previously been for the five focal districts and such information is scanty in the various reports and district development plans, a general characterisation section was added at the beginning of this report in the form of thematic maps. The aim is to provide a general picture of the area of interest and assist in the planning of the future research work and selection of intervention sites.

It would be easy to start concentrating on exceptional areas as attention is drawn to them by the publicity and disreputable handling of by governments of such cases as Benet in Uganda and Chepyuk in Kenya, but this is not the focus of this report. The aim of adding the maps is

to provide a more analytical approach in order to understand general differences within the whole area of operation. These maps come from a multitude of data sources. Some of them are from global data sets with limited accuracy and should not be considered the ‘ultimate truth’. Altitude and rainfall was obtained from a GIS database A-Where (MudSprings Geographers). The Global tree cover database (Modis) was used to find patterns of tree cover. Central Bureau of Statistics (Kenya) and Uganda poverty databases were used in poverty characterisation. Both the poverty databases and Landsat Global Population Database was used for population figures and densities. United States Geological Survey data was used for land cover information of the districts, MERECP (Ugandan side) and MEICDP (Kenyan side) GIS data for the forest vegetation map.

Characterisation of the districts surrounding Mt. Elgon

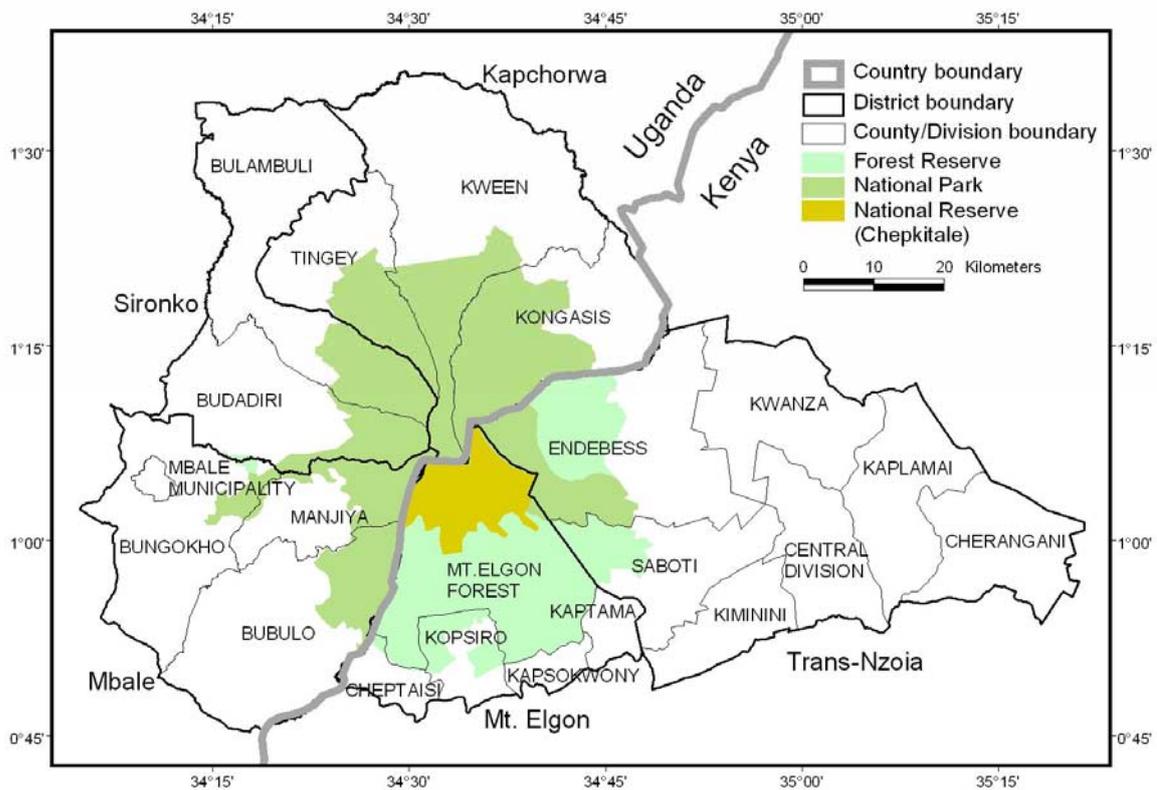


Fig. 1. Administrative and Mt. Elgon gazetted area boundaries¹ of the five districts surrounding Mt. Elgon in Kenya and Uganda. In Uganda, showing up to County level, in Kenya up to Division level.

¹ It is not clear to the author where the current Forest reserve boundary in Chepyuk area in Kopsiro is located. (Two options are obvious in the map: The administrative divisional boundary by CBS database or the Forest Reserve boundary as in MEICDP data). In practice, forest has been cleared up to the administrative boundary of the map. As administrators in districts are not used to using maps, such questions could not be answered within the time available for the study.

Mbale, Sironko and Kapchorwa on the Ugandan side, and Trans-Nzoia and Mt. Elgon on the Kenyan side, are the five districts immediately surrounding Mt. Elgon, the fourth highest (4321 m) mountain in Africa. The mountain lies approximately one degree north of the equator and falls on both Kenya and Uganda (01°10' N and 34°30' E). The following is a short characterisation of the five study districts using thematic maps.

The five districts are divided into Divisions (Kenya) and Counties (Uganda) as in Figure 1. In Kenya divisions are further divided into locations and sub-locations, and in Uganda, Counties are divided into sub-counties and parishes. Table 1 summarises some basic information of the five districts.

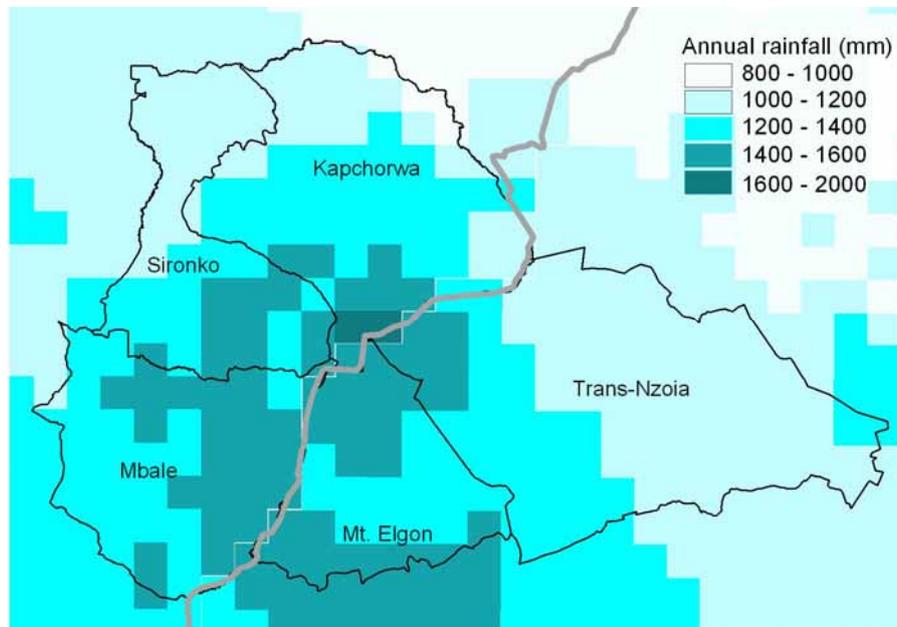


Fig. 2. Annual rainfall in the five study districts (Mud Springs Geographers Inc). There is considerable difference of annual rainfall within the five districts. Rainfall naturally varies by altitudinal gradients along the slopes of the mountain. Further, areas with the same altitudes on the western side receive more rainfall compared to the similar altitudes on the eastern side. The northern side rainfall decreases abruptly towards the northern semiarid areas.

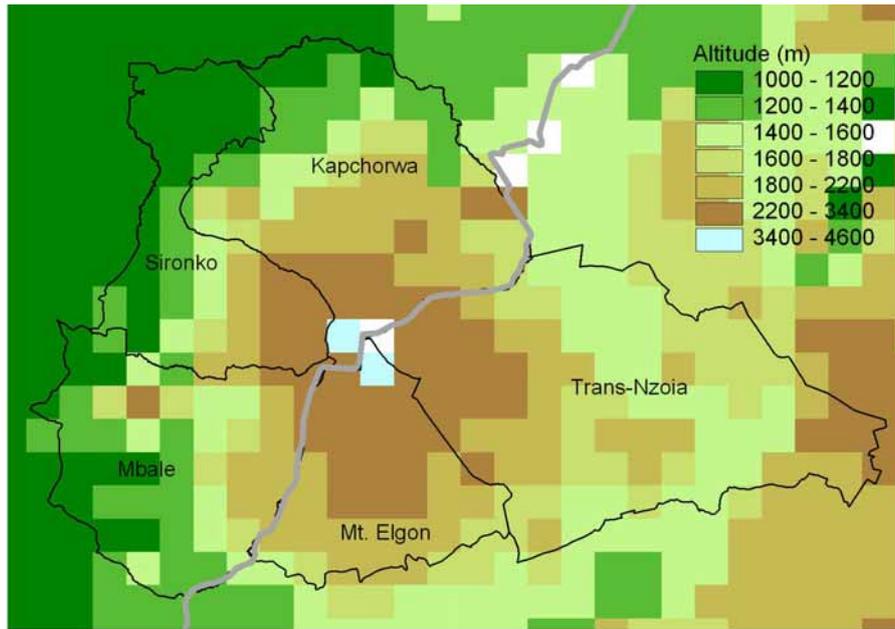


Fig. 3. Altitude (Mud Springs Geographers Inc). The western side of the mountain sinks abruptly to about 1100m above sea level. On the eastern side the terrain descends only to the altitude of 1500m on the Endeless-Kitale plain and rises again towards the Cherangari hills to the east of the study area.

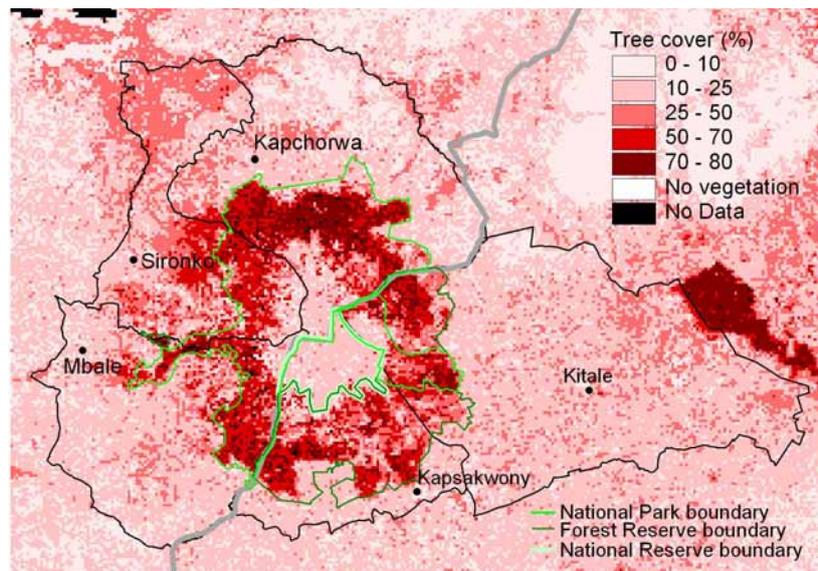


Fig. 4. Tree cover of the five districts (Global Land Cover Facility). The tree density percentages are based on the characterization of terrestrial vegetation from the NOAA's Advanced Very High Resolution Radiometer (AVHRR) data acquired in 1992-93. One pixel represents tree cover percentage in 1 sq km. This map using a global database should be taken with an appropriate caution at this regional scale, as it has not been properly ground-truthed. However, it gives a) an approximate indication of the current state and of the forest b) an indication of the large-scale differences of tree cover on farmland in the five districts.

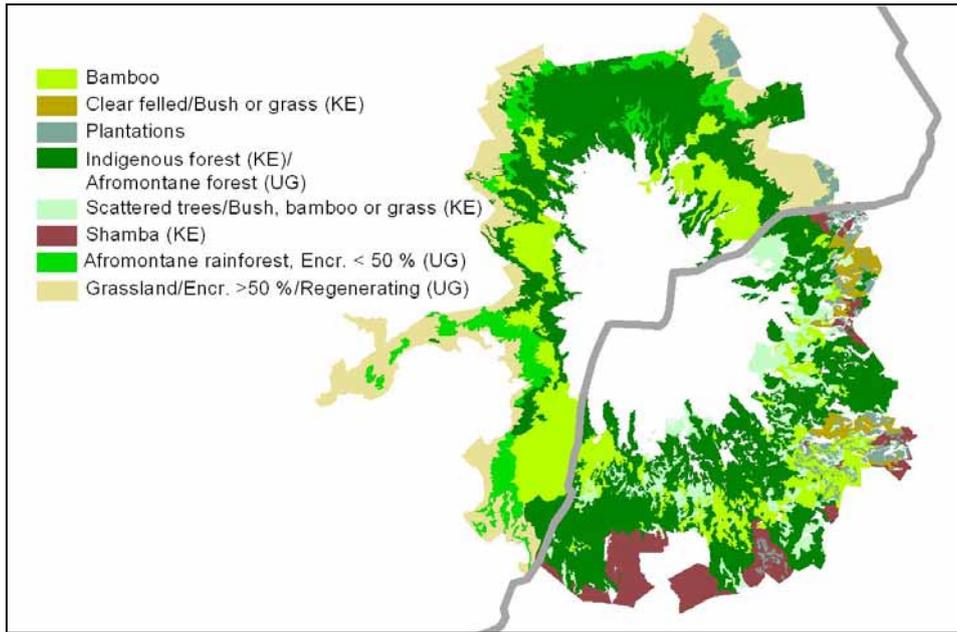


Fig. 5. Vegetation map of the main forested zone in the Forest Reserve and National Park areas compiled by using MERECP and MEICDP GIS data.

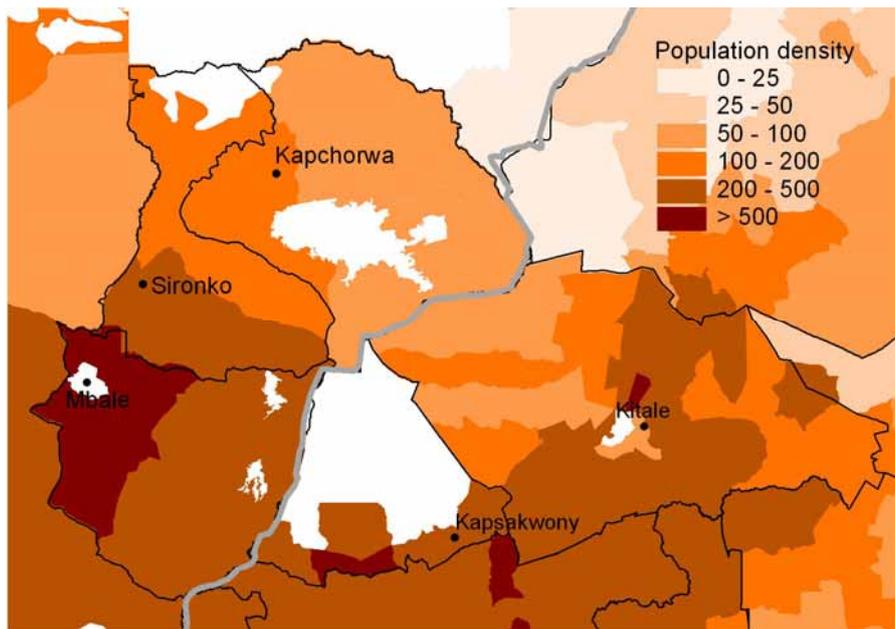


Fig. 6. Population density as people per sq km (According to and calculated from CBS Kenya 2004 & UBOS 2005. This population density map has been produced using the Poverty databases of Kenya and Uganda. 30% growth was added to the population figures of 1992 of the Ugandan side. Figures on the Kenyan side as those of 1999. Highest population densities are found in Bungokho (Mbale), lower Kopsiro and Cheptais, and Kitale environs. However, high densities, those between 200 and 500, are typical in all of Mt. Elgon district, the central plains of Trans-Nzoia, half of Sironko and the rest of Mbale (on top of Bungokho of over 500 people per sq km)

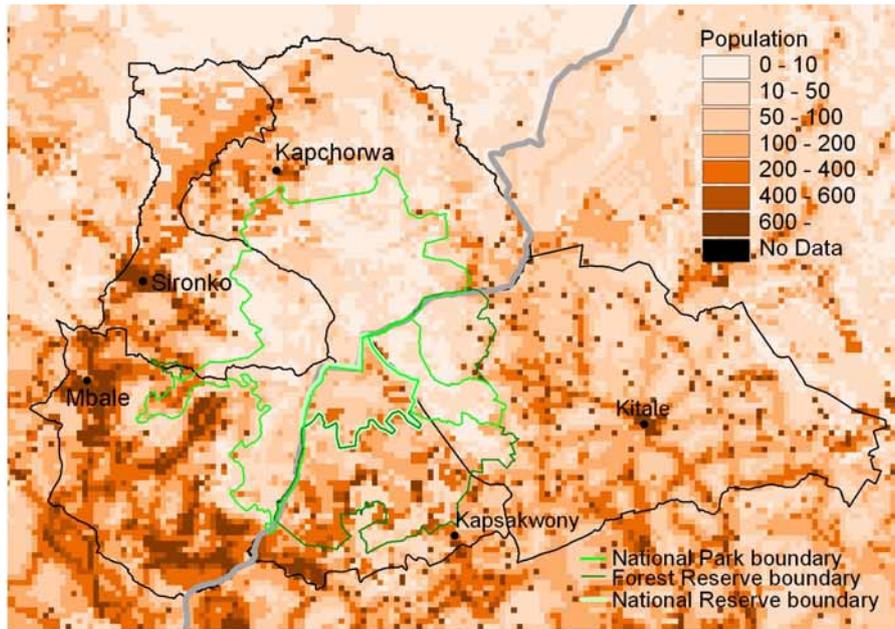


Fig. 7. Another way of looking at population figures in the study area: Population according to the Global Population Database (Oak Ridge National Laboratory, LandScan 2001). The Forest Reserve in Mt. Elgon district is so encroached by human activities, including old buildings where people used to live before moving to Chepyuk, that it has been interpreted by this method as inhabited with considerable densities. (More on the method in: http://www.ornl.gov/gist/projects/LandScan/landscan_doc.htm)

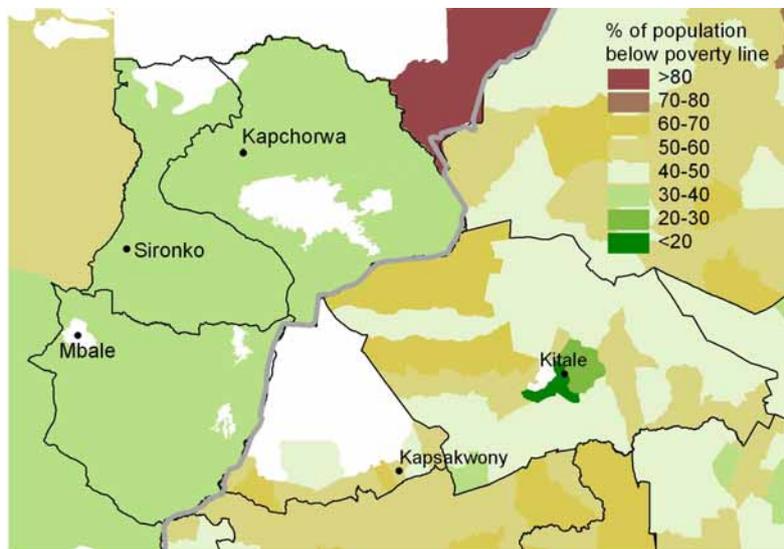


Fig. 8. Percentage of poor people below the poverty line (CBS Kenya and Uganda). The method of determining the number of poor people is explained in detail in the database. However, in short, a monetary poverty line is derived which represents the cost of a basic basket of goods that allows minimum nutritional requirements to be met in addition to the costs of meeting basic non-food needs. Most of Endeless division in Trans-Nzoia, and parts of Cheptais and Kapsokwony have highest percentages of poor.

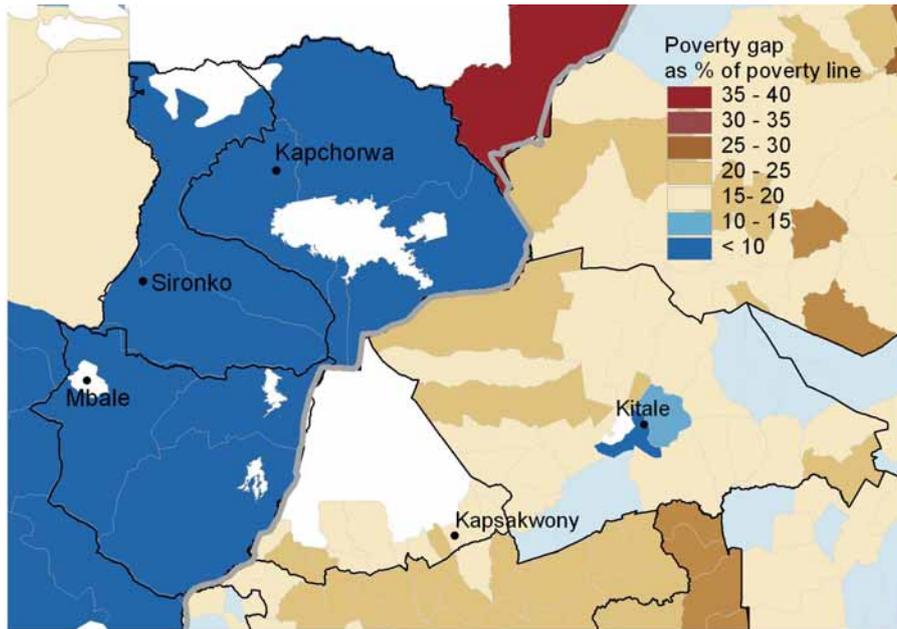


Fig. 9. Poverty gap as percentage of poverty line, i.e. how much poorer the poor people are relative to the poverty line. This measure captures the average expenditure shortfall, or gap, for the poor in a given area relative to the poverty line. It is obtained by adding up all the shortfalls of the poor (ignoring the non-poor) and dividing this total by the population (CBS Kenya 2004; UBOS 2005).

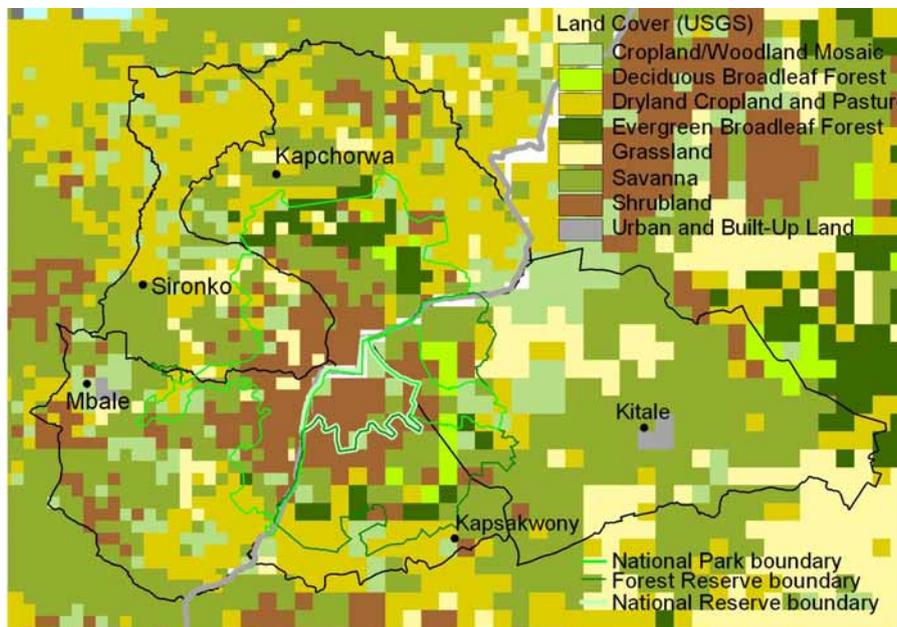


Fig. 10. Land cover map by USGS (Global land cover characterization). As KFWG reported, in 2000, very little broadleaved mixed forest can be seen in the Forest Reserve. Some categories are partly misleading. E.g. most of the small-holder cropland/pasture land has gone into Savanna category. There are also cropland/woodland mosaic on the moorlands of the mountain as obviously Senecios and Grounsels mixed with grass give the same reflectance as Cropland/Woodland mosaic.

Table 1. Basic information on the five districts surrounding Mt. Elgon in Kenya and Uganda (Kenya 1997a, 1997b, 2002a; Uganda 2005a, 2005b, 2005c; NEMA 2004a, 2004b, 2004c)

	Mbale	Sironko	Kapchorwa	Trans-Nzoia	Mt. Elgon
Population	720	284 565	193 510	645 170	158 127
2001ke/2002ug	925				
Pop growth rate	3.2 %	3.4 %	4.2 %	4.2 %	3.2 %
Area sq km	1480	1071	1738	2467	937
Density persons/sq km ¹	487	266	111	262	169
District HQ	Mbale	Sironko	Kapchorwa	Kitale	Kapsokwony
Pop in HQ 2001	70 437	11 253	8864	Approx. 60000	4000-5000

¹Calculated as population density 2001 (Kenya) and 2002 (Uganda) divided by area.

Most of the settled land area in the five districts is under subsistence small-scale agriculture. In addition to small-scale subsistence farming, Trans-Nzoia has large areas under large-scale farming. Large-scale farming is found especially in the Endebess-Kitale plain (1800-2000m), (total of 66000 ha). Most of the large-scale farms belong to the Agricultural Development Corporation (ADC)².

In Trans-Nzoia, the main crops include tea, coffee, pyrethrum, maize, beans and sunflower. Particular cash crops are sunflower, tea and coffee. Maize and beans serve the dual purpose of food and cash. Other food crops include, finger millet, sorghum, potatoes (sweet and Irish). Fruits include citrus, bananas, apples and avocados. Cotton has been introduced recently. In large farms maize and dairy are important. Food processing includes oil processing, flour milling, and tea and coffee production. Fish farming also plays an important role with 237 fish farmers and 283 ponds in Trans-Nzoia (Kenya 1997b).

In Mt. Elgon district maize, tomatoes, fruits, tea, sunflower, wheat pulses, coffee, pyrethrum are cultivated. In Kaptama division wheat is also grown. Horticultural crops and coffee are more common in Cheptais and Kopsiro. Dairy plays an important role. Coffee, pyrethrum, bananas, avocado and oranges are important cash crops in the district. However, market crops

² Some private large-scale farms occur, but it was impossible in such a short time to establish their number, location and size. I was also told by officers that private large-scale farms are negligible in the total picture of land tenure in the district as most of the earlier large-scale farms have been subdivided like any other private land in Kenya and the parcels are not so large any more.

in Chepyuk include maize, cabbages and onions. Chepyuk is also exceptional in that sense that farmers still keep only traditional cattle. In Cheptais, irrigation is used. Apples are a special crop in Kaptama³. Fish trade is significant in Kapkateng and Cheptais markets (63 fish farmers with 117 ponds of 100-200m²) (Kenya 1997a, 2002a).

Farmers in the sub-counties at high altitude in Mbale grow bananas, coffee and Irish potatoes while those at low altitude grow maize, millet, cassava, and sweet potatoes (Uganda 2005b). Every crop – bananas, maize and beans - has become a cash crop, but the traditional cash crops are coffee and cotton.

According to the District Development Plan (Uganda 2005a), the main crops in Kapchorwa district are maize, matoke (bananas), coffee, beans, wheat, sunflower, and vegetables.

According to the District environmental office, in the lower zone of 1000-1500 m altitude, millet, cassava, rice and groundnuts are grown, while in the upper zone (2000m), wheat, Irish potatoes, coffee, matoke and maize are the main crops.

The coffee-banana system is predominant in Tingey county as well as in Sipi and Tangwen, a transitional area between Mbale and Kapchorwa. Arabica coffee is grown with shade on the lower slopes and without shade on the highest slopes. *Cordia* and *Albizia* are the main shade trees⁴. While matoke and coffee are grown on the western side of the mountain, barley, maize, wheat and Irish potatoes dominate towards Suam. The areas towards, around and beyond Kween and Kongasis counties have maize and wheat, occasionally with small-sized plots of sunflower. Farmers have also lately started growing new commercial crops such as rice — in Ngenge wetlands — and barley. Banana and maize are predominantly grown in pure stands and a marginal or negligible acreage is covered by mixed stands. Other activities in Kapchorwa include cattle rearing, poultry keeping, apiary, and pig rearing (Uganda 2005a).

On the slopes of the Benet Resettlement Area in Kapchorwa, one finds a patchwork of maize, potatoes, beans, bananas, coffee, barley, wheat, pasture land, assorted greens, pumpkin, peppers, other assorted vegetables and a few stands of eucalyptus. The recently constructed road connecting Mbale and Kapchorwa has dramatically increased access to markets and contributed to increased cash-crop production. Farmers sell their surpluses to middlemen

³ Paul Obusuru

⁴ Chemangei Awadi

who bring their trucks to farms and village trading centres. Despite a shortage of grazing land, livestock rearing is seen by many as the most reliable and lucrative activity (Himmelfarb 2005).

Highlands in Sironko are areas of intensive farming. Coffee, banana, Irish potatoes, peas, beans, fruits and other horticultural crops are the main crops. In the lowlands groundnuts, maize, sorghum, millet, cotton, soya beans, sweet potatoes, sunflower, rice (in Wunanbutye and Muyembe sub-counties) are grown (NEMA 2005c).

Two main ethnic groups occupy the two districts in Uganda: the Bagisu in Mbale and Sironko and Sabiny in Kapchorwa. Historically, the Bagisu were primarily agriculturalists and utilized some forest and grassland resources. Populations of Sabiny have historically resided in both the upland areas and northern plains, largely practising nomadic pastoralism. The Kenyan side is mainly inhabited by the Luhya, the Teso (in the lowlands) and the Sabaots on the higher slopes⁵.

Land tenure in past and present

Uganda

Upon declaration of the 1903 Crown Lands Ordinance, all land in Uganda fell under the jurisdiction of Britain. Consequently, all land held under customary law became Crown land. Those occupying land under customary law became tenants at will of the Crown. Under Crown Lands Ordinance Africans were permitted to occupy Crown land as of right until arrangements were made to remove them to other areas. No non-African was to occupy Crown land outside a township without a licence or lease (Great Britain 1955).

The boundaries of most towns were declared in the early years of this century. They were determined largely on an arbitrary basis, always greater than the town area at the time to allow for future expansion. Many boundaries were the circumference of a circle with administrative offices as the centre. Mbale in the eastern Province of Uganda was gazetted with a boundary of a radius of two miles. In Uganda the greater part of the land inside the

⁵ It remained unclear if the formerly forest dwelling groups are of separate origins than the above groups. A lot of confusion is caused by different names carrying different emphasis (Kalenjin, Ndorobo, Ogiek etc). Within the limited time in the field and with the marginality of the issue in the bigger picture of land tenure in the five districts surrounding Mt. Elgon, I did not attempt to resolve the confusions.

towns was Crown land, although there was a small amount of land held in private title. No one, of any race who was not in possession of valid licence of lease was to occupy Crown land within a township (Great Britain 1955).

Towns in Uganda were surrounded by Crown land in customary African occupation. An exception was made for Mbale, where land adjoining the township boundaries was African freehold land. This exception was due to 20sq miles of land that had been given to a Muganda general, Kakungulu, who helped British colonialists to extend the colonial frontier to Eastern Uganda. Many customary tenants were deprived of their land due to this land transaction (Wandukwa 2004).

In general, the Ordinance enabled the protectorate government and religious institutions to acquire vast expanses of land. As years passed, those with authority, especially the chiefs (a creation of the British governance), misused their powers to allocate land to themselves (Brock 1969; Wandukwa 2004). Finally, chieftainship was abolished in 1966. The British authorities made a series of agreements with traditional rulers, granting private estates to them and their functionaries ('mailo' in Buganda, native freeholds in Toro and Ankole). The remainder of the country was regarded as Crown land.

In 1953, East African Royal Commission (EARC) was formed to frame recommendations by which better economic development of land was to be achieved (Obol-Ochola 1971). The Commission proposed that land tenure policy should seek individualisation of landownership. It also recommended that land transactions should be facilitated to allow easier land access for economic use; customary land rights should be ascertained and accommodated before exclusive individual rights are sanctioned; registration should not promote subdivision and fragmentation. The land tenure reform was to be pursued only with local support.

The Commission also argued that registration of individual ownership and consolidation of land throughout the protectorate was necessary in order to encourage commercial transactions of land. Some districts such as Teso and Longo rejected the idea of individual ownership of land and there were widespread riots as result. In 1958, a pilot scheme was introduced in Bugisu in a place called Bubirabi. The scheme failed to take off (Great Britain 1955; Wandukwa 2004).

The Public Land Act (PLA) enacted in 1962 repealed the 1903 Crown Land Ordinance. This meant that all former Crown land become *public land*. It was administered by the District Land Boards (DLB). The DLBs got powers to dispose of land either in freehold or leasehold form to interested individuals. However, as the 1962 PLA did not place a ceiling on the amount of land somebody would individualise in freehold, land grabbing became a serious problem (Wandukwa and references therein). In 1969, as a remedy, administration of public land reverted to the Uganda Land Commission (ULC). The 1969 PLA limited the amount of land that could be given to an individual to 500 acres, beyond which the consent of the minister had to be sought. According to the Act, no one wishing to lease land on which customary tenure peasants lived could evict these peasants before they consented. If and when they consented compensation needed to be paid for the lost land (Nuwagaba 1998).

A fundamental transformation in land tenure and management in Uganda was established by the 1975 Land Reform Decree (LRD). The decree claimed to reform the customary tenure in the interest of development. The LRD, among other things, sought to address the issue of land fragmentation and prevention of large chunks of land being left underdeveloped. The LRD declared all land public. Powers of administration was vested in the Uganda Land Commission (ULC) (Nsabagasani 1997) in accordance with the provisions of the Public Lands Act of 1969.

The protection people had enjoyed under customary land tenure through the PLA 1969 was now abolished. Customary tenants on public land became tenants at sufferance. No person was allowed to occupy public land by customary tenure except with written permission of the prescribed authority. The politically powerful people grabbed vast chunks of customary land, thus displacing a considerable number of people (Otim 1993). All freeholds, including mailo ownership that existed before commencement of the decree, were supposed to be converted to long-term leaseholds of 99 years for public bodies and religious organisations and 99 years for individuals (Roth et al. 1993).

The land reform decree of 1975 was, however, never implemented. The decree was rendered defunct by Uganda's 1995 constitution and finally replaced by the Land Act 1998 (Okoth-Ogendo 2000).

The primary objective of 1998 Land Act was to operationalise the land reforms of the 1995 constitution. The Land Act was passed with the hope of bringing about economic

development in the country by addressing issues of equity and justice. But more specifically the fundamental objective was the creation of a market in land (Wandukwa 2004).

The Act recognizes a number of tenures: customary, freehold, leasehold and 'mailo'. What is important is that customary tenants on former public land now enjoy security of tenure and cannot be evicted at will as it had been before under the 1975 LRD. Security is further guaranteed by acquiring a certificate of customary ownership (CCO). However, the main objective of the 1998 Land Act was to promote the rapid disappearance of customary land rights through their transformation over time into freehold.

Customary land tenure is by far the most widespread tenure type in Uganda (Uganda Land Alliance 1997; Nsabagasani 1997). Most of the land in the three study districts falls under customary land tenure (Figure 11). Few customary tenants have obtained certificates of occupancy. In practice, many find the process cumbersome and not necessary. Fees and forms make it difficult. However, most of the people feel secure under their customary system. As Wandukwa (2004) puts it, registration of land is not regarded as vital to consolidate tenure as the peasants have their own sense of security of tenure offered by the traditional system of tenure.

Before a certificate is obtained, the land is surveyed. The District Land Board is required to call together all stakeholders (neighbours) and resolve any possible conflicts before the survey. The board is in fact the only land related body in the study districts at the moment as District Land offices are undergoing drastic reformation and have no functional staff. District Land Boards were established by the Land Act of 1998 to hold and allocate land not owned by any person or authority, facilitate registration and transfer of interests on land and take over the role and exercise the powers of the leaser, in case of leases granted by the former controlling authorities. They were also to facilitate surveys and making of plans, maps, drawings and estimates through their officers or agents. Other roles included to compile, maintain and annually review lists of compensation claims and deal with all other matters connected with land in the district (Uganda 2005b).

It was reported in Mbale and Sironko that under the customary tenure, land is individually owned and it can be sold and bought without the clan's involvement. According to the informants, this is not just a recent trend that might have been caused by in-migration (e.g. in the tumultuous 1980) that had led to mixed communities. For a long time, they said, the clan

has not had a strong say on land deals. However, Wandukwa's study in 2004 of Sironko states that though there is evidence that land transactions are a common place in the area, land is sold with the sanction of the clan members.

Under customary land tenure system, land is passed on from one generation to the next, usually by the head of the household sub-dividing it among his sons. Generally, women do not inherit land. However, widows can keep the land they are occupying when their spouse dies. Women are reported to own only 7% of the land in Uganda.

The national Constitution, which states that "Women shall be accorded full and equal dignity of the person with men" and "Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this constitution". However, this fine principle has not yet reflected in land ownership. Property in a matrimonial home belongs to the husband in the absence of evidence to the contrary (Mugoya 1998; UWONET 1998).

Kapchorwa occupies vast areas of lowlands with free-range livestock. Even though these lowlands are owned by individuals, access on 'empty' land is free for grazing⁶. Interview participants of Himmelbarb (2005) noted that agricultural land tenure in the plains was largely individualized by household, while grazing lands were held by villages in common.

According to Kayiso's (1993) study of Mbale in the early 1990s, out of 832 plots included in the study 490 (58.9%) were inherited, 263 (31.6%) purchased, 39 (4.7%) allocated by clan incumbents⁷ and 33 (4.0%) rented. For Kapchorwa the corresponding figures were 121 (28.3%), 109 (25.5%), 125 (29.3%) and 51 (12.0%), respectively.

In the 1990s, clan heads in Kapchorwa still played a prominent role in allocating land for settlement. This might have changed since the establishment of District Land Boards. Terms of payment for the plots or holdings acquired through purchases, leasehold, renting or allocation were found to be cash, physical assets and both cash and assets. For Mbale and Kapchorwa districts, the majority of holdings (53.2% and 64.1% are acquired with physical assets such as livestock, durable assets like houses and, possibly, as part of bride price. The

6 James Mwalye, Kibale Mwambi, Chemangei Awadi

7 It is not clear to me what clan allocation of land means. It is likely that this refers to the time in the early 1990s where 'empty' land was still available in the lowlands and clans were involved in allocating this land.

use of livestock or produce as consideration for holdings or land is a common in the project area, given that cash is hard to come by (Kayiso's 1993).

Leasehold tenure is mainly found in trading centres. However, land tenure in such centres is also governed by mixed leasehold and customary arrangements. Recently, scattered parcels have been obtained on leasehold by well-off people from elsewhere. These parcels cover a very small area of the total landscape and are impossible (and unnecessary) to depict in the land tenure map. For example, in Sironko, about 5% of land holdings are under leasehold (NEMA 2005c). Land is rarely rented. However, some land is rented in the lowlands (Sironko)⁸.

In Mbale, the old freehold land of the late general Kakungulu still occupies large areas north of the town⁹. This is a 'mailo' system with tenants occupying the land. Churches (Church of Uganda, originally Uganda Missionary Society; and the Catholic Church) occupy relatively large areas. Small-scale farmers, however, occupy most of it¹⁰. In Sironko, it was pointed out that government institutions occupy large parcels of land. These are mainly agricultural and livestock trial and research farms and vary from 30 to 400 acres¹¹. In Kapchorwa in Bukwa division, Sebei cooperative union, Kapyoyon farm, hires out land 6 acres per family, 2000 acres in total¹².⁴

Kenya

Many white settlers got their land under the 1897 land regulations. These regulations never gave freehold titles to settlers and prompted them to lodge complaints to the commissioner of the protectorate. They wanted the Crown to take over the land and give it out on freehold terms.

In 1899, all land was declared Crown land and the commissioner of the protectorate went ahead to campaign for the establishment of a 'white man's country'. Land was given out on freehold terms, with 999-year leases and licences. The first reserves for Africans were

8 James Mwalye, Kibale Mwambi

9 Martha Muragura

10 James Mwalye

11 Matilda Makabai

12 This might not be an exhaustive list of big landowners in the Ugandan side.

established in 1906. In 1915, these reserves obtained legal protection (Macharia 1970). In 1938, a distinction was drawn between Crown land for which titles could be granted and native lands, held in trust by the Crown for those in actual occupation (Okoth-Ogendo 2000)

What is now Mt. Elgon district remained as part of the Native Land Unit. This means a completely different history of developments in land ownership compared to Trans-Nzoia.

Trans-Nzoia was opened up as a settler-farming district. This happened around 1910, although Boer settlers had come even earlier, in 1908, and when they were allotted 2000-3000 acre farms. In 1912, the first survey of Trans-Nzoia was conducted, but by then the forest had already been gazetted. When the first 50 farms were auctioned in 1913, 35 remained unsold. However, by January 1914 all were sold. Another 120 farms were auctioned in that year.

The whole of Trans-Nzoia was part of the 'white highlands'. According to Waweru (Waweru 1974), allocation of land to the settlers often resulted in displacement of the local people called El-Gonyi.¹³ Original inhabitants were few and as they were pastoralists the land appeared practically empty to the colonialists. As a result local people became workers on the farms, squatting on large white-owned farms. Work on the large farms also attracted people from outside Trans-Nzoia.¹⁴

Land within towns was either Crown land or freehold. The towns were surrounded by Native Land Units, Crown land or land governed by the Highlands Order-in-Council, which may be by either alienated (to white settlers, churches, for instance) or Crown land (Great Britain 1955).

Trans-Nzoia was also one of the highland areas where Ex-soldier settlement schemes were established after WWI and WWII. Each British volunteer or soldier that took part in the East African campaign was eligible for a block of land. Land near Kitale totalling 28000 acres was earmarked. Other areas were established in Nairobi and Limuru.

After the WW1, there were three schemes of with 72000 acres. A second phase came after the WWII. In 1962, there were 300 settlers under these schemes, which covered a total of 25000 acres in Trans-Nzoia and Uasin Gishu (Sandford 1919; Waweru 1974).

¹³ It is not clear how much displacement of original people actually happened. I was also told by officers in the district that Trans-Nzoia was practically empty except small pastoralist populations.

An Order-in-Council of 1960 terminated the Highlands Order-in-Council (1938-1939) which had excluded all non-Europeans from owning land or farming in the Kenya Highlands. By the Sessional Paper of the Kenya Colony and Protectorate Legislative Council of 1959/1960 (No. 6), inhibitions against the transfer of freehold land between parties of different races were withdrawn (Kenya Colony and Protectorate 1960).

By 1963, there were 1320 Europeans. The total population was then 98308 (1962 figures). However, after the independence, the number of white farmers dropped dramatically. By 1969, only 668 of them were still in the district (Waweru 1974).

At the independence, most of the white farms in Trans-Nzoia were disposed of. There were basically four ways in which the land ended up in the hands of new owners.

1. Kenyan individuals bought whole farms.
2. Cooperatives bought the land collectively and divided it among their members.
3. Government bought the farms, some of which was put under the ADC farms and others sub-divided for smallholder settlement schemes.
4. Settlement Funds Trustee bought and sub-divided them for small-scale farming.

In addition, the Government bought some of the farms for afforestation.¹⁵

Large chunks of land in Trans-Nzoia are currently under the management of the Agricultural Development Corporation (ADC) (Figure 12). ADC is a parastatal formed in 1965, when the government bought land from white settlers at the independence. Some of the original ADC farms have been sub-divided over time for small-scale agriculture.

In 1987, by a Parliament Act, the remainder of the farms were to be set aside for seed production. It was recognised that these are the only remaining pieces of government agricultural land big enough for seed production. Currently, there are eight ADC farms in Tran-Nzoia. They cover about 40,000 acres in total, mainly in the Endebess region. These farms concentrate on seed production and bulking, together with Kenya Agricultural Research

14 Dominique K. Nyumu

15 Peter Ng'ang'a Kinyanjui; Dominique K. Nyumu

Institute and Kenya Seed Company. The land is also used for livestock breeding. One farm that grows citrus fruits by irrigation.

The corporate generates all its funds for operation from the farms and the extension services that its staff provide to medium and large-scale farms. However the main resource, land, belongs to the government. Some donor funding is currently also coming from UNDP/Italian government.

Large-scale farming is an important source of employment in the district. Although most of the farm employees are usually given small pieces of land to cultivate, they are squatters kept on the farms to provide casual labour. In May-August, there are about 2000 of these landless workers on each of the ADC farms.¹⁶

Since independence, small-scale farmers have formed cooperatives in order to buy land together. After the purchase, each family is allocated its portion, say 5 acres, and goes through the process of adjudication and registering the land individually. This has led to communities of Kisiis, Kikuyus and others living in neighbourhoods. After the purchase and subdivision of land among members, these cooperatives are not involved in any land issues, but may take on other activities.

In cooperatives, one could pay for the land by providing labour to the other members. This process may take long and some members have not finalised registration. However, having been part of the cooperative that bought the land, they are not insecure as they are recognised by the neighbours as owners of their land. However, selling an unregistered parcel of on its own and without registering it in the process may put the new owner in an insecure situation because the seller's relatives can undermine the transaction.¹⁷

General concern over the status of the native land units (Native Reserves) throughout East Africa and over how to accelerate agricultural development led to the appointment of the East Africa Royal Commission in 1953. As a result of the commission's report, the Native Lands Registration Ordinance was passed in 1959. Part of this Ordinance deals with the process of

¹⁶ Nixon Sigei, Mrs Nzomo

¹⁷ Dominique K. Nyumu, Mrs Nzomo

land adjudication and consolidation, and another part introduced a system of registration of title based on the English model.

The registration provisions of the Ordinance were repealed and replaced by the Registered Land Act 1963, while its sections regarding land adjudication and consolidation were retained as a separate Act, the Land Adjudication Act. This Act was later renamed the Land Consolidation Act, when the Land Adjudication Act 1968 was passed to provide simpler procedures in those areas where no formal programme of consolidation was being carried out (Coldham 1978 and references therein).

One of the most distinctive features of the Kenya land adjudication programme is its use of local committees at all stages of the process, particularly in the settlement of disputes. Under the Land Adjudication Act 1968, the adjudication officer, a public officer appointed by the Minister of Lands and Settlement, is required to appoint not less than 10 persons resident within the section to be the adjudication committee to deal with each adjudication (Coldham 1978 and references therein).

Kenya's land adjudication programme has progressed at different paces in different parts of the country. Individual freehold tenure was first introduced in the Central Province. That happened in the 1950s during the Mau Mau rebellion. Most of the former Native lands there had been registered by the end of that decade, and nearly completed in the Nyanza and Western Provinces by the mid 1970s. Land registration in the Eastern, Rift Valley and Coast Provinces began at a later date. Today, however, there are areas in Kenya where the process has been stopped due to people's reluctance to cooperate.

There are currently four land tenure systems in Kenya: communal, freehold, trust and government land. Trust land is not available for farming unless gazetted under an appropriate law. Government owns land in the form of forest and reserves, townships and other alienated lands. These lands can be occupied by squatters who practice subsistence farming (Mbwika 1991). Town areas are held in trust by county councils and leased out.

In the two study districts, smallholder farms are generally now all adjudicated as freehold land. Not all, however, have collected their title deeds. For example, in Mt. Elgon district, adjudication took place between 1971 and 1990s.¹⁸

However, there are people, especially by the forest boundary, whose land has not been adjudicated. One case in Mt. Elgon district is Chepyuk (Chepyuk and Emmia locations). In spite of the official policy of land privatisation and issuing of title deeds in Kenya, the reform was not implemented in this area. Several mismanaged allocations and re-allocations (1970s, 1990s and 2005) have taken place since 1974 when the area, 3686 hectares, was originally excised for a forest dwelling community of the Sabaot (Ndorobo, Kony, Sabiny etc¹⁹) in exchange to their original home land in the high altitude moorlands within the gazetted forest reserve.

In addition to poorly managed procedures and corrupted practices, the original land allocation was complicated by a general rush to the area after the forest was opened up for farmland. The area looks attractive to people lower down cultivating steep slopes, for example. Also, different informal arrangements of acquiring land have been used over the years, including buying by local arrangements from those to whom it was allocated and providing labour in exchange for land.

In 2005, the forest boundary was resurveyed and part of the population was found to reside in the forest reserve. This has led to another major 'reshuffling' of land. The process has so far led to widespread dissatisfaction, as former investments in land were not given consideration when the area was re-divided amongst 'eligible' land applicants. Village elders were and are still used in identifying 'original' or 'indigenous' people who can get land in the area. Thousands have been left landless (more in Medard). Up to date, the Chepyuk area has remained government land. The moorland area is now Trust land called Chepkitale National Reserve. In Trans-Nzoia, smaller areas of land disputes exists. These are forest areas that have been irregularly given out for settlement without being officially degazetted by the government.²⁰

18 Tom Nyang'au

19 Very many different names of the group have been used.

20 David Omoto, Peter Ng'ang'a Kinyanjui

The land tenure map also marks Nyayo Tea Zones at the boundary of the forest. They are owned by Kenya Tea Development Authority (KTDA). KTDA established these zones in the early 1990s to stop people encroaching on the forest.²¹

The land tenure issue of the small-scale farmers in predominantly freehold Kenya, is not as simple as it looks. As Haugerud writes, “The formal and informal tenure systems interact in an unpredictable and disruptive manner. Uncertainty and conflict regarding claims to titles land persists and there is wide divergence between the land register and actual patterns of use and access”. Sons of men who received land titles during the tenure reform marry and establish their own families on farms to which they themselves do not hold formal title. Many land sales, subdivisions and successions go unrecorded and many people live on land which is titled to another person, often that person dies and different individuals continue to have overlapping access to the same parcels of rural land (Haugerud 1989). Further, distribution of land is unequal and over the years of questionable governance ethics, large areas of land have been given out irregularly.

Now the new Draft of National Land Policy calls for thorough reform. “Land reform should adhere to the principles of redistribution, restitution, resettlement, land banking, land readjustment and land taxation”...The policy recognises gender, equity, HIV and AIDS and poverty as critical main cross-cutting issues. Constitutional changes are, however, required to realise the envisioned reforms. (Ministry of Lands 2006)

21 Dominique K. Nyumu

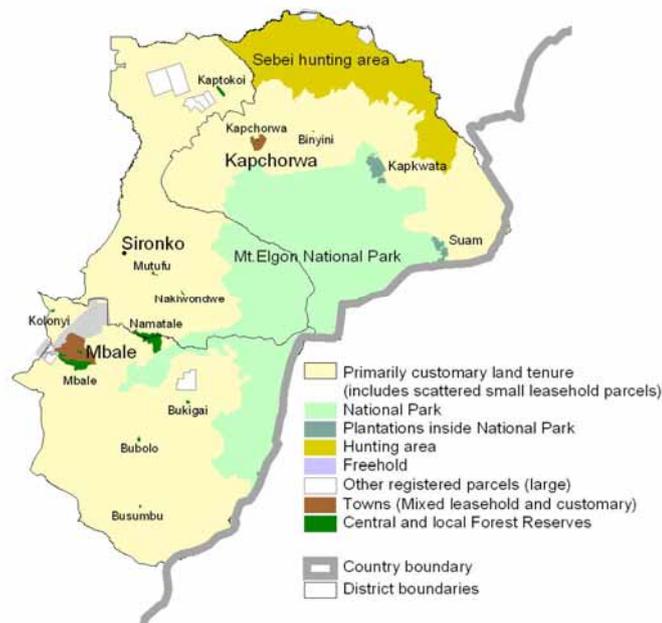


Fig. 11. Land tenure map of Kapchorwa, Sironko and Mbale of Uganda. National Park boundary according to a map 'Mount Elgon National Park' by Department Lands and Surveys (2000) edited so that Namatale forms a separate Forest Reserve. Forest Reserve Boundaries from Biomass study (NFA). Town areas and Sebei Hunting area from 1:50 000 Topographic maps by Department of Lands and Surveys (1963). Freehold and leasehold boundaries from Cadastral maps at Department of Lands and Surveys in Entebbe (boundaries only, no status confirmed). What the 'Other registered parcels' are has not been confirmed. They are areas that have been marked in the Cadastral maps as registered. In Sironko, it was reported that government has several research farms and stations. It was assumed that the large parcel immediately north of Mbale town is the freehold granted by the British administration to General Kakungulu in the 1920s, though ownership details have not been confirmed. Boundaries should not be taken as legal authority.

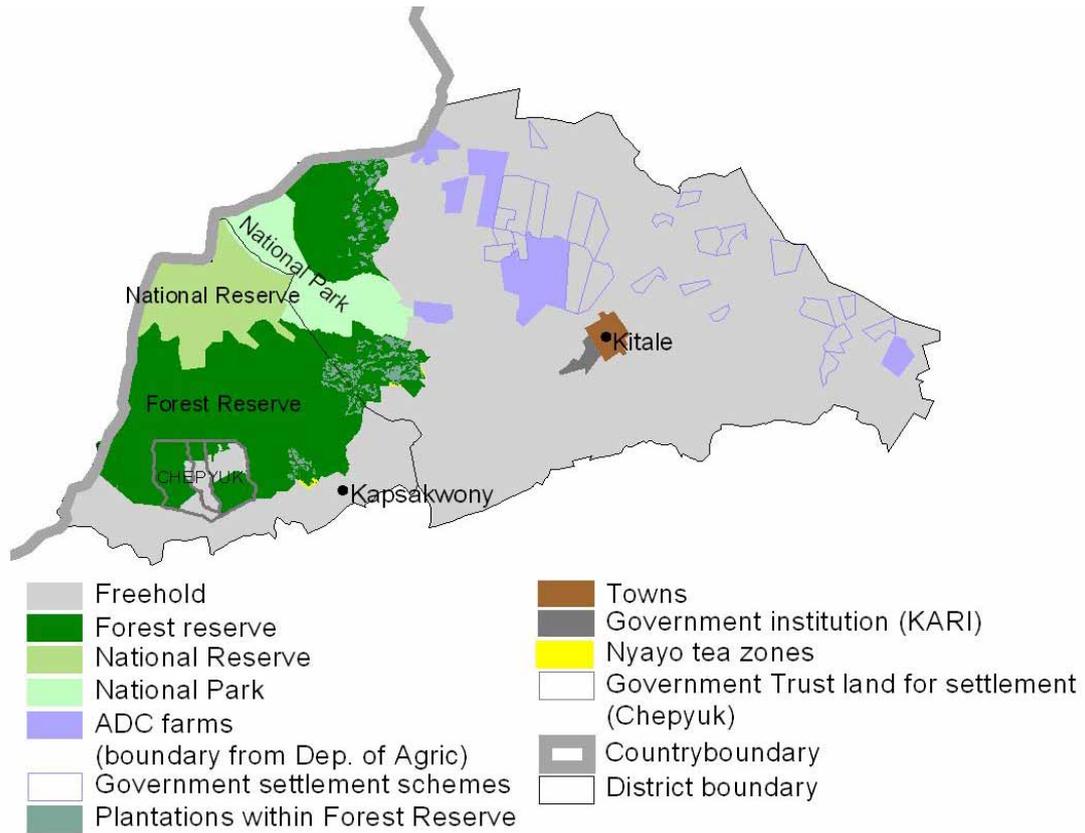


Fig. 12. Land tenure map of Trans-Nzoia and Mt. Elgon districts. Boundaries of Forest Reserve²², National Reserve, National Park, Nyayo tea zones and Plantations as in MEICDP data. Chepyuk boundaries as in Poverty database 'location boundaries' (CBS Kenya 2004). ADC farms, Settlement schemes and town areas from the Agricultural Mechanisation Department, Ministry of Agriculture, in Kitale. District boundaries and country boundary from Mudsprings Geographers.

²² As mentioned earlier, it is not clear where the current forest boundary is located in Chepyuk (does it follow administrative boundaries or is part of the settlement area still gazetted as forest).

Forest management in the five districts

Below is a summary of the different institutional arrangements for forest management in the five districts around Mt. Elgon (MERECP):

Kenya

- Kenya Wildlife Service (KWS): Management and conservation of Mt. Elgon National Park. No consumptive use is allowed and collaborative management is absent. The new Forest Act has potential for collaborative and participatory forest management agreements.
- Forest Department in Kenya: Management of the Mt. Elgon Forest Reserve and Forest Plantations. Forest department allows use of certain forest resources through permit systems, but resource-use levels are not recorded or assessed. Again, the new Forest Act has potential for collaborative and participatory forest management agreements.
- Mt. Elgon County Council: Management of the gazetted Chepkitale National Reserve (Trust land). Settling on the land is not permitted. Grazing and forest product extraction is not regulated.

Uganda

- Uganda Wildlife Authority (UWA): Management and conservation of Mt. Elgon National Park. Allows collaborative management. The authority also has plantations to manage. UWA has policy of revenue sharing with surrounding districts.
- District local governments – Mbale, Sironko and Kapchorwa: Local government works with UWA through various arrangements. It also manages some smaller forest reserves in the districts.
- National Forest Authority (NFA): It manages some forest reserves which are close to the Mt. Elgon National Park. It supports collaborative forest management.

Uganda

In 1937, a boundary line was cut and Mt. Elgon Crown Forest was gazetted under the authority of the Forest Department. In 1948, the area was regazetted as Mt. Elgon Central Forest Reserve. It was gazetted yet again in 1951 as a Demarcated Protection Reserve (Synott, 1968; van Heist 1994; MERECP).

When the forest was demarcated for the first time, numerous Bagisu lived on and cultivated land within the intended Forest Reserve. Immediately after the Reserve was gazetted, 20 excisions were made and 70 heritable licences allowing peoples to live and cultivate within the forest issued. From the 1940s to the early 1960s, there were continuous dispute, as further

excisions were made and new licences issued to control cultivation rather than to evict people (Wiley, 1993).

In the 1970s and 1980s, the Forest Department management broke down due to political instability. This resulted in widespread encroachment of protected areas. For seven years starting from 1978, two-thirds of the montane rain forest was destroyed (Otte 1991).

In 1987, all natural forest areas over 100km² were designated as Forest Parks. In January 1988, a new government forestry policy was proclaimed stating that the role of forestry should not only be to provide timber, fuel, pulp and poles but also to address broader environmental values. The president announced that Forest Reserve boundaries would revert to those of 1963, which meant that all encroachers had to be evicted (van Heist 1994).

Around 1988, the World Conservation Union in collaboration with the then Ministry of Environment Protection (MEP) identified Mt. Elgon Forest (together with Kibale and Semliki Forests) as of high conservation importance due to its unique biodiversity and hence the need to restore its heavily damaged ecosystem. More than 20% of the natural forest around the mountain had been destroyed (Onyango 1996).

In 1988, a Forestry rehabilitation programme was started with the support of several donors. The programme did not aim at total protection. Instead its objective was to develop management systems to preserve 50% of the natural high forests while allowing controlled timber harvesting in the other half. In 1991, a ban was imposed on felling indigenous trees and the production of charcoal in Forest Reserves, but it proved difficult to control trade in indigenous timber, because there was sales were not regulated (van Heist 1994).

From 1937 until recently, the Sabiny (Sebei) were permitted to remain in the park and graze their stock without licences. In the early 1970s, highland households began to settle on the northern edge of the forest reserve at the urging of the Forest Department, which was concerned about the presence of people in the interior of the reserve.

The second main group of Sabiny in the resettlement area originated in the northern Ngenge plains. They escaped increasingly violent cattle raids, now with firearms, by the Karamojong and the Pokot in late 1970s. Hundreds of households moved up the slopes to settle on the forested edge of the reserve. Such emigrations were so pervasive that today, one

governmental official observed, over a third of Kapchorwa district is completely unpopulated (Himmelfarb 2005). The formal resettlement took place in 1983 (Onyango 1996).

A new era of confusion and conflict emerged with the transition of the protected area from forest park to national park in 1992. When the governmental agency in-charge of the administration of the park (then Uganda National Parks) resurveyed boundaries, it was found that the resettlement area which was supposed to have been no larger than 6000 ha was in fact more than 7500 ha. Despite the fact that the government had allocated land to households throughout the 7500 ha, the Uganda National Parks staff redrew the park boundary, removing the 1500 ha from the resettlement area and declaring those who lived there “encroachers.” Roughly 6000 people were left landless.

Both villagers and local governmental officials vehemently protested the new boundaries, eventually securing a parliamentary order calling on Uganda Wildlife Authority (UWA) not to forcibly relocate any residents until the dispute was resolved. Though the authority repeatedly promised villagers that it would address the situation, it delayed resolution. Eventually, the villagers, with the help of a non-governmental organization, Uganda Land Alliance, sued UWA. Though there have been numerous disputes between forest-adjacent communities and park managers throughout the history of the protected area, nowhere has the conflict been more intense and enduring than in the Benet Resettlement Area (Himmelfarb 2005). As a result of the disputes, the area of 1500ha was degazetted.

In 1992, the name of Forest Park was changed to ‘Conservation Forests’ after a dispute with Uganda National Parks. In 1993, Mt. Elgon forest was officially declared a National Park and formally handed over to Uganda Wildlife Authority the following January.

The UWA Programme for Community Conservation and Development is based on the principle that long-term conservation of the Mt. Elgon ecosystem can only be assured if residents of adjacent communities understand Park management issues, and share both in the benefits flowing from the operation of the protected area and in the responsibilities for managing that area (UWA 2000; UWA 2002).

Assessment of the resource use was conducted within the IUCN Programme in the 1990s to better understand which resources the surrounding communities were extracting and assess harvest levels in the park. The report showed that approximately 60% of the park was being

used for product extraction, though more regularized access was limited to the lower 10 kilometres of the park's boundaries or 30% of the park area. The extraction area extends as far as the bamboo zone (up to 10km in some areas) in the search of resources. Different uses include bamboo, building poles, firewood, medicine, mushrooms, honey, grazing, timber, green vegetables, crop (matoke) stakes, hunting, ropes, craft materials, traditional sites, thatching, fruit, drinking tubes, white ants and caterpillars, sand for smearing houses, fertiliser (rich soil) and charcoal (Scott 1994).

UWA's policy of allocating 20% of the entrance fees to surrounding local authorities is a good example of how benefits from conservation can be shared. However, the actual amounts shared are small, as they are limited to gate fees only and do not include a wide range of other sources of revenues such as fees charged for trekking and camping. (Chhetri et al 2002).

At the moment, there are 26 valid agreements between UWA and 60 communities (parishes) neighbouring the Mt. Elgon National park. Usually, it is UWA or a third party — such as Action Aid, the African Highlands Initiative's Landcare chapter or Local councils — that takes initiative in order to discuss such agreements, known as Collaborative Resource Management Agreements.

Each agreement is for a fixed period of time. The parish elects a Forest Resource Users Committee of about seven representatives. Resource needs are negotiated and rules set on the product, duration and time of harvesting. The Committee sets penalties for breaking the agreement. The main responsibilities of the community is to oversee and control resource extraction to make sure it is within the accepted limits set by the agreement, conduct forest walks to observe its state, collect data as agreed between the community and UWA, enforce penalties, and participate in boundary management (Taungya system). The community agrees on how to use the money from penalties.²³

Following the gazetting of Mt. Elgon National Park, boundary demarcation was done between 1993 and 1996. However, communities in all the three districts disputed the 1993 boundary. This led to the establishment of two committees to retrace the boundaries, one at national level and the other at district level. The committees' work is to ensure that the exact boundary

²³ G.R. Matanda

is established and marked with beacons and trees. The local communities then plant trees along the boundaries after signing boundary management agreements with park authorities.

Collaborating community members can grow crops within the boundary zone alongside seedlings until the canopy closes. The Boundary Management Committee is the main body that decides on the allotment of plots for boundary tree planting and intercropping in the boundary zone. The zone is 10 m wide section of forest (within the park) in which five lines of eucalyptus are planted. UWA pays for planting and weeding.²⁴ However, Kibuka (2000) concludes that very few within the community really benefit from the boundary management and even those who did were not satisfied. This is mainly because only a few families are allocated plots in the zone. The plots are also considered too small to make a difference.

In accordance with Uganda's National Forestry and Tree Planting Act (2003), the agreements allow use of some forest resources with no restrictions (mushrooms, fallen branches for firewood, wild vegetables, fodder, circumcision sticks), and use of others on a restricted or seasonal basis (bamboo shoots, medicinal plants, matoke stakes, wild honey and setting beehives). It was agreed that pit-sawing, charcoal burning, hunting, pole harvesting and cultivation agriculture be banned altogether (Hinchley et al.).

The forest boundary of the Mt. Elgon National Park has not changed since the gazetting of the forest, except in the Benet resettlement area. However, the actual forest boundary has changed a lot due to encroachment. Also, two large plantation forests have been established Kapkwata on the northern tip of the National Park and Suam by the Kenyan boundary.

In addition to Mt. Elgon forest, there are several other small forest reserves within the districts. However, many have been taken up by people for settlement and no longer have forest cover, though they still remain officially gazetted. The central forest reserves (CFR) are kept in trust by NFA while the local forest reserves (LFR) are held in trust by District Local Government (NEMA 2004b).

Mbale

- Mbale central forest reserve: 562ha. Mainly eucalyptus. Also demonstration plots of *Grevillea robusta*, *Casuarina*, and *Tectona grandis*. (CFR, in municipality)

²⁴ G.R. Matanda; Mafabi Rashid; Matilda Makabai; Chemangei Awadi

- More than three quarters has been allocated to farmers, who keep earnings from tree growing (often eucalyptus for poles). Those living outside the reserve can obtain grass for fodder and fallen branches. No growing of crops is allowed in the reserve, though sometimes it happens. The rent of having a plot in the reserve costs Ush22300 an hectare a year.
- Farmers with plots in the reserve belong to the Mt. Elgon Tree Farmers Association. The organization was originally formed to address, among other things, theft of tree products. The association collaborates with the UWA.²⁵
- Namatale Central Forest Reserve (DFR, Bufumbo subcounty): 663 ha. Originally gazetted as natural highland forest, it falls in the two districts of Mbale and Sironko. It has been severely encroached. The middle part is secondary forest, which is a result of conservation that led to natural regeneration in the 1990s. A third of this forest reserve comprises shambas under food crops. The farming system does not include trees. A few temporary houses have even been built in the reserve. Encroachment on the forest is more severe on the Mbale side. On Sironko side, the boundary has been marked by live markers while on Mbale side the plants were uprooted by villages and the boundary is now maintained as a slashed strip.

This area has seen been grossly mismanaged. The boundary was pushed irregularly pushed up to 500m into the forest. However, the people believed that what they were doing was legal. Now those living in the reserve are in an extremely insecure position, as they can be evicted any time. This insecurity shows in the lack of long-term investment on the land such as tree planting.

NFA has been involved in development initiatives within the area. These include promotion of energy saving stoves, beekeeping, tree growing and nursery establishment. Attempts have been made to solve the problem of encroachment and negotiate joint management agreements. However, the situation is challenging with recent (2005) setbacks of political origin that made the people return to the gazetted area from which they had moved. Negotiations have not led to any agreements. The aim of NFA is to rehabilitate this natural forest area by regeneration and enrichment planting.²⁶

- Kolonyi: 21 ha (LFR Nakaloke sub-county)
- Bubulo: 21 ha (LFR Buwagogo sub-county)
- Busumbu: 10 ha Forest and wetland has been encroached by few people who derive income by hiring it to farmers. (LFR Butiru sub-county)

²⁵ Susanne Wanyinya

²⁶ Arinaitwe Enoch

- Bukigai: 18 ha (LFR Bukigai sub-county)²⁷

Sironko

- Mutufu: forest reserve 21 ha, half of it is eucalyptus, half maize.
- Kaptokoi: 85 ha, bushland.²⁸
- Nakiwondwe in Budadiri: 21 ha, established to provide building poles. Planted with eucalyptus (NEMA 2004c). District Natural Resource and production department manages this forest reserve.
- Namatale (See above under Mbale)

Kapchorwa

- Town council forest: (not forest any more), leasehold, 5 acres, open with houses, under NFA management, peri-urban.
- Binyinyi: This forest was totally encroached and turned into agricultural land. It is in a process of replanting (NEMA 2004a). Beekeeping by the veterinary department is the main purpose. The reserve is a source of firewood for the community. Meetings to make agreements for intercropping maize with trees have been arranged.
- Kapchorwa central forest reserve: Not a forest. Houses and schools have been built. Few eucalyptus, 5 ha.
- Kwirwot: Natural forest which has not suffered much of encroachment (NEMA 2004a).

Kenya

On the Kenyan side, the Mt. Elgon Forest Reserve was gazetted in 1934 and part of it formed the National Park in 1968. Mount Elgon National Reserve, Chepkitale, was gazetted in 2000.

Mt Elgon forest on the Kenyan side is administered as

- Mt. Elgon Forest Reserve by Forest Department (five forest stations in Trans-Nzoia, another three in Mt. Elgon)
- Mt. Elgon National Park by Kenya Wildlife Service (KWS), in Trans-Nzoia only.
- Chepkitale National Reserve (Trust land) by Mt. Elgon County Council.

²⁷ The last three were not mentioned by officers in the district. These local forest reserves are, however, listed in NEMA 2004 report.

²⁸ Mafabi Rashid; Matilda Makabai

The national on the Kenyan side covers only a small area of the forest, with the rest of the forest being under the management of the Forest Department or, in Mt. Elgon district, managed as Trust land under the County council. Forest reserves and the Chepkitale National Reserve are separately managed. The Forest Department does not collaborate with the district councils on forest management.²⁹

The Wildlife Act does not provide opportunities for the local community to use national park resources. However, illegal extraction of forest products such as firewood, poles, water, medicines and honey, and even hunting, happens all the time.

In the forest reserve, resource extraction for home consumption is permitted. However, people are expected to get permits to use the forest or obtain its resources. No records are kept on what resources are extracted or what level of use is sustainable. The Forest Department and the Kenya Wildlife Service collaborate in forest management, for instance in joint patrols and fire fighting. In addition, the Nyayo Tea Zone (a parastatal) collaborates with the department in reafforestation and has tree nurseries and plantations in the forest reserve (Kiragu 2002).

A General Forest Licence (GFL) is used for extraction of major forest products such as saw timber, pulpwood and large quantities of firewood (Kiragu 2002). Even though there is a tree-cutting ban in force, the Pan African Paper Mills have an agreement with the government to continue harvesting wood. The government has shares in the company. Government institutes are also allowed to get firewood from the forest.³⁰

A Monthly Fuel Licence (MFL) is needed for subsistence collection of firewood and use of forest land for pasture. Firewood for household use costs Ksh39 a month for one head load daily. Grazing of a cow costs Ksh33 a month and sheep Ksh11 each. Goats are not allowed to graze in the forest at all (Kiragu 2002). A clearance letter is needed from a forest station for extraction of minor products such as vegetables, mushrooms and herbs.

Kiragu (2002) studied communities adjacent to the forest reserve to determine resource extraction and participation in conservation. According to her study, all communities were aware of the laws and regulations concerning forest use: No cutting of trees without permit,

²⁹ David Omoto

³⁰ Peter Ng'ang'a Kinyanjui

charcoal burning, timber sawing, residence, firewood collection without permit, starting fires or grazing in the forest without permit. However, few people go for permits allowing them to collect forest product. Charcoal is openly sold in nearby market centres and is in high demand. Products typically obtained from the forest include fuel wood, construction materials (timber, poles, posts, rafters, withies, ropes, thatching grass), fodder (pasture), medicinal herbs, and food (produce of non-residential cultivation, wild honey and vegetables, bamboo shoots) (Kiragu 2002).

To get an idea of the involvement in decision-making, Kiragu (2002) asked whether the farmers knew how the money collected was used. Forty one percent said they knew while 58% said they did not. Only 17% said they had attended a seminar on forest-related issues, while 10% had attended a public meeting in the last year. A majority of respondents (71 %) said they were not involved in any form of forest management issues. Those that were involved, said they did so through keeping private tree nurseries, planting of trees on their plots and reforestation through the non-residential cultivation (NRC) system.

When the government abolished the shamba system of establishing tree plantations with the help of communities resident in forests in 1985, people were evicted from forests. However, local communities can still be involved in reforestation by taking part in the non-residential schemes. In the schemes, the community takes care of young trees and, in return, can grow crops, mainly annuals and biannuals. An NRC contract costs Ksh330 an acre a year, usually for three years at a time (Kiragu 2002).

In earlier years, the system functioned well. Local communities benefited through increased food production and incomes. As a result, tree seedling survival rates improved due to weed control and protection against fires. However, the system has deteriorated, mainly because of mismanagement, poor control and lack of legal status. On the Kenyan side of Mt. Elgon, encroachment on the forest reserve is emanating especially from NRC areas, resulting in unclear boundaries between these areas and indigenous forest. Much of the area set aside for non-residential cultivation has been completely converted into shambas, where trees have been cleared and none is planted (KFWG 2000).

Ndiwa (2003) conducted a land use survey of Mt. Elgon district using Remote Sensing. He looked at changes during 12 years, from 1986 to 1998. He found that during the period, Mt.

Elgon Forest Reserve decreased by 21.1%. More than 80% of deforestation is attributed to agricultural expansion to forest land.

In addition to farmers encroaching on forest and causing destruction by cultivation, grazing, cutting of trees and charcoal burning, large scale logging is major cause of forest destruction that has dramatically opened the canopy. The Raiply wood company of Eldoret continued to enjoy preferential rights to harvest Elgon Teak/Olive (*Olea capensis*) even after presidential ban of harvesting indigenous trees in 1986. This continued until 2000 when the community barricaded roads to block the company's vehicles from getting into the forest (Kiragu 2002). The clearings created by logging promote the growth of grass and this encourages people to drive their cattle into the forest to graze. (KFWG 2000)

The Chepkitale National Reserve has remained a free access area for grazing and beekeeping and forest product collection without any management plans.³¹

Some changes have happened over time in Trans-Nzoia in relation to forest land. In 1968, 1981.8 hectares of land adjoining Saboti forest was added to the Mt. Elgon forest. It is still forest and is called Kabeywani block of Saboti forest. Sikhendu (808.6 ha), which is detached from the main forest block by 20km, was also gazetted in 1968. Kitalale forest (2350ha) which is also detached from the main block of forest was acquired in 1973. Kitalale has, however, become a settlement in 1993. Kabeywan in Cherangani was irregularly given to settlers in politically motivated allocations. The allocations were challenged in court and the case is still pending. Kapolet Charangani Trust land, which covers 746.6 ha and is managed by the Forest Department, was given out for settlement in about 1997.

In Mt. Elgon District Kaberwa and Kaboywe plantations cover the lower zone of the forest. In Trans-Nzoia a total of 8425 ha are under plantations.

The Forest Department is still operating under the old Act, but participatory forest management approaches will be incorporated from next year. Staff have already been trained in the new approaches, which will see agreements made between each of the forest stations (five in Trans-Nzoia, three in Mt. Elgon) and a Community Forest Association (CFA). These

³¹ James Chesebe

new arrangements are initiated within the Green Zones Development Support Project, funded from the African Development Bank (ADB) in both Mt. Elgon and Trans-Nzoia districts. The aim is to form community associations made up by local community based groups (CBOs) for each division. Working with these associations, the Forest Department will establish participatory forest management plans. The motto will be: 'Government owns the forest but community together with the government manages it'. User groups acknowledged under the agreements will recognise grazers, fuel wood collectors, herbalists, hunters and gatherers.²⁰

Forest management in the area seems extremely varied — with different management histories, legal and actual status of the forest areas, arrangements with surrounding communities, good examples of joint management and some nasty conflicts.

Tree tenure

There has been increasing interest in trees outside forests, as they often are the main tree resource for a majority of the rural populations. Do trees on farms benefit the whole family or is there differentiation between men and women?

There may be some internal variation as to whose domain trees belong. However, according to officers in the five districts, a general rule is that trees belong to men. This status seems even stronger on the Ugandan side than on the Kenyan side of the mountain.

Timber trees are with no exception men's domain. However, there seems to be variation in whether a timber tree such as *Grevillea* can be pruned by women for firewood or not. In Trans-Nzoia, it was reported that women can prune bigger trees like *Grevilleas* even if they do not have the right to cut them. Usually women collect only fallen branches for firewood. It was argued that if women plant trees, men will take over the ownership, except for smaller shrubs like *Sesbania* which has worked better in farm extension efforts targeting women. *Sesbania* has no market value and is not suitable for timber, it does not interest men. In Trans-Nzoia, Vi-agroforestry reports that women take the lead in planting scrubs such as *Sesbania* or *Calliandra* because they can own them. In Mbale, the rule was formulated differently, so that the household head owns the trees. This means that widows can actually own trees.³²

³² Richard Nyabuti; Opara Cleophas; James Mwalye; David Omoto

In Trans-Nzoia and Mt. Elgon districts, I was told, women take the lead in fruit tree growing. But even there fruit growing can be taken over by men, especially if the fruits do well and can be sold for extra cash. When the quantities are small, women take the lead³³. In Sironko, it was reported that even avocados are sold by men.²⁸

It is common to hire land in the lowlands (reported in Sironko). Trees on hired land belong to the owner, not to the tenant.²⁸

Although there was no opportunity to meet representatives of the Mount Elgon Tree Farmers Association, it would be interesting to confirm whether this association has any women members. Can women in reality become 'registered tree farmers'?

Relations between the land tenure types and sustainable land management

Relations of land tenure and economic development

For a long time, there has been general contempt by land administrations for customary land tenure. Even though the 1998 Land Act in Uganda purported to reinstate customary tenure as a basis for property holding, this was done in terms that make it clear that the state would like to phase out the whole system. In Kenya, the official policy in Kenya is to end customary tenure through systematic adjudication of rights and registration of land. Customary tenure is seen as an impediment to development.

When land-related problems, such as disputes or erosion, started to emerge in the native reserves, customary land tenure was blamed, rather than the general lack of adequate space in these areas (Fleming 1968). Customary land tenure has been generally seen as a static system. It is also believed it excludes non-members from land transactions, hindering their integration to the national and regional markets. They are believed to be non-secure and this hinders investment. Customary land tenure has also been blamed for fragmentation of land into uneconomic pieces. Furthermore, because land under customary tenure cannot be used as collateral for loans by holders, the argument has been that changing the system to freehold will lead to agricultural investment. (Okoth-Ogendo 2000, Macharia 1970).

³³ Richard Nyabuti, Opara Cleophas

Academic dissertations and papers written in Uganda concerning the aims and means of the 1998 Land Act were consulted in this study (for example, Wandukwa 2004; Tibeingana 1999; Coldham 2000; Kasujja; Nsabagasani 1997; Mugoya 1998) are all very critical of the legislation. Several papers have been also written about the land reform in Kenya (e.g. Haugerud 1989; Barrows and Roth 1990; Coldham 1978; Okoth-Ogendo 2000). These dissertations and papers quickly assure the reader that the land reform has clearly missed the point(s) and has not resolved and will not resolve thorny the issues, such as low economic growth and agricultural production, as intended.

Creation of land markets has been central in land tenure reforms in both Kenya and Uganda. The argument has been that a land market would deliver land for production because it would facilitate the movement of land from less progressive farmers to more progressive ones and hence spur economic development.

According to Barrows and Roth (1990), customary tenure in Kenya was already undergoing individualisation and change several decades before the land reform. Land markets had existed in many areas as early as the 1930s. According to Wandukwa (2004), in Sironko the “existing cultural and social realities may not favour a land market that the Land Act was meant to create”. Transactions which people consider free market because they are able to sell their land whenever they have a pressing financial needs are, however, common. Tibeingana (1999) concludes by referring to Walubiri (1994) that “once people are left to do anything with their land there will not be much achieved”. This means that there will be no rush to sell and buy land, nor any sudden investments on land. Most of the land sales are distress sales to obtain money for school fees, medical bills and bride price, among other needs. Those who buy land typically have alternative livelihoods (Haugerud 1989; Wandukwa 2004). They may not be progressive farmers who put the land under the best possible agricultural use because Agricultural investment is not the primary motivation of accumulating land through purchase (Haugerud 1989). In Trans-Nzoia, for instance, absent farmers who leave their land unused are listed amongst the major problems in the district (Kenya 2002b). Buying land is a lucrative investment for those who have accumulated wealth. Distress sales are likely to lead into larger differentiation of well-being of the society and increased landlessness.

It is a general assumption that privatisation of land leads into better investment through agricultural loans that can be acquired by using one's land as collateral. Studies, however, conclude that acquisition of loans using land as collateral is almost impossible in Uganda due to a number of obstacles in the way of an ordinary peasant farmer. These include the difficult processes of obtaining a loan, banks' requirement that one have a recognised business venture to qualify for credit, an applicant's political connections, corruption requiring large fractions of the loan to be paid to bankers, and location of the land in an area that might not be attractive to buyers in case the borrower fails to pay the loan (Tibeingana 1999). Moreover, although a minority of farmers use title deeds to secure agricultural credit, the banks have found the courts reluctant to allow taking over of land offered by a farmer as security for a loan (Moris 1970:400).

Changing customary land tenure into freehold has not prevented fragmentation of land. In fact, there was never any reason to suppose it should, as it is the simple need of land in the absence of other livelihood options for offspring of a family that leads to subdivision of farms. As early as in the 1960s, it was noted in Kenya that freehold land had led to fragmentation and subdivision (Fleming 1968). Many of these subdivisions do not get registered officially (Fleming 1968; Haugerud 1989).

Creating security of land, according to Wandukwa (2004), may not be a priority in Uganda because the people have their own customary means of ensuring security. Place (1995) argues that generally speaking, households have strong private rights of use and even ownership over land they occupy. Traditional authorities do not normally interfere in land use and transfer decisions of households on cultivated land. Mugoya (1998) further concludes that land tenure or insecurity of tenure is currently not a stumbling block to economic development. It is interesting that in Kenya where freehold is the main form of land tenure for small-scale farmers, insecurity of land tenure was mentioned as one of the problems in the new Draft National Land Policy (Ministry of Lands 2006). This insecurity is mainly caused by multiple claims to the same piece of land.

A large number of studies have been conducted in an attempt to find correlations between land tenure types and investment. Very few correlations have been found. The positive relationship found by Roth et al. (1993) between certain investments and land registration provides some evidence of demand-side effects through enhanced tenure security, that is the

right to sell has a significant effect on tree crops and continuous manuring, while right to bequeath exhibits a significant negative relationship with fencing, tree crops and manuring. Yamano et al (2004) studied different land tenure types covering most parts of Uganda (except the northern areas) and found that short-term land investments are less practised under the 'mailo' tenure system than the freehold tenure system, although they did not find any differences across land tenure systems in long-term land investments, such as slash and burn practices and tree planting.

Place (1995) found through informal surveys that in most study sites, tenure factors were not as constraining as supply side factors such as extension of agroforestry information and planting materials. These constraints (as well as lack of appropriate technologies) were the top reasons given by farmers for lack of tree planting or technology adoption. Himmelfarb (2005) argues that increasing pressures of landlessness, decreasing yields and economic marginalization have led residents of the Benet Resettlement Area to diversify their subsistence strategies. However, he also reports that numerous farmers in the upper area were hesitant to invest in energy and resource-intensive soil conservation measures due to the uncertainty of how long they will be allowed to stay there. However, in Sironko highlands, where land tenure is considered secure, terracing, contour planting and bunding are also nearly absent.

What actually makes land efficient is not the fact of ownership but the technical management. Very low use of chemical inputs, improved seeds and other planting materials needed for diverse cropping lead to low productivity. Certain public investments have an important effect on both farm and non-farm investments. Presence of roads adjacent to parcels has been found to strongly correlate with all agricultural investments, especially manuring and terracing.

Education is having a positive effect on diversification of economic activity in the research area (Roth et al. 1993; Place 1995; Tibeingana 1999). Muramira (1993) studied adoption of agroforestry practices in two districts in Uganda (Masindi and Mpigi) and found that land tenure systems did not affect tree-growing programmes, as most ownership was adequately secure. Kayiso's (1993) studies among communities in Mbale and Kapchorwa found that the

most salient problems intertwined with the operation of land were: a) scarcity of arable land, and b) poor quality of available land³⁴.

In Trans-Nzoia, when talking about the cooperative members who bought land collectively, with some having fetched their titles and others not, an agricultural officer concluded that “there is no pattern that these who do not have title deed would not invest as much as their neighbours who have the title deeds. It depends mainly on individuals. Some are more eager to invest than others”.

In 1955, members of the East African Royal Commission pointed out that: “From the land usage angle there is nothing necessarily associated as more beneficial either with communal or individual approach. Neither individual tenure nor co-operatives nor collective farming necessarily makes crops grow better”. The system of ownership of land and the security of such a system have no inherent intrinsic effects on economic development.

Some patterns in tree planting

Proper studies of land cover and land use are needed to establish a clear picture of the spatial differences within the five districts in relation to patterns of tree cover. However, by quick observations (by no means systematic) and interviews with various officers within the district, one can reach tentative conclusions. In general, on the Ugandan side it appears that lowlands have fewer trees than highlands, while on the Kenyan side, lowlands have more tree planting than in the highlands (Figures 13, 14). Another quick observation is that eucalyptus is by far the most popular tree on farms in all five districts, but, in addition, Trans-Nzoia has lots of other tree species grown on farms.

In Mt. Elgon district, ethnicity was given as a reason for the spatial pattern. People in the lowlands are Luhyas and Tesos who are commonly considered as hardworking and with a tradition of planting trees. The upper zone is settled by the Sabaots, who have traditionally depended and still depend on the forest for their tree products. These are also the people who earlier took part in the shamba system by cultivating farms adjacent to forest while keeping animals and trees in the forest. They do not generally plant trees on farms. It is also an unquantified observation of the Forest office in Mt. Elgon district that Kaptama and

³⁴ These two were picked from a number of likely problems interposed by the study, namely, scarcity of land, cost of land, socio-cultural factors that inhibit the development of land, uncertainty of tenure, poor quality of soil, and boundary disputes.

Kapsokwony have higher tree cover than Kopsiro and Cheptais. In Mt. Elgon district, Chepyuk area is an exception with practically no tree growing at all. In Trans-Nzoia, Vi-Agroforestry has had a substantial impact in introducing agroforestry on small-scale farms. In addition to scattered trees on farms, 2-3 acre woodlots are common. Some spatial differences occur: In Cherangani there is more intense tree planting than elsewhere, while the lowest results have been obtained in Saboti.³⁵

In Sironko and Mbale, the tree cover pattern is explained by farming practices, farmland characteristics and tradition. The upper areas have more trees than lowlands because ox ploughs are used on field in the lowlands, requiring big open areas. Oxen cannot be used on the upper slopes because the land is stony. Also, the types of crops grown on the upper slopes (coffee, banana) require shade, thus encouraging tree planting. Free grazing livestock in the lowlands also poses a threat to tree growing, or at least complicates it. Further, in the highland areas people have a longer tradition of tree-planting compared to the lowlands.³⁶ In Kapchorwa, the western part of the highlands has more trees than the eastern part. High population and inadequate firewood supply is believed to have pushed the western part into tree planting. Generally, on the higher slopes, people plant trees. More enlightened people have woodlots. Woodlot sizes vary between 0.01 and 1 ha (NEMA 2004a).

Due to the past insecurity of tenure, the higher slopes of Benet are devoid of trees, but already the lower slopes have numerous small woodlots, intercropped banana and coffee tree plots, and Napier grass contour bands amid the maize and potato fields. In the lowland plains of Nenge, people do not plant trees significantly. However, the environment office believes that many are willing to. Even though extension efforts to encourage tree planting have not targeted these areas, some people have started growing trees on their own. The area is sparsely populated but charcoal burning is popular. That has affected the landscapes by leaving only young trees. In some places, even young trees are cut for charcoal.

In Trans-Nzoia, it was reported that firewood is a major motivation for tree planting, especially for women. For men, construction planting trees for timber is typically more important. Both men and women naturally would like to plant fast-growing species. Thus,

³⁵ Björn Horvath

³⁶ Mafabi Rashid, Kibale Mwambi

Grevillea and eucalyptus are preferred. As seeds and seedlings for these two species are available everywhere, Vi-Agroforestry does not provide them. *Calliandra* is also in high demand and is actively distributed by the programme. *Sesbania* is constantly requested for planting again after harvesting.

Both women and men plant fruit trees. Some popular species include passion, avocado, lemon, mulberry, guava, *Sizigium*, papaya, *Annona*, Mexican apple and *Ziziphus*. Medicinal trees in the programme request list include *Xanthoxylum* (in West Pokot), *Warburgia* and *Prunus*. Some preferred indigenous species are *Cordia africana* and *Croton macrostachys*. The programme promotes Elgon teak/olive and *Podocarpus*, but when farmers realise how slowly they grow compared to some other species, they are not very interested. *Prunus africana* is now coming up in the landscapes in Trans-Nzoia after having been promoted and planted some years ago. According to Vi-Agroforestry, there is not much interest in planting trees for fodder. Fodder, however, may come as a side supply from planting trees for firewood. Kalenjins are an exception to this rule. They are traditionally cattle keepers and fodder is of interest to them. The same applies to environmental conservation benefits from trees. People do not plant trees for conservation. Trees on farms are mainly for home consumption, though some farmers see the benefit of marketing as well.³⁷

According to the Forest Department office in Trans-Nzoia, due to a ban on harvesting of trees for timber, timber prices have gone up. This is believed to have encouraged planting, which has resulted in more tree-planting than ever before in the district. New nurseries are established all the time. It would be interesting to know whether the result really derives from the timber-cutting ban or the cumulative effects of the vigorous tree-planting programme over the years by Vi-Agroforestry, which currently works with more than a thousand groups and has transformed the landscapes of Trans-Nzoia.

It seems also that due to Vi-Agroforestry's efforts in Trans-Nzoia, tree planting has become a popular practice among both women and men. In the other districts, the impression is that tree-planting is predominantly by men³⁸.

37 Björn Horvath, Richard Nyabuti, Opara Cleophas

38 Paul Obusuru, James Mwalye, Mafabi Rashid, Kibale Mwambi, Richard Nyabuti, Opara Cleophas

The main constraints to tree planting in Trans-Nzoia were summed up as: a) small size of the farm, especially when trees are not soil friendly b), long-term realisation of benefits, and c) inadequate markets to encourage planting. Farmers are also unhappy with the fact that there is no one to consult when they plant, but at the time of harvesting, they are regulated and permits are needed.³⁹ In Sironko, a few more reasons were given: Farmers still expect inputs from the government; weak extension services; lack of farmers' participation due to unfunctional district Forestry Services; and inadequate knowledge of tree growing (NEMA 2004c).



Fig. 13. Towards Kapchorwa (Uganda). Trees are generally better integrated to the highland farming system (top). Bigger parcels especially in the lowlands which are ploughed by oxen, do not have any trees at all (bottom). Benet area north-east of Kapchorwa is devoid of trees.

³⁹ Richard Nyabuti, Opara Cleophas



Fig. 14. Trees are integrated in the farming system on the lower slopes of Mt. Elgon district (Kenya) (top). Upper slopes (of Kopsiro) are very empty of trees (bottom).

The large-scale ADC farms are mechanised, forming large open lands in Trans-Nzoia (Figure 15). According to the ADC management, these farms are generally keen on agroforestry. However, trees need to be planted in woodlots and along border due to mechanised farming. The main species planted are eucalyptus and cypress. Riverines crossing ADC farms are conserved for biodiversity. In fact, five out of the eight ADC farms in Trans-Nzoia have some

natural vegetation left their areas⁴⁰. ADC workers plant shrubs that can bring benefits quickly. Long-term investments by squatters are not allowed by the management of the farms.⁴¹

In Mbale and Sironko, it was reported that people are in general interested in planting trees, but there is not enough space. However, in Mbale, many farmers have about 20-50 trees on their farms. Those with more land may have woodlots of 1-2 acres, but farmers mostly prefer scattered trees due to lack of space. Eucalyptus is the most preferred species on farms. Others include *Maesopsis eminai*, *Cordia africana*, *Ficus natalensis* and *Grevillea robusta*. *Leucaena* and *Calliandra* are preferred for fodder. According to a study by Byabashija et al. (2004) on the usage of indigenous species, *Arundinaria alpina*, *Cordia millenii*, *Ficus spp.*, *Markhamia lutea* and *Albizia spp.* are the most commonly used *indigenous* species in the three districts of Mbale, Sironko and Kapchorwa. In Sironko, farmers were reported to have a lot of interest in planting fruit trees as a permanent crop. That would patch up their food supply in March-April when everything else is used up or sold. According to the farm extension workers, there would also be potential for timber markets. In the lowlands especially, the price is high because trees are fewer.³⁶ In Kapchorwa, species planted include *Grevillea*, eucalyptus, avocados, *Sesbania*, cypress, *Calliandra*, *Cordia*. Species selection is said to be a big challenge in the lowlands.



Fig. 15. ADC farms cover large areas of Trans-Nzoia district (Kenya).

40 Nixon Sigei

41 Richard Nyabuti, Opara Cleophas

Emerging issues

It is obviously much too rushed to conduct a study on a complicated issue like land tenure and its relations to land management in 30 days, only 8 of which were spent in the field, and with information collected from only government officers within the study districts. However, based on the short assessment, the following list presents the issues that emerged clearly as problem areas in the current setting of land tenure and land management:

- Landlessness
- Large settlement issues/conflicts (Benet and Chepyuk, and Namatale)
- Insecurity on the northern side of the mountain
- Fragmentation of farmland and small land size due to population pressure affecting land management
- Women do not have tenure rights in practice (trees and land)
- Conversion of customary land tenure into freehold (multiple rights to land that are not accommodated by the law, wife's position)
- Resource access of forest products (especially on Kenyan side where joint management is only starting next year)
- Land offices in Uganda not functional

Landlessness is a particular problem especially in the market centres, within the squatter community working on ADC farms in Trans-Nzoia, among the communities along several parts of the forest boundary where farmers have been evicted from the forest (especially, but not only in Benet and Namatale in Uganda and Chepyuk⁴² in Kenya), amongst women, and in the lowland communities in Kapchorwa and Sironko⁴³, where cattle rustling has forced thousands of people to leave their homes and take refuge with relatives or in urban centres. Peace talks with the Karamojong and Pokots have been often held during droughts, but they do not hold when the rains come. Cattle rustling has also been reported in Kapkoi and

42 There are currently several projects addressing the Chepyuk case. These include the Anglican church, Vi-Agroforestry, Agriculture department projects, NALEP and FD projects.

43 Sub-counties affected: Bunanbutye, Muyembe, Bukhalu, Butandiga (Uganda 2005c).

Kwanza division in Trans-Nzoia. There are also still people who live within the park in Kapchorwa district (adjacent to Benet)⁴⁴ (Uganda 2005a; Kenya 2002b).

Due to high population, farms have become so small that they cannot be subdivided any more in some areas. Highlands on both sides of the mountain are worse off in this respect⁴⁵. This was reported to result in little or no tree planting, as there is not enough land for both crops and trees. In addition, population pressure has led to overuse of land with no fallow periods, not enough inputs for fertility management and no soil and water conservation structures. Landslides have been reported in all districts on the Ugandan side (NEMA 2004a, 2004b, 2004c).

In Trans-Nzoia, pollution from fertilisers, pesticides and herbicides was ranked as the most serious environmental problem (Kenya 2002b). However, no quantitative analysis of the levels of these pollutants has been done⁴⁶. Where tree planting takes place, it is unfortunately dominated by eucalyptus (even in Trans-Nzoia where Vi-Agroforestry has already achieved considerable results in diversification). Byabashija (2004) concludes that not much is known on how to propagate indigenous trees and it is difficult to help rural communities to produce them in large quantities. This, therefore, calls for efforts in research and development. “This may include identification of existing superior indigenous stands as sources of high quality planting material, determining suitable seed collection times of various indigenous tree species, collection of small representative samples for testing and experimentation purposes and investigating the most appropriate methods of raising suitable planting stock of various species by either seed or vegetative propagation for breeding, conservation and operational planting”. Old vegetation surveys (e.g. Dale I.R. 1940) could form a basis for species selection.

It is a serious challenge that women cannot own, control and profit from trees of higher value. This tradition by default leaves more than half of the population outside any attempts to improve livelihoods by diversification to trees and in attempts to improve the overall biodiversity of the area. This challenge of inequality requires more than finding suitable (low

44 Mafabi Rashid, Matilda Makabai; Chemangei Awadi; Paul Obusuru

45 This was mentioned as a particularly serious problem in Sironko and in Suwerwa in Charangani.

46 Godfrey Wafula

value!) shrubs for women to grow. It calls for a total change in attitudes within families and communities – an enormous challenge, but absolutely essential to solve. In the process, it is good to remember that women spend at least 18 hours a day occupied in productive and community roles, while rural men spend less than six hours on constructive work. However, women mostly produce food crops while men concentrate on cash crops. This implies a general unequal division of labour (Uganda 2005c).

Women constitute the biggest group of the landless in both Uganda and Kenya. Even though the constitutions of both countries grant them equality with men, this has not translated into concrete action in land tenure and land transactions. There are several issues related to land transactions which lead to women being sidelined. In Kenya, when land was converted from the customary land tenure into freehold, it was by default the household head whose customary right was transformed into freehold. This transformation from customary to freehold deprived many other individuals of rights to a land parcel they had enjoyed under the customary tenure. Coldham (1978) states that land adjudication often has the effect of depriving some people of their rights while conferring on others greater rights than they were entitled to under customary law.

He further argues that the provisions governing the preparation of the adjudication record rest on two questionable assumptions. They assume that it is possible to equate rights to land recognised by customary law with rights recognised by the Registered Land Act 1963 and they assume that the office charged with preparing the adjudication record has the time and the expertise necessary to secure the protection of customary rights (Coldham 1978). Ogoth-Ogendo (2004) concludes that it is virtually impossible to bring to the adjudication register all the multiple rights claimable under customary law.

In Uganda, the guiding principle is as follows: “Any decision taken in respect of land held under customary tenure whether in respect of land held individually or communally should be in accordance with the custom, traditions and practices of the individual or group concerned; except that a decision which denies females or children access to ownership or use of land shall be null and void”. Under these guidelines, even though women’s rights are mentioned, the customary tenure which is dictated by patrilinear practices with many other rights attached will result in men being legitimised as owners (UWN 1998). As there is now also an opportunity to change leaseholds into freeholds, and as people who currently own leases are

predominantly men, men have again an advantage over women to become permanent owners of land in perpetuity.

It is not land tenure as such that poses a problem in the area. Both freehold and customary land tenure can serve well if the system is administered with principles of good planning, equity and transparency. These principles have not been, in general, fulfilled in either of the land tenure types in the study area (and in Kenya and Uganda as a whole). In Kenya, it requires revising the constitution to accommodate the principles of the new land policy, which provides a multitude of improvements to the current situation.

Uganda is at the moment struggling with the most basic issues in land management.

Kapchorwa lands office has no staff at all. The cartographer died and others have not been hired. The Surveyor was laid off in restructuring and no new position has been advertised. A new position of a physical planner has also not been advertised. In Mbale, the lands office there are two cartographers who report that there is actually no work as all the other staff, including the surveyor, were laid off. Although, there a newly recruited physical planner in the office, work has not yet resumed.

One of Okoth-Ogendo's (2004) challenges for the 21st century was democratisation of the heavy and bureaucratic administration system. This clearly is an obstacle for the majority of smallholders in both countries and maintains the gap between the formal and the informal land tenure systems. Concerns were voiced in the Department of Lands and Surveys on the decentralisation policies that Uganda is currently pursuing in its land administration. This is believed to result in ever increasing corruption in land administration, as there are more people involved that can potentially abet such practices.

Mt. Elgon forests have over the decades been extensively impacted by excision of forestland; human encroachment for cultivation, grazing and forest product extraction; logging by individuals and companies; and charcoal making (Otte 1991; KFWG 2000; MEICDP 2001; Scott 1994; Ndiwa 2003). Participatory management of the forest on the Ugandan side has solved some of the main problems earlier encountered in curbing illegal activities, but there is still a long way to go until the park has been restored from the earlier results of encroachment.

Spainhower's 2003 overall conclusion is that poverty has increased as a result of eviction and restricted access to the park, and the extension service delivery has had little to no effect in

increasing incomes of villagers and has served as an inadequate attempt to alleviate poverty as a whole. In Kenya, the existing forestry law has had limited participatory forest management up until now. The non-resident cultivation scheme on the boundaries of the forest has been the only real opportunity for the forest adjacent communities to take part in forest management. However, as mentioned earlier, the system has been a big failure on Mt. Elgon. The Forests Bill (2005) makes it mandatory for all forests to be managed on the basis of approved management plans and, furthermore, participation of communities and other stakeholders should be promoted in the management of forests.

To date, there are two completed and approved forest management plans in place, one of which is for Mt. Elgon, approved in 2003. Participatory approaches will be implemented for the first time starting from the beginning of 2007. This will be a major challenge for both the Forest Department and the Kenya Wildlife Service after a long history of conflict with the people neighbouring forests. More scientific approaches are also called for in establishing sustainable levels of resource extraction⁴⁷.

⁴⁷ How the new Forest Bill will affect the management of Chepkitale National Reserve requires more investigation.

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