TANZANIAN FOREST LAW

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INTRODUCTION

There has been a substantial international influence in Tanzanian Forest law. Firstly, State forest reserves were established by colonial powers, demarcating and alienating forests from customary control. Secondly, forest laws have been developed and implemented by reference to international treaties, conventions and agreements; and thirdly, international donor organisations have assisted in supporting both the creation and implementation of forest policy. Historical contingency has also played a major role in development of Tanzanian forest law. In the last one hundred years or so Tanzania has undergone three major changes of administration, each leaving a legacy of law, policy and land use. Acquisition of the State forest estate has been progressive. Forest reserves gazetted under the German administration of 1891-1919 were retained by the British from 1919-1961 and most are still recognised today by the Tanzanian government. Over time, each administration continued to add to the State controlled area with more forest reserves, game reserves and national parks.

While the physical boundaries of these forest reserves have usually remained the same over time, the policies under which they were managed have changed. Under customary law forest was preserved for traditional rituals, resource conservation and acted as a source of famine foods or shelter during inclement times. The eastern African climate is unpredictable and maintaining a mosaic of vegetation types with a range of resources was a well regulated part of traditional land use management that enabled people to survive droughts or excessive rains. The German and British administration were concerned about over-exploitation of the forest resource by timber extraction, replacement by cash-crop plantations and degradation by fire. After independence the Government of Tanzania continued to use the 1957 British forest ordinance, but this was replaced in 1998 by a new forest policy and in June 2002 by a completely revised Forest Act. The new policy and law integrate the sentiments of the international 1992 Biodiversity Convention with a recognition that people living near to forest reserves should be involved in forest management.

Changes in Tanzanian forest policy reflect changes in social values. Firstly, there is an increased emphasis on conservation of biodiversity, and secondly there

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is concern for an equitable inclusion of people affected by forest management in determination of how the forests should be managed. Conservation of forests has always been an important part of forest law in Tanzania, but only recently has forest biological diversity been explicitly part of forest policy and management. The forests of eastern Tanzania are one of the top twenty-five global biodiversity hotspots and so are internationally as well as nationally important for biodiversity conservation. The focus on conservation can conflict with the desire for equity. What is of importance to the global community may not be compatible with needs of the State and local community. These tensions can be seen in the Convention on Biological Diversity (CBD)[2]. The convention recognises sovereign rights of the State over its own resources under Article 3[3], but also requires the State to both form a system of protected areas and respect traditional lifestyles under Article 8[4]. It is in these latter two requirements, protection and local needs that there has historically been the most conflict.

This chapter first presents an overview of forests in Tanzania, focusing on the mountains in the east of the country which are regarded as being the most important for biodiversity conservation, and then reviews the history of Tanzanian forest management and law. In conclusion the problem of biological conservation and social equity is discussed.

THE FORESTS OF TANZANIA

Tanzania is a predominately dry country, with about half of the land area receiving less than 760 mm of rain a year in four years out of five[5]. Only about 4% of the country receives greater than 1270 mm of reliable rainfall a year. This simple meteorological fact has enormous ramifications for the type of vegetation that the land can support and the use to which the land can be put. In the absence of groundwater, closed canopy forest requires greater than about 1200 mm of rain a year to develop. If the rainfall is less than this, or is markedly seasonal, then open woodland, thorn thicket or grassland prevails. This chapter deals specifically with closed canopy, predominately evergreen forest as it is in this vegetation type that a high proportion of Tanzania's rare and endemic plants and animals are found. Much of the higher rainfall areas are on mountains, where lower temperatures at higher elevations mean that precipitation exceeds evaporation. Thus the naturally forested areas are also catchments where water can be harvested. These catchment forests feed rivers which can be used to irrigate crops, supply cities and generate hydroelectric power. Although forests use water through evapo-transpiration, the consensus is that natural forest cover is an appropriate land-use for catchments as natural forests regulate micro-climate, ameliorate flooding and capture fog and mist through occult precipitation[6]. Maintenance of forest cover as a State priority is in preference to agriculture or grazing as an alternative land-use for the high rainfall areas, and this in turn has historically led to conflict between national needs of the State forestry authority and other land users.

More recently, the role of forests for biodiversity conservation has been incorporated into forest management. The forests in Tanzania vary greatly in