



Protecting Rights of Minorities and Marginalised Groups in Kenya: Progress in Law Reforms

Professor Patricia K. Mbote

Dr Collins Odote

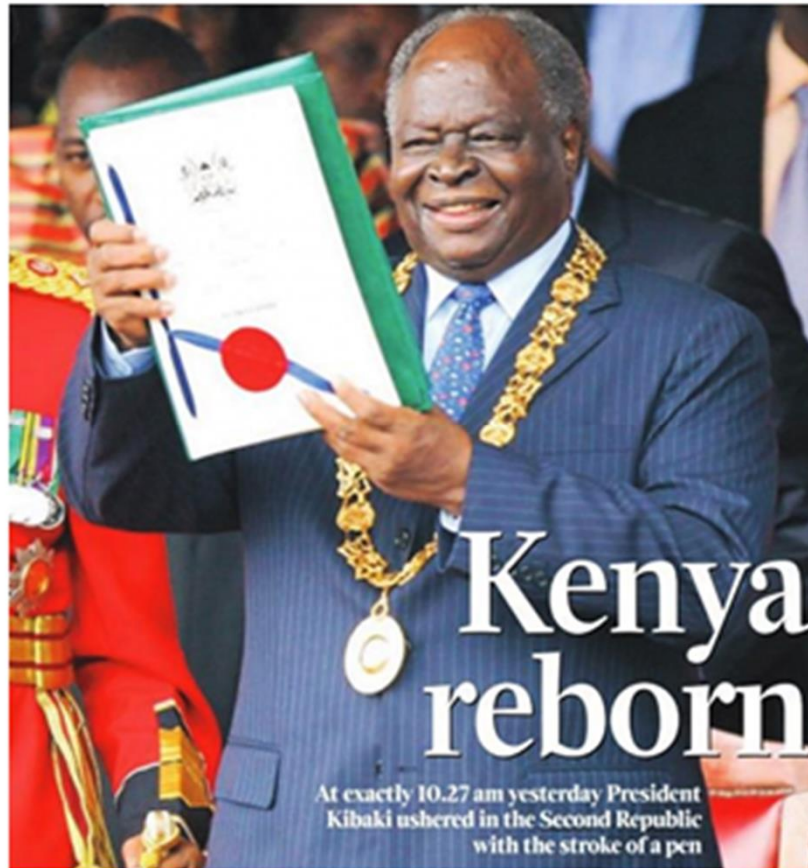
**1st international Seminar: Social
Cartography of Traditional Peoples &
Communities in Kenya, Zimbabwe &
Brazil**

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Constitutional Context





Highlights



- * 2010 Constitution and restructuring of Governance and protection of rights
- * Mention of Ethnic Minorities and Marginalised Groups explicitly
 - * Devolution- rationale and protection of marginalized
 - * Bill of Rights and Special affirmative action policies(Art 56)
 - * Requirement of Political parties to ensure their participation



Highlights -2



- * Art 100 Affirmative Action Legislation for representation
- * Art 201: Public expenditure to promote equity and pay special attention to marginalized areas
- * Equalization fund and focus on basic services(health, water, roads) to marginalised areas)



Land Reforms



- * Kenya's History and Land Rights of Minorities- A case of Siamese Twins?
 - * Pre-colonial Kenya and customary arrangements for land ownership
 - * From IBEACO, Protectorate to Colony and the land agenda
 - * Struggle for independence and Communities agitation for land rights
 - * Post-Colonial Kenya and unsupportive legal regime("Modern Land Tenure" Versus **traditional and customary tenure arrangements**)



Land Reforms - 2



- * 2002 Njonjo Land Reforms, Ndung'u Land Commission – Litany of dispossession of land for communities
- * 2007 Elections , Post Election Violence and the land nexus
- * National Land Policy and correction of past Mistreatment of customary land rights
 - * Reversal of 1954 Swynnerton Policy on privatization
 - * Correction of misuse of Trust Lands and Group Ranches



Land Reforms - 3



- * Policy recognition of Community Land.
- * National Land Policy Directive:
 - * Definition of community,
 - * Vesting of ownership of CL on defined community
 - * Documenting and mapping existing forms of communal tenure



Constitutional Underpinnings



- * From a past Constitution with limited land focus, 2010 Constitution robust on land
 - * Recognizing property rights
 - * Vesting land rights on all Kenyans
 - * Clarifying tenure arrangements
 - * Establishing a National Land Commission
 - * Protecting Rights of women to land
 - * Recognizing rights of communities and marginalized groups
- * Detailed Provisions on Community Land Rights



Community Land Rights



- * Community Land Shall vest in and be held by Communities identified on the basis of **culture**, ethnicity or **similar community of interest** (Art 63)
- * Community land listed to include:
 - * Land registered in the name of group representatives under provisions of law
 - * Community forests, grazing areas or shrines
 - * **Ancestral lands and lands traditionally occupied by hunter-gatherer communities**
 - * Land held in trust by county governments

Beyond

Constitutional

Reforms



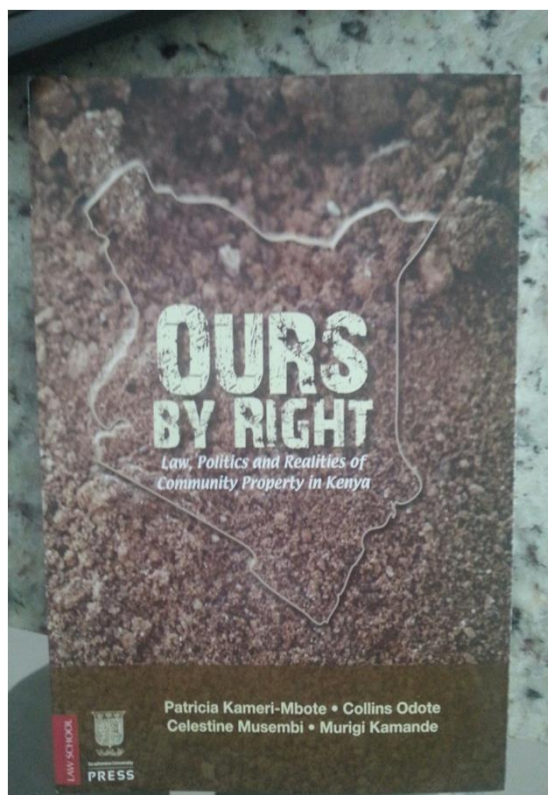
“Ours By Right: *Law, Politics and Realities* of Community Property Rights in Kenya ; FF supported, findings

“Constitutional Directive for Community Land Law in 5 years

“Challenges around addressing the question on Community land

“ *Who owns, what interest in What land?*”

“Normative recognition Vs territorial demarcation of land





Key Issues



- * Despite recognition, lack of clarity on Who Indigenous people are??
- * Constitution only defines **marginalized groups** but not minorities, even then very general definition
- * Delay in finalizing Community Land legislation
- * Linking community land rights to natural resource rights
 - * Renewable (Forests, fisheries, wildlife etc)
 - * Non-renewable



Key Issues - 2



- * Discovery of extractives on communal land and pressure for expropriation
- * Benefit sharing initiatives
 - * Economic, ecological and social imperatives
 - * Community interests
 - * Regulatory framew
- * Resilience of customary and social systems
 - * Past disregard amidst “resistant weed”
 - * Need for recognition and application
- * Balancing institutional structures with modern developments



Key Issues - 3



- * Need for innovation in strengthening communities and the protection of their rights
- * Beyond law, capacity building, learning , knowledge sharing and networking
- * Social cartography? Lawyer?????
 - * Traditional.... No way
 - * Multidisciplinary research interactions
 - * Ideas, innovation and people!!!!