

Abstract

Although Land is central to livelihoods and governance in Kenya, its treatment in Law has always been at variance with obtaining reality. This situation is greatly exemplified by the manner in which customary /traditional/community land tenure regimes have been dealt with since the introduction of colonialism. Colonialism introduced a legal framework that gave preference to individual tenure regimes to the complete exclusion of customary arrangements. The result was a land regulatory regime that required traditional customary tenure to give way to “modern” methods of holding and using land. In reality, though, customary tenure did not die. Instead it continued to exist side by side with and in some cases, in spite of the law. The Constitution of Kenya, 2010, seeks to correct this discordant arrangement by recognizing that land belongs to all Kenyans and forms a core basis for sovereignty. It, in doing so, affirms that in addition to private and public land, land can also be held by communities on the basis of ethnicity, culture or community of interest.

The Book discusses the importance of the Constitutional recognition of community land and based on comparative experiences from several countries in and outside Africa and case studies from several communities in Kenya, makes proposals for implementation of the community tenure as a land category. In addition to giving proposals for a Community Land law it also discusses practical implementation issues necessary for success of reforming Kenya’s land tenure regime and :giving meaning to Communal Land Rights.