

RECOGNITION AND SUPPORT OF ICCAs IN KENYA

Fred Nelson¹
Maliasili Initiatives

Case study for:
RECOGNISING AND SUPPORTING
TERRITORIES AND AREAS CONSERVED BY INDIGENOUS
PEOPLES AND LOCAL COMMUNITIES
Global Overview and National Case Studies

Edited by Ashish Kothari, with Colleen Corrigan, Harry Jonas, Aurélie Neumann, and
Holly Shrumm

ICCA Consortium, IUCN/TILCEPA, Kalpavriksh, and Natural Justice

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¹ Fred Nelson is Executive Director of Maliasili Initiatives, a US-based non-profit organization that supports natural resource conservation, sustainable development and social justice in Africa by working with leading local organizations to build their capacity and foster wider collaborative initiatives. He has lived and worked in Tanzania for a total of 11 years and is now based in Vermont, USA. Contact: fnelson@maliasili.org

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List of acronyms

ACC	African Conservation Centre
BMU	Beach Management Unit
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EAWLS	East African Wildlife Society
FFI	Fauna and Flora International
GDP	Gross Domestic Product
ICCA	Indigenous People’s and Local Community Conserved Territories and Areas
ILRI	International Livestock Research Institute

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KANU	Kenya African National Union
KWS	Kenya Wildlife Service
KWWG	Kenya Wildlife Working Group
LMMA	Locally Managed Marine Area
NGO	Non-government organization
NRT	Northern Rangelands Trust
UNDP-GEF	United Nations Development Programme - Global Environment Facility
USAID	United States Agency for International Development
WWF	World Wide Fund for Nature

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Summary

Kenya is a culturally and biologically diverse country with a wide range of customary and more recent, formalized community conservation arrangements across its landscapes. With more than three-quarters of its landscapes comprising semi-arid and arid rangelands and savannahs, traditional pastoralist land use and management practices, based around transhumant livestock management, are a central element of natural resource governance country-wide. Pastoralist communities have long protected important resources – such as forests, water sources, and dry season grazing refuges – through customary mechanisms. Weaknesses in collective customary forms of land tenure – as in much of sub-Saharan Africa – have however led to the erosion of these traditional communal management systems.

Kenya's legal framework for 'Group Ranches' – privately titled collective rangelands used for communal livestock production – provides a way for pastoralist communities to formalize rights over communal pastures, and has been widely adopted in Maasai communities in the southern and central parts of the country; but the Group Ranches have been increasingly sub-divided during the past twenty years.

New community conservation areas termed 'conservancies' have been widely created in pastoralist areas in southern and central Kenya, facilitated and supported by a wide range of government, NGO, private sector, and external donor resources and interests. Organizations such as the African Conservation Centre and Northern Rangelands Trust have played a key role in developing the management framework for these conservancies and scaling them up over larger areas in recent years. These conservancies provide a range of local values, including clarifying and firming up local land tenure over pasture and grazing areas, improving security through networks of community scouts and

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communications infrastructure and law enforcement bodies, and providing a legal structure for communities to enter into third-party joint ventures with tourism investors in order to generate local revenue from wildlife. At present NGOs and government are working to develop a harmonized legal framework for community conservancies, as to date these conservation areas have not had any basis in protected area or wildlife policy or law. Thus while these emerging ICCAs are widely supported by civil society, donors, and private sector, government policy is yet to create an enabling context for their establishment and governance.

The sacred Kaya forest groves on Kenya's coast are one of the country's most famous customary ICCAs, protected by the Mijikenda people for their spiritual and cultural value even while much of the region's coastal forests – a global biodiversity hotspot – have been cleared. The Kayas are one of the six designated World Heritage Sites in Kenya (as a cultural site), and many of them have been protected by the government as 'National Monuments' under the Antiquities Act, effectively incorporating them into the protected area network while safeguarding their cultural values. Organizations such as WWF and the National Museums of Kenya have worked with local communities to protect Kayas and develop income-generating opportunities based on these forests such as through guided tourism visits for beach travelers on the Kenyan coast.

Within the past five to ten years, important policy and legal changes, as well as some pioneering local pilot initiatives, have helped coastal communities in Kenya to strengthen territorial rights over in-shore reef fisheries which support the livelihoods of artisanal fishing communities. The basis for this emerging ICCA governance framework on the coast are 'Beach Management Units' (BMUs), which are associations of fishermen, traders, and other fishery users and stakeholders centered around coastal landing sites. These BMUs are able to develop and enforce rules governing their fishery, including demarcating its boundaries and excluding non-members from outside the area, with the support and sanction of the Department of Fisheries. Several ICCAs have been mapped recently and donor and NGO support to these areas is increasing, with seemingly high potential to scale up coverage of a high potential of the Kenyan Indian Ocean coastline, home to important marine biodiversity which sustains millions of people along the coast as well as Kenya's tourism industry.

A number of important recent developments at the level of government policy, and in relation to external forms of support to ICCAs, have occurred in Kenya. By far the most important of these are constitutional changes as adopted through the public approval of Kenya's new constitution in August 2010. While the constitution provides general strengthening of devolved and democratic governance in Kenya, itself of great importance to ICCAs, it also provides for critical reforms to the country's land tenure framework, changes that are elaborated in a new land policy. Specifically, these reforms call for the replacement of trust land – a historically weak tenure class managed on a trustee basis by County Councils (local, district-level government) that has been vulnerable to alienation and encroachment and which makes up the majority of land in Kenya – with a new tenure category of 'community land'. This has the potential – if implemented effectively – to transform the historic weakness of communal and

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customary land rights in Kenya's rural areas, which, as in most African nations, has been the greatest impediment to securing and sustaining traditional or newly established ICCAs.

Additional recent developments of importance to the recognition and support of ICCAs include enhanced donor support, such as that provided by the UNDP-GEF Small Grants Programme focal support to ICCAs in Kenya, as well as support by the UK government's Darwin Initiative to the emerging coastal ICCAs. Large international conservation organizations such as The Nature Conservancy and Fauna and Flora International are also providing increased support to ICCAs, through partnerships with Kenyan organizations such as the East African Wildlife Society and Northern Rangelands Trust. The combination of experienced NGOs, a variety of conservation and development-focused donors, and recent institutional reforms at the constitutional and policy levels suggest that Kenya is likely to emerge in coming years as a leading African country in the recognition and establishment of ICCAs.

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1. Country description and context

1.1. Key features of Kenya

Kenya is the second-largest country in the East African Community (after Tanzania), with a total size of 58,036,700 ha of land and water (the latter comprising mainly its portions of Lake Victoria and Lake Turkana). More than three-quarters of the country's land area is semi-arid or arid. True desert covers the northern part of the country around Lake Turkana and along parts of the Somalian and Ethiopian borders, transitioning into semi-arid brushland and dry savannah moving south. Rainfall is higher along the coast, in the southwest near Lake Victoria, and in the highlands in the south-central part of the country, centered on Mount Kenya, sub-Saharan Africa's second-highest peak, and the Aberdares range. These montane areas serve as 'rain towers' for the arid lowlands and contain the bulk of Kenya's remaining evergreen forest. As a result of its generally arid and semi-arid climate, only about 8% of Kenya's land is arable and the predominant land use is pastoralism.

Kenya's coast contains patches coastal forest that are a part of the East African Coastal Forest biodiversity hotspot, which runs along Africa's Indian Ocean coastline from Somalia to Mozambique and is characterized by high levels of species endemism, particularly among birds, reptiles, plants, and invertebrates. The Arabuko-Sokoke forest, a National Park and Forest Reserve managed by the Kenya Wildlife Service, is one of the most important patches (42,000 ha) of forest in all of sub-Saharan Africa for avian conservation, and for conservation of the East African coastal forest biome in general.

Another of Kenya's outstanding biological features is the Maasai Mara National Reserve, which lies adjacent to Tanzania's Serengeti National Park along the Kenya-Tanzania border. The Maasai Mara, perhaps the most famous and visited wildlife reserve in Africa, hosts the Serengeti ecosystem wildlife migration, totaling around 2-3 million wildebeest, zebra, and other ungulates during the dry season and thus is an integral component of this migratory system. The Maasai Mara is also, as a result of its wildlife populations, which comprise about 25% of all the wildlife founds in Kenya (Western et al. 2009), the key attraction in a tourism industry that generates over \$1 billion in annual receipts and is a leading source of foreign exchange, employment, investment (Honey 2008).

Kenya's human population has grown rapidly during the past 30 years, now totaling over 41 million with a growth rate of 2.46 %/year and fertility rate of 4.19 children/woman (CIA 2011). The population is concentrated in the southern and western portion of the country and along the coastline, particularly around Lake Victoria in and in the southern and central highlands around Mount Kenya, the Aberdares, and other montane areas with relatively high rainfall and soil fertility.

Kenya ranks 143rd out of 187 countries on the UNDP Human Development Index, with a score of 0.509, which is above the regional average for sub-Saharan Africa of 0.463 (UNDP 2011). Kenya – particularly the capital Nairobi – is the commercial and business

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hub of eastern Africa, with a strong international business community and growing middle class. The economy has generally experienced high growth rates for the past decade, although growth and investment cratered in 2008 as a result of the global recession as well as the post-election violence that engulfed Kenya in the early months of that year. GDP growth in 2010 was over 5% (CIA 2011). Key sectors in the economy include agriculture – including a horticulture and floriculture industry that has grown to become one of the country's leading exports – as well as tourism and a range of technology and services industries that serve much of sub-Saharan Africa (e.g. Kenya Airways is now probably the sub-continent's premier airline, serving most of the countries in Africa). Nevertheless, as in nearly all sub-Saharan countries, poverty in both rural and urban areas is pervasive, particularly in light of population growth and concomitant rural-to-urban migration. The demands of the growing population, coupled with a growing middle class and rising standards of living and demands for resource consumption, are frequently pointed to as a leading cause of environmental degradation in Kenya.

Kenya's population is ethnically diverse and reflects the diversity of its physical geography and climatic zones. The arid and semi-arid savannahs are occupied primarily by Nilotic-speaking pastoralist groups, including the Turkana, Kalenjin, Maasai and Samburu, as well as the Cushitic-speaking Somalis who predominate in the northeastern part of Kenya. The area around Lake Victoria, centered on Kisumu, is home to the Luo and Luhya, while the Kikuyu – Kenya's most populous ethnic group (about 22% of the total population) – predominate in the central highlands.

Kenya's ethnic diversity and discrete geographic and cultural divisions are often highlighted as a source of political discord and violent competition through 'tribalism', but in reality the country's political structures, rooted in a fairly characteristically African colonial and post-colonial history, have had as much or more to do with the problems of political unity and democracy in Kenya. Founding President Jomo Kenyatta aligned Kenya with the West during the Cold War and promoted capitalism and foreign investment – in stark contrast to neighboring Tanzania – but his undemocratic regime increasingly concentrated land and other public resources in patronage networks grounded in his own Kikuyu ethnic group. His successor, Daniel arap Moi, continued in this pattern, surviving an attempted coup in the early 1980s, although he shifted favoritism away from the Kikuyu towards competing groups such as his own Kalenjin community. Moi's regime, increasingly contested by civil society and the public during the 1990s, survived hotly contested multi-party elections in 1992 and 1997 until his eventual term-limited resignation in 2002. The general election that year led to an unprecedented opposition victory by Mwai Kibaki, heading a coalition of long-time opposition parties to unseat the KANU (Kenya African National Union) party that had ruled since independence.

Kibaki's administration brought into government a wide range of reformers who had supported his coalition, and the early years of his rule (e.g. 2002-2004) were characterized by a flowering of policy and legal reform including in natural resource sectors such as wildlife and forestry. This window of reform quickly closed, though, as

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former private-public networks of political and economic elites reconsolidated patronage-based governance around the Kibaki regime (Wrong 2009). This led to the regime's loss of popular legitimacy and the hotly contested general election of December 2007, which pitted Kibaki against his former opposition coalition member, Raila Odinga. Kibaki was declared winner and sworn in for a second term in hotly disputed circumstances (nearly all prominent incumbent Members of Parliament were unseated in the election). This led to several months of local violence and national paralysis as the two contestants' networks of supporters were mobilized and long-simmering local tensions over land and resource access broke into open ethnic violence. Former United Nations Secretary General, Kofi Annan, with support from US Secretary of State Condoleezza Rice and Tanzanian President Jakaya Kikwete, spent several months brokering a solution to the impasse, which resulted in a coalition government in place since 2008, with Kibaki as President and Odinga as Prime Minister. One of the critical conditions for this agreement was the promulgation of a new national constitution before the next general election; this constitution was passed through public referendum in August 2010, a landmark event that has led to renewed hope in democracy and public institutions in the country.

1.2. Brief history of conservation, state- and community-based

Kenya's conservation history goes back hundreds of years to its pre-colonial, pre-state period, as the sacred Kaya forests of the coastal zone (see section 2.1.(ii)), as well as numerous traditional pastoralist conservation practices (see section 2.1.(i)), demonstrate.

In terms of formal legal-administrative measures, Kenya's conservation history is traceable to Kenya's status as a British settler colony and the creation during the early phase of this rule of the first 'wildlife' and 'forest reserves'. Forest reserves protected supplies of timber and wildlife reserves were set up to protect game from indiscriminate slaughter by European hunters. Most of Kenya's protected area system consists of fairly small areas – with the exception of Tsavo East National Park at around 2 million ha – and the total coverage of national parks and game reserves is only about 8% (compared to 15-30% of total land area in comparable African states such as Tanzania, Zimbabwe, Zambia, Botswana and Namibia).

Kenya's protected areas consist of National Parks, National Reserves, National Sanctuaries, National Monuments, Marine National Parks, Marine National Reserves, and Forest Reserves. The parastatal Kenya Wildlife Service (KWS) manages National Parks, National Reserves, several National Sanctuaries, and Marine National Parks and Marine National Reserves. Some National Reserves, notably the Maasai Mara, are directly managed by local government – the County Councils with jurisdiction over the area.

As a result of the limited protected area coverage, most wildlife² (~65%) is found outside the protected area network on private and communal lands of one kind or another (Western et al. 2009). The long-term co-existence of large mammals with transhumant

² 'Wildlife' in this context refers to large mammals, primarily ungulates but also including species such as elephants. Data on the numbers of these species comes from aerial surveys carried out since the 1970s.

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pastoralist communities such as the Maasai and Samburu is an important factor in the large number of wildlife that are still found outside protected areas in Kenya (Collet 1987; Western 1989). One unique feature of Kenya is that some of its leading wildlife reserves – including the Maasai Mara and Samburu National Reserve – fall under the authority of local County Councils (elected district-level local government), which also retain the bulk of revenues generated by tourism therein. So local governments play a particularly important role in managing the national conservation estate.

A key event in Kenya's conservation history occurred in 1977, when all forms of wildlife utilization were banned by Presidential order. This brought the country's trophy hunting industry – then the leading safari hunting industry in Africa – to a halt, including cutting off revenues that some local communities had previously earned from hunting carried out on their lands. In later years, conservationists would increasingly point to the hunting ban – initially temporary but still in place 35 years later – as a major problem facing conservation efforts since without the ability to generate revenue from sustainable forms of consumptive use wildlife was at a disadvantage in relation to alternative, competing land uses (Baskin 1994; Norton-Griffiths 2008).

During the 1970s and 1980s Kenya was swept with a wave of commercial poaching focusing on rhino horn and elephant ivory; elephant number declined from several hundred thousand nationwide to about 20,000. Partly as a result of this situation, Kenya was the leading country behind the 1989 ban on the ivory trade enacted under CITES (Bonner 1993). That same year, Kenya abolished its Department of Parks and Wildlife Management, which had been unable to deal with pervasive poaching and illegal use of wildlife and was widely considered ineffectual and riddled with corruption, with the parastatal Kenya Wildlife Service (KWS). Since that time KWS has been the lead authority for wildlife and national parks management and during the 1990s, at least, was one of Africa's leading protected area management bodies.

Kenya's historic land tenure framework, a particularly critical factor in the ways that local communities are able to manage their customary lands and natural resources, has both advantageous and disadvantageous elements with respect to community conservation. Kenya's post-colonial land policies have, in relation to other countries in sub-Saharan Africa – many of which effectively nationalized much or all land after independence – generally provided secure private rights to land. As a result a sizeable portion of Kenya's white settler population remained in the country after independence and in certain areas, such as Laikipia District, the descendants of colonial-era settlers have driven large-scale private wildlife conservation and tourism development efforts (Honey 2008). The Kenyan government attempted to avail similar private rights over land to collective bodies – local communities – through the Group Ranch framework established through legislation passed in 1968 (see section 3.1.(i)). Group Ranches became the predominant form of land ownership in large areas inhabited by pastoralists, particularly the Maasai areas of Narok and Kajiado Counties in southern Kenya. However, as is discussed later, deficiencies in the land tenure and governance framework of the Group Ranches has latterly led to their increasing dissolution and effective privatization at the behest of their residents.

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Most of the land in Kenya that is not private land, including Group Ranches, or state land such as protected areas, generally is classified as ‘trust land’ and as such is under the authority of the respective County Councils. In practice the trusteeship of these local government bodies over such lands has led to widespread misuse and misallocation of land and has provided weak protection to local customary land rights (Alden Wily 2011). As is discussed later, the new constitution envisions the replacement of trust lands with a new tenure category called ‘community lands’ which would enable local groups of people to better secure and title their collective properties.

2. Features of ICCAs

2.1. Range, diversity and extent of ICCAs

With its culturally and biologically diverse geography, and relatively limited extent of state protected areas, Kenya has a wide range of documented ICCAs covering both marine and terrestrial environments and a wide range of ecosystems. The country has a diversity of cultures, many of whom – such as pastoralists – have strong connections to their lands and natural resources and a range of traditional conservation institutions, many of which remain undocumented.

(i) Pastoralist Landscapes

Kenya’s different pastoralist communities have long-standing and diverse traditions of actively managing their environment in ways that conserve the forage and water resources that their livelihoods depend upon. For example, Bassi (2006) describes the indigenous conservation practices of Borana pastoralist communities in northern Kenya along the Ethiopian border: the Borana traditionally protect springs and highland forests as critical resources for their livestock, with the forests providing refuge and forage during times of drought as well as protecting water catchments. Other pastoralist groups such as the Maasai, Samburu, and Turkana also traditionally protect dry season grazing refuges and forests through traditional mechanisms and belief systems. For example, the Loita Forest in Narok District is one of Kenya’s more significant remaining patches of highland forest, in a country that has experienced heavy levels of deforestation (Box 1). The Maasai communities living alongside this forest have protected it from external encroachment and other development threats.

Box 1: The Loita Forest - ‘forest of the lost child’

The Loita Forest in southern Kenya is among the few formally unprotected, or unreserved, indigenous forests remaining in the country. The forest covers an area of 33,000 ha and is surrounded by – and traditionally controlled by – the Maasai communities of the Loita and Purko sections, who use the forest as a dry season grazing refuge as well as for fuel wood and building materials, water catchment, traditional medicines, and a range of spiritual and cultural purposes. The Loita Forest is in very good condition, largely as a result of strong traditional protection by the surrounding

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communities, who call the forest *entim naimina enkiyio* or ‘forest of the lost child’. While much of Kenya’s broadleaf highland forests have been destroyed during the past fifty years, the Loita Forest represents a notable exception to this trend and a demonstration of the potential of local stewardship.

The principal challenge local communities have faced over the course of the past 20 years in conserving the Loita Forest has come from efforts by outside parties, particularly the Narok County Council, to take over management of the forest. In 1993 the County Council declared its intention to take over the forest, which would have alienated the forest from local users and potentially reduced local incentives to protect the forest. The local communities have subsequently waged a long legal and political struggle to maintain control of the Loita Forest, which for the most part has been successful. A challenge has been the Loita Forest’s status as trust land under the authority of County Councils (as notional trustees for local residents). With the new land policy and constitutional provisions envisioning the phasing out of trust land and the new tenure category of community land, there may be good prospects for formal registration of the Loita Forest in the name of its traditional managers and resident communities.

Source: Adapted from Karanja et al. 2002

ICCAs traditionally conserved by pastoralists are examples of strongly coupled and interrelated ecosystem services, biodiversity, and human economies. Pastoralist land use practices such as the use of fire as a range management tool, and grazing by livestock, have shaped East Africa’s savannahs and grasslands for millennia (Collet 1987). These management interventions have aimed, primarily, to improve the quality of forage through active management (fire, rotational grazing) of pasture for livestock as the basis to local livelihoods and economies. Ecosystem services such as water catchment by highland forests provide for these livelihoods in their entirety and thus traditional production systems evolved in ways that foster their conservation.

The total extent of areas conserved by pastoralist communities in Kenya is unknown and in effect indeterminate as many of these traditional areas are under threat from changes of various stripe. As more than three-quarters of Kenya comprises arid and semi-arid rangelands and savannahs, with nearly all of this area occupied and managed by pastoralist communities, the total area of land subject to some degree of local conservation management may be very significant (e.g. certainly more than 1 million ha). However, due to a range of tenurial, governance, and social challenges, it is also unclear to what degree traditional land conservation practices have been maintained or eroded, although it is clear that in most areas they are eroded to some degree. Kenya’s land tenure framework has historically left pastoralists, outside of the Group Ranches in Maasai and Samburu areas, with very weakly defined and protected land rights. This facilitates encroachment, expropriation of lands and key resources by outsiders, the erosion of traditional conservation practices due to an inability to enforce customary rules and management systems. These are discussed in greater detail in subsequent sections.

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(ii) Forests

Among the most well-known and extensively documented ICCAs in Kenya are the sacred groves of the Mijikenda people of the coastal zone. These groves, known as Kayas, range in size from about 30 to 300 ha and are found along much of the Kenyan coast in Kilifi, Kwale, Malindi and Mombasa Districts. About 70 Kayas have been identified, and these areas now often serve as relict refuges for a range of species in the high biodiversity East African coastal forest biome, which has otherwise been highly degraded by clearing, settlement, and urbanization. The Kayas are estimated to cover in total about 6,000 ha, or about 10% of the total remaining coastal forest in Kenya (Githitho n.d.). The traditional preservation of the Kayas was underpinned by Mijikenda spiritual beliefs and ritual traditions, and enforcement of traditional rules is primarily through adherence to taboos and social sanction. Many Kayas have been degraded through clearing, encroachment, and, closer to the coast, resort developments. Kayas are mostly legally trust lands and thus local communities face the same challenge to excluding outsiders and exercising land rights as communities in areas like Loita Forest. Since the early 1990s, in order to protect the cultural and biological values the remaining Kayas contain, a strategy has been employed of gazetting Kayas as National Monuments under the Antiquities and Monuments Act. This provides the Kayas with a form of statutory protection from encroachment and development, and does not significantly constrain local access since traditional uses of these forests are non-extractive. 11 representative Kayas spread along the coast were officially inscribed in 2008 as one of Kenya's six World Heritage Sites (UNESCO 2011).

Kenya also has promoted participatory forest management through the 2006 Forest Act, which provides for the establishment of Community Forestry Associations by communities adjacent to Forest Reserves. These associations then enter into co-management agreements for the management of Forest Reserves with the Forestry Department; this arrangement however is effectively co-management of state-owned protected areas and the communities are thus in a delegated yet secondary position of authority with regards to the forests they are involved with managing. Such co-management is thus not included in the purview of this discussion of ICCAs.

(iii) Community Conservancies

The most widespread form of community-based conservation practiced in Kenya during the past twenty years has been the establishment of locally-protected areas, often termed community conservancies or sanctuaries. These areas set aside land explicitly for wildlife, often on the basis of tourism investments made by outside companies that enter into contractual agreements with the local community. Unlike in Namibia (see case study in this volume), the term 'conservancy' in Kenya bears no official meaning circumscribed within wildlife or protected area policy or law; it is rather an informal term to denote the local designation of conserved areas within established Group Ranches or trust land. This terminology is also used partly to market these areas by the tourism companies, and to emphasize the local conservation measures that are being instituted.

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Data collected by the International Livestock Research Institute (ILRI) provides documentation, compiled from different sources, of 41 conservancies established in eight districts around the country, covering a total 1.58 million ha, including 402,141 ha within 'conservation zones' that are specifically set aside for wildlife, tourism and seasonal livestock grazing³ (ILRI, unpublished data).⁴ The majority of conservancies (24 out of 41) are located in the Group Ranches surrounding the Maasai Mara National Reserve in Narok District, and those surrounding Amboseli National Park in Kajiado District. In both these areas, conservancies have been formed through joint venture and concessionary agreements between local landholders and tourism companies, which provides for the communities to set aside areas for tourism and wildlife in exchange for certain fees and other benefits. Importantly, some conservancies grant exclusive use of the area to only one tourism company or lodge; the demand for creating conservancies emanates from this desire for more private, exclusive 'wilderness' experiences on the part of high-end tourism clients. This led to the establishment of the first conservancies during the 1990s (Honey 2008). The creation of these areas is thus largely driven by the tourism market, and the reality that as much wildlife is found on the community lands outside these state protected areas as within them (Western et al. 2009).

For the communities, the main benefit and draw of the conservancies is to generate new forms of revenue, as well as employment and other ancillary benefits, from tourism investments. In some areas level of revenue are economically significant; for example in Maasai Group Ranches around the Maasai Mara, landholders generate on average 60% of income from livestock, 30% from tourism, and 10% from agriculture (Thompson et al. 2009). Some tourism investments, particularly in Laikipia and Samburu Districts, have been built as joint equity partnerships between investors and the local community, where the lodge is effectively owned by the community or will be transferred to their ownership on a set schedule after a number of years. Some conservancies, again mainly those in Laikipia and Samburu, have also adopted a more holistic approach to natural resource management, addressing issues such as grazing management, including the restoration of traditional pastoralist grazing reservation practices that had been eroded (Glew et al. 2010).

Another important benefit for communities establishing conservancies, particularly those in northern and central Kenya, has been improving security. For conservancies in areas such as Samburu District, one of the major challenges to local livelihoods, land use management, and conservation has been insecurity due to cattle rustling, presence of small arms, ethnic strife and contested access to pastures and water (CDC et al. 2009). One of the main interventions that has accompanied conservancy establishment has been addressing security issues through a range of mechanisms, including linking conservancies to a central communications hub managed by the Northern Rangelands

³ As in Namibia's communal conservancies, in Kenya the boundaries of the conservancies as a whole includes areas where people reside and areas or zones where conservation is not the primary form of land use.

⁴ The lower figure is definitely classifiable as ICCAs; the larger area includes a wider landscape with high local conservation value and many of the same attributes of the core conservation zones but without the same level of focused conservation protection; nevertheless they too could be considered ICCAs as many of them meet the criteria.

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Trust (see below), which in turn maintains communications and coordinating links with local police units. The conservancies have also set up a range of mechanisms to resolve land access conflicts amongst different pastoralist ethnic groups, through grazing committees and various councils of elders (CDC et al. 2009). This improved security and clarity around land access rights and regulations has been one of the main drivers for the expansion of community conservancies in northern Kenya during the past decade.

In biological terms these community conservancies are a critical component of Kenya's conservation landscape, particularly as over 60% of wildlife (large mammals) in Kenya is found on private and community lands. The conservancies protect key portions of large migratory wildlife populations around the Maasai Mara and Amboseli; Norton-Griffiths (1995) estimates that the migratory wildebeest population of the Serengeti ecosystem, comprising more than one million animals, would decline by up to 33% if the wildebeest could not access the Group Ranches surrounding the Maasai Mara National Reserve.

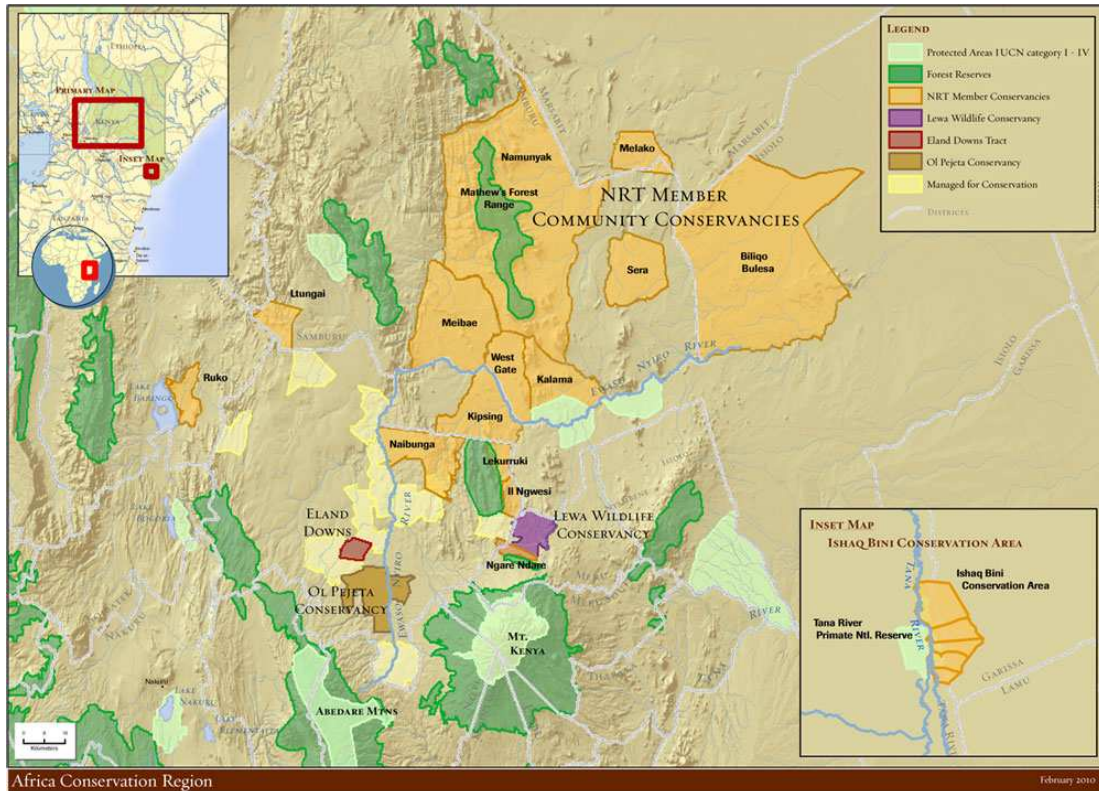


Grevy's zebra in Laikipia District, central Kenya

© Kenneth Coe

A number of conservancies protect significant populations of highly endangered species. In Laikipia and Samburu Districts, conservancies provide critical habitat for Grevy's zebra, which is endemic to northern Kenya and southern Ethiopia and of which there are only a few thousand remaining in the wild. Community conservancies and adjacent private wildlife conservancies in Samburu and Laikipia provide habitat for the majority of the remnants of this species' population. Other endangered or threatened species found in this network of community conservancies (see Map 1) include wild dog, cheetah, and elephant.

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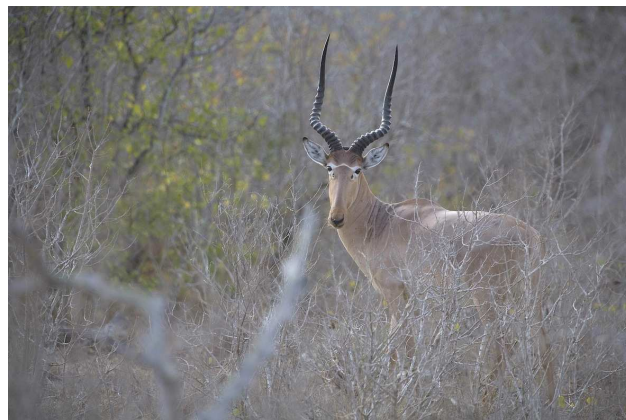
RANGELANDS OF
NORTHERN KENYA



Map 1: Community Conservancies facilitated by Northern Rangelands Trust in central, northern and eastern Kenya.

(Source: The Nature Conservancy, Matt Brown)

A very notable new and emerging conservancy is Ishaqbini, located in Garissa District in eastern Kenya. This conservancy has been established explicitly for the protection of a key area of habitat used by the hirola (*Beatragus hunteri*), an antelope endemic to eastern Kenya and Somalia, which now numbers only 200-300 in total, most of these found in a few locales in far eastern Kenya (King 2011).



Hirola antelopes on Ishaqbini conservancy, Garissa District, eastern Kenya

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(iv) Locally Managed Marine Areas

Kenya's coastal communities rely heavily on inshore reef fisheries and marine resources for their livelihoods – for food, trade, and other products. Kenya's coastline is also a key area for marine biodiversity, with extensive coral reef all along the coastline, as well as beaches used for nesting sea turtles. Traditionally fisheries have been open access, with traditional fishing technologies limiting catches and avoiding high levels of by-catch or unselective harvest. With technological changes, such as the introduction of purse seine and monofilament netting, fishing practices have become less selective and more impactful on local fish populations (Samoilys et al. 2011). This endangers both marine biodiversity as well as human livelihoods along the coast.

Both the concept and the terminology of ICCAs are emerging as a central strategy to improve local management of in-shore fisheries and coral reef systems in coastal Kenya. The basic concept is to enable communities to establish 'Locally Managed Marine Areas' (LMMAs) which grant a defined group of fishery users – including fishermen and other marine product harvesters as well as boat operators, processors etc. – the rights to govern a defined area of water and reef. The first significant pilot LMMA was established in 2005 by the community of Kuruwitu on the central Kenyan coast. The residents of Kuruwitu established an umbrella organization, the Kuruwitu Community Welfare Association, and designated a 200 ha no-take zone in their traditional waters around their reef. The protection and enforcement of the no-take zone has been successful in protecting marine resources, resulting in a reported 30% increase in live hard corals and a 200% increase in fish numbers since 2005 (Lee 2011).



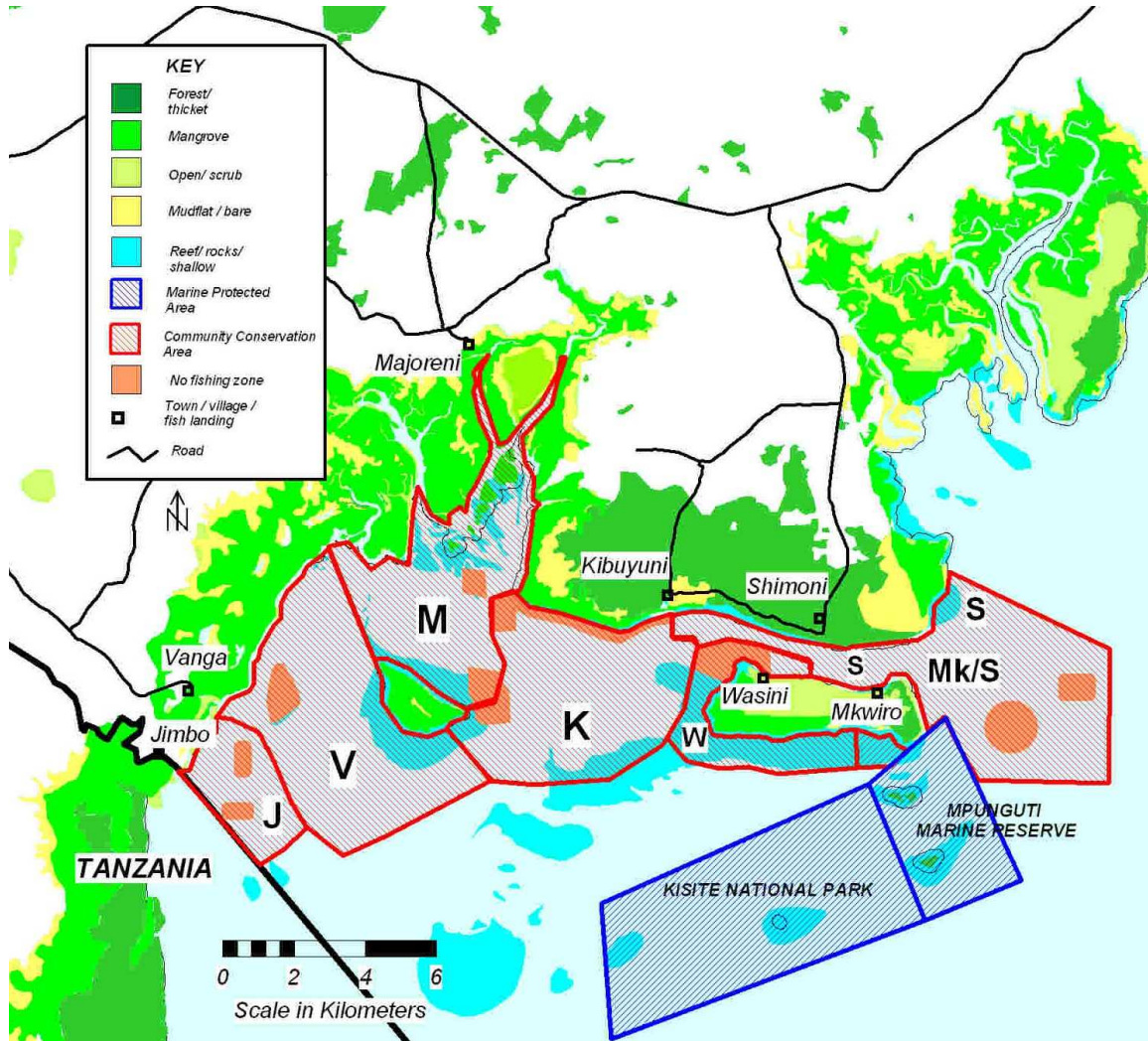
Artisinal fishing, Shimoni

© Richard Lamprey / Fauna Flora International

Lessons from Kuruwitu and other freshwater and marine areas contributed to designing co-managed LMMAs under the Fisheries Act, through Beach Management Unit (BMU) regulations which were released in 2007. Since then a number of BMUs have been established along the coast although most of these are not yet operational.

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The most functional emerging stretch of LMMAs established as BMUs is along the southern Kenya coast adjoining the Tanzanian border. This area, known as Shimoni-Vanga, includes seven communities, all made up of artisanal fishermen and traders. Their territorial waters as established under local by-laws passed pursuant to the BMU Regulations covers a total of 12,400 ha (Lamprey and Mushage 2011; Brett 2011), and adjoins to the Kisiti National Park and Mpunguti Marine Reserve (see Map 2).



Map2: Coastal ICCAs in southern Kenya

© Fauna & Flora International/East African Wildlife Society

These LMMAs include a range of management categories, including no-take zones and regulated use zones, and are established explicitly to regulate local reef fisheries in the interests of local livelihoods dependent on sustainably managed fisheries and marine resources. As noted above, for Kuruwitu, which was established about seven years ago, there is evidence of fish and coral recoveries in the no-take zone.

2.2. Main threats to ICCAs

Threats to ICCAs in Kenya take a range of forms, including direct drivers of ecosystem degradation or land loss on the ground, and underlying policy or institutional challenges. At the landscape scale, many areas face increasing pressures from a combination of human population growth, economic expansion, new or growing commercial interests, and the effects of drought and climate change. All of this occurs in a governance context characterized by enduring weaknesses in the ability of local groups to secure rights over communal lands and resources, which community conservation practitioners continue to search for creative ways to overcome.

As throughout sub-Saharan Africa, a combination of high poverty, growing human populations and in particular large numbers of young people, most of whom are unemployed or underemployed, as well as increasing growth and investment in some areas, are putting pressure on natural resources and ecosystem services. The charcoal trade, for example, is the major source of household energy throughout East Africa, and is based almost entirely on forests and woodlands, with most harvesting carried out with little regulation or controls. Growing energy needs increase pressure on woody biomass. A number of new or growing industries such as horticulture and biofuels are placing increasing pressure on land and water resources in Kenya. Allocation of large areas of land by the government for biofuel and commercial agriculture lies at the heart of conflict over natural resource use in the Tana Delta, a vitally important area for agro-pastoralist communities and biodiversity and ecosystem services in coastal Kenya (McVeigh, 2011).

Again, as throughout much of Africa, institutional and governance issues underlie processes of environmental degradation and the loss of land to external interests in Kenya. Weaknesses in the status of most community lands as 'trust lands' managed by district-level governments has led to widespread encroachment and alienation of such areas, a process which continues today. Even in Group Ranches, which are privately vested in registered communities, land is held in trust by the managing body of the Group Ranch and this has led to abuse of leaders' authority in land allocation and management decisions, eventually contributing to the dissolution of many Group Ranches holding important ICCAs (Mwangi, 2007).

Fortunately, Kenyan conservation groups have been innovative in working to develop effective legal and administrative measures to overcome the limitations of Kenyan land and natural resource laws and policies to date. The development of community conservancies and Beach Management Units are among the most notable recent attempts to develop new institutional frameworks for communities to collectively manage lands and resources.

3. Governance and management of ICCAs

3.1. How are ICCAs governed and managed?

(i) Communal Rangelands

As Kenya is a largely arid and semi-arid country, much of its land area comprises rangelands that are used and managed by pastoralist communities, as described in previous sections. Traditional pastoralist land management regimes emphasize mobility across different pastures during periods of seasonal change and resource availability, as well as reciprocal access arrangements amongst neighboring communities. Important or sensitive areas such as water sources, forests, and other key refuges during times of drought are protected through traditional taboos and belief systems. A combination of traditional governance – such as councils of elders and traditional age set⁵ leaders – and spiritual beliefs and customs are generally used to make and enforce decisions. These traditional resource governance regime have played a critical role in shaping the landscape in Kenya’s semi-arid and arid areas up until the present day; for example pastoralist areas continue to feature numerous traditionally-protected forests, from far northern Kenya (Bassi 2006) to Maasai areas in the southern part of the country (Karanja et al. 2002).

As is the case throughout sub-Saharan Africa, the development of formal land tenure and natural resource governance policies and institutions have had a range of negative and positive impacts on customary ways of managing communal rangelands throughout Kenya. Kenya’s land tenure framework comprises state, private, and trust lands; the latter category is managed by County Councils and comprises the largest proportion of land in many semi-arid areas (private lands predominate in areas where rainfall is higher and arable agriculture is the main form of land use).⁶

Land legislation passed in 1968 enables pastoralist communities to create and register Group Ranches; these are in effect privately titled collective rangelands used for communal livestock production. Most of Kenya’s southern, relatively high-rainfall rangelands, which are occupied predominantly by Maasai pastoralists, have been registered as Group Ranches. Group Ranches are registered in the name of a number of trustees chosen by the community (which comprises the Group Ranch membership) and managed by Group Ranch committees. They can pass their own internal by-laws and, at least legally, have full freehold rights of ownership over their land area. The Group Ranch committee may also allocate lands to individuals and enter into third-party agreements with outside parties, such as tourism companies who seek access and use concessions to the Group Ranch’s lands.

⁵ East African pastoralists generally use ‘age sets’ as a main form of social organization, with an age set consisting of individuals in a 5-10 year interval and those age sets serving particular roles within the society (young warriors, elders, etc.).

⁶ Alden Wily and Mbaya (2001) give the breakdown for all of Kenya’s land as follows: government land (13%), trust land (74%), and private lands (13%).

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Since the 1990s, Group Ranches have increasingly been converted into individual land holdings through a process of subdivision and allocation of individual parcels to the Group Ranch members (Mwangi 2007). The main reason for this is that the land tenure framework for owning and governing shared communal rangelands has not been sufficiently secure or supportive of sustaining rangelands as communal resources. The Group Ranches were originally conceived as part of a transition from the notionally inefficient communal land tenure structures employed by pastoralists to a more efficient future of individualized property rights and commercial ranching. Thus it was built into the legislation that the Group Ranches could subdivide their holdings to the individual members. The Group Ranches have also been characterized by weak systems of oversight and accountability from the Group Ranch committees to their membership. As a result, corrupt and non-transparent land allocations have characterized the history of many Group Ranches, with the result that land has been lost and communal rangelands contracted over time. These realities have created a sense among many pastoralist communities that their future land holdings could not be secured through the Group Ranch ownership framework, that the governing leadership of the Group Ranches was insufficiently accountable and their decisions could not be adequately controlled by the membership, and that individual families would be better off with their own individual land parcels, even if the residents realized full well that these smaller parcels were insufficiently large to sustain transhumant pastoralist production systems (Mwangi 2007). The result has been progressive individualization of Group Ranches and attendant widespread concerns about the future of both pastoralism, and the wildlife-tourism land uses that communally managed pastoralist rangelands in Kenya help to sustain.

Despite these trends and challenges, some Group Ranches have resisted sub-division and continue to work within the Group Ranch framework to improve administrative and governance mechanisms for managing and sustaining communal rangelands (Box 2). Many of these Group Ranches have developed conservancies or wildlife sanctuaries, using the communal land tenure framework provided by the Group Ranches as the foundation for these areas. Conservancies, particularly those in Laikipia and Samburu working with the Northern Rangelands Trust, have augmented the Group Ranch land holding framework by establishing community-based organizations or trusts (under relevant legislation providing for the formation of those bodies). This enables them to create their own governing bodies with rules for accountability in the use and management of shared property in ways that provide greater safeguards than that afforded by the Group Ranch committees. Some conservancies have also been established, particularly in areas around the Maasai Mara, by former Group Ranch residents who have individualized their properties but then pooled them back together to create large conservancies that then enter into concessionary agreements with tourism companies, with the individual landholders being paid as shareholders.

Box 2: Group Ranches as a Governance Framework for Community Conservation: The Case of Olkiramatian Group Ranch, Kajiado District

Olkiramatian Group Ranch covers an area of about 21,612 ha and hosts a population of approximately 15,000 people, the vast majority of whom are Maasai pastoralists who predominate in this area of the southern Rift Valley. Unlike many other group ranches in Kajiado District, Olkiramatian is notable in having resisted subdivision thus far and retained a communal tenure system of landholding. The group ranch has, rather than subdividing its land, instead worked to improve communal land governance structures within the established group ranch framework, thus demonstrating how, potentially, the group ranch framework can still be used to achieve communal natural resource governance objectives.

The Olkiramatian community has zoned its land area into three basic zones, and established rules for regulating land use, settlement, and other activities within those areas. These land zones comprise irrigation-cultivation zone; a livestock grazing zone, which is also designated as an area for permanent settlements; and the conservation zone, which is set aside for wildlife and tourism. This latter zone comprises the ICCA on Olkiramatian. The group ranch has augmented the standard group ranch committee with subsidiary specialized committees, such as committees for managing the designated conservation zone, as well as water, pasture, and land committees. No permanent human settlements are allowed within the conservation zone, but dry season grazing is allowed, with the idea of using the area as a seasonal 'grass bank', mirroring traditional pasture management techniques. The conservation committee also works to address issues arising from human-wildlife conflict, and for coordinating the seasonal movements of livestock between the conservation zone and other seasonal pasture areas.

The community conservation area was created in 2003 with the aim of improving conservation so as to be able to generate alternative sources of income from tourism, as had been done in neighboring Maasai communities throughout Kajiado District. Increasing levels of livestock mortality provided additional incentives to explore alternative land uses and income streams. Olkiramatian has a standard assemblage of large mammals, including elephant, buffalo, giraffe, and zebra, characteristic of Kenyan Maasailand, and additionally has scenic attractions such as the Ewaso Nyiro river and the Rift Valley escarpment. A tourism camp has since been established in the conservation area although it has struggled to become profitable due to limited local capacity for managing and attracting tourists.

Source: Moiko 2009; 2011.

(ii) Locally Managed Marine Areas

The governance framework for LMMAs in Kenya is provided by the Fisheries Act and its subsidiary regulations, providing for the creation of Beach Management Units (BMUs), which were released in 2007. BMUs comprise an association, generally of several

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hundred registered members, made up of fishermen, boat owners, fish traders, and other users of the fishery such as tourism operators or fish processors (Lamprey and Mushage 2011). The physical basis for the BMU is the traditional fish landing site or 'beach' for each community, which is where most regulation is focused. Registered members of the BMU form the BMU Assembly, who elect the BMU Executive Committee every four years. The Committee comprises 9-15 people, of whom 30% are boat owners, 30% are boat crew members, and 30% are other stakeholders, with at least 10% being fish traders and at least three members being women (Lamprey and Mushage 2011).



BMU meeting, Mkwiro

© Richard Lamprey / Fauna Flora International

The BMUs are able to devise and enforce their own by-laws and, in concert with officials from the Department of Fisheries, may create their own management plans to govern their territorial waters and its fishery. Examples of regulations developed under this framework includes the designation of certain areas as no-take zones or otherwise regulated for particular uses, levying fees or taxes on fish landings or other activities such as tourism, regulation of the types of fishing gear that may be used, and restriction of use of the fishery to registered fishermen and boats.

The BMU thus provides a clear governance framework for local fishery users to circumscribe and regulate their fishery, exclude outsiders pursuant to local regulations, and institute and enforce local conservation rules and practices. This converts the fishery from a general open-access governance context to one based on establishment and enforcement of local territorial and access rights over marine resources. The Department of Fisheries plays a key role in registering BMUs and facilitating the development of, and eventual approval of, local management plans, and provides general oversight of the BMUs as well to ensure local rules are being followed. While this provides some level of external co-management that may limit local initiative and freedom in making management decisions, such a level of oversight is perhaps appropriate given the nascent and emerging nature of most BMUs under this recently-developed legal framework.

One of the challenges identified with respect to the emerging BMUs is that the communities have difficulty securing access to coastal land to complement the rights the

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BMUs give them over marine resources. For example, some communities have hoped to integrate tourism projects with their fishery management but have found that it is impossible to obtain rights to coastal lands that they traditionally used, due to absentee ownership or lack of local rights to those lands (Lamprey and Mushage 2011).

4. Recognition and support to ICCAs

Kenya's ICCAs cover a wide variety of formal and informal areas with varying levels of support and recognition by the government and other external bodies. A number of ICCAs have received international recognition for their global values, and national protection as such. There has been strong NGO and donor support for the development and strengthening of new ICCAs such as many of the emerging community conservancies in pastoralist rangeland landscapes. This support continues and in many respects is intensifying within Kenya today as the conservation and livelihood values of ICCAs grows and is better understood.

4.1. Government recognition and support to ICCAs

Kenya's government has provided mixed support with regards to ICCAs. In the pastoralist landscapes that almost certainly provide the largest area of traditionally conserved lands in the country, the land tenure framework and policy context established since independence has not been conducive to local governance and protection of these communal territories. Trust lands governed by County Councils have been very vulnerable to alienation and encroachment, and Group Ranches have also proven susceptible to similar problems leading to their subdivision. While the Kenyan government has provided legislation enabling the formation of Group Ranches, the registration fees for these areas also presents a significant barrier to their formation, particularly in the more arid and impoverished areas. Traditionally protected forests such as Loita Forest have not received any formal recognition or support to local management efforts, as communities have struggled in the face of attempted expropriation of this forest by local government (County Council) bodies.

Community conservancies, as one innovative mechanism developed since the 1990s to strengthen local conservation efforts and opportunities from wildlife and tourism, have similarly received mixed support from government. The first local conservancies were formed partly based on the support of the Kenya Wildlife Service, under the directorship at the time (1994-1998) of David Western, who was (and is) a strong proponent of community-based conservation (Honey 2008). This support consisted of general support by KWS of conservancy formation, assistance in securing funding from donors, and working collaboratively with NGOs and private tourism operators and private wildlife sanctuaries to develop the first conservancies as locally-managed complements to Kenya's limited state protected area system.

Since those early days, support from KWS has been more ambiguous and inconsistent. Numerous efforts to reform Kenyan wildlife policy in ways that secure greater local rights over wildlife and conservation efforts on communal and private lands have

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generally failed to gain any permanent traction (Kabiri 2010). The conservancies have thus developed and expanded based on a fragmented set of policy and legal provisions using the land legislation for Group Ranches and legislation providing for the establishment of trusts, societies and associations as local governance bodies. At present, there is a renewed effort to develop a clear and streamlined policy and governance framework for conservancies and local tourism joint ventures, but the ultimate outcome of this effort, which is as much led by civil society and the private sector as by government, is uncertain. A draft Kenya Wildlife Bill provides new requirements for conservancies to register with KWS, although it is not clear what if any rights they receive in exchange for such official recognition.

The strongest recognition of traditional ICCAs in Kenya has come for the sacred Kaya forest groves of the coastal zone. The government has recognized both the cultural and biological value of these small forest fragments and used the Antiquities Act to protect them as National Monuments. 11 representative Kayas have also been inscribed by UNESCO on the World Heritage Site, under the cultural site category. While this is a notable level of government protection and recognition, it is not clear if there are conflicts that arise from designation of these locally sacred forests as National Monuments, in terms of removing these areas from full local jurisdiction or rights of access. While there is a considerable amount of work on documenting biodiversity in the Kayas, and on linking them to the coastal tourism industry to generate income-earning opportunities for local communities, there is little available institutional analysis of the management and governance of Kayas under the National Monument framework.

The Department of Fisheries is playing a key role in the support and recognition of ICCAs in the coastal zone, in the form of LMMAs based on local Beach Management Units. The 2007 BMU Regulations provide the legal framework for establishing LMMAs and enforcing territorial rights over marine resources and reef fisheries, as well as local governance of tourism in these reefs. The government is also playing a lead role in facilitating the formation of BMUs, training these new local governance bodies, providing oversight and technical information of relevance to management plans, and other forms of facilitation and technical input.

It should be noted that perhaps the most significant recent action with regards to supporting ICCAs by the Kenyan government has been adoption of the new land policy providing for a new tenure category of ‘community lands’. This policy change – which is now incorporated into the new constitution passed in 2010 that also provides community lands as one of three main land tenure categories along with state lands and private lands – will address the most critical issue in securing ICCAs locally, which is the ability to secure land tenure over traditional community lands and resources. The government’s actions in developing new legislation to implement the land policy will be critical for the future development and support of ICCAs in Kenya.

4.2. Civil Society recognition and support to ICCAs

A wide range of NGOs, foreign donor agencies and private funders (e.g. foundations), and even private tourism companies have played a key role in the development and support of many ICCAs in Kenya.

Many organizations work on issues of land tenure, wildlife conservation, and pastoralist livelihoods in Kenya's rangelands, due to the interlinked fortunes and challenges facing pastoralism and wildlife conservation. Many of these groups play a key role in facilitating the formation of conservancies, including fundamental issues of land tenure, development of governance bodies, and establishment of joint ventures with tourism companies. Some of the most prominent NGOs involved in facilitating establishment of community conservancies include the following:

- African Conservation Centre (ACC): ACC traces its origins to the Kenya country program of the Wildlife Conservation Society, based in the US, and was established principally by David Western, who was KWS director in the mid-1990s but subsequently developed ACC to facilitate and champion community-based conservation. ACC has worked primarily in Maasai rangelands in the southern Rift Valley, around Amboseli National Park, and in Laikipia in central Kenya. A major focus has been on working with communities to establish conservancies and integrate tourism and wildlife interests with strengthened local land tenure and incorporation of traditional grazing practices.
- Northern Rangelands Trust (NRT) (see Box 3): NRT serves as the lead facilitator of a growing (currently 18) number of community conservancies in northern-central Kenya, as well as conservancies elsewhere such as the Ishaqbini Conservancy in Garissa District, established to protect the critically endangered Hirola antelope.
- International Livestock Research Institute (ILRI): ILRI, which is a part of the United Nations CGIAR network on agricultural research and based in Nairobi, has been a leading hub of research on community conservancies and pastoralism. ILRI has developed a database of all the community conservancies around the country, the first time in over 15 years since the first conservancy was established that this information has been collected and consolidated (ILRI, unpublished data).
- Ecotourism Kenya is the leading organization promoting community-based tourism in Kenya including community-tourism joint ventures, and manages a certification scheme under which many of the camps and lodges situated on community lands are registered.

Box 3: Northern Rangelands Trust

The Northern Rangelands Trust (NRT) is headquartered in Laikipia District, central Kenya, and has emerged as the country's leading facilitator of community conservancies during the past decade. NRT was established by Lewa Wildlife Conservancy, a private conservation and tourism ranch which started working with neighboring local communities in the mid-1990s to assist those communities establish their own conservancies on their Group Ranch lands so that they could also develop economic opportunities from tourism and conservation. As the number of conservancies grew, the

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need emerged for an umbrella organization that could play the lead role in facilitating formation of the conservancies as well as attracting external donor support, and NRT was established in order to play this role in 2004. Since then, NRT has grown its portfolio to 18 conservancies in Laikipia, Samburu, Isiolo, and Marsabit Districts, extending its reach further into northern Kenya. NRT has also taken on a separate conservancy project in eastern Kenya's Garissa District, focusing on the unique and critically endangered population of the hirola antelope found in that area, called Ishaqbini.

NRT has developed deep and important experience in facilitating conservancy formation and management, and continued to work to strengthen the legal and governance framework for managing the conservancies and delivering on their economic and environmental objectives. NRT has obtained support for its work with communities from a number of international conservation groups, including Fauna and Flora International and The Nature Conservancy, as well as a range of smaller private donors, such as a number of US zoos, and bilateral agencies such as USAID.

Source: CDC et al. 2009; Glew et al. 2010; NRT 2011.

Private tourism companies have also played an important role in the process of establishing conservancies. In some cases, tourism operators have simply approached Group Ranch committees or groups of local landholders where Group Ranches have been subdivided, and worked with the local communities to establish a conservancy based on a contractual tourism joint venture. In some instances NGOs facilitate these with the communities and the investor, and in other cases the tourism company and the communities agree to these arrangements on their own. A number of conservancies, particularly around Amboseli and the Maasai Mara, have been created through these direct community-tour operator negotiations.

The most significant private sector influence on conservancy formation has been in Laikipia and Samburu Districts in northern-central Kenya. A private wildlife conservancy (one individual landowner), the Lewa Wildlife Conservancy, worked with KWS and various NGOs to establish a locally-owned tourism lodge and community conservancy on Iingwesi Group Ranch, its neighbor to the north (Honey 2008). This initial effort, which took place in the mid-1990s, expanded to working with other communities in the area and eventually to the formation of Northern Rangelands Trust to facilitate this growing body of work in 2004 (Box 3). Lewa has thus been at the center of the development of both policy and practical frameworks for community conservation in Kenya for more than 15 years (Honey 2008).

Kenya's conservancies have received significant external funding from both bilateral development agencies and private foundations, which has enabled these local experiments in community-based conservation to become established and expand. Key funders have included the following:

- USAID (Kenya Country Office): wide range of policy related and on-the-ground conservancy establishment efforts through both government (KWS) and NGOs;

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- Ford Foundation (East Africa regional office in Nairobi): funding local conservancies including Ilingwesi and Shompole Trust in Kajiado District;
- Liz Claiborne and Art Ortenberg Foundation (US): support of the first community-owned lodge at Ilingwesi in the 1990s and support of general work by ACC.

A notable supporter of ICCAs in Kenya, including community conservancies but extending to other types of ICCAs as well, is the UNDP-GEF Small Grants Programme, which has adopted support of ICCAs as a part of its global strategy of funding local conservation efforts. Kenya in particular has been chosen as a focus for support of ICCAs, which is increasingly locally available financial support for these efforts.

In the marine realm, key NGOs involved in facilitating the establishment of ICCAs include the East African Wildlife Society (EAWLS), Fauna and Flora International (FFI), and WWF. EAWLS, which is the country's leading national conservation organization (as opposed to country offices of international NGOs), is the lead facilitator of LMMAs on the coast, including the important pilot example of Kuruwitu and the seven emerging LMMAs at Shimoni-Vanga on the southern coast. FFI works to provide these projects with technical and financial support, the latter sourced from the UK government's Darwin Initiative (Lamprey and Mushage 2011).

EAWLS is also, along with Nature Kenya, the leading Kenyan conservation group on many important natural resource policy and governance issues that impact on the development of ICCAs. EAWLS hosts and facilitates the Kenya Forests Working Group and Kenya Wetlands Forum, which are umbrella bodies that bring together a wide range of stakeholders to work on resource-specific issues ranging from policy development to local conflicts and emergencies. The Kenya Forests Working Group has in particular been highly influential in leading collective civil society efforts to improve forest governance in Kenya since the late 1990s. This has included carrying out aerial surveys to document forest condition and organizing effective media campaigns around forest conservation issues. EAWLS is strongly supportive of community conservation efforts and policy reforms designed to vest greater levels of authority and responsibility for ICCAs to the local level.

EAWLS has also facilitated, along with other collaborating organizations, efforts to link local communities from different areas to shape important policy issues. A major effort in this regard was formation of the Kenya Wildlife Working Group (KWWG), which comprised community and private landholders from different wildlife-rich districts (e.g. Laikipia, Samburu, Kajiado, Narok) and which played a major role in efforts to reform wildlife policy and law from around 2002 (after the 2002 general election created a reformist opening) to 2006. Subsequently KWWG dissolved but EAWLS has recently been trying to reconstitute a multi-stakeholder forum for addressing wildlife policy and management issues. EAWLS also facilitates the Kenya Wetlands Forum, which is active on wetlands policy and management issues.

For the sacred Kaya forests, WWF's coastal forest program provides support to local communities in securing and protecting the Kaya groves. This includes developing some

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local tourism projects based on taking visitors to Kenya's coasts to visit the forests and generate income as a result. WWF has also assisted in facilitating government protection of the Kayas and World Heritage Site status.

A number of Kenya's ICCAs have received notable forms of international recognition. Both Iingwesi and Shompole conservancies have received the Equator Prize from UNDP as exceptional achievements in community-based conservation. Iingwesi was also featured in one of the leading film documentaries made to date on community-based conservation in Africa, titled *Milking the Rhino*.⁷ Production of this film was supported financially by the US-based MacArthur Foundation.

On general land tenure issues, the leading organization is the Kenya Land Alliance, which has played a key role in land policy debates and recent land policy and constitutional reforms. There is a wide range of pastoralist development and policy advocacy organizations, often working with collaborating international groups active in pastoralist and land rights issues, such as the International Land Coalition and International Institute for Environment and Development.

4.3. Key issues for the recognition and support to ICCAs

A wide array of financial and technical resources, and networks of numerous experienced organizations, are available to local community groups, community-based organizations, researchers, and others seeking to support ICCAs in Kenya. Donors such as UNDP-GEF and USAID, the Ford Foundation, and others, have provided sustained support to ICCA development in Kenya at varying geographic and financial scales over the years. The key challenges that these efforts face have primarily had to do with the legal and policy framework for collective local management of lands and natural resources, such as the weakness of the tenure status of trust lands in Kenya and the shortcomings of the Group Ranch tenure framework. Developing more secure rights over collective lands and resources, and simpler procedures with lower costs for obtaining those rights, will be critical for the future expansion and consolidation of existing ICCAs, many of which have emerged with only limited formal policy and legal support.

The wildlife and protected area authorities – in Kenya the KWS – have been, at least since the end of the 1990s, particularly ineffective in creating an enabling environment for community conservation efforts, even though their own relatively small state protected areas are heavily dependent on scaling up conservation efforts across wider private and communal land areas. There is little evidence from recent wildlife policy and pending wildlife legislative reform efforts that ICCAs will be recognized as a type of protected area or be given enhanced rights under the law. The draft Kenyan wildlife bill would establish procedures for community conservancies to be registered but it is not clear if they would obtain any new rights in the bargain or simply have to adhere to a new set of bureaucratic procedures. The CBD Programme of Work on Protected Areas and related ICCA global policy guidelines rarely if ever enter into public discussions about natural resource management and conservation in Kenya. Recent efforts by the

⁷ See: http://milkingtherhino.org/fckimages/file/MTR%20Updates_Spring09.pdf

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Department of Fisheries to create a regulatory framework for LMMAs/ICCAs in coastal marine areas through the formation of Beach Management Units have been more successful, albeit only subsequent to enhanced donor and NGO support of these efforts and more in-depth facilitation than initially took place during 2007-2009 (Lamprey and Mushage 2011).

5. The future

5.1. Future activities planned by the communities, the government, and the civil society; especially in relation to issues of recognition and support

Kenya has a diverse array of ICCAs operating under an equally diverse and relatively fragmented and piecemeal set of policies and legislation. ICCA development has been organic, driven by both formal sectorial policy measures (e.g. in fisheries/coastal management) and by practical experimentation linked to market trends and communities' economic interests (e.g. in the community wildlife conservancies).

As in many other African countries, the single most important issue in the future development of ICCAs in Kenya is the question of land tenure. Kenya has historically had a weak policy and legal framework for enabling local communities to secure collective rights over land (Alden Wily 2011). The Group Ranches, the most widespread form of communal land holding in the country, have been undergoing a long-term process of transition to individual properties, which their residents hope will provide them with greater tenure security. Trust lands, wherein most communities live outside of the relatively small proportion of land registered as Group Ranches, have been notoriously subject to alienation, encroachment, and allocation for patronage or other acquisitive purposes. Some large areas of community land, such as the Tana Delta, have recently been or are currently threatened with large-scale expropriation for commercial agriculture or biofuels plantations.

In this context, recent changes at the policy and the constitutional level in Kenya present real prospects for major reform of the status of communal landholdings, and thus the ability of communities to secure much clearer rights over their ICCAs, than has been possible up until the present.

The most significant change is passage of the new constitution in August 2010. Both land tenure issues specifically, and the wider issue of political and administrative devolution, were central issues in the constitutional reform agenda and are given strong emphasis in the new constitution. Drawing from the new Land Policy passed earlier, in 2009, the constitution provides for a new category of land, 'community land', as an addition to existing tenure categories of private and public land. Community land will enable communities – as defined on various criteria – to demarcate, register, and formally secure rights over communal landholdings. These community landholdings will replace trust lands – significantly devolving these lands from control through local government to direct ownership by the communities themselves – and may also provide an alternative tenure model for the existing but largely unsatisfactory Group Ranch framework (for

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those Group Ranches that have not already been converted into individual parcels). This would enable much clearer and more secure community level tenure over key ICCAs such as pastoralists' communal grazing areas and traditionally protected forests, most of which today lie on trust lands and face a high level of insecurity. Creating a framework for community land tenure is important even for marine ICCAs, in order to harmonize rights to control access to the fishery with rights over coastal land itself.

The process over the next five years of elaborating in legislation and regulations how exactly community land is to be defined, demarcated, registered, and governed, will be critical to the evolution of ICCAs and natural resource governance and land tenure more generally in Kenya. Since the constitution was passed, the attention of a wide range of policy makers and civil society groups, from pastoralist development networks to conservation organizations, has begun to focus on this critical issue of developing the community land tenure framework.

In addition and also drawing on these constitutional-level developments, efforts are ongoing to reform and develop Kenya's wildlife policy and specifically to create a clearer policy and legal framework for community conservancies. It is recognized that local communities are making an increasing contribution to national conservation objectives, as the scale and performance of conservancies expands rapidly in areas such as northern Kenya, and becomes a key part of national conservation strategies for critically endangered, regionally endemic species such as the hirola and Grevy's zebra. This is undoubtedly contributing to these renewed efforts to develop a clear and coherent policy framework for the establishment and governance of conservancies to replace the piecemeal framework that has existed up until the present.

The most critical issue to the future development of ICCAs in Kenya is how all these reforms are going to be crafted and implemented. Already some NGOs are using new provisions of the constitution to demand increased accountability on the part of government decision makers and to challenge recent land allocations or alienations. At the same time, though, there is much concern regarding the political will to implement the new constitution and numerous new legislative acts that will be required to bring Kenya's legal code into conformance with the constitution. More positively, Kenya possesses one of Africa's strongest civil society community around environmental, land rights, and human rights issues – as embodied of course by the late Nobel Laureate, Wangari Maathai – and the strength of this civic networks will be critical to working to shape the next wave of legal and policy reforms.

Ultimately Kenya is poised to be a leader in Africa in developing and scaling up sustainable and community-based natural resource management, based in large part on a diverse and growing assemblage of ICCAs, but also retains the potential to slip backwards into past patterns of gridlock, policy failure, and even politically-linked violence and strife.

5.2. Recommendations

Priorities for supporting and strengthening ICCAs in Kenya include the following:

- ✓ The most critical priority is implementation of the new constitution and the new land policy, including through the necessary legislation for implementing these changes. Creating clear and workable ways to convert trust lands to community lands, securely held by defined groups of local people, and including ways to ensure this transition avoids elite capture and establishes locally accountable mechanisms for collective governance of land and resources, will be critical to the future of ICCAs in Kenya. This is a major undertaking but the path has clearly been laid out by the new land policy and the constitution. A great deal of institutional and policy design and implementation work remains.
- ✓ Once the new land tenure framework has been articulated, other natural resource sectors can build upon that foundation to harmonize the management of other resources such as forests and rangelands with the governance of community lands. For example, forest policy and law needs to go beyond the current focus on co-management or joint forest management in state Forest Reserves, to assisting local communities to secure clear rights over forests and forest products (e.g. timber, carbon) in order to strengthen traditionally conserved forests such as the Loita Forest and other similar areas around the country.
- ✓ For the past twenty years, Kenya has undertaken to reform wildlife policy and legislation in ways that would create stronger incentives for local communities to support conservation efforts. This is particularly critical given the high proportion of large mammals that reside outside state protected areas in Kenya, and the importance of migratory wildlife populations to national and local tourism industries. These reform efforts have until the present been largely unsuccessful and wildlife policy has been polarized between various camps. Efforts to reform wildlife policy continue and recently increasingly concern the formalization of community conservancies within the wildlife policy and regulatory framework. These efforts may create a clearer, more enabling framework for community conservancies, or they may create burdensome regulations that inhibit the further spread of conservancies as has occurred in different parts of Kenya in recent years. Reforms to the wildlife sector need to grant local communities clearer devolved rights over wildlife management on community lands, and thus draw on the reforms to the land policy and general spirit of devolution in the new constitution. Reforms also need to ensure that communities continue to be able to control tourism investments in their conservancies, and avoid introducing punitive levels of taxation on community tourism ventures, as has for instance occurred during the past five years in Tanzania. Continued centralized management of wildlife outside protected areas will inhibit local conservation efforts.

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- ✓ Recent measures at the policy level and in terms of local pilot initiatives establishing LMMAs through the BMU framework should be scaled up, and learning from initial pilot initiatives, continue to inform further improvements in the institutional design of BMUs.
- ✓ External donors and international NGOs have a range of promising policy (wildlife, land, tourism, marine) and implementation entry-points for supporting ICCAs in Kenya, and this appears to present one of the foremost opportunities to scale up ICCAs, recognize traditionally conserved areas under the new land policy, and strengthen policy and governance institutions. Support should be focused on these high-potential and cutting-edge areas. There are a wide range of effective and innovative local organizations involved with ICCAs in Kenya to collaborate with on these priorities.

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