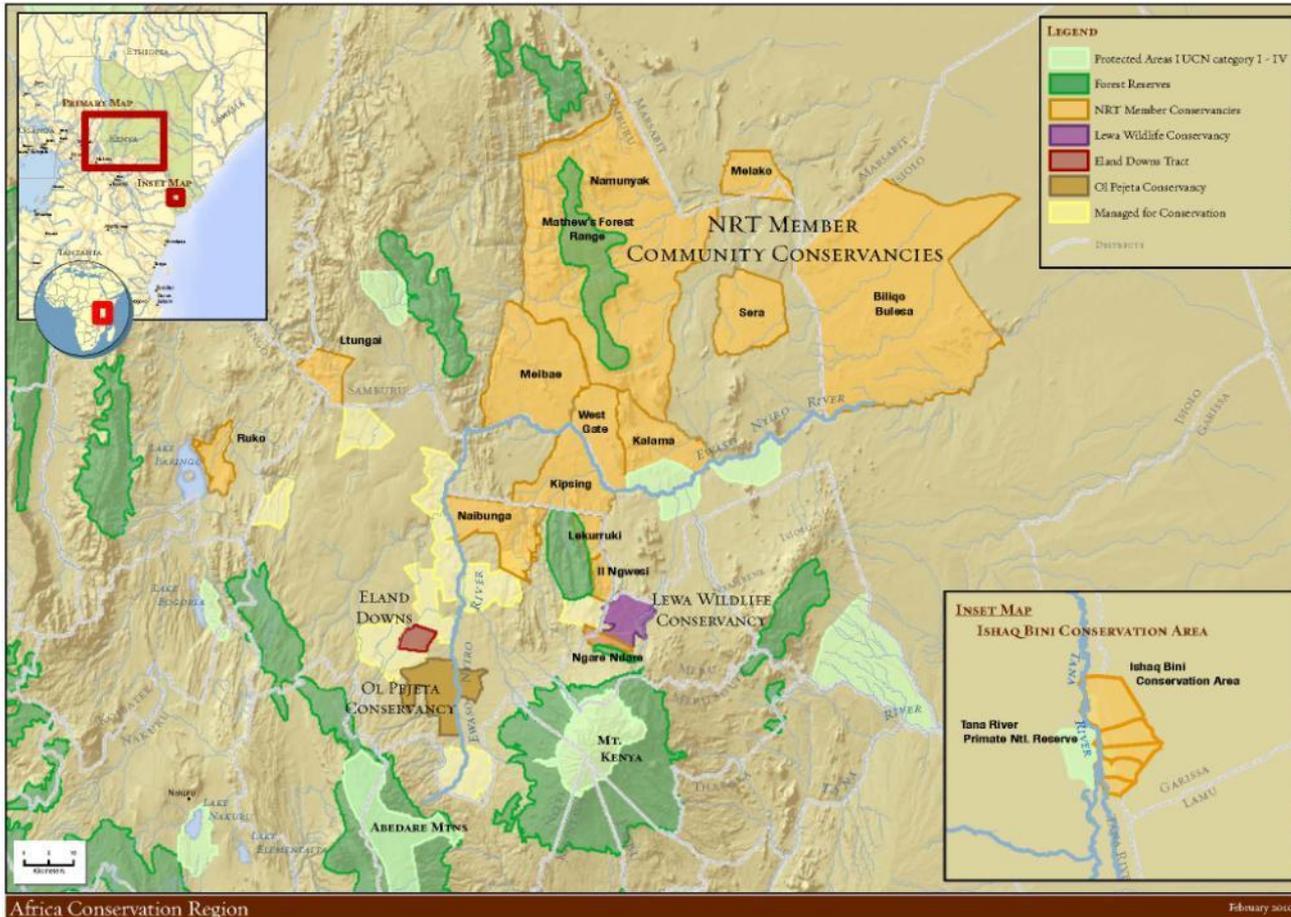


The Impact of Recent Constitutional and Land Policy Reforms on Community Conservation Initiatives in Kenya

Dr. Collins Odote, University of Nairobi

Presentation Overview

- The presentation is based on a study carried out for The Nature Conservancy, as part of USAID's grant to ABCG
- Based on the ongoing collaboration between The Nature Conservancy and Northern Rangelands Trust
- Carried out by Collins Odote, then finalising his PhD at the University of Nairobi under the supervision of Professor Patricia Mbote



Africa Conservation Region

RANGELANDS OF NORTHERN KENYA



NRT Growth (acres)

1995	68,000
1999	340,201
2003	730,650
2005	1,043,304
2007	1,285,827
2009	~2,000,000



TNC – NRT Partnership

- Conservation Action Planning
- Strategic & business planning
- Scientific expertise
- Land tenure support
- Socio-economic studies

Rationale

- The conservation of wildlife outside protected areas in East Africa is influenced to a large degree by the land tenure systems in the countries
- For Kenya, conservation efforts have proceeded against a constitutional and legal framework that places restrictions on innovative approaches due to tenure challenges
- Recent constitutional and policy changes in the land tenure and management framework heralds a new dawn for conservation efforts

Tenure and Community Conservancies

- Community conservancies operate on the basis of land and wildlife
- Tenure rights link the two
- Before August 2010, law existed in parallel to reality
- Law focused on conversion to private tenure; in reality, many pastoral communities managed their resources communally
- Communal conservancies (such as NRT) sought to bridge gap between law and reality
- However, disparate legal regimes for operations: Trustee Act, Trust Land Act, Land (Group) Representatives Act)

Tenure and Community Conservancies

- Problem: Law did not recognise rights of local communities
- Did not ingrain conservation imperatives
- Abused by political elite to disinherit local communities of their ownership, access, and control of rights over land, wildlife and related natural resources and benefits deriving thereof

Constitutional and Policy Changes

- Country's constitutional architecture changed fundamentally on 4th and 27th August 2010
- Augmented by a first ever National Land Policy adopted in August 2009 by Parliament
- Makes changes to manner in which land is owned, managed and utilized
- Improves governance framework
- Enhances community involvement in natural resource management
- Improves frameworks for NRT and other communal conservancies in Kenya

Key Change One: Tenure Categorisation

Improvements at several levels:

1. Equal recognition given to all tenure categories
2. Tenure holdings classified into public, communal and private
3. Classification of land as a resource owned by all Kenyans

Reforms will provide a clear tenure regime for the recognition of customary practices, incorporation of traditional resource management rules and arrangements and for the legal protection of community Conservancies.

Key Change Two: Reform to Land Use Regulation

- Land use regulation to have regard to conservation ethics and not just economic exploitation
- Reform proposed to state powers of eminent domain and police powers (development control). Detailed procedure on their exercise and conservation as a rationale for exercise of powers.
- Call for recognition and protection of pastoralism as a legitimate land use and reform to laws and polices impacting on pastoralism
- Powers to repossess illegally acquired lands; critical due to past abuse of Trust Lands

Key Change Three: Legislation on Community Land

- Definition of community land. This is land held by communities identified on the basis of ethnicity, culture or similar community of interest.
- Requirement for legislation on community land within five years
- Investments in property required to benefit local communities and their economies: **therefore communal conservancies have to always respond to this constitutional directive.** Parliament will develop legislation.

Key Change Four: Requirement for Sustainable Development

- Sustainable Development as a national value and principle of governance
- Taken together with the provisions on environmental conservation, need to ensure that wildlife conservation promotes sustainable development: **which includes both environmental conservation and economic development**

Key Change Five: Devolution

- Of power and resources
- Relationship between local and national government regarding ownership and control of land and wildlife resources
- Need for clarity and cooperation

Key Change Six: Institutional Architecture

- Creation of National Land Commission as principal agency for managing land
- Removal of power of President and Commissioner of Lands to allocate land
- Devolved structures and their implications on land management

Impacts of Changes on Conservation Efforts in Kenya

- Designed to improve legal and policy framework
- However, implementation challenges: political, capacity, financial, technical, and administrative
- Huge awareness needed
- Link to devolved government
- Documenting experiences
- Influencing implementing legislation and administrative action
- Capacity building for communal land institutions
- Support to and collaboration with the National Land Commission
- Aligning strategies to constitutional and policy realities

ASANTE SANA!