

## ABCG MEETING MINUTES

### Land Use Management Tools for Conservation in East Africa

**Moderators:** Helen Gichoi, PhD, President, African Wildlife Foundation (in Nairobi, Kenya)  
Peter Veit, Institutions and Governance, World Resources Institute (in Washington, DC)

#### Background

To address the challenge of conserving biodiversity outside of protected areas, conservation organizations are assessing the range of land and natural resource-use management tools, especially on community-land, to achieve biodiversity conservation. Among these tools are zoning, long-term land leases, voluntary easements, measures to secure tenure, and land purchases. The application of these new tools on community land depends in large measure on the law and practice of land tenure and natural resource property rights in the individual countries. ABCG organizations are working to advance the use of new land tools for biodiversity conservation and local development purposes on land outside the protected areas in Kenya and Tanzania. This meeting will explore some recent findings for conservation in East Africa.



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#### Welcome from Washington and Background on ABCG

Natalie Bailey, Coordinator, ABCG

ABCG is comprised of seven US-based international conservation NGOs with field activities in Africa. Members include African Wildlife Foundation, Conservation International, the Jane Goodall Institute, The Nature Conservancy, Wildlife Conservation Society, World Resources Institute and World Wildlife Fund. Together, we tackle emerging and high-priority issues affecting biodiversity in Africa as we work toward a vision of an African continent where natural resources and biodiversity are securely conserved in balance with sustained human livelihoods.

We are supported in these efforts with a grant from the Africa Bureau of the [US Agency for International Development's Biodiversity Analysis and Technical Support](#) (BATS) program. Much of our effort under BATS links with one or more aspects of the [Dar Vision](#) for the Future of Biodiversity in Africa:

***By 2025, environmental degradation and biodiversity loss in Africa have been significantly slowed, people and nature are adapting to climate change, and species and ecosystem services are providing a foundation for human welfare in a society committed to sustainable economic development and equitable sharing of natural resource benefits.***

With support from BATS, ABCG is undertaking work in several areas, from investigating the biodiversity implications of extractive industry activity to incorporating conservation best practices into food security priorities to collaborating on climate change adaptation. The work presented today was also supported by USAID's BATS program and represents the first of several years' work on the intersections of governance, rights and land management for conservation.

The results of today's meeting, including presentations, minutes and additional resources will be posted to the ABCG website: [www.abcg.org](http://www.abcg.org). To keep up with ABCG, you are invited to join our listserv (indicate your interest on the sign-in sheet), or follow us on Twitter ([@ABCGconserve](https://twitter.com/ABCGconserve)) or "like" us on Facebook ([www.facebook.com/ABCGconserve](https://www.facebook.com/ABCGconserve)).

### **Welcome from Nairobi and context of this meeting for East Africa**

Helen Gichohi, PhD, President, African Wildlife Foundation

Dr. Helen Gichohi serves as President of AWF and is responsible for directing the African Heartlands Program in nine massive landscapes throughout eastern, southern, central and west Africa. Dr. Gichohi works with a wide variety of scientists, community officers, government officials, lawyers, donors, and partners to ensure the future for Africa's wildlife. She designs and manages conservation strategies aimed to reduce threats to wildlife in the Heartlands and improve socioeconomic conditions for the people living there. Dr. Gichohi serves on the Board of the Kenya Wildlife Service and has been awarded the Order of Great Warrior of Kenya Award by the President of the Republic of Kenya in recognition of her sterling contribution to conservation.

Helen welcomed the group assembled in Nairobi, and shared some of the background and context for holding this meeting. A variety of skill sets is required to address the difficult challenges of conservation in East Africa. Particularly important are the different social arrangements, tenure, ownership, political interests that impact conservation and tenure. Conservationists must engage with that complexity to address challenges, and must deliver livelihood and economic benefit in lands shared by people and wildlife. Poverty is a critical challenge, as people are highly dependent on the larger environment and natural resources. Developing programs with robust, positive economic outcomes is critical. Conservation-based economic incentives that AWF pursues include tourism as means to deliver conservation, for one example. Helen invited all of the meeting participants to learn important lessons about land tenure and livelihoods together.

### **Government Restrictions on the Use of Private Land in Tanzania and Kenya**

Peter Veit, Institutions and Governance, World Resources Institute

Peter is Project Manager for the Equity, Poverty and Environment initiative in the Institutions and Governance Program. His recent work has focused on a range of environmental governance matters, particularly environment, democracy human rights links. For more than 15 years, he has conducted research and written on community-based natural resource management, environmental decentralization, environmental advocacy, and other environmental accountability matters. He has undertaken long-term field research in a number of African countries, including in Sierra Leone as a Fulbright Scholar, where he conducted research on household variability in agricultural strategies and practices; and, in Rwanda as Director of the Karisoke Mountain Gorilla Research Center, where in the

1970s he studied the reproductive practices of mountain gorillas. He has also held a range of research and teaching positions at the University of California campuses at Santa Cruz and Davis.

Land and natural resource tenure is made up of a bundle of rights, including use, inheritance, management and exclusion that may vary widely. Free-hold tenure or ownership gives greatest bundle of rights. In many countries, private ownership is the most secure form of tenure because of existing laws. Most investments focused on securing tenure focus on issues of documentation, registration, titling. But there has been insufficient attention to looking at authorities that state has to extinguish or restrict rights.

In many countries, there are two primary means that governments use for restricting or extinguishing private property rights: 1) eminent domain, a compulsory acquisition of land by the state for public purposes, which can include conservation of biodiversity, and results in a complete extinguishment of private property rights; 2) police powers, the power of the state to restrict or limit personal rights, including personal property rights for purposes of public/national interest/security. African states have frequently exercised eminent domain in the advancement of conservation, while the US has only used eminent domain twice for the establishment of protected areas.

Creating new protected areas through acquisition of land via eminent domain is becoming more and more difficult in a number of countries: politics, human rights advocacy, community opposition, rural resentment, etc. Uganda hasn't created new PA since independence, though they have elevated status of some areas, extinguishing some rights to resources. A new threat in Uganda is degazettement and downlisting of PAs, including changes in land use within the protected estate. Forest reserves are now sugar plantations because of changing use patterns.

There is a new frontier in the region of restricting land use on privately-held land for wildlife corridors and dispersal areas. It is typically voluntary rather than mandatory, but can have some negative consequences for local people as it has positive consequences for conservation.

In Kenya, there are a variety of laws that allow the government to restrict private land use, including:

- Imposition of restrictive covenants on private land titles (Government Land Act)
- Direct statutory restrictions (*e.g.*, land preservation orders) on use and development of agricultural land (Agriculture Act, Registered Land Act)
- Restrictions on dealings with family land or customary land (Registered Land Act, Land Control Act)
- Chiefly directives to plant trees and other orders (Chief's Authority Act)
- Restrictions of subdivision of land (Local Government Act)
- Application of zoning regulations (Physical Planning Act, Local Government Act)
- Development and application of land use plans
- Application of EIA and other mechanisms, such as easements (Environmental Management and Coordination Act)
- Common law restrictions of private land use (Judicature Act)

During Kenyan colonial times, the British routinely exercised police powers, but today the government uses some authorities frequently and others infrequently (such as easements) and some are hardly ever used. Government restrictions are commonly upheld by the courts. Developers are concerned by the

use of such powers, but environmentalists note that governments could use these authorities more. There are many reasons why such authorities are not exercised to the full extent of the law: weak capacity to monitor, community resistance, political pressure, lack of public awareness, etc. The government therefore emphasizes voluntary compliance and self-regulation.

If the government were to exercise its property rights-restricting authorities to full extent of law, there would be major implications across East Africa. While there is a broad range of available authorities and allowable uses, there is an overall lack of a standard for justifying the exercise of many authorities. As the process has not been legally codified and frequently lacks public participation or transparency, there is cause for concern. When citizens have sought court decisions for such cases, courts have typically sided with the government, and the government is often not obligated to pay landowners for loss of resources/land.

Kenya's new 2010 Constitution preserves eminent domain and policy powers to restrict private land use. There is a clear alignment of exercise of authorities with the national interest and a call for lawmakers to craft new legislation to delineate new regulations. The Constitution includes a balance between meeting national interest and protecting private property.

New legislation is required by the Constitution to delineate Kenya's new land policy. Some options for promoting accountability in the new Land Use Policy include:

- Develop robust, unqualified public purpose requirements for use of powers
- Establish high justification standards (*e.g.*, cost-benefit analysis—do benefits to public outweighs costs to affected landowners?)
- Establish and codify procedures for exercising authorities that include fundamental democratic principles (*e.g.*, participation, transparency)
- Other accountability measures include FPIC, parliamentary approval, ballot box initiative, etc.
- Given importance of land to rural populations and the hardships from land-use restrictions, providing fair and adequate compensation for losses may be appropriate

### **Expanding Options for Habitat Conservation Outside Protected Areas: The Use of Environmental Easements, Leases, PES and Other Conservation Tools in Kenya**

Kathleen Fitzgerald, Director, Land Conservation, African Wildlife Foundation

Kathleen has served as the Director of Land Conservation for the African Wildlife Foundation, Nairobi, Kenya since 2007. There she provides technical land support to AWF's nine Heartlands. Kathleen was the co-founder and Director of the Northeast Wilderness Trust, a regional land trust in the United States. Previously she was the Executive Director of the Stowe Land Trust in Vermont, Project coordinator for an experiential environmental education program in Bangkok, Thailand, and Coordinator for the Greater Laurentian Wildlands Project focusing on carnivore and wilderness conservation planning. She has completed dozens of land transactions and has published numerous papers and articles on large landscape and carnivore conservation and tools that can be used for conservation. Kathleen graduated from St. Lawrence University with a major in Environmental Studies and Government and has a Master of Science degree from the Field Naturalist Program, University of Vermont, where her research focus was wolves Canada.

AWF's mission is to work together with the people of Africa to ensure that wildlife and wild lands of Africa endure forever. AWF's Heartlands Program includes nine massive landscapes throughout eastern,

southern, central and west Africa. AWF is now celebrating its 50<sup>th</sup> anniversary! AWF's programs include: conservation science and applied research; land and habitat conservation; conservation enterprise; and capacity building. Cross-cutting issues include policy support and climate change.

There is a need for new tools to secure Kenya's ecological integrity and to maintain viable populations of native wildlife and to protect land outside protected areas. AWF and other organizations are moving forward with innovative conservation measures such as environmental easements.

Kenya currently is working towards its "Vision 2030" for economic growth and development. One component of the Vision addresses the environment: Kenya aims to be a nation that has a clean, secure and sustainable environment by 2030. Flagship projects for the environment include securing wildlife corridors and migratory routes. This provides AWF and other Kenya organizations with an opportunity.

There are many tools and approaches AWF and other partners uses to conserve land and habitat and to achieve goals of protecting key wildlife habitats, core areas and corridors. In addition to supporting protected areas, conservationists engage in participatory land use planning and zoning in community areas, direct purchase, application of legal and economic instruments, land policy advocacy, forest conservation including REDD+ and other carbon instruments, establishment of land conservation trusts and payment for ecosystem services (PES).

As it is not always feasible or useful to exercise compulsory measures, voluntary tools for conservation are very important. These include:

1. Environmental easements
2. Conservation leases
3. Carbon credits
4. Co-management agreements

Kathleen defined payments for ecosystem services (PES) as *a voluntary transaction where a well-defined ecosystem service is being bought by a (minimum one) ecosystem service buyer from a (minimum one) provider if and only if the ecosystem service provider secures ecosystem service provision (conditionality)*. PES may include carbon sequestration and storage, biodiversity, watersheds and landscape beauty. She noted that all the tools that she will describe are indeed PES tools.

*Environmental Easements* can be an important tool for conservation. Easements refer to a legal agreement between a landowner and a qualified organization that limits uses of the land to protect its conservation values. Kenya's Environmental Management and Coordination Act (EMCA) provides for the creation of environmental easements as a mechanism for facilitating conservation by imposing one or more obligations in respect of the use of land (EMCA Sections 112-116). In practice, this application is seen as a contentious one, as courts are involved. The law does address compensation, and states that landowner should be entitled to compensation. However, these easements as per EMCA are not voluntary. Easements to date have not been used widely as a conservation tool. To improve their use in the future, AWF is looking at piloting voluntary environmental easements to set a precedent in Kenya. One improvement would be legislation that recognized voluntary rather than compulsory easements, as well as standards for valuing easements, and stipulation on who may hold easements. The Kenya Land Conservation Trust is also working on these issues.

*Conservation Leases* are another important voluntary tool for conserving land in Kenya. It is enabled by Section 34 of the 1963 Registered Land Act. AWF has worked with the Kimana Group Ranch, southern

Kenya, to establish conservation leases to protect corridors between Amboseli National Park, and Chyulu Hills and Tsavo West National Parks. In this area, the land has been subdivided into 60-acre lots, blocking historical wildlife movement. AWF has entered into an agreement with 210+ landowners for 15-year leases. The leases read like an easement, acknowledging the conservation values and restricting certain uses to protect these values. AWF pays twice a year for land rights, beginning at 500 Kenyan shillings per acre, and increasing by 2.5% per year, as a direct deposit in bank accounts. For the system to work, secure land tenure is a critical assumption – without it, not much can be done. Additional challenges include long term sustainability, annual payment, title and shifting parcels, competition, the program cannot benefit all members of Kimana Group Ranch, and not everyone can have a tourist lodge, which most communities desire—it is simply not sustainable.

AWF is also working on a *Carbon Credit Program* with Imbirikani Group Ranch, adjacent to Chyulu Hill National Park. The Ranch has 4,500 members and covers 320,000 acres. AWF is working with the community to address the many drivers of deforestation in the area. The target of the project is to prevent forest degradation and deforestation, assess the carbon credits the community could generate through forest protection and the introduction of alternative livelihoods and market the carbon credits on the voluntary carbon market. AWF will seek certification through VCS/CCB. Using M-Pesa, payment from the carbon credits would be made directly to community members through mobile banking.

Challenges to implementing carbon credits programs include mitigating deforestation when the source is far away, the time lag required for successful implementation, changes in study sites; cost, and GIS requirements. In addition, though payments are included in the plan, it is important to remember that it is not all about the money.

AWF is also learning lessons from *Co-management* agreements. In South Africa, co-management agreements have been used in settlement of land claims where communities claim lands that are now protected areas. For example, in Northern Kruger National Park, the Makuleke Community owns land, but SAN Parks manages the land for them as per a 50-yr agreement. The land is functionally a part of Kruger NP. Co-management agreements can be implemented in a variety of ways, from ad-hoc consulting to a more formal approach such as the above example. Co-management agreements may be a possible land conservation and management tool in Kenya.

### **The Impact of the Recent Constitution and Land Policy Reforms on Community Conservation Initiatives in Kenya**

Collins Odote, University of Nairobi, Nairobi

Dr Collins Odote obtained his PhD in Law from the University of Nairobi in December 2010, becoming only the second person to receive such an award from the University. His thesis was on land tenure and wetlands management. His research interests is in environmental governance, land tenure and resource use. He also chairs the Board of the Institute for Law and Environmental Governance (ILEG), a local non-governmental organization working on legal and policy aspects of environment and natural resource management in Kenya and the region. Collins coordinated the Institute's Access to Environmental Justice Project, which project led to the training of all high court judges of Kenya and the judges of the court of appeal on environmental law.

Collins currently teaches land use and environmental jurisprudence at the Centre for Advanced Studies in Environmental Law and Policy, a postgraduate training programme at the University of Nairobi. He is

also a member of a government task force established by the Minister for Environment and Mineral Resources to amend all environmental related legislations to ensure they comply with the new Constitution.

This presentation is a component of The Nature Conservancy's (TNC) collaboration with the Northern Rangelands Trust (NRT) in Kenya. The NRT has grown from 68,000 acres in 1995 to more than 2 million acres today. Together, TNC and NRT carry out conservation action planning, strategic and business planning, share scientific expertise, provide support for land tenure and carry out socio-economic studies.

In East Africa, conservation of wildlife outside protected areas is greatly influenced by the land tenure systems in the countries. Conservation efforts in Kenya have moved ahead despite a constitutional and legal framework that restricted innovative approaches due to tenure challenges. However, the recent Constitution and upcoming policy changes in land tenure has opened the door to new possibilities.

Until recently, laws had focused on private tenure/ownership rather than communal tenure, as is practiced by many pastoral communities. Laws had been abused by the political elite to disinherit local communities of their ownership, access and control of rights over land, wildlife and related natural resources and benefits they derived from these rights.

Major changes have taken place in recent years. In 2009, Parliament adopted the first ever National Land Policy, paving the way for needed changes in land use and tenure. In August 2010, Kenya's Constitutional architecture changed fundamentally. As a result, the governance framework for land tenure has changed, and community involvement in natural resource management has been enhanced.

1. Changes in tenure categorization: One change has been the 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 for and the legal protection of community conservancies.
2. Reform to land use regulation: Another important change is the call for recognition and protection of pastoralism as a legitimate land use, with reforms to laws and policies that affect it. The state will now have powers to repossess illegally acquired lands – this is critical due to past abuse.
3. Community land will be defined as land held by those who identify on the basis of ethnicity, culture or similar communities of interest. New legislation on community lands will be required by the Constitution within five years. Investments in property will be required to benefit local communities and their economies – this legislation will be developed by Parliament.
4. The new Constitution upholds sustainable development (including both environmental conservation and economic development) as a national value and a principle of governance.
5. Devolution of power and resources
6. Institutional architecture: Creation of National Land Commission as the principal agency for managing land; removal of power of President and Commissioner of Lands to allocate land

Overall, the impacts of the changes on conservation efforts in Kenya:

- Designed to improve legal and policy framework, but implementation challenges
- Will require huge awareness and capacity building
- Require much technical support
- Influence implementing legislation and administrative action

- Will support and enhance collaboration with national land commission
- Align strategies to constitutional and policy realities

### Response

**KIIRU James**, Cultural Attaché, Embassy of Kenya, provided a response to the presentations as a representative of **H.E. Ambassador Elkanah Odembo**, who was not available for the meeting. Mr. Kiiru highlighted the importance of land use and biodiversity, and noted the challenges faced in the past in terms of private land use and management. “If you want to touch a Kenyan heart, talk about land.” The majority of Kenyans rely on land as their source of their livelihoods. Land is a source of wealth and a very sensitive issue.

Kenya’s Vision 2030 is supporting Kenya as an emerging industrial country by 2030. As that progresses, there will be a lot of pressure to manage land and property. How Kenya manages biodiversity will be a key focus of the Vision. Kenya will integrate elements of the new land policy, but there will still be some challenges. Law makers will consult with conservation groups as they craft new legislation. There are some exciting new opportunities in carbon credits and improving practices on privately held land.

### Summary of Q&A/Discussion

- Complex, long-term negotiations are often needed to develop successful environmental leases and other conservation land use management strategies. In AWF’s experience in the Amboseli region, they are working in a semi-arid landscape populated by Maasai pastoralists that do not typically heavily engage in agriculture. AWF and the community have worked together to develop a grazing plan that incorporates seasonality and does not result in any economic loss for the people. Rather, they are gaining from payments they receive. Beginning small with a pilot was important to working out challenges. The community benefited from working with a Maasai lawyer to help them negotiate.
- Equitable land use planning is critical to achieving many of the goals discussed in this meeting. Tourism, development, agriculture and conservation are inextricably linked, and land use planning must be equitable and account for the livelihoods needs of the people. The National Land Use Planning process requires that planners take into account the most optimal/appropriate uses of land. AWF is emphasizing incentives for conservation and ecotourism to better compete with other land uses.
- Kenya’s progress with its new Constitution and Land Use planning are being closely watched by neighboring countries and others around the world. Many changes are taking place in other nations in Africa and successes and failures will be shared quickly. Change is difficult and can be very slow. One participant shared a statistic from a recent survey of executives about their ability to change organizations, the success rate of which was only 30%. The birth of a new constitution in Kenya now provides a platform for major changes in that it recognizes the rights and values of individuals and communities in ways the old constitution never did. Helen Gichohi gave an example of the role of behavior change: the current drought in Kenya has come about partially because of climate change and partially because of behavior. Allowing the land to have an opportunity to recover before next cycle – that’s behavior.

Co-management in South Africa vs. Kenya: While there are forms of co-management agreements in Kenya, they are not in the style that South Africa has developed. Kenya has the policy structure and tools to assure that co-management benefits go to communities.

Conservancies currently have the ability to contract KWS to manage land, but this is not yet commonly done, as in the South Africa model.

- Pastoralism: The interconnections of livestock and wildlife in pastoral lands are very important. Some feel that the role of pastoralists has been marginalized, as grazing may be the best land use system in drylands. In Northern Kenya, there may be the opportunity for cross-border agreements for rangelands access with long-term benefits to wildlife populations. AWF and other conservation organizations have worked in integrated systems of wildlife and livestock but the government has not incorporated these well to date. There may be upcoming opportunities to better integrate separate management systems. AWF is working with other NGOs on a livestock program that helps the pastoralist generate more income from livestock in exchange for better land management and good governance.
- Serengeti Road: While the proposed road through Serengeti National Park would be constructed only on Tanzanian soil, its impacts would be felt throughout the region, as Kenya's Maasai Mara is contiguous with the Serengeti and is a critical component of the annual migration. The Kenyan government is aware of the impacts of the road and President Kibaki has written to President Kikwete to request a meeting between the governments regarding the road.
- Coordination and collaboration are very important parts of the conservation toolkit. Working together with community groups, government officials and other conservationists yields benefits that individual organizations may not be able to realize on their own. New opportunities are developing in East Africa and the collaboration will grow.



ABCG members and partners continue the discussion following the presentations