**The Impact of The New Constitution of Kenya and the National Land Policy on Community Conservation Objectives in Kenya: A case Study of the Northern Rangelands Trust**

**Final Report Prepared for Nature Conservancy by**

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**6th October, 2010**

This project was made possible by the generous support of the American people through the United States Agency for International Development (USAID) under the terms of Cooperative Agreement No. RLA-A-00-07-00043-00. The contents are the responsibility of the Africa Biodiversity Collaborative Group (ABCG) and do not necessarily reflect the views of USAID or the United States Government. This publication was produced by The Nature Conservancy on behalf of ABCG.

**I: Introduction**

The adoption of the National Land Policy in Kenya[[1]](#footnote-1) and ratification of a New Constitution[[2]](#footnote-2) through a referendum on 4th August 2010 is poised to herald a new dawn in the property regime and land management structure in Kenya. While the obtaining philosophy for land ownership has been geared towards protection of private property rights and holding in land, with the country’s’ constitutional and legal architecture geared towards conversion of other tenurial holdings to private property, the envisaged property and land rights regimes proposes a fundamental shift from this ideology.

One of the key concerns in the land reform debate in Kenya has been the treatment of customary or community land. Customary tenure in Kenya, has largely been neglected.[[3]](#footnote-3) Despite the neglect customary tenure has remained resilient[[4]](#footnote-4) and continued to exist. In Northern Kenya, local communities have continued to own, manage and use land and land-based resources based on their customary practices and rules. In order to utilize these practices in the management of biodiversity, environment and natural resources, local communities in Northern Kenya have established community conservancies. In 2004, the Northern Rangeland Trust was established as an umbrella organization to give support to and coordinate the activities of these conservancies. The adoption of the National Land Policy and the overwhelming ratification of the new constitution will have impacts on the strategies adopted by these conservancies.

Against the above background, this paper assesses the provisions of new constitution and the national land policy to determine the opportunities therein for growth of community conservancies in Kenya. The paper assesses the extent to which the envisaged land reforms will affect strategies already developed by the community conservancies, discusses the adjustments required to be made to those strategies and highlights opportunities in the reform process for engagement by the conservancies. Being exploratory in nature, the opportunities are only highlighted and initial recommendations made for action.

**II: The Existing Framework for Community Conservancies in Northern Kenya: The Northern Rangelands Trust**

Under the legal framework that has been in existence since the independence of Kenya, local communities are viewed as inimical to sustainable management of natural resources. Instead focus is on private ownership of land and management of natural resources on such land. The greatest exception to this general rule is when, by dint of law, certain land and natural resources are vested in the government to manage. This is the situation under which wildlife, forest and minerals are largely managed by the government pursuant to relevant laws passed by parliament. A small window is also given to limited local involvement in management of natural resources. However despite this predominantly negative view of communal ownership and customary rules for land ownership and management, evidence abound that in various parts of the country, customary practices and management regimes continue to exist. Professor Okoth Ogendo, has argued that despite their expropriation, suppression and denial of juridical content, and wrong ascription as a tragedy of the commons, the African commons and customary rules for the management of property have not only survived but also thrived.[[5]](#footnote-5)

The legal regime for land and natural resource management, gave very little recognition to customary rules and common management. Such limited rules existed within the context of the legal regime for trust lands (These are unalienated land that under the colonial period were referred to as native lands and currently are owned and held by local authorities in Kenya in custody for the local residents of the area) management and the introduction of the concept of group ranches (large parcels of land owned and held invariably by a group of people on behalf of a larger community. System introduced to support pastoralism). However these were riddled with challenges. In response to these challenges and to give voice to communal voices in resource governance, various options have been experimented with in Kenya including having community groups register as group ranches, Trusts and even self-help groups. In Northern Kenya, from 2004 the Northern Rangeland Trust was registered and has continued to exist as an Umbrella organization for several communal conservancies in Kenya. The Trust currently has fifteen members.

The Northern rangeland Trust was registered under the Trustees Act[[6]](#footnote-6) with eight founder Trustees, including the then Speaker of the Kenyan National Assembly, Francis Kaparo and two members of parliament. The overall objective of the Trust was and continues to be the conservation of biodiversity and improvement of the livelihoods of the communities within the Trust area through management and sustainable use of natural resources.[[7]](#footnote-7) To achieve this broad objective, the trust is empowered by its constitutive documents, within the trust area, to;

* Conserve, manage and sustainably use natural resources
* Promote development of tourism and other environmentally sustainably income generating projects
* Promote education, sports and culture of residents
* Provide improved health services and facilities
* Alleviate poverty through improved social services, provision of employment and establishment of community-based enterprises
* Promote and support trusts, corporations, NGOs and other charitable organizations with similar objectives to that of the trust.

It is in pursuit of the last objective that NRT has encouraged the formation of and admitted to membership several communal conservancies and continues to support their functions. Community conservancies are entities established to enable local communities to participate in the management of natural resources. Community-based conservation reverses top-down center-driven conservation by focusing on the people who bear the costs of conservation.[[8]](#footnote-8) Over the last twenty years, a number of community conservancies have been established in Kenya to offer alternate livelihood strategies to community members as well as habitats and migratory corridors for wildlife.[[9]](#footnote-9) Through the efforts of Lewa Conservancy and under the auspices of Northern Rangeland Trust, fifteen such conservancies have been established and operate as members of the Northern Rangeland Trust. The existing conservancies are Biliqo-Bulesa, Naibunga, il Ngwesi, Lekurruki, Ngare Ndare, Melako, Namunyak, Westgate, Sera, Ruko, Mpus Kutuk, ,Meibae, Ltungai, kalama, and Ishaqbini. The community conservancies:

* Ensure the conservation goals of the community are met through development of by-laws governing the use of natural resources;
* Provide security to the Conservancy’s residents, its wildlife and its visitors;
* Act as the development arm for the community by developing wildlife-based enterprises, from tourism to small businesses;
* Promote improved rangeland management and livestock grazing systems by and between communities;
* Promote and support access to education for community members through scholarships for secondary and higher education, and the development of school conservation clubs;
* Ensure that the wider community is fully engaged in the Conservancy’s activities and management decisions through the Annual General Meetings and exposure tours for community members to other community conservation initiatives;
* Reinforce the direct link between community development and conservation;
* Provide a framework for fundraising and a reliable mechanism for donor linkage; and
* Legalise its operations by ensuring it is officially registered with the government.[[10]](#footnote-10)

To coordinate the actions of the community conservancies and guide its operations, the Northern Rangeland Trust has a five-year Strategic plan, with the current plan running between 2008-2012.[[11]](#footnote-11) The Strategic Plan is based on a mission of improving livelihoods of conservancy communities through wildlife conservation in rangelands of Northern Kenya.[[12]](#footnote-12) It then prioritizes five strategic goals that it intends to achieve during the plan period. These include:

* Ensuring safety for the people and wildlife through mechanisms that enhance conservation and community development
* Ensuring stability or increase in wildlife populations, reestablishment of wildlife in their former ranges and improvement of environmental conditions to sustain wildlife populations and movements
* Secure adequate funds for realizing NRT’s objectives and functions
* Ensure that NRT staff and board carry out their duties effectively,
* Secure national and international support and recognition of NRT and its member conservancies.[[13]](#footnote-13)

In addition, the member conservancies of NRT have also developed individual strategic plans.

**III: Land Tenure and Community Conservancies**

The operations of the community conservancies in Kenya, including for members of the Northern Rangeland Trust, is influenced to a great degree by the land tenure regimes existing in the country. The tenure regimes that have hitherto existed in the country are customary land tenure, private land tenure and public land tenure.[[14]](#footnote-14) However the structure of the tenure regimes has been such that the greatest focus has been on tenure conversion from other regimes to private tenure. The reasoning was that investing individuals with private property rights in land would contribute to and enhance proper resource management because individual actions are informed by enlightened self-interest.[[15]](#footnote-15) However, despite this acknowledged policy preference, local communities have continued to manage land and natural resources in accordance with their customary practices side by side with the obtaining private tenurial arrangements. This has been especially so for pastoral communities in Northern Kenya, where the Northern Rangeland Trust is situated. For these communities, communal conservancies provided a useful avenue for giving legal recognition to their communal ownership and management of land and management of wildlife resources.

The legal regime that has existed and under which the communal conservancies operate relates to that governing Trust Lands and group ranches. Trust land was land that was occupied by natives during the colonial period and had not been consolidated, adjudicated and registered in the names of either individuals or groups nor taken over by government.[[16]](#footnote-16) Chapter IX of the old Constitution of Kenya[[17]](#footnote-17) stipulates that Trust lands vest in county councils to be managed for the benefit of persons resident within the council. Importantly for the function of communal conservancies, the county councils are empowered to set apart trust land and grant occupancy and user rights to:

“… any person or persons for a purpose which in the opinion of that county council is likely to benefit the persons ordinarily resident in that area or any other area of Trust land vested in that country council, either by reason of the use to which the area so set apart is to be put or by reason of the revenue to be derived from rent in respect thereof.”[[18]](#footnote-18)

These provisions are buttressed by the Trust Land Act which details the procedure for setting apart Trust Land.[[19]](#footnote-19) Setting apart refers to the process of converting land from public use to private use and is akin to the constitutional process of compulsory acquisition through the exercise of the power of eminent domain. However despite its good intentions and positive applications in the context of the Northern Rangeland Trust to encourage growth of communal conservancies, the majority of the cases have resulted in an abuse of trust by county councils vested with ownership of trust land and the process of setting apart has resulted in such land being given to individuals with little regard to the interests of the communities resident in the area. In areas where communal ownership is perceived as capable of encouraging good resource husbandry through the trust land system, land has been parceled out to groups that do not necessarily have anything in common, to the detriment of the management of environmental resources within those areas.[[20]](#footnote-20)

In essence therefore the conservancies that hold and manage land under the provisions of the Trust Land Act, operate under a legal framework that in theory facilitates their operations but in practice does not fully encourage and support community conservation imperatives and ownership of natural resources, inclusive of land. Instead the legal regime of trust lands has led to abuse of trust with most land held by county councils being dished out to private individuals in circumstances shrouded in corruption and resulting in disinheritance of local communities.[[21]](#footnote-21) In moving to the new dispensation under the new constitution, the past abuse of trust by county councils will require to be addressed within the legislation on community land so as to ensure success of conservancies.

To address the particular challenges of pastoral communities and their need for large tracts of land for grazing, and respond to the government policy of giving preference to registration and individualization of tenure, the system of group ranches was introduced and a supportive legal regime the Land(Group Representatives) Act[[22]](#footnote-22) enacted by parliament in 1968. The Act introduced a system of group ranches in arid and semi-arid areas as a compromise between individual ownership and the need for wider resources in drylands.[[23]](#footnote-23) In these areas communal lands are divided into smaller units known as ranches which are then registered in the names of group ranches elected by members of the group.[[24]](#footnote-24) The group ranch status is granted to a group of herders that is shown to have customary rights over the range or pastureland in question.[[25]](#footnote-25) The term group to whom ownership is vested is defined by the Land (Group Representatives) Act as a “tribe, clan, section, family or other group of persons, whose land under recognized customary law belongs communally to the persons who are for the time being the members of the group, together with any person of whose land the group is determined to be the owner under the proviso to Section 23 (2) (a) of the Land Adjudication Act.”[[26]](#footnote-26) This provision provides that ,” where such person has, under recognized customary law, exercised rights in or over land, which should be recognized as ownership,”[[27]](#footnote-27) then such rights shall be recognized so long as :

* The land adjoins land of which a group is an owner
* that person desires to join the group and to have his land added to the group's land ; and
* the group is willing to have that person as a member

The members of the group ranch elect between three to ten members who become the group representatives in whose name the ranch is registered and who hold the land as trustees on behalf of the wider membership. They are required to consult the wider membership in dealings with this land and performing their role as representatives.[[28]](#footnote-28) In practice the group ranch concept has suffered serious challenges including sub-division and misuse of trust powers by the registered representatives who convert themselves to and deal with the ranch as absolute owners.[[29]](#footnote-29)

Despite its shortcomings, the group ranch concept provides an avenue for the legal recognition and operations of community conservancies and has been used by some members of Northern Rangeland Trust. Another option that has been utilized to give legal recognition to community conservancies is community forest associations under the Forestry Act.[[30]](#footnote-30) This provides avenues for communities that have had an association with a forest to register and participate in the management of the forest and its component resources. The lack of a clear recognition and legal framework for community management of natural resources and customary tenure explains the experiments with different arrangements and is at the heart of the proposed changed by the new constitution and the national land policy relating to communal tenure.

**IV: Proposed Changes to the Land Tenure Framework**

* 1. **The National Land Policy**
1. **Overview**

Kenya has since independence operated without a National Land Policy. The lack of such a policy has led to serious challenges in the framework for land ownership and management including fragmentation, breakdown in land administration, disparities in land ownership and poverty.[[31]](#footnote-31) The adoption in August 2009 of the Sessional paper on a National Land Policy[[32]](#footnote-32) following five years of in-depth consultations, debate, stakeholder approval, cabinet endorsement and parliamentary endorsement, therefore marked a turning point in the country’s land management framework. The policy aims at helping the country attain efficient, sustainable and equitable use of land for prosperity and posterity.[[33]](#footnote-33)

1. **Tenure Categorisation**

Tenure is defined by the policy as “the terms and conditions under which the rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted.”[[34]](#footnote-34) The Policy categorizes land into three distinct groupings, namely public land, community land and private land. This is a departure from the categorization that has existed before of government land, trust land and private land. Briefly public land will refer to those lands that are owned by the public collectively as Kenyans including those registered in the name of public institutions. All land that is neither privately or communally owned shall be deemed to be public land. Community land, on the other hand, as a new tenure category, is land that is held, managed and used by a given community. Private land will continue to be land owned, held and used and managed by private individuals and other private legal entities.

The Policy reverses a hitherto policy approach to land management, an approach that glorified private property and focused on conversion of other tenure regimes to private property, since the latter was seen as the most secure. In its place, the national land policy recognizes the reality in tenure regime, a reality composed of a dual land tenure regime comprising modern or private tenure on the one hand and customary tenure on the other. The policy recognizes this duality as legitimate and gives protection and equal status in law to both tenure holding approaches.[[35]](#footnote-35)

1. **Objectives of Land Policy**

The policy’s overall objective is to secure rights over land and provide for sustainable growth, investment and the reduction of property.[[36]](#footnote-36) This is to be achieved through a legal and policy framework that focuses on establishing and maintaining a system of land administration and management that ensures that: All citizens have opportunity to access and beneficially use land; allocation and use of land is done in an economically viable, socially equitable and environmental sustainably manner; land markets operate efficiently, effectively and economically; land and land based resources are used efficiently and effectively and effectively and; mechanisms for resolving land disputes are efficient and transparent.[[37]](#footnote-37)

1. **Institutional Structures**

The policy then addresses a broad range of issues including tenure, constitutional principles, land use, land administration and institutional framework for land management. It criticizes the obtaining institutional framework for being centralized, complex and bureaucratic and proposes its overhaul.[[38]](#footnote-38) The reform is geared towards facilitating efficient, cost-effective and equitable delivery of services; devolution of land administration and management and its access by the poor and stakeholder participation and accountability.[[39]](#footnote-39) To achieve this, the Policy proposes that a National Land Commission be established and charged with the task *inter alia,* of holding title to and managing public land on behalf of the state, maintaining a register of all categories of land in Kenya and exercising the powers of regulating land use on behalf of the state.[[40]](#footnote-40) In addition to the national Land Commission, the policy also calls for the establishment of District Land Boards and Community Land Boards.

District Land Boards[[41]](#footnote-41) shall represent the National Land Commission at the District level and will be composed of community representatives chosen through a democratic election by the community members. They will be supported by officers appointed by the National Land Commission. Their principal function shall be to promote equitable access to land, conservation of cultural sites and protecting minority land rights.[[42]](#footnote-42) They will administer both public and private land on behalf of the National Land Commission and determine the jurisdiction of the Community Land Boards. Community Land Boards[[43]](#footnote-43) shall be the lowest unit for devolved land administration and management. Like the District Land Boards, its community representatives shall be democratically elected and be composed of those ordinarily resident in an area determined by the District Lands Boards. Their functions shall include:

* Holding and managing community land
* Documenting all community land
* Regulating all transactions relating to community land
* Facilitating recording and issuance of title for community land by the National Land commission.[[44]](#footnote-44)
1. **Impact of Policy on Communal Conservancies**

For communal conservancies, the provisions of the policy dealing with constitutional principles, land use, communal tenure, historical injustices and institutional framework for land management are especially relevant.

The reform of the land tenure framework by the National Land Policy[[45]](#footnote-45) 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. The policy clearly recognizes that colonial and post-colonial land administration has undermined traditional resource management institutions thereby creating uncertainty in access, exploitation and control of land and land-based resources.[[46]](#footnote-46) Further that the government has poorly managed trust land resulting in irregular and illegal allocations.[[47]](#footnote-47)

The reforms to the tenure regimes proposed that will be beneficial to community management of natural resources include the designation and recognition of community ownership through recognition of community land as a distinct tenure category.[[48]](#footnote-48) The policy proposes that a comprehensive land law be enacted to govern all categories of land and thus consolidate the current disparate land legislations in Kenya. This will be achieved through enactment of a land Act in place of the various statutes governing land, including the Registered Land Act, The Government Land Act, The Transfer of Property Act, The Registration of Documents Act, The Registration of Titles Act, The Trust Land Act and the Land(Group Representatives)Act. In the process of consolidation, the term “community” should be defined and ownership of community land vested in the community as defined in the legislation.[[49]](#footnote-49) The law should also make provision for the recognition, protection and registration of community rights to land and addressing illegally acquired trust lands. It further seeks to ensure accountability by those who will manage the community land and the repeal of the Trust Lands Act and review and harmonsation of the Land (Group) Representatives Act with the proposed “Land Act.”

The Policy also urges government to document and map existing forms of communal tenure and their incorporation into broad principles to govern the content of community land law. In addition it recommends that government invests in capacity building efforts for local communal land governance institutions in addition to developing mechanisms for communal land management and dispute resolution.

A key challenge in property and land issues in Kenya has been land use. At the core of the tenure discourse belies the question of how land is used and the impacts of that use on sustainability of land and land-based resources. The overall assessment of land use and land use legislation is their non- conformity to the conservation ethic and encouragement of land degradation.[[50]](#footnote-50) Both the land use practices and the laws that govern them have largely been focused on economic exploitation and increased production without paying regard to the need to conserve the land and resources therein for sustainability purposes. The lack of a comprehensive national land policy only exacerbated this situation. The national Land policy seeks to reverse this situation by calling for development of a national land use policy and for land use management.[[51]](#footnote-51) Importantly the policy provides for the reform of the regulatory powers of the state.[[52]](#footnote-52) This will enable the state to be able to compel rational and sustainable use of land and natural resources by regulating the exercise of proprietary rights in land.

In northern Kenya, the main land use is pastoralism. In recognition of neglect of pastoralism as a land use in policy frameworks, the National Land Policy identifies pastoralism as a land issue requiring special intervention and its recognition as an appropriate production system.[[53]](#footnote-53) To do so, the Policy requires government to review the Land (Group Representatives) Act, establish a legislative framework to regulate transactions in land in pastoral land areas and provide for suitable methods for defining and registering land rights in pastoral areas. All these requirements provide frameworks for land use practices within pastoral areas that respect rights of communities and conform to principles of sustainable resource management.

Institutionally, the policy calls for the establishment of a national Land Commission as a constitutional body to hold and manage title to public land on behalf of the state and to establish and maintain a register of all land in the country including community land.[[54]](#footnote-54) An important institution for community land tenure and the future operations of communal conservancies is the community land boards. These are to comprise democratically elected community representatives with support of officers of the national land commission.[[55]](#footnote-55) The functions of community land boards is to hold and manage community land, document community land, regulate all transactions relating to community land and facilitate the recording and issuance of title for community land by the National Land Commission.[[56]](#footnote-56) This is an important institution on which the NRT should seek to be represented within their area of existence and also to engage with for the documentation, recognition and titling of community interests in land.

The National Land Policy recognizes the importance of a sound constitutional basis for land tenure and management and urges for constitutional reform so as to anchor the policy and envisaged reforms under it. This provides the context within which the new constitutional provisions on land should be viewed and assessed.

* 1. **New Constitutional Framework**
1. **Constitutional Recognition of Land and Property**

The old constitution only contained two broad provisions relevant to land ownership, management and use. First is the provision of section 75 on protection of private property. Secondly are the provisions of section 111-118 on trust land. The constitutional treatment of land has been criticized in several quarters. The national Land Policy succinctly quipped that the constitution did not recognize the uniqueness of land and lumps it with other categories of property[[57]](#footnote-57) additionally it fails to establish an efficient accountable and equitable institutional framework for land ownership, administration and management.

Land has been at the center of the clamour for reforms throughout the country’s history. It was the driving force behind the struggle for independence during the colonial period and continues to be a key contestation. The constitutional review process has been driven to a very large extent by the quest for ordinary citizens to have equitable access to and control over land since land forms the basis of livelihood for majority of Kenya’s population. In response to this, the review process and all previous constitutional drafts have attempted to address in a much more comprehensive manner than the current constitution, the question of land ownership, access, control and use.

The New Constitution addresses the issue of land in Chapter Four on the Bill of Rights and in much more detail in Chapter Five, which focuses solely on land and environment. Under the Bill of Rights, the constitution seeks to protect the right to property. In Article 260 on interpretations, the term “property” is defined as inclusive of land.[[58]](#footnote-58) Thus, under the Bill of Rights, rights to land are protected with the state being prohibited from depriving any person of their land, unless under the powers of eminent domain subject to payment of compensation.[[59]](#footnote-59) The only exception to this rule is if the land was illegally acquired. In essence the new constitution gives the state power to repossess land that was acquired through unlawful means. In reliance of this provision, the state can repossess all that land in trust areas that belonged to local communities and were illegally acquired. This is an important provision that would be useful for recovery and restitution of communal lands.

1. **Tenure categorisation**

The New Constitution contains the same classification of land as the national Land Policy, thus giving recognition to community land.[[60]](#footnote-60) It provides that such community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.[[61]](#footnote-61) An important provision relates to the recognition of ancestral lands and lands traditionally occupied by hunter-gatherer communities as part of community land. [[62]](#footnote-62) Parliament is required to enact legislation to implement the provisions on community land including how such land can be disposed of and used.[[63]](#footnote-63) While the new constitution gives a time frame of eighteen months for the general law on land, that on community land has a time frame of five years.[[64]](#footnote-64)

1. **Community Land**

To address the perennial exploitation of community land by private investors without any benefits to local communities the new constitution requires parliament to enact legislation to ensure that investments in land and other natural resources benefit local communities.[[65]](#footnote-65) The New constitution creates the National Land Commission[[66]](#footnote-66) as recommended by the National Land Policy, it also recognizes and supports settlement of land disputes at the local level through traditional dispute resolution mechanisms.[[67]](#footnote-67)

1. **Limits of Landholding by Non-Citizens**

The new constitution limits the tenure holding by non-citizens to leasehold for a maximum period of ninety nine years down from nine hundred and ninety years. This provision is important for conservancies since the land on which they operate will have to be owned legally by the communities and by citizens. In case non-citizens are part of the owners then the tenure regime will be leasehold for a maximum of ninety years. The question to be dealt with is the extent to which non-citizens will be involved in communal conservancies by owning land.

1. **Limits of Amount of Landholding**

The constitution requires parliament to enact legislation to prescribe the maximum and minimum land holding acreage in respect of private land. This provision is important for community conservancies and the NRT. They need to influence the legislation to implement this provision to ensure that the limits created are conducive to land uses that support conservation and land-based activities that NRT members conduct.

**V: Impact of Envisaged Changes on NRT Strategies**

The greatest change that will occur to the strategies of NRT is focus on legal recognition of local communities for ownership of land and related resources. This will require that NRT invests a great deal on policy and legislative work for entrenching the provisions on communal land.

In addition to legislative and policy engagement efforts should also be focused on documenting NRT’s experiences with communal conservancies and developing frameworks for identifying and defining local communities for purposes of legal recognition. This may look straight forward but as experiences from around the world demonstrate, the identification and registration process for ownership purposes to ensure both inclusion and exclusion is laborious and highly complex. A focus on this will ensure that NRT’s input into the process adds value.

The strategies will also need to incorporate aspects of capacity building and awareness creation both on the new provisions amongst the conservancies but also publicity on the work and experiences of NRT. This will enable the members of the conservancy on the one hand to appreciate the changes and be prepared to adapt to and implement them but also the wider public especially policy makers to gain knowledge on the experiences of NRT and thus seek to incorporate those experiences in the implementation process of both the new constitution and the National Land Policy.

**VI: Opportunities for NRT Engagement with Legal Reforms**

The adoption of the National Land Policy and the New Constitution for Kenya portend changes in land tenure and use and provide numerous opportunities for NRT and its member’s conservancies. As the previous section has highlighted the reforms to the land tenure categories with an explicit recognition of community is progressive. It will provide NRT with the opportunity of registering the land held by its member conservancies as community land, a category now recognized in law. The legal framework including legislation by parliament on community land is envisaged. This is an opportunity for NRT to engage with at several levels. In the first instance, NRT should lobby for inclusion in the process of development of the law as members of the drafting committee, prepare submissions to the committee and use its experience to serve as pilots of successful community land management and thus provide principles from its experience that should be incorporated into the envisaged Community Land Act. The experience with group ranches will also be handy in the envisaged review of the Land (Group Representatives) Act.

The policy envisages the documentation and mapping of existing forms of communal tenure and incorporation of their essential characteristics into the communal land law. NRT should seize this opportunity in the National Land Policy to use the experience from its conservancies to shape the content of the communal land law and communal land tenure. This should be undertaken through a comprehensive documentation of the communal tenure practices and lessons learnt from all its members’ conservancies so that the key principles arising from these conservancies can be incorporated into the envisaged legislative provisions on communal land tenure.

There is also the call for government to invest in capacity building for communal land governance institutions and facilitation of their operations. Two opportunities arise from this. First is the opportunity for NRT to tap into on behalf of its members, government resources for capacity building for its member conservancies since these are community governance institutions. Secondly to partner with government from its developed experience and expertise to develop programmes for capacity building for local community institutions and use the experience of NRT to provide lessons for communal institutions throughout the country.

The new constitution provides for devolution as a central governance principle and contains a detailed devolved structure of government in its chapter eleven. The central unit of devolution is the county. The fourth schedule on powers and responsibilities shows that county governments have certain powers relating to land especially as regards planning. It is therefore critical that NRT participates in the design of legislation on counties as they shall form a central locus of management and development within their areas of operations. Additionally NRT should prepare to influence the policies and operation of counties in Northern Kenya, especially as regards communal conservancies, natural resource governance and raising and managing resources in devolved structures for benefit of local communities. The New Constitution envisages that at least fifteen percent of all the revenues raised nationally shall be allocated to county governments.[[68]](#footnote-68) Monitoring the use of these resources and lobbying for effective budgeting and allocations for community conservation activities is a task that NRT and its members conservancies should be prepared to undertake. Lastly regarding counties is the development of relevant bylaws and regulations governing community participation in management of natural resources.

The constitution envisages at Article 66(2) that parliament shall pass legislation to ensure that investment in property benefit local communities and their economies. The experience of NRT demonstrates that investments on land can benefit local communities first if the communities participate in the investment process and secondly if there is a well structured process of using the returns from the investments to improve amenities within the local communities. The NRT model should be documented and shared with the process of developing this legislation as envisaged by the constitution.

**VII: Conclusion and Recommendations**

With the envisaged land reforms following the passage of the first ever national Land Policy and adoption of a new Constitution with explicit and progressive provisions on land, the framework for the work of communal conservancies in Northern Kenya is bound to change in a radical yet positive manner. Those envisaged changes will strengthen tenure security for local communities in pastoral areas of Northern Kenya. However, there is envisaged implementing legislation to be adopted by parliament. The content of this legislation is very critical for it will contain numerous details including definition of communities, how they will be determined and the terms under which they can hold land. The process of developing the legislation and piloting registration and documenting community land and implementing the provisions of the community land law once enacted is one that NRT and its members should seek to be involved in and to influence. This brief has provided pointers of the exact avenues for such involvement.

A critical look at the Strategic Plans of the NRT and its members reveal that tenure reform was not identified as a key objective. With the envisaged reforms and the importance of tenure for the operations of community conservancies in Kenya, there is need to amend the strategies so as to focus on tenure reform so as to position NRT to take advantage of and influence the design of the new framework for governing communal conservancies in Kenya.

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