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# KENYA SECURE PROJECT COMMUNITY LAND RIGHTS RECOGNITION (CLRR) MODEL IMPLEMENTATION PLANNING WORKSHOP PROCEEDINGS SEPTEMBER 12-16, 2011 KASKAZI BEACH HOTEL, DIANI BEACH, KENYA



OCTOBER 2011

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KENYA SECURE PROJECT  
COMMUNITY LAND RIGHTS  
RECOGNITION (CLRR) MODEL  
IMPLEMENTATION PLANNING  
WORKSHOP PROCEEDINGS  
SEPTEMBER 12-16, 2011  
KASKAZI BEACH HOTEL, DIANI BEACH, KENYA

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**DISCLAIMER**

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# TABLE OF CONTENTS

<b>1.0</b>	<b>BACKGROUND.....</b>	<b>2</b>
<b>2.0</b>	<b>INTRODUCTION .....</b>	<b>3</b>
<b>3.0</b>	<b>PROCEEDINGS .....</b>	<b>5</b>
	DAY 1–MONDAY, 12 SEPTEMBER.....	5
	DAY 2 – TUESDAY, 13 SEPTEMBER .....	8
	DAY 3 – WEDNESDAY, 14 SEPTEMBER .....	9
	DAY 4 – THURSDAY, 15 SEPTEMBER .....	10
	DAY 5 – FRIDAY, 16 SEPTEMBER .....	11
	<b>APPENDIX 1: WORKSHOP AGENDA .....</b>	<b>13</b>
	<b>APPENDIX 2: LIST OF PARTICIPANTS .....</b>	<b>15</b>
	<b>ANNEX 1: OVERVIEW OF KENYA SECURE PROJECT .....</b>	<b>18</b>
	<b>ANNEX 2: OVERVIEW OF COMMUNITY LAND RIGHTS RECOGNITION MODEL .....</b>	<b>23</b>
	<b>ANNEX 3: NATURAL RESOURCE MANAGEMENT APPROACHES ON COMMUNITY LANDS.....</b>	<b>28</b>
	<b>ANNEX 4: REMARKS OF USAID KENYA MISSION DIRECTOR .....</b>	<b>33</b>
	<b>ANNEX 5: REMARKS OF MINISTER OF LANDS .....</b>	<b>35</b>

# 1.0 BACKGROUND

The “Securing Rights to Land and Natural Resources for Biodiversity and Livelihoods in the Kiunga, Boni, and Doodori Reserves and Surrounding Areas in North Coastal Kenya” (SECURE Project) is aimed at securing land and resource rights of indigenous communities in the North Coast region of Kenya, and improving the management of natural resources through community co-management to enhance the conservation of biodiversity, and ultimately, to improve livelihoods.

SECURE is a project in support of the Ministry of Lands’ (MoLs’) Land Reform Support Programme (LRSP II)—an initiative to pilot certain principles of the National Land Policy (NLP) and to promote efficient, sustainable, and equitable land use in Kenya. In particular, the SECURE project contributes to Component 3 of the LRSP II by undertaking a land tenure demonstration intervention on the northeast coast. The SECURE Project also contributes to the land reform section of Reform Agenda 4 of the Kenya National Accord and Reconciliation Act.

Northern coastal Kenya is home to three biologically rich nature reserves of great local, national, and global significance: the Boni and Doodori National Reserves and the Kiunga Marine National Reserve (KMNR). The reserves, all managed by the Kenya Wildlife Service (KWS), and surrounding areas are the ancestral homeland of two ethnic groups: the Boni and the Bajuni. The Boni, who number between 3,000–3,500 individuals, are traditionally hunters and gatherers. They were moved from the forest into villages on government land between the Boni and Doodori National Reserves due to insecurity in the region in the 1970s. The Boni continue to depend on forest and rangeland resources in and between the reserves for shifting subsistence cultivation, collection of non-timber forest products, some timber, and bush meat. The Bajuni, of Swahili and Arab origin, live along the coast and on the islands of the Lamu Archipelago. They rely heavily on fishing, mangrove harvesting, and slash and burn farming. Despite the fact that they have lived in settlements in the area for centuries, their legal claim to these lands remains ill-defined and vague. Thus, like the Boni, the Bajuni are officially designated as “squatters” on their ancestral, customary lands.

The Boni and Doodori National Reserves experienced significant depletion of wildlife during the Shifta war and the Somali incursions that followed it. These incursions resulted in banditry and wildlife poaching for ivory, rhino horn, and animal skins for export. The KMNR is under serious threat due to irregular, and perhaps illegal, allocations of land within the reserve to powerful Kenyan and foreign businessmen and developers. In addition, haphazard development of beach plots and coastlines for tourism is a serious threat to the integrity of marine and estuarine ecosystems. The proposed Lamu Port, associated land speculation, and land grabbing in the region lend further urgency to securing land rights of resident communities and protecting the fragile ecosystems.

The SECURE Project is being implemented by the MoL with support from Tetra Tech ARD and in collaboration with the KWS, Kenya Forest Service (KFS), civil society organizations (CSOs), and the targeted communities themselves. The project—which commenced in September 2009 and is currently scheduled to close on April 30, 2012—aims to:

1. Improve land and natural resource tenure security and reduce conflict over natural assets.
2. Improve management of protected and biologically sensitive areas.
3. Provide lessons learned to inform the implementation of Kenya’s National Land Policy (NLP) and the development of other relevant policies and laws.

## 2.0 INTRODUCTION

The Kenya SECURE Project and the Land Reform Transformation Unit (LRTU) of the Ministry of Lands (MoL) held a workshop from September 12-16, 2011 at the Kaskazi Beach Hotel in Diani Beach, Mombasa to reach consensus on the approach of the Community Land Rights Recognition (CLRR) model, and to finalize the implementation plan, budget, timeline, team, and public awareness campaign for piloting the model. **(See Appendix 1 for workshop agenda)**

The CLRR model, developed by the project with the LRTU, had previously undergone a number of reviews within the MoL as well as amongst stakeholders. During these reviews a number of minor changes were made, necessitating a final discussion amongst MoL staff, civil society involved in the land sector, and other stakeholders. **(See Appendix 2 for list of participants)**

As a system of land tenure in Kenya, “Community Land” is a new category introduced by Article 63 of the 2010 Constitution. This Article strengthens various provisions in the National Land Policy regarding the recognition of all modes of tenure. To give equal legal recognition to Community Lands, the Policy under Section 3.1 paragraph 33 seeks to adopt a plural approach, in which different systems of tenure co-exist and benefit from equal guarantees of tenure security. The rationale for this plural approach is that the equal recognition and protection of all modes of tenure will facilitate the reconciliation and realization of the critical values which land represents.

To secure community lands, the Land Policy further requires the Government to “document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law” (Section 3.3.1, paragraph 66 (a.)).

The Government is further required to “lay out...a clear framework and procedures for: the recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women” (Section 3.3.1, paragraph 66 (d) i).

To facilitate implementation of these principles, the CLRR Model was developed and lays down the procedure for recognizing community land rights. To make the model operational, the following issues should be noted:

1. The model is not a legal framework. The existing legal framework has no provision for community tenure to land, except in areas called Trust Land and Group Ranches (demarcated areas of rangeland to which groups of pastoralists, who graze their individually owned herds on it, have official land rights if they have customary rights over the range or pastureland in question).
2. The Model is in line with the Constitution of Kenya 2010 and the National Land Policy 2009, both of which provide for community land. The Land Policy goes further by requiring that communal tenure, whether customary or non- customary, be documented and mapped in consultation with the affected groups. The CLRR process is a step in this direction.
3. The land covered by the Model does not fall immediately under the currently available legal mechanisms for community land, namely, Group Ranches and Trust Land. However, Article 193 of the Land Policy requires the government to put in place a framework for conversion of Government Land in the 10 mile coastal strip into Community Land.
4. The absence of clear and secure property rights for communities has been an impediment to full enjoyment by communities of rights to land, productive use of land and national development. It has

also led to defensive titling of land into individual holdings to protect land from encroachment by the government or other entities.

5. The Model answers three critical questions with regard to the land under the Model, “what land?”, “who holds the land?” and “what interest?” These are very important for the Model because the ultimate objective is to secure the rights of the community to the land.
6. There is need to define community using the parameters given in the Constitution: ethnicity, culture or other community of interest, and take cognizance of any other provisions in the Constitution that prohibit discrimination on any basis. Some of the communities in Kenya may be an amalgam of all three parameters.
7. Whatever interests are conferred to the community under this Model, the residual powers of compulsory acquisition and development control apply to community land for regulatory purposes and for provision of land for the public interest.
8. The interest created in the implementation of the CLRR Model is vested in an identified entity which will hold paramount or allodial title<sup>1</sup> above to whatever rights any one person has to the land.
9. It is appreciated that different legal models exist for corporate holding of interests – society, company, group representatives and trust. Whichever legal entity is selected, the recommendation is that the CLRR Model be adopted to secure the rights of the community.
10. There is need to build the capacity of communities to actualize community rights.

The CLRR Model takes the normative provisions of the Constitution and the National Land Policy to a practical level and will be a useful guide in helping frame community land rights legislation. It is, however, necessary to capture the living customary law used (what people are using on a day-to-day basis), as opposed to narratives of customary law that are out of use.

In addition to working to finalize consensus on the CLRR Model, the workshop was also organized as a forum to present, discuss and further develop with stakeholders the implementation plan, budget, timeline, team, and public awareness campaign for piloting the model.

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<sup>1</sup> Allodial title is defined as: Lands that are the absolute property of their owner and not subject to any service or acknowledgment to a superior ([n.wikipedia.org/wiki/Allodial\\_title](http://n.wikipedia.org/wiki/Allodial_title)).

## 3.0 PROCEEDINGS

### DAY 1—MONDAY, 12 SEPTEMBER

The first day of the workshop consisted of welcoming the participants, reviewing the objectives and agenda of the workshop, providing context to the workshop topics, and introductory presentations, followed by discussions.

In his opening remarks, the SECURE Project Chief of Party, Kevin M. Doyle, welcomed the participants to the meeting and brought the participants up to date on the project objectives, activities, accomplishments to date, and its efforts with the MoL to develop the CLRR model for piloting in Mkokoni, Kiunga, Kiwayu Island, and the Boni villages in the Boni-Dodori corridor. **(See presentation in Annex 1)**



The Deputy Coordinator of the Ministry of Lands LRTU (right) delivering his opening remarks, as SECURE Chief of Party looks on.

The Deputy Coordinator of the LRTU, Victor K. Liyai, then provided an overview of the land reforms undertaken by the MoL over the last two years, the role of the SECURE Project, the challenges the MoL is facing in the land reform process, and the need for concerted efforts between all the stakeholders in the land sector to help meet the expectations of most Kenyans for bona-fide land reform.

The SECURE Project consultant, Dr. Antwi Adarkwah, then made a presentation about the theory behind statutory recognition of customary community lands and presented an overview of the CLRR model, its place in the Lamu scenario, and experiences elsewhere in the world recognizing community lands. In his presentation he reminded the participants that the provision for community lands was in both Kenya's new Constitution and National Land Policy, and, therefore, not to be treated lightly as both instruments give it legal pluralism with other forms of land tenure. He informed the participants that while some politicians and administrators, as well as citizens, are leery of the community lands concept, the proposed CLRR model is a transparent process where the targeted communities are at the center of the process. At the end, the communities will hold a community title instead of individual title deeds, and they will be empowered to govern and manage their land with appropriate checks and balances to avoid manipulation, corruption, and undermining of the community land holding. **(See presentation in Annex 2)**

After the opening presentations, a number of comments were made and questions were raised in a plenary session. The highlights of these discussions include the following:

- **Community Land registration** - There was concern amongst some participants that unless community land is registered and the community has an actual title over the designated land, the government could still govern over that land and de-facto hold it in trust. The participants were reminded that the ultimate aim of the CLRR model would result in a formal and acceptable document by the community showing the land they own and the document being treated like a private title.

- **Community Land Boards -**

There was also concern raised as to the role of the Community Land Boards as envisaged in the National Land Policy, and whether or not it was the same thing as the “land holding entity” proposed in the CLRR model. While some participants believed it should be one and the same, a large number of participants felt that the two bodies should be different. The “land holding entity” would be made up solely of community members who would be responsible for the governance of that land, and the Community Land Board would be a government body that would oversee community lands in a given area. No conclusion was drawn on this issue, as the MoL has not yet clearly defined this, and the aspect of Community Land Boards was absent in the draft National Land Commission bill.



Kenya SECURE Project consultant, Dr. Antwi Adarkwah, presenting an overview of the CLRR model to the workshop participants.

- **Checks and balances** – Participants underscored the need for checks and balances within a community’s land holding and governance entity to limit possible ill consequences from individuals within and external to the community who may try to take advantage of the community at-large to further their own interests. The need for female representation in the land holding entity was also emphasized in order to ensure that women members of the community, who are often very active in the utilization and management of land, are also part of the ownership and governance of the land. It was agreed that there must be clear and accessible documentation of the community institutions and rules so as to enhance provisions for gender equity and to be in line with the constitution..
- **Notion of ‘first settler basis’** - There was negative reaction to the notion of ‘first settler basis’ as a method to define customary claims, which was mentioned in the presentation by the SECURE Project consultant as one way of identifying community land claims. The SECURE consultant responded by saying that the project was not proposing or endorsing this method for use in the CLRR, but that, simply, it is just one way of identifying such claims. Reactions to this were united in saying that this method would open a Pandora’s Box in Kenya, and therefore, should be avoided.

**The impact of the planned Lamu Port** – Concern was raised by some participants about the manner in which planning for the Lamu Port is being done, and its potential impact on the SECURE Project pilot communities. One of the greatest impacts of the planned port so far was the influx of individuals, groups and corporate entities interested in acquiring land, sometimes for speculative purposes and which may not take into account community rights or claims. In response, a government representative promised that the community will definitely be consulted in the near future and there was no cause for alarm. There were also concerns on the potential impact of the port in the project area especially in relation to the CLRR model. The response to this was that most of the infrastructure will be south of the targeted pilot communities.

- **Historical claims** - The issue of historical claims in the pilot area and whether the CLRR model had developed mechanisms of addressing them, especially when the implementation properly starts, was raised, too, by a number of participants. There were concerns that while this needs to be addressed, it should not be done in such a way that even people who voluntarily use the historical injustices excuse for speculative purposes take land from other community members. The plenary was informed that the NLP has clear provisions for dealing with historical injustices on land. It was



Left to Right, Aisha Mohammed, Shungwaya Welfare Association; Soipan Tuyu, USAID Pro-Mara Project; Rebecca Wangui, Kenya Land Alliance.

further pointed out that the TJRC commission would be coming to the area in the near future and, thus, that it was upon the communities to make their concerns and ideas known. It was further agreed that provisions be embedded in the CLRR process so that during the implementation process there would be ways of taking inventory of historical injustices in relation to land and other natural resources that would then be passed to the relevant agencies to deal with in the future. The participants also requested the government to provide documentation as to what is already registered in the pilot communities. It was agreed that during the CLRR implementation in the pilot areas, the disputed areas will be mapped and areas claimed to be irregularly acquired from community lands will be clearly indicated. This will then help the Ministry, together with the communities, bring to light the overlapping claims that will then have to be dealt with.

- **Land Legislation** - One of the major queries that arose during the Q&A session related to the land reform process and the new draft bills. It was reported that while there was a draft Land Bill and Land Registration Bill in circulation, it was unfortunate that community land was not part of the two despite the fact that this is an important characterization of land. The participants then proposed that the Ministry call back the two bills and amend them accordingly to provide for community lands as per the Constitution and National Land Policy.

In response to the query on community lands, the Ministry representative said that four pieces of legislation were going to be enacted – a National Land Commission bill, a Land bill, a Land Registration bill, and a Community Land bill. He noted that ideally the Land bill would include provisions for all categories of land, but that the Constitution mandates a Community Land Act. The Ministry promised that there was still time and the participant’s suggestions would be looked into as part of consensus building on the bills and, if need be, amendments to address the concerns would be made. Meanwhile, they asked the stakeholders to advocate for incorporation of community lands in the Land bill and that the piloting of the CLRR be completed in a timely manner so as to help inform the legislation.

- **Community Land Transactions** - Another issue that came up was on how to make sure that once communities have titles, they cannot easily transact community land to outsiders at the expense of the community’s interests. It was agreed that during the piloting of CLRR, clear guidelines will need to be developed for communities to have clear rules on such transactions.

## DAY 2 – TUESDAY, 13 SEPTEMBER

The second day of the workshop was mainly used to review and enhance two important documents for the eventual implementation of CLRR: a draft Community How-to-Guide on the CLRR Process and a Public Information and Awareness Strategy.

The USAID representative made his opening remarks in the morning on Day Two due to his absence at the Opening Session of Day One. He pledged that the agency will continue collaborating with the Ministry on land reforms, as they believe that land is one of the most important assets in helping the country achieve Vision 2030. He said that, in the eyes of USAID, secure land rights would then catalyze investments in urban and rural areas, create livelihood opportunities and encourage sustainable natural resource management. He added that the potential offered by the CLRR model was immense in trying to unlock the community land question, and hoped that there will be goodwill from the Ministry in implementing the model soon.

### Community How-to-Guide on the CLRR Process

The draft *Community How-to-Guide on the CLRR Process*, developed by the SECURE Project, was handed out to the participants, followed by a short question and answer session. The guidebook was developed to help communities understand the potential of having their community lands registered by the Government, and the roles and responsibilities of the community in the CLRR process.

The workshop participants were then broken into groups to review certain sections of the draft How-to-Guide, and propose additions, corrections, omissions, and other ways to improve the document. The copious suggestions for improvement are being integrated into the document separately from this proceedings report.

### Public Information and Awareness Strategy

The afternoon session included a presentation on the draft Public Information and Awareness (PIA) strategy developed for the CLRR process by the SECURE Project. This was followed with some questions and answers, and later group work to provide suggestions to enhance the document before its usage in preparation for the implementation of the CLRR. Some of the recommendations included increasing the targeted audiences, having short and precise messages, and the need for the MoL to be in the forefront in implementing the strategy. During the workshop, one of the participant organizations, the Kenya Land Alliance, promised support in implementing the PIA if the need arises. Below is an outline of the PIA Strategy developed with the input of the workshop participants.

Audiences	Key Messages	Modes of Communication
<ul style="list-style-type: none"> <li>▪ Communities without land tenure security</li> <li>▪ Politicians</li> <li>▪ Provincial/local administration</li> <li>▪ General Public</li> <li>▪ Media</li> </ul>	<ul style="list-style-type: none"> <li>▪ Constitutional Provisions on land and land rights</li> <li>▪ National Land Policy directives on Community Land</li> <li>▪ Potential benefits of community land</li> <li>▪ Details of community land rights recognition, registration, governance and management</li> </ul>	<ul style="list-style-type: none"> <li>▪ Direct community sensitization</li> <li>▪ Media coverage – Print &amp; Electronic</li> <li>▪ Print Advertisements</li> <li>▪ Websites</li> <li>▪ Social Media outlets</li> <li>▪ Printed materials: brochures, posters</li> <li>▪ Radio/TV messages</li> <li>▪ Radio/TV interviews &amp; talk shows</li> <li>▪ Community How-To Guide</li> <li>▪ Fact sheets</li> </ul>

## DAY 3 – WEDNESDAY, 14 SEPTEMBER

Day 3 concentrated on the implementation planning of the piloting of the CLRR model, including discussions about the implementation team, the timeline for implementation, and a presentation of the draft Guidelines for CLRR Practitioners which will serve as the basis for a training session for the implementation team prior to implementation.

### CLRR Implementation Plan

The workshop participants viewed a presentation of the draft plan for the implementation of the CLRR model. Participants were then assigned into groups to review and provide suggested refinements to the draft plan, including designation of the field implementation team, and a draft timeline of field implementation activities. The implementation plan is being prepared as a separate document.

One of the main observations from the discussion after the presentation of the draft plan and the group work was the issue of creation of demand for the CLRR. Some participants wondered whether there was existing demand for community land recognition throughout the country, and if not, how was the project intending to create that demand? The response was that the SECURE Project is only working in Lamu County as a pilot site. While there was demand in Lamu due to the project's efforts over the past two years to lay the groundwork for community lands, it was suggested that it would be useful to begin informing communities throughout the country of the option for community land rights recognition so that they can make informed choices. It was affirmed that there is much land under the Trust Land regime in the country and unless advocacy and awareness campaigns are mounted, the potential beneficiaries will continue being ignorant of such initiatives. As a result, there is a need to create awareness of the opportunity to register community lands and generate demand.

The participants felt that the model needed to be packaged and brought out to the public for it to gain popularity as it had timely provisions that would help in solving the problem of land as faced by many communities beyond even Lamu and especially in the pastoralist areas of the country. Some of the advocacy strategies proposed included sustained media engagement, i.e. through advertisement spots and press releases to generate news stories in the print and electronic media. It was also proposed that the Ministry of Lands take the leading role in promoting the model as its own rather than the SECURE Project doing so. One of the ways of showing this authority would be for the Minister and/or Permanent Secretary to appear on radio and television talk shows. It was also suggested that the Ministry take a more active stance to promote the model in Lamu, as there was still a contingent of critics suggesting that community lands recognition is not the best solution to address the land tenure insecurity in the region.

### CLRR Implementation Team

It was proposed that the CLRR main implementation team members be as follows:

<b>Lead Team</b>	<b>Actors</b>
<ul style="list-style-type: none"><li>• Ministry of Lands</li><li>• LRTU and local assistant surveyors</li><li>• USAID SECURE project</li></ul>	<ul style="list-style-type: none"><li>• Ministry of Lands</li><li>• Surveyor</li><li>• Boundary committee members</li><li>• Governance committee members</li><li>• Community in meetings</li><li>• Director of Survey</li><li>• Commissioner of Lands</li><li>• District Working Committee</li></ul>

## Implementation Timeline

The timeline here for piloting the CLRR model was discussed and agreed upon, assuming speedy approval of the model by the Ministry and the mobilization of human resources.

The participants requested that the Ministry approve the model as soon as possible in order to provide the project with a workable implementation plan, and to provide the necessary impetus for the SECURE Project to seek a cost extension from USAID in order to complete the piloting beyond the current project end date of April 30, 2012.

## Guidelines for CLRR Practitioners

The presentations and group work on the implementation plan were followed by a short presentation on the draft *Guidelines for CLRR Practitioners* manual for the technical staff who would be carrying out the implementation of the CLRR. This implementation manual will serve as guidelines to the facilitating team when engaging with the communities, and will be the basis for a training session that is scheduled prior to commencing the piloting activities in the field. Workshop participants provided suggestions for enhancing the various sections of the guidelines manual. These suggestions are being integrated into the document separately from this proceedings report.

## **DAY 4 – THURSDAY, 15 SEPTEMBER**

The fourth day of the workshop was used to follow up on loose ends (parking lot issues) from the previous day's deliberations and prepare for the last day of the workshop when the Minister of Lands was scheduled to officially approve the model. Some of the issues discussed during the day included a continuation on the previous day's presentations on the CLRR implementation guideline for facilitators and technical staff (as discussed in the notes of the previous day) with group comments on the guidelines.

Other parking lot issues dominating the discussions included the 'first settler' versus other rights claims including the gender aspect, aspects of land use planning as a pre-requisite when setting aside community lands, composition of community land boards taking into account gender and integrity concerns as directed in the constitution, the CLRR vs.

squatter settlement scheme, the divesture and registration of different lands for community lands, TJRC synchronization, etc. The issue of land use planning was presented by the MoL staff based in Lamu and

### **Calendar of Implementation**

#### **October 2011**

- Approval for conversion of public land into community land
- Approval to pilot test
- Finalization of implementation manuals

#### **November and December 2011**

- Procurement of stationery and necessary equipment for CLRR implementation
- Training of implementation staff
- Ground preparation
- Create community demand through Public information and awareness
- Community engagement
- Recording of customary land claims and governance rules

#### **December 2011 to April 2012**

- Validation and finalization
- Endorsements
- Processing of plans and registration

#### **April to June 2012**

- Prepare reports on lessons learned to inform legislation

they emphasized the need of this as part of the process in working with communities as their community lands are being recognized and registered.

The participants then made preparations for the next day's CLRR approval ceremony with the Minister of Lands and other senior officials visiting from the Ministry.

## DAY 5 – FRIDAY, 16 SEPTEMBER

Day 5, the last day of the workshop, was mainly set aside for the CLRR model approval ceremony with the Minister of Lands in the afternoon. The day saw an increase in the number of participants as community representatives from the pilot areas together with other stakeholders including the District Commissioner of Lamu East, the Principal Chief of Lamu, the County Councilors, representatives from KWS, Save Lamu, Kenya Human Rights Commission and other groups joined the other participants in anticipation of the approval ceremony.

The morning of the final day was used to deliver presentations to the new participants in order to bring them up to date on the presentations and discussions of the

preceding days and to update them of the progress achieved so far. There was then a discussion led by the KWS Senior Warden from Lamu, Mr. Michael Gichure, on the case of Kiwayu Island. Kiwayu is a special case among the pilot communities because it consists of two indigenous villages within a gazetted reserve, the Kiunga Marine National Reserve. Since gazettement in 1979, the inhabitants of the island have been allowed to remain in their villages. The Senior Warden made it clear that despite rumors that KWS plans to evict the communities from the island; this was not true as they recognized that the communities have rights to live on the island. He expressed hope that the CLRR process will assist in formalizing an agreement between the communities and KWS for the communities to continue to live on the island. He announced that KWS had recently launched a management planning process for the region, including the KMNR and Kiwayu Island, that will hopefully, through consultations with key stakeholders, come up with amicable ways for the community and KWS to develop co-management arrangements that are mutually agreed to with the obligations of different actors and benefit sharing arrangements set in place.

This discussion was then followed by a presentation from the Deputy Director of the East African Wildlife Society (EAWLS), Mr. Michael Gachanja. He spoke on the importance of communities managing natural resources on community lands themselves, with co-management from government resource agencies and NGOs. **(See presentation in Annex 3)**

In the afternoon, we learned that the scheduled appearance of the Minister of Lands, the Honorable James Orengo, would not take place and that Mr. Orengo would be unable to attend at the closing ceremonies. Instead, the Assistant Minister, the Honorable Sylvester Wakoli Bifwoli, officiated over the closing of the workshop, accompanied by Mr. Ephantus Mundia Murage, Director of Survey, Mr.



The Boni representative to the Lamu County Council (left), together with the DC Lamu East, as they endorse the CLRR model in front of Assistant Minister of Lands and other Ministry officials.

Augustine Masinde, Director of Physical Planning, Mr. E.W.Barasa, Sr. Deputy Secretary, and Mr. P.K. Mwangi, Deputy Director of Land Adjudication & Settlement.

After some welcoming comments by the Deputy Coordinator of the Land Reform Transformation Unit, the SECURE Project Chief of Party presented an overview of the project and the CLRR model. This was followed by comments from community stakeholders who endorsed the concept of community lands, and then by comments from the District Commissioner of Lamu East and County Councilors representing the Boni area and Kiunga. Remarks of the USAID Mission Director, Ms. Erna Kerst, were then delivered by her representative, as she was unable to attend the ceremonies. She stated that the “CLRR model reflects an

innovative approach to documenting and conferring land rights in a systematic and inclusive fashion” and “represents high quality technical expertise and broad consultation with all stakeholders.” She concluded by pronouncing that she is “certain that [the] two governments (the United States and Kenya) will sustain the current momentum in supporting the implementation of principles of the new Land Policy as part of Kenya’s broader reform process.” **(See remarks of USAID Mission Director in Annex 4)**

The Senior Deputy Secretary then made some general remarks, thanking everyone for their participation and hard work in the workshop and in the development of the CLRR model, before he introduced the Assistant Minister. The Assistant Minister then proceeded to deliver a speech which had been previously authorized by the Minister of Lands, recognizing the contributions of the SECURE Project in the implementation of the National Land Policy and Chapter 5 of the Constitution. He stated that, “for the first time in Kenya, the CLRR offers opportunity to take politics out of land administration. The Model could also be used by the communities to document their historical land claims to be presented to National Land Commission when operational and to the Truth, Justice and Reconciliation Committee (TJRC) for consideration and re-dress. The model will also contribute immensely to the development of the legislation on land that the Ministry of Lands is currently undertaking notably the Land Act and the Community Land Act.”

“Considering the pivotal role that the CLRR Model will play towards implementing the provisions of the Constitution and the National Land Policy,” he continued, “the Ministry of Lands hereby approves the CLRR Model to be pilot-tested immediately in the project area, starting with the Boni-Dodori corridor, and the lessons learned be incorporated to improve the Model. In addition, a Cabinet Memorandum be prepared to seek Cabinet approval to convert Public land (formerly Government Land) in Lamu that has not been alienated and registered to community land as we await Parliament to enact legislation that will allow for conversion of land from one category to another.” The Assistant Minister then declared the workshop closed. **(See remarks of Assistant Minister in Annex 5)**



The Assistant Minister reads the closing remarks on behalf of the Minister, approving the CLRR Model for piloting, and then declaring the workshop closed.

# APPENDIX 1:WORKSHOPAGENDA

## **Monday, September 12**

### Morning

- Welcome: SECURE Chief of Party
- Opening Remarks: LRTU Coordinator
- Remarks of USAID
- Review of the Workshop Agenda
- Tea Break
- Overview Presentation of CLRR Model
- Status Update of CLRR from Ministry

### Afternoon

- Questions & Answers on CLRR (panel discussion)
- Review and Revisions of CLRR Model & Document (group activity)
- Group Presentations and Finalization of CLRR Model & Document

## **Tuesday, September 13**

### Morning

- Preparing Communities for the CLRR
- Review the draft Community How-to Guide to the CLRR process
- Enhancement of draft Community How-to Guide (group activity)
- Group Presentations and Plenary Discussion on Community How-to Guide

### Afternoon

- Introductory Presentation on Public Information & Awareness
- Brainstorm and plan a public information and awareness campaign (group activity)
- Group Presentations and Plenary Discussion on Public Information & Awareness
- Timeline of Public Information & Awareness activities

## **Wednesday, September 14**

### Morning

- Presentation of draft step-by-step Implementation Plan
- Review of step-by-step Implementation Plan (group activity)
- Group Presentations and Plenary Discussion on step-by-step Implementation Plan
- Finalize the designation of the implementation team
- Finalize the timeline of CLRR field implementation activities

Afternoon

CLRR Loose Ends:

- Community Land Boards and their registration/formalization/functions
- Registration of Community Lands
  - Type of Title
  - Registration Options

### **Thursday, September 15**

Morning

- Presentation of draft Implementation Guidelines for CLRR practitioners
- Enhancement of draft Implementation Guidelines (group activity)
- Group Presentations and Finalization of draft Implementation Guidelines
- Discuss and plan a training workshop for CLRR practitioners

Afternoon

Post Piloting Activities:

- Legislative Provisions (Community Land Bill, Land Registration Bill...)
- Conversion of Trust Lands to Community Lands
- Mechanisms to deal with Overlapping Claims on delineated Community Lands

### **Friday, September 16**

Morning

- Case of Communities on Kiwayu Island within the Kiunga Marine National Reserve
- Natural Resource Management on Community Lands
- Review presentation of CLRR Model and CLRR Implementation Plan

Afternoon

- Arrival of the Minister and his team
- Participants Lunch with Minister
- Welcome Remarks by Master of Ceremonies
- Brief on Secure Project by Coordinator, Land Reform Transformation Unit
- Overview of the CLRR Model by Chief of Party, Secure Project
- Comments by community stakeholders
- Remarks by the USAID Mission Director
- Comments by District Commissioner – Lamu East, Chair of the District Working Group
- Remarks by Senior Deputy Secretary, Ministry of Lands
- Address by the Hon. Minister for Lands
- Brief Q&A
- Vote of Thanks
- Closure of the Workshop
- Refreshments

## APPENDIX 2: LIST OF PARTICIPANTS

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45	Mr. Ephantus Mundia Murage, Director of Survey, Ministry of Lands		
46	Mr. Augustine Masinde, Director, Physical Planning, Ministry of Lands		
47	Mr. E.W.Barasa, Sr. Deputy Secretary, Ministry of Lands		
48	Mr. P.K. Mwangi, Deputy Director of Land Adjudication & Settlement		
49	Mr. Julius Saina, Ministry of Lands		
50	Mr. Cyrus Ndegwa, Ministry of Lands		
51	Mr. Elija Aloru, Ministry of Lands		

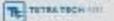
# ANNEX 1: OVERVIEW OF KENYA SECURE PROJECT



## Overview of the Kenya SECURE Project

12 September 2011

Kevin M. Doyle, Chief of Party  
Kenya SECURE Project



### Kenya SECURE Project

- Designed as part of the Land Reform Support Programme (LRSP II) of the Ministry of Lands
  - To strengthen the NLP process & principles
  - To promote sustainable and equitable use of land
- Implemented by the MoL LRTU
- Supported by the DPGL



### SECURE Project

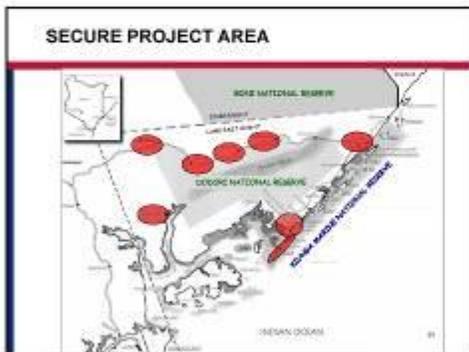
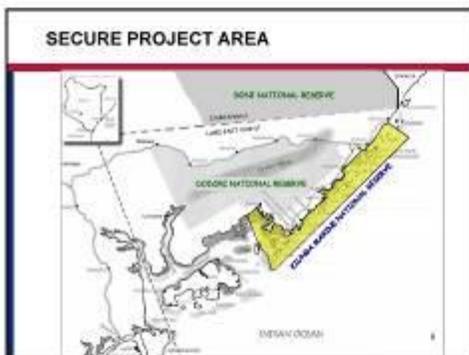
Donor: 	Facilitator: 
Implementing Agency:  Ministry of Lands	Implementing Partner:  KENYA WILDLIFE SERVICE
Consulting Partners:	
	

### SECURE Project Objectives

1. Improve security of tenure and reduce conflict over natural assets
2. Improve management of protected and biologically sensitive areas
3. Provide lessons learned to inform policy

### SECURE PROJECT AREA

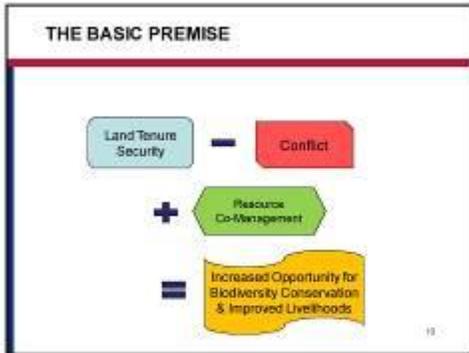
KENYA: DUSAR



**SECURE PROJECT: UNDERLYING PRINCIPLES**

- **Improved land tenure security**
  - Clarification and formalization of customary land and resource rights will help reduce conflict
  - and will allow for integrated and collaborative land use planning and resource management.

12



### Community Land (Section 3.3.1.2)

- Community land refers to land lawfully held, managed and used by a given community as shall be defined in the "Land Act"
- To secure community land, the Government shall:
  - Document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law

21





### Sources of Concern and Conflict

- Land and institutions that govern its ownership and use have greatly affected growth and development of the economy in the Kiunga, Boni and Dodori Reserve areas and the environs
- Lack of access to land and inefficient land administration system has had a negative impact on the regions investment environment as well as its physical environment, greatly impacting the success of conservation efforts in this biologically significant area

### Sources of Concern and Conflict

- In the project area, land is governed by both statutory law and customary practices. While ownership is well defined in the statutory law, customary practices have not, heretofore, been honored by the Government.
- Land tenure in the area derives heavily from customary practices notably institutions of marriage, power and control and inheritance.
- Consequently, the rate of socio-cultural, economic and political development has been directly affected by the level of security of land tenure.
- The above scenarios have been the source of concern and conflicts, and thus clamour for securing land tenure and property rights.

### Sources of Concern and Conflict

- Most citizens live without any form of secure tenure (legally designated as "squatters"), and are under constant threat of eviction, which obviates their inability to access credit and constrains their motivation to improve their land, shelter and neighborhoods, as well as to participate in the co-management of the natural resources on which they depend and the conservation of the biodiversity values in the region



# ANNEX 2: OVERVIEW OF COMMUNITY LAND RIGHTS RECOGNITION MODEL

**Overview of  
Community Land Rights Recognition Model  
(CLRR)**

Yaw Adarkwah Antwi, PHD MRICS  
Land Tenure Expert  
Consultant to Kenya SECURE Project

Ministry of Lands Meeting  
12-16 September 2011  
Mombasa

### Introduction

**Speaker's Background**

- Academic study of customary tenures around the world: PhD study and publications on the economics of customary (informal) land markets in Sub-Saharan Africa. Consulted for the British Royal Institution of Chartered Surveyors, DFID, USAID on customary land tenure projects in various African Countries.
- This presentation is based on field experience of customary land rights recognition and institutional strengthening from
  - Ghana,
  - Sudan and,
  - Sierra Leone
- Some points are informed by ideas gleaned from recent ongoing work in Liberia and Namibia.

### The Question of Coastal Strip Lands

- Currently there is a perception of injustice regarding "outsiders" taking land from "natives".
- Directly or indirectly this perception has been associated with the use of the conventional squatter settlement schemes employed to settle villagers.
- These perceptions appear sporadic and specific to the Coastal strip but in fact they are actually symptoms of a systemic problem that arise from registration regimes that attempt to supplant existing customary land rights.
- Final solutions to political problems of this nature need to be found for land at the coastal strip.

### Approach to Lasting Solutions

- The 2009 Land Policy seeks final solutions when it asks for the transformation of lands along the coastal strip to Community Lands.
- It further enjoins the Government of Kenya to "lay out..... a clear framework and procedures for: the recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women" (Section 3.3.1, paragraph 66 (d) I of Land Policy)
- Analysis of the situation in the context of similar experiences from elsewhere in Africa where plural land rights regimes drive land management has informed the design of the Community Land Rights Recognition (CLRR) model.

### Crucial Pillars for Recognizing and Registering Community Land Rights in Kenya

- The Community Land Rights Recognition (CLRR) Model is pivoted on the following two main pillars:
  - Recognise, demarcate and register areas for communities identified using the Kenyan Constitution's criteria of,
    - ethnicity,
    - culture or,
    - similar community of interest
  - Document, nurture, support, as the case may be, customary institutions that administer and manage customary tenure among group members without necessarily getting involved in setting rules and standards or demarcating internal parcels(See [Customary Rules](#))

### Under CLRR Power to Manage, Alienate, etc. Remains with Communities after Registration.

- CLRR provides a mechanism for community's lands to gain a status in law equal to 'titled lands' as stipulated by Section 3.1 paragraph 33 of the Land Policy without interference with their own way of doing things.
- Responsibility for effective management of lands lies with the community and their (non-government) appointed leaders.
- Also responsibility for mismanagement lies with community itself, not with politicians/government officials – no more blame games!
- For the first time in Kenya the CLRR offers a chance to take politics out of land administration.

### CLRR Minimizes the Cost, Logistics and Technical Staff Needed to Achieve Registration

- Reduction in costs are achieved since CLRR:
  - Relies on communities to provide evidence of boundaries with abutting neighbours
  - Uses community members' labour to cut boundary lines, install beacons etc.
  - Avoids contentious imposition of internal demarcation of parcels. This tends to be done continuously and incrementally by communities themselves using their own rules and institutions of land allocation without triggering much dispute.
  - The approach reduces the number of government paid technical staff needed for demarcation. [\[See Economic Justification\]](#)

### Main Tenets of CLRR Model (1)

- CLRR translates Community Land Provisions of the Land Policy and Constitution into Practice.
- It acknowledges communities have rules and institutions for land rights and land management that have stood the test of time and suits their environment.
- It utilizes those rules and institutions to achieve a land rights registration process that is well attuned to community needs.
- It preserves communities' land institutions and rules in the recognition and registration process.

### Main Tenets of CLRR Model (2)

- By preserving community's land rights rules and institutions, the CLRR process obviates the tendency of inadvertently expropriating or extinguishing certain land rights of some community members (as tended to happen under the squatter settlement scheme approach) which inevitably leads to injustice and persistent calls for redress.
- CLRR prevents potential abuse by elite since it avoids the contentious issue of internal demarcation and allocation of portions of community lands to "outsiders".
- Under the CLRR process, transactions with "outsiders" are acceptable but are to be executed by the community itself, represented by their Land Governance Entity.

### CLRR Stages (1)

- Stage A: Demand for community land rights recognition
  - The public is informed of the opportunity to secure community land and resource rights via the CLRR process.
- Stage B: Community Engagement
  - The community is engaged in the process of taking inventory of their land and resource rights.
- Stage C: Recording of Community land claims and governance rules
  - The community's land claims and land governance rules are recorded.

### CLRR Stages (2)

- Stage D: Demarcation
  - Actual physical demarcation of community boundaries is undertaken with the participation of the community.
- Stage E: Validation & Finalization
  - All documents and maps are reviewed and agreed upon by the community and relevant government agencies.
- Stage F: Issuance of Title
  - A Certificate of Title of Community Land Ownership is conferred to the community land-holding entity.

### Communities Land Rights Rules and Institutions Examined in Some Detail

- Communities' tried and tested rules and institutions for land holding are technically referred to as customary land rights in the land tenure literature internationally.
- Recognition of Community Lands under the Constitution and Land Policy is therefore tantamount to the granting of equal legal status to customary land rights in Kenya.
- Though customary land rights differ depending on the circumstances of given communities, there are fundamental aspects common to them across Africa.
- Ideas of fundamental aspects of customary land rights has helped in the development of the CLRR to ensure the registration system is in tune with community circumstances.

### Common aspects of customary land rights.

- Customary land rights are rights held by groups, clans, extended families, individuals and/or combinations of these over land they normally (but not always) occupy and use (broadly defined)
- Often established on first settler basis (but not necessarily always) and traced to antecedents in history
- At their very elaborate level they are part of a complex and layered relationships between families, sub-clans, clans, villagers, tribes and individuals

13

### Customary Rights Examined (Cont'd)

- The rights in essence originate as *de facto* rights that rest on the simple fact of 'being on the land' for so long and having rules that regulate land use and alienation etc. without major conflicts and counter claims.
- These complex web of rights and rules often do not directly map onto formal (western) notions of property rights and therefore present challenges when embarking on titling rights.
- Almost always not documented but exist as *real, practical and legitimate* rules embedded in community's culture and passed on to generations as oral traditions and practices relating to land.
- Customary rights are common around the world and, in fact, are the predominating land rights regimes in Africa in Countries that formally recognise them and in even those that don't.
- It is these rights that the Kenyan Constitution proposes to recognise by designating lands as Community Lands.

14

### Why Recognise Customary Land Rights?

- When a significantly large number of groups of people/tribes/clans, etc. are present in a polity and they have evolved their own rules and institutions that assign property rights among members and govern how common properties are utilised, it is both important and necessary to recognise these rights and incorporate them in formal land administration for three main related reasons:
  - Justice
  - Tenure security
  - Economic (land market) efficiency

15

### (a) The Justice of Customary Land Rights Recognition

- Natural Justice requires that it is only fair to recognise first settler land rights and acknowledge them as the basis from which any land rights regimes (even when considered superior by whatever criteria) are to be introduced.

16

### (b) Recognition of Customary Land Rights to Ensure Tenure Security

- When customary land rights are overridden through the use of government fiat, tenure insecurity is engendered.
- There is a constant battle between customary rights holders who continually attempt to reclaim their rights from government assigned rights holders, while the latter uses government officials, the political system etc. to hold on to their land claims.
- Every now and then, depending on the suasion of the politics and/or the tilt of power of officials, lands could be reverted to 'original owners' and vice versa. This dynamic introduces tenure insecurity into many an African land market and contributes to driving away needed investments.

17

### (c) Economic Justification for Recognising Customary Land Rights

- It makes economic sense to recognise customary land rights for efficient operation of the land market
  - Rent-seeking theory predicts, and empirical evidence around Africa confirms, that overriding customary land rights and re-assigning rights (already assigned customarily) through the use of government fiat, triggers off wasteful diversion of real resources away from investment in land into unproductive activities and actions explained in the following slides

18

**(c) Economic Justification for Recognising Customary Land Rights (Cont'd)**

- Resources are wasted via three main channels:
  - (1) Customary land rights holders (or their representatives) spend (waste) resources to protect and/or win their rights back: money and time spent to orchestrate violence, cost of destroying investments on lands they deem to be theirs, cost of lobbying and "advocating" the police to get their customary land rights returned and/or recognized, etc.
  - (2) Government-assigned rights investors waste resources through expenditure to influence the governmental system and to protect their investments from attempts by customary land owners to reclaim lands:
    - i. paying politicians and officials for the grant of lands,
    - ii. paying for excessive security personnel,
    - iii. erecting protective barriers that are not necessarily essential for their operations,
    - iv. spending money and time to undermine customary land holding institutions etc.

19

**(c) Economic Justification for Recognising Customary Land Rights (Cont'd)**

(3) Formal land administration becomes inefficiently expensive as a result of,

- i. the unnecessarily high number of technical staff needed to plan, allocate, and police land rights (functions that mostly the customary system handles without recourse to government purse) and,
- ii. exceptionally complex rules and procedures for the documentation and registration of land rights convinced by officials to mystify the public and the politics so as to extract as much rent (bribes) as possible from land market players while at the same time to justify their budgetary allocations.

20

# ANNEX 3: NATURAL RESOURCE MANAGEMENT APPROACHES ON COMMUNITY LANDS

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FROM THE AMERICAN PEOPLE

## Natural Resource Management Approaches on Community Lands

Michael K Gachanja  
(gachanja@eawwildlife.org)  
EAWLS  
September 16, 2011



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FROM THE AMERICAN PEOPLE

### National Land Policy and Constitution of Kenya

- Community land consists of (group reps registered land, land transferred to specific communities, lawfully held, managed or used by specific communities, ancestral lands, trustland)
- Land Policy and Constitution recognize and protect rights of forest, water dependent or other natural resources dependent communities and facilitate access, **co-management** benefits from the resources.

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FROM THE AMERICAN PEOPLE

### Natural Resource Management on community lands would require:

- Policy and implementation to be linked through a feedback process (in most cases there is big gap between the two),
- Government institutions and rural communities to negotiate as partners; and
- A complex set of interest groups to collaborate and participate honestly in the process.

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### Continuum of arrangements for NRM



- providing information after government decisions;
- consultation** with communities taken into account before government-led decisions;
- advisory** committees informing decision making;
- equal **partnership** in management decisions, planning and implementation;
- community **leading role**, government provides regulatory oversight/guidance and technical support and capacity (with or without assistance of third parties).

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### A) The Community Based Approach

- Under this approach, rural people make decisions about sustainable management of natural resources in their areas.
- This is a community property resource rights driven approach.
- The approach hinges on giving people authority and management control on their lands (or lands they have rights over), land neighbouring Pas)
- It requires creating fiscal policies that enable communities to realize tangible benefits

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### Underlying five principles of Community Based Approach:

- Effective management is best achieved by giving a value to natural resources
- Differential inputs must result in differential outputs
- There must be a positive correlation between management and benefit
- The unit of proprietyship, management and benefit should be the unit of production
- The unit of proprietyship should be small as practicable within ecological and socio-political constraints

**USAID KENYA**

**Forest Management by Communities**

Country	Under Concession	Under Communities A/B (%)
Cameroon	6.4 Mha	1.1 Mha -17.8%
CAR	5.4 Mha	0.0 Mha 0.0%
Congo	3.7 Mha	0.5 Mha 5.3%
DRC	33.5 Mha	0.0 Mha 0.0%
Gabon	13.9 Mha	0.0 Mha 0.0%
Mozambique	4.6 Mha	2.0 Mha 43.3%
Tanzania	0.6 Mha	3.6 Mha 595.1%

- USAID KENYA**
- B) Private/Community Based Approach**
- Under this approach, communities and private sector agree to set a conservancy/ or manage a particular NR
  - Private sector agree to lease the land for an agreed timeframe
  - Rules, regulations and responsibilities between the private entity and the communities are agreed upon

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- Private Community Based Approach related problems**
- Fewer benefits to communities
  - Linkages between the "benefit" and conservation objectives remain weak, and that the communities do not always perceive the benefits as addressing their real needs in terms of rural development.

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**Example of Community Based Approach The Northern Highlands Trust**

Highes have autonomy of management, decision-making authority (including financial management) and apply their own norms and rules on their land

Build upon traditional mechanisms for providing resources and - orientated decision making over resources are (commonly through states)

Customary access to land and resources maintained

Rules in co-management are shared




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- Benefit-Sharing from Land – Based Natural Resources**
- Put in place legislative and administrative mechanisms sharing of benefits from land based natural resources by communities and individuals;
  - Make **benefit-sharing mandatory** where land based resources of communities and individuals are **managed by national authorities for posterity**;
  - Ensure management and utilization of land-based natural resources involves all stakeholders

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**Benefit Sharing problems arise:**

- Lack of community participation
- Failure to realize community expectations
- Inability to bridge the conceptual gap between benefits realized and the management of the resources
- Inconsistency in benefit sharing approaches
- Failure to understand community costs, benefits and incentives related to forest conservation.

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**Some key factors for considerations for NRM on Community land**

- The specific natural resource factor
- Policy and Legislation factor
- Land factor
- Community factor
- Stakeholders factor
- Institutions and participation factor
- Financial factor

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**Some key factors for considerations for NRM on Community land: Natural Resource (e.g wildlife)**

Factor	Consideration
Potential	Is there sufficient wildlife resource or potential resource on which to base a viable project?
Location	Is the wildlife located in an area to which the community has a clear right of access to manage as opposed to being seen as trespassers?
Use	Is there a tradition of wildlife use and management? What options exist?
Monitoring	Are adequate and appropriate monitoring systems in place?

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**Some key factors for considerations for NRM on Community land: Policy and Legislation**

Factor	Consideration
Wildlife	CWM demands policy that links wildlife conservation to social and economic rural development.
Tourism	CWM demands policy that are compatible with sustainable use and the maintenance of ecological integrity.
Land use	CWM must be placed within the context of land use and allocation policy.
Fiscal	Clear policy mechanisms understanding on how communities would benefit are essential.
Legislation	All the above policies require a legal framework and the right of redress if they are to be effectively implemented.

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**Some key factors for considerations for NRM on Community land: Land**

Factor	Consideration
Community land	Clear land tenure is needed.
Land use planning and Security of Tenure	CWM should be supported by a land allocation that has prioritized a particular use in the context of a land use plan. Is there also some security of tenure and so it supported at national, regional and local levels?

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**Some key factors for considerations for NRM on Community land: Community**

Factor	Consideration
What is the Community?	There is a perception that communities are difficult to define and typically consists of many sub-groups with conflicting interests.
Institutional structure of the community	The fundamental issue in the community context is having a structure that can make decisions, is representative and has integrity, particularly in relation to benefit sharing and distribution.
Skill base	What is the skill base at community level? How can the skill base be developed?
Expectations	It is easy to raise expectations and then disappoint.

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**Some key factors for considerations for NRM on Community land: Stakeholders**

Issue	Consideration
Community stakeholders	Veeted interests and conflicts occur within communities.
External stakeholders	Conflict resolution with and between external stakeholders is more complex. Are demands of other stakeholders compatible with local needs?
Ownership	Who has the rights of management, rights of use, and legal access to the land are key questions that can help resolve or intensify a conflict.
Stakeholder influence	Are there stakeholders who exercise a large amount of influence?

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**Some key factors for considerations for NRM on Community land: Institutions and participation**

Issue	Consideration
Government agencies	Are government agencies supportive? Are they prepared to adapt their traditional roles? Will they resist policy reform?
Local County	Are counties prepared to act as facilitators or do they see themselves as central to the management of community lands, thereby usurping community authority and control?
Traditional local authorities	Such authorities are important in assisting the development of the community decision making structure. In assisting discussion for a, etc.
NGOs	What are their agendas and drives? And does it conflict with national government, county and community policies and objectives?
Participation	What is participation? who should participate? How can participation be encouraged?

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**Some key factors for considerations for NRM on Community land: Financial**

Issue	Consideration
Revenue	Is government willing to relinquish revenue from licenses, concessions?
Benefits	How to derive and share benefits is a key question. What form do benefits come in? What do communities recognize as benefits? What restrictions are there on benefits? Are there benefits for individuals or only communities as a whole?
Private sector	What are their motivations? Are there possible private sector/community partnerships? In such partnerships, what will be contribution by community?

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**Lessons learnt**

- There is much to be learned from exchange of ideas and solutions to problems but little to be gained from attempts to export project models wholesale (some concepts may be universal but site changes/situations may determine the need for site specific mechanisms to address problems)
- NRM is easier to implement where communities are more homogeneous and the population is small
- Advocacy is unavoidable element in NRM, it needs to be recognized as a positive process for raising awareness

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**Conclusions**

- Need to create enabling framework (policy, laws, institutions, guidelines);
- Recognize the respective parties' strengths and weaknesses for management contributions;
- Ensure equitable benefit-sharing.

# ANNEX 4: REMARKS OF USAID KENYA MISSION DIRECTOR



## **SECURE PROJECT WORKSHOP ON ENDORSEMENT OF COMMUNITY LAND RIGHTS RECOGNITION MODEL BY MINISTRY OF LANDS**

**Remarks of the USAID/Kenya Mission Director  
September 16, 2011**

### **Introduction**

Honorable James Orengo, Minister of Lands, Heads of Departments from the Ministry of Lands, ARD team, community participants, representatives from UN-Habitat and civil society.

I am pleased to join you today for this historic event to witness the adoption of the first Community Land Rights Recognition model. I commend the Ministry of Lands for taking a leadership role on this critical issue.

### **USAID and GoK Partnership**

The United States is one of Kenya's most important bilateral development partners. With an annual budget of nearly \$500 million, the U.S. and Kenya are working to address key development challenges such as improving health, promoting growth in agriculture, strengthening the quality of teaching and learning in schools, and supporting Kenya's efforts to carry out democratic reforms.

Working with the Ministry of Lands, particularly the Land Reform Transformation Unit (LRTU), on land policy is an important element of USAID/Kenya's development program. Through the SECURE program, USAID has provided over \$2.1 million to support the land reform process.

### **USAID support to addressing the Land Question in Kenya**

For 40 years, there has been impassioned debate about land tenure in Kenya. Today, development strategies such as Vision 2030 recognize that effective and equitable land management is vital for stability and progress in Kenya.

USAID shares the Government of Kenya's conviction that secure land rights are critical for increasing productive investments in urban and rural areas, creating livelihood opportunities, and

encouraging sound and sustainable natural resources management. This is particularly true for women, youth and the poor.

Significant progress has been made over the past few years. I congratulate the Minister for the adoption of the National Land Policy, incorporation of land principles into the new Constitution, and establishment of the Land Reforms Transformation Unit (LRTU) to maintain the momentum for land reform. It is also encouraging that supporting legislation, including the National Land Commission bill, the Community Land bill and the Land Registration bill are moving forward.

However, much more work lies ahead in order to deliver on the aspirations and expectations of Kenyans with regards to land.

### **Leadership, Commitment and Proof of Action**

Today, we are gathered together to launch the Community Land Rights Recognition model, or CLRR. The CLRR is the result of the tireless efforts of a determined team from the Ministry of Lands, our implementing partner ARD, and the communities themselves. Together, they have helped the Government deliver on its commitment to its people.

The CLRR model reflects an innovative approach to documenting and conferring land rights in a systematic and inclusive fashion. It represents high quality technical expertise and broad consultation with all stakeholders.

### **Closing Remarks**

Today's event marks an important step towards the institutionalization of the CLRR model. And looking at the conviction of those gathered at this event, I am convinced that the Ministry of Lands is well-positioned to apply the CLRR model as an effective tool for expanding land rights in rural communities. This progressive step reflects the spirit of the new Constitution and requires considerable leadership and support.

I am certain that our two governments will sustain the current momentum in supporting the implementation of principles of the new Land Policy as part of Kenya's broader reform process. We look forward to continued partnership with you on land reform and other development priorities to improve the lives of all people in this great country. Thank you for your commitment to the process and I wish you great success in implementing these noble actions.

# ANNEX 5: REMARKS OF MINISTER OF LANDS



REPUBLIC OF KENYA

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## MINISTRY OF LANDS

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**Remarks of the Honorable James Orengo, Minister for Lands, as delivered by the Assistant Minister, the Honorable Sylvester Wakholi Bifwoli, on the occasion of the closing ceremonies for the SECURE Project Workshop on the Community Land Rights Recognition Model at Kaskazi Beach Hotel, 16<sup>th</sup> September, 2011.**

Mission Director, USAID/Kenya

Hon. Assistant Ministers,

Hon. Members of Parliament,

Heads of Departments from Ministries represented,

Local Leaders,

Ladies and Gentlemen,

It gives me pleasure to officiate over the closure of this workshop on the Community Land Rights Recognition Model and take the opportunity to share my thoughts on the Model and the Government direction.

Over the years, the Ministry of Lands has been working towards the protection of citizens rights to land and providing security of tenure to individuals and groups. These rights were formerly derived from Government lands and trust lands, which have since been reclassified as Public Land and Community Land respectively by the Constitution of Kenya 2010.

As a system of land tenure in Kenya, "Community Land" is a new category introduced by Article 63 of the Constitution. This Article strengthens the various provisions in the National Land Policy regarding the recognition of all modes of tenure, including customary and community land ownership. Almost all previous statutes on land were geared towards individualization of land with few or no provisions for recognizing communal rights and interests to land.

To secure community lands, it is necessary to document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups and

incorporate them into broad principles that will facilitate the orderly evolution of community land law. For this reason, there is need to lay a clear framework and procedures for recognition, protection and registration of community rights to land and land-based resources taking into account multiple interests of all land users.

As part of the Land Reform Support Programme of the Ministry of Lands and with support from the Development Partners Group on Land, the Community Land Rights Recognition Model has been developed to lay down the procedure for recognizing community land rights. The model is not a legal framework but a sequence of actions to be undertaken by Government in collaboration with communities towards the recognition of their rights to land.

Essentially, the Model provides steps and processes that will enable the divestiture of land from public land category to the community land category as per the provisions of the Constitution and the National Land Policy that reclassify all Trust Lands to Community Lands, and the provision in the Policy to convert Public Land (formerly Government Land) in the Coastal strip to Community Land.

It acknowledges that the community land rights may incorporate overlapping claims to land rights and therefore ensure that all layers of overlapping claims are captured while at the same time, serving to provide evidence for any conflicting land claims that require special attention to be resolved.

For the first time in Kenya, the CLRR offers opportunity to take politics out of land administration. The Model could also be used by the communities to document their historical land claims to be presented to National Land Commission when operational and to the Truth, Justice and Reconciliation Committee (TJRC) for consideration and re-dress. The model will also contribute immensely to the development of the legislation on land that the Ministry of Lands is currently undertaking notably the Land Act and the Community Land Act.

It is therefore clear that the Secure Project has made major contributions towards implementation of both the Constitution and the National Land Policy. The ultimate success of this process will be enhanced by adoption of the Model by the stakeholders and the approval of the same by my Ministry. This will facilitate pilot-testing in the field of the model as soon as possible.

Considering the pivotal role that the CLRR Model will play towards implementing the provisions of the Constitution and the National Land Policy, the Ministry of Lands hereby approves the CLRR Model to be pilot-tested immediately in the project area, starting with the Boni-Dodori corridor, and the lessons learned be incorporated to improve the Model. In addition, a Cabinet Memorandum be prepared to seek Cabinet approval to convert Public land (formerly Government Land) in Lamu that has not been alienated and registered to community land as we await Parliament to enact legislation that will allow for conversion of land from one category to another.

My Ministry appreciates the support from our Development Partners and reiterates our commitment to this project and the continued partnership with our Development Partners.

With these few remarks, it is my pleasure to declare this workshop on Community Land Rights Recognition Model officially closed.

Thank you.

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