

KENYA'S NEW WILDLIFE LAWS

What impact on conservancies?



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A group of Impala in Olare Motorogi Conservancy adjacent to the Maasai Mara National Reserve.

When the first conservancies emerged in the 1990s it was not the result of a specific top-down policy, but rather a response to the growing calls to recognize landowners and communities as the custodians of their wildlife.

At that time there was no legal framework defining or regulating conservancies, and an interesting mosaic of government, NGOs, and private sector supported the creation and management of conservancies. The lack of policy and regulations may in fact be a driver for their growth, providing room for experimentation with models suited to particular contexts, and encouraging participation by those that might otherwise be wary of top-down agendas.

DEFINING CONSERVANCIES

The development of Kenyan conservancies is a unique example where conservation practice leads and policy follows, and it was only with the new Wildlife Act in 2013 that conservancies were formally and legally recognized. There is some confusion over what recognition means. Conservancy, essentially, refers to a type of land use. This means that someone devoting their land to wildlife conservation is engaging in a legitimate, nationally recognized activity, and through calling it a conservancy they are stating that one of their primary objectives is wildlife conservation.

A conservancy is not a land ownership model, as often misunderstood. Rather, a conservancy can be created on a number of different land ownership structures. When we talk about the different types of conservancies -- private, group,

and community -- we are referring to the land ownership model on which the conservancy land use is applied. A private conservancy, exemplified best in Laikipia, is where a single person, family, or corporate body owns the land. A group conservancy, like those in the Mara, is where several landowners have put their land together. A community conservancy, like those in northern Kenya, refers to those established on community land.

THINKING IN THE CONTEXT OF DEVOLUTION

This gets at a larger question of who Kenya's wildlife belongs to, which has become more complex through the ongoing experiment with devolution. According to the Kenyan Constitution, wildlife conservation is a national function where responsibility to conserve wildlife rests with the national government through the Ministry of Environment and Natural Resources.

Until now, this mandate has been implemented by the Kenya Wildlife Service (KWS) through its various offices and programmes. Key principles of the Wildlife Act emphasize effective citizen participation, equitable benefit sharing, and devolving the conservation and management of wildlife to the owners and managers of land. It is unclear how the above principles are being put into practice. Devolved management as described by Wildlife Act doesn't bestow ownership



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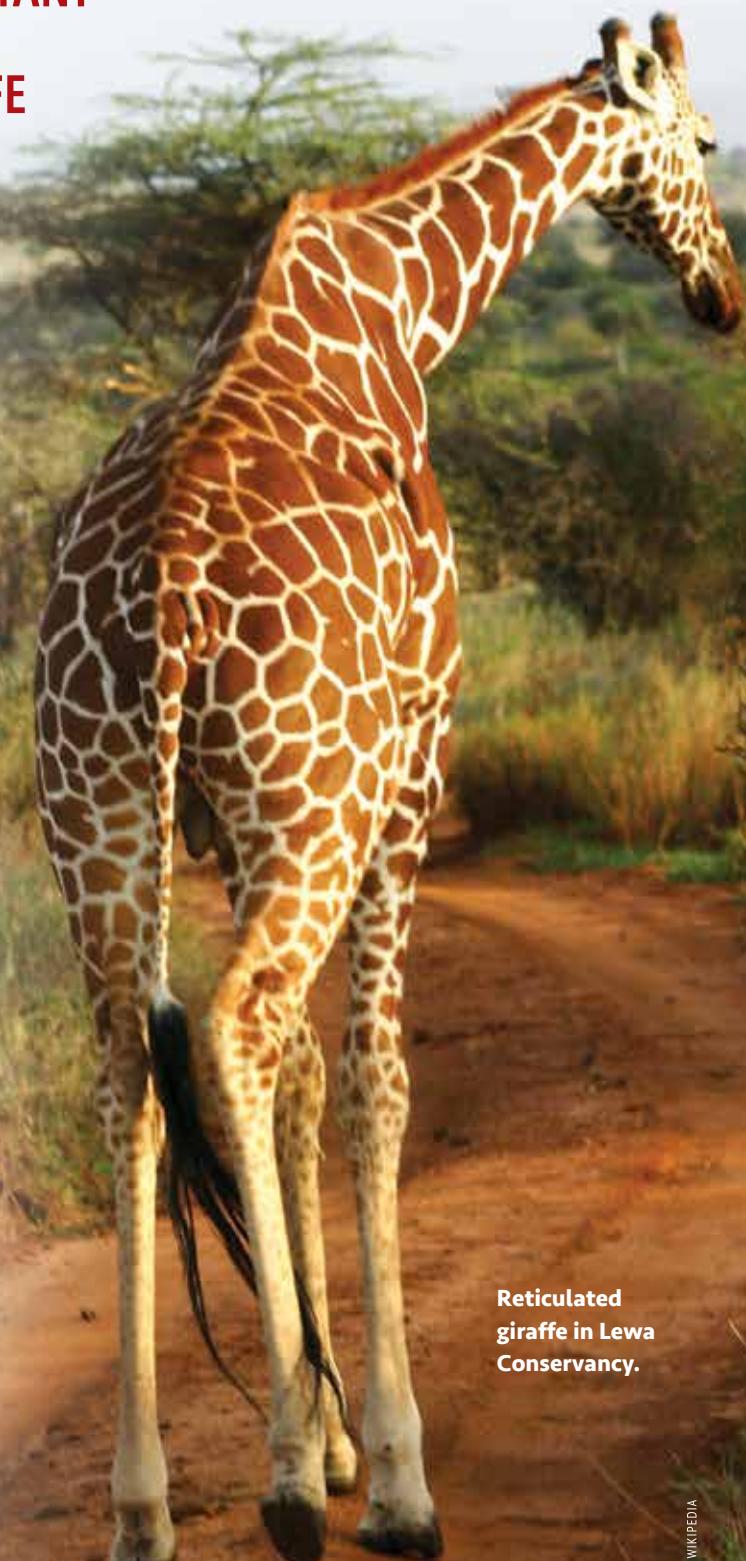
A NUMBER OF DEVOLVED STRUCTURES HAVE EMERGED THAT ARE IMPORTANT TO CONSERVANCIES AND LOCAL PEOPLE ENGAGEMENT IN WILDLIFE MANAGEMENT.

of wildlife to landowners as has occurred in some other African countries, but it sets a new paradigm which recognizes the landowner not only as a stakeholder, but as a legally recognized entity in the management of wildlife. Conservancies, then, are a way for communities and landowners to engage in devolved wildlife management outside state protected areas.

A number of devolved structures have emerged that are important to conservancies and local people engagement in wildlife management. Particularly important are the new County Wildlife Conservation and Compensation Committees (CWCCC), which were designed to devolve decision making related to conservation issues to the county level where they are closer to the people affected by these decisions. A CWCCC is composed of 13 members with 6 drawn from county governments, 2 from national government and 4 community representatives. Each CWCCC has a chairperson appointed by the cabinet secretary responsible for wildlife matters and a KWS warden who serves as the secretary. Theoretically, the composition of the CWCCC is designed to tilt decision-making downward towards the county and local communities, yet at the same time the committee remains accountable to the ministry in charge of wildlife issues.

The CWCCC has a variety of roles. These include supporting the development of ecosystem management plans, ensuring the distribution for wildlife benefits, collaborating with KWS to monitor the implementation of management plans in national parks, mitigating human-wildlife conflict, promoting conservation in county land-use planning, registering wildlife user rights, and supporting the preparation and implementation of management plans on community and private land. To date, however, these roles seem farfetched, as these CWCCCs have no implementation personnel nor budgets and appear to be entirely reliant on the secretary provided by KWS.

The CWCCCs provide an important opportunity for conservancies, and they should



Reticulated
giraffe in Lewa
Conservancy.

CONSERVATION

be strengthened. Not only does this devolved structure allow for discussion and decision-making informed by the local context in specific counties and regions, but the committees also provide a local point of contact and engagement for conservancies and a potential avenue to leverage county government support. Furthermore, the CWCCCs are meant to support and approve conservancy management plans, a key requirement in the establishment and operation of a conservancy. The huge costs associated with holding CWCCC meetings, and the need for a strong technical and management presence in the committees means that unless these structures are supported and recognized they are likely to hinder the needs of conservancies.

REGULATIONS

So far, we know that anyone may form a conservancy. We know that there is no prescribed minimum size of land in order to become a conservancy, and no restrictions on the type or diversity of land-use that occurs as long as it contributes to wildlife conservation. We know that a conservancy must register itself as some kind of legal entity, such as a company, a trust, society or even a Community-Based Organisation (CBO) to enable effective management of its affairs. We know that a conservancy must have a management plan and that the management plan will eventually be approved by the CWCCC and gazetted by the cabinet secretary. We know that this management plan does not need to be a complex document that gets forgotten in the shelves as so many do, but rather it can be something simple, something that makes sense to the conservancy members and represents a way for them to measure progress. We also know that conservancies can join or form Community Wildlife Associations that are outlined in the Act, and that conservancies can apply for wildlife user-rights to harness the benefits from wildlife. These include non-consumptive uses, such as wildlife-based tourism, commercial filming, cultural and

Elephants are among wildlife found in Laikipia County's conservancies .

The Status of Wildlife Conservancy in Kenya

140
Number of private and community conservancies

22
Number of counties where conservancies are located

religious practices as well as consumptive options like trade and live capture, research involving off-take, and cropping or culling.

Beyond this, distinct regulations regarding conservancies are being developed. While KWS issues a registration certificate for conservancies and registers the conservancy scouts, more clarity on how this process works is needed and how it relates to the CWCCC. Additionally, it is not established how management plans will be evaluated and approved by the cwcccs, or what the process will be to apply for and access wildlife user rights. These processes need to be fleshed out.

THE WAY FORWARD

Under the Wildlife Act, conservancies are one option for expanding wildlife conservation and engaging communities and landowners in the process. These are part of other conservation avenues that landowners and communities can engage, among others, including sanctuaries, game ranches, game farms, protected wetlands, conservation orders, and easements. These conservation models are a critical complement to our national parks and reserves and have the potential to distribute conservation decision-making and benefits to those that have historically been excluded.

The ongoing processes described above raise both concern and opportunity. If a supportive and enabling environment is created to catalyze growth of conservancies, it has the potential to mainstream conservancies into national development plans, increase accountability, and create an avenue to leverage government funding and attract increased support from development partners. If it becomes another bureaucratic stumbling block, however, leading to additional costs and hurdles of complying with registration requirements, the formalization process has the potential to kill the conservancy movement by creating the perception of government interference on private and community land. ●





PHOTO BY: IAN SAUNDERS

CASE STUDY FROM TSAVO MALKAHALAKU CONSERVANCY



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The Greater Tsavo Conservation Area (GTCA) comprises 42,000 square kilometers of wildlife dispersal areas in southern Kenya, including the Tsavo East, Tsavo West and Chyulu Hills National Parks, surrounding community wildlife conservancies, cattle ranches and large swathes of private and communal lands.

The GTCA boasts an impressive diversity of wildlife, including Kenya's largest single elephant population, numbering just over 12,000 animals (2011 census), which amounts to over one third of all of the country's elephants. The communities living on the boundaries of the National Parks belong to a diverse range of ethnic groups, with differing ways of life, customs and beliefs. The GTCA is one of Africa's last true wildernesses, but in many of its remote, outlying areas it is as challenging as it is wild.

Wildlife, habitat, human security and livelihoods in the GTCA are increasingly under threat for a plethora of reasons. Some of these are new and some are long-standing, such as commercial poaching for trophies that predominantly targets elephants and rhino, and the killing of a wide range of species for bushmeat. Outside the Parks

we are seeing resource-driven conflict between pastoralist and agricultural communities, particularly those living in the communal lands between the Tsavo East National Park and the Tana River. These long-running conflicts are easily manipulated and exploited by external, malign influences, which have a destabilizing impact on rural communities. Another major concern is the competition between livestock, wildlife and the eternal search for grazing.

The challenges require broad-based thinking and inclusive involvement to seek alternatives that will relieve pressure on the national parks but also support a much-needed rural economy and offer viable solutions for local livestock owners. To this end, the Tsavo Conservation Group – TsavoCon have pioneered a philosophy called Stabilization through Conservation or StabilCon which aims to create wider areas that, underpinned by law enforcement and governance, are politically, socially and environmentally conducive to sustainable human endeavour. While applied across a range of initiatives, StabilCon can also be used to guide the development of conservancies, as is the case in Tsavo.



THE CONSERVANCY

Addressing the complex challenges and creating stability in rural areas where conflict and natural resource destruction are on the increase require structures and processes that promote collaboration and participation. Under the Wildlife Act 2013, Community Conservancies provide a workable, living and breathing entity from which a greater level of natural security can be achieved. One of these community entities well suited to the Greater Tsavo context is the 1.2 million acre Malkahalaku Community Wildlife

BELOW: Orma elders in Malkahalaku Conservancy who together with Kenya Wildlife Service requested the creation of the Conservancy.

Conservancy which has been developing in Tana River County, with the support of TsavoCon and implementing their StabilCon approach. The conservancy project was initiated by a joint request from Orma elders and KWS. The task has been challenging from the outset due to insecurity, the remoteness of the area and the resident Orma people's relatively low levels of exposure to the outside world. Despite all this, the Orma community have shown amazing willingness to partner with TsavoCon and are currently showing an openness to engage and develop solutions to decades-old challenges such as poaching and the dispute surrounding illegal livestock grazing in the National Park.

Malkahalaku Community Conservancy has been a work in progress, slowly evolving as a unifying glue, a kind of social movement and a collective strength for the community at large. It has acted as a platform to address insecurity and socio economic challenges, to exchange ideas and generate innovations. It has become a social engagement platform for the different age sets within the Malkahalaku area.

In this role, the conservancy has helped in consensus building on community constitutional rights such as secured land tenure, access to water, livestock management and increasingly security to sustainably manage their natural resources. By embedding and aligning itself with traditional structures, national and county governments the conservancy has empowered existing leadership and encouraged good governance practices in the complex and unforgiving harshness of Tsavo.

In the three years since the conservancy's inception there have been no confirmed cases of elephant poaching in Malkahalaku despite it being a wet season dispersal area for elephants. This has been achieved through social pressure, engagement and collaboration between all stakeholders, and the conservancy members simply denying the poaching syndicates and cartels a space to operate. Previously poaching was a regular occurrence in the area.

The Malkahalaku Community Conservancy is a work in progress, its remoteness, extreme weather fluctuations, livestock issues and of course fund-raising to develop much needed innovations combine to make the task ahead a demanding one for all involved. Such challenges reinforce the importance of relationships between the people of Malkahalaku, TsavoCon, official agencies and KWCA. ●

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