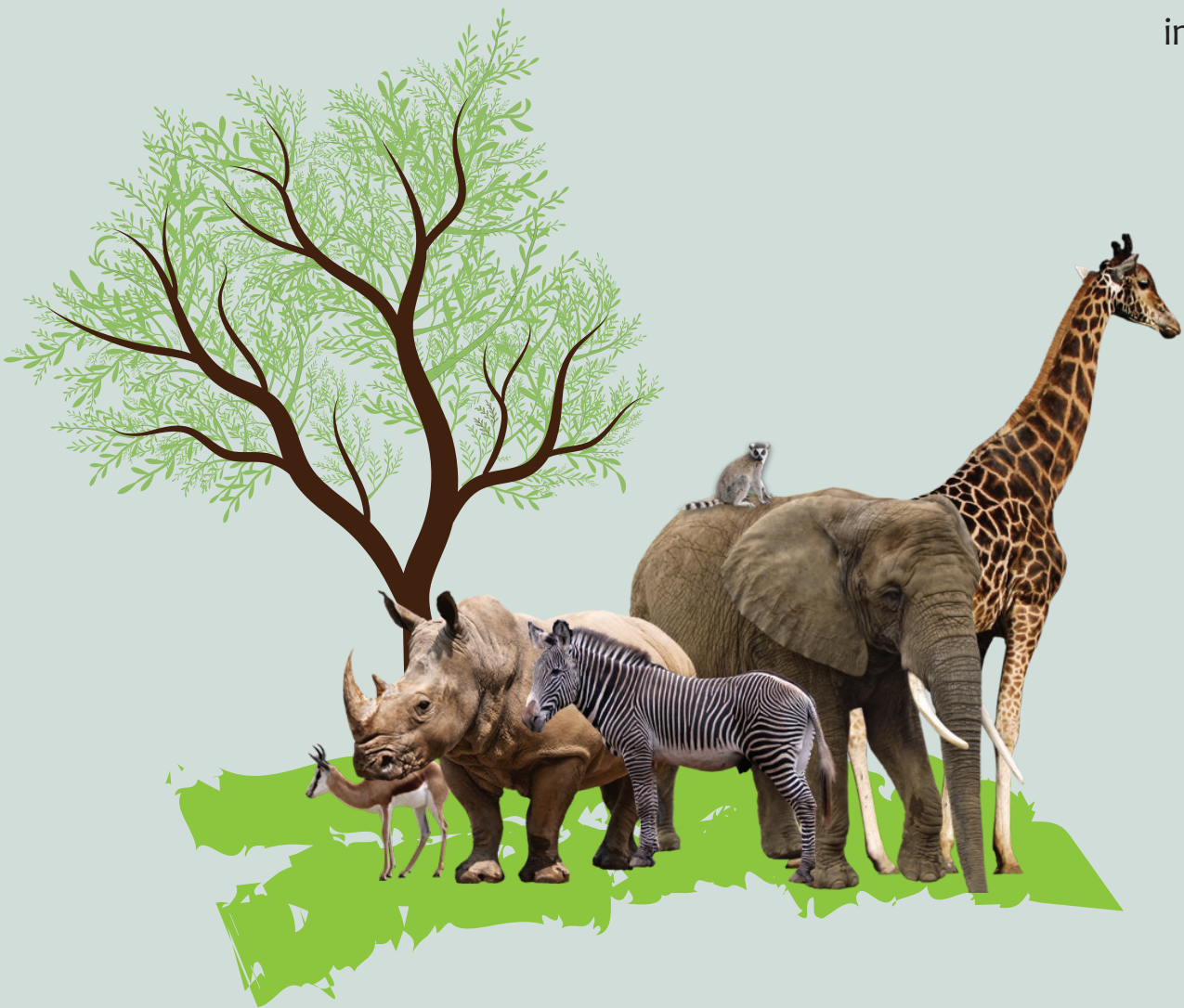


# EXECUTIVE SUMMARY

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A Human Rights  
Observations & Risk  
Assessment of  
Community  
Conservancies  
in Kenya



July 2022

# Acknowledgements



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While this study was commissioned by The Nature Conservancy, the findings, analysis, conclusions and recommendations are the sole responsibility of IRPA and do not necessarily reflect the views of The Nature Conservancy, the Kenya Wildlife Conservancies Association, or any other third party.



# Executive Summary

Kenya's unparalleled stunning environment and rich natural resources are critical national assets that contribute valuable socioeconomic benefits to the country and to its communities. Conservancies form a crucial part of Kenya's conservation narrative and present an attractive land use option for communities, while offering improved resource rights from ecotourism and other conservation enterprises. Various studies indicate that community conservancies have generally delivered positive conservation and socioeconomic benefits. Because conservancies provide a group channel for common benefit, they establish elements of social cohesion and togetherness which should translate to shared values and revenues. There is a desirable correlation between wildlife conservation and a respect for human rights. To realize the common and shared standards, conservancies should protect and enhance the fundamental human rights of community members. It is however unclear what the human rights effects and impacts of conservancy establishment and existence has been on communities.

This study examines the risks to the protection, advancement and safeguarding of human rights in the context of community conservancies. It focuses on determining the presence of increasing broad-scale awareness on human rights issues and risks; developing concrete and accessible mechanisms in place for communities to identify, address and track any adverse human rights effects, as they arise; and establish structures that communities can use to advance self-determination.

## Key Findings

This being a Human Rights Risk Assessment (HRRRA) rather than a Human Rights Impact Assessment (HRIA), the findings spotlight potential adverse effects of conservancy operations and establishment with the aim of accentuating priority intervention areas, without underestimating the actual and potential positive impacts on Kenya's people, wildlife and environment. The study identifies five cross-cutting thematic areas that call for immediate intervention to mitigate human rights impacts.

**Security of land tenure and the right of communities to use, develop and control their territories and resources: A number of significant rights are at risk due to land tenure insecurity.** Rights touching on IPLCs, women, livelihoods and benefits accrued from the conservancy model are linked to land. Increased risks on land and environmental rights correspond with a higher risk to socioeconomic rights, mainly due to the reliance on land and environment for social, economic and livelihood benefits. The very existence of conservancies is at risk where security of land tenure and the manner in

which they use their resources is not addressed. This is aggravated by three issues: a) community land is not fully regulated thus creating tenuous land status; b) private land can be transacted, freely, and models grounded on this tenure basis face many risks and possibility of dissolution; and c) public land hosting conservancies means significant control of these enterprises rests with the state.

**Women's equality and freedom from non-discrimination:** The study establishes an inextricable linkage between women's rights and socioeconomic and participation rights, which may be attributed to the associated livelihood-related responsibilities that fall on women. A majority of the conservancies are within patriarchal communities, and it was noted that this influences their decision-making as well as the right to equality and freedom from non-discrimination. On a positive note, in conservancies where women own land, their decision-making abilities were elevated. Though not rife, the reported sexual crimes do not augur well and more must be done to create an environment where women's rights are respected in this regard. Participation and meaningful involvement in decision-making for women is essential to address the risks associated with gender-based rights.

**Insecurity - the right to life, human-wildlife conflict, human-human conflict, and threats to security of person and property:** While we take note of the important fact that human-wildlife conflict, as well as other threats to life and property are not directly attributable to conservancies, the objective of these conservancies lie in their quest to preserve and protect nature, including wildlife. Given the reality of life-changing injury or loss of life and property, coupled with the government's inconsistent approach to compensation, the issue cannot be ignored. There is immense opportunity to collaborate with communities to alleviate these losses, taking into consideration that the biggest risk to conservancies is human-wildlife co-existence.

**IPLC decision-making and participation rights:** IPLC engagement in conflict resolution, Free, Prior and Informed Consent (FPIC), decision-making and self-determination are key markers for minimizing the risks to their human rights. The study noted that governance structures as they currently exist within community conservancies, whether formal or informal, are capable of adversely impacting the degree of decision-making by communities and increasing conflict. IPLCs' rights were at greater risk in heterogeneous communities and those of a diverse nature, for instance in cases where conservancies cross county borders and various groups live, or two historical-warring communities come together to end conflict through formation of the conservancy. Further,

discriminatory practices are reported to occur among sub-groups of Indigenous Peoples (IPs), where predominant groups benefit and are in control of the conservancy. Limiting community members, particularly IPs' rights to FPIC and self-determination happens when intimidation tactics are applied by authorities or Local Communities (LCs) which impacts their right to use, access and benefit from their territories. Consequently, their ability to self-govern is impeded, posing a risk to their culture and livelihoods.

**Benefits accrued from the conservancy:** the existing models of conservation, especially those with influential or non-transparent third-party actors who

have alienated significant portions of their communities, present a threat to the benefit sharing aspect of community conservancies. A majority of the conservancies with these third-parties intimidated at their dissatisfaction with the lack of transparency on how the conservancies are used to generate funds, and the manner in which these gains eventually trickle down to the community. While the risk was linked to perceptions of interviewed community members, the cited instances of corruption grant some merit. Across both new and well-established conservancies, some stakeholders decried the lack of clarity on how conservancies can generate tangible and monetary benefits for them.

## Recommendations

Towards increasing broad-scale awareness of human rights issues and risks, developing mechanisms for communities to continuously identify, address, and track any adverse human rights impacts, and building structures through which communities can advance their self-determination, we recommend that:

a. National and county governments, conservation and other regulatory authorities consider: fast-tracking titling by the National Land Commission (NLC) to guarantee security of community land tenure; Ensuring an enabling environment for community conservancies to thrive by harmonizing overlapping policies and legislation governing agency coordination and management of natural resources management; Improving the capacity of stakeholders and rights holders to routinely undertake participatory human rights audits; and, Recognizing, exploring and upholding traditional or alternative conflict resolution mechanisms in management of environmental and natural resource-based conflicts.

b. The private sector can play an active role in building the capacity of communities to manage their conservancies by: Carrying out due diligence on the application of FPIC and inclusive engagement prior to granting funding for the establishment of new conservancies or supporting existing conservancies; Placing emphasis on baseline studies prior to the establishment of conservancies to promote communities right to FPIC and buy-in; and, Supporting the development of training modules that can be used by conservancies to build their capacity around organizational and institutional strengthening, operations, policy documents, and strategy.

c. For better socioeconomic and environmental outcomes, Community Conservancies could prioritize a combination of strategies that maximize socioeconomic benefits for local community members and protection of biodiversity values including: Devising and implementing strategies aimed at enhancing and entrenching local community participation in conservancy programs, to

uphold their rights to participate in decision-making and self-determination; Identifying and reducing barriers to equitable local participation, increasing women representation on boards and adopting sustainable livelihood models that promote women economic empowerment; and, in collaboration with IPs and LCs, developing culturally responsive conflict resolution mechanisms, increasing information on, and adhering to these procedures to the satisfaction of aggrieved members.

Based on the three focus areas, the report draws the following conclusions:

- **Broad-scale awareness of human rights issues and risks:** The level of awareness was observed to be low among IPLCs and rangers engaged with during the data collection exercise. Many stakeholders and rightsholders had not interacted with their conservancies through a human rights lens. They found the exercise educative and had great interest in understanding those rights as they related to their day-to-day operations.
- **Mechanisms for communities to continuously identify, address, and track any adverse human rights impacts that may emerge:** The study did not find explicit evidence of mechanisms to regularly track adverse human rights impacts, that would help identify trends and seek solutions to address human rights violations.
- **Structures through which communities can advance their self-determination:** To some degree there are existing structures through which communities can advance their self-determination, be they County governments, the Ministry of Lands, the National Land Commission, the Kenya Human Rights Commission, and the Kenya National Human Rights Commission. In addition, the regional wildlife conservancy associations and KWCA could certainly play a more explicit role to ensure that communities that are either already part of a community conservancy or are targeted for a new conservancy, are provided the opportunity and capacity for self-determination.



