Pillar 1

Secure Rights Over Lands, Waters, and Resources

Knowledge, Evidence, and Practice

KEY POINTS

- Formal recognition of rights can be important in certain contexts, but it does not always equate to secure rights. The type of property rights held, the knowledge by communities of their rights, their ability to exercise those rights, and the recognition and respect of rights by other actors all contribute to tenure security.
- Secure rights can help align incentives for sustainable use and management of lands, waters, and resources by enabling communities—including those with strong values and knowledge around stewardship and sustainability—to exert their voice and agency in management decisions.
- In general, tenure security is associated with both positive human well-being and environmental outcomes, but tradeoffs exist. Our knowledge about how tenure security intersects with other factors shaping sustainable use and management of resources is still growing, pointing to the importance of careful situation analysis and monitoring.
- Rights to coastal and freshwater resources are complex, evolving, and require extra considerations compared to land rights. The unique features of these resources directly contribute to the complexity of rights, governance, and security—and use rights are often more common than control rights in these contexts.

KEY TERMS

Property Rights—the authority to undertake particular actions related to a specific domain. Property rights include access, withdrawal (i.e., extraction), management, exclusion, alienation (i.e., title transfer), and due process and compensation. Property rights are often bundled into use rights (access, withdrawal) and control rights (management, ownership, exclusion, alienation).[19]

Collective Rights—Indigenous Peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In that regard, States recognize and respect the right of Indigenous Peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories, and resources. States shall promote, with the full and effective participation of Indigenous Peoples, the harmonious coexistence of the rights and systems of different population groups and cultures.[20]

Tenure Form—determines who can use what resources, for how long, and under what conditions.[21] Some examples include public, private, communal, collective Indigenous or customary.[22]

Tenure Security—the perception or belief a rightsholder has that property rights will be upheld by society—including communities, the government, and other actors.[23] It results from an interaction between tenure form, property rights, and institutions.

Property Rights

See "Tool 2: Tenure Rightsholder and Stakeholder Mapping" for a template to aid in identifying rightsholders and stakeholders in an area, along with whether rights are formally or informally held.

The factors that influence whether a person or community has tenure security are complex. Property rights dictate the type of actions that a rightsholder can take regarding lands, waters, or resources. Property rights include *use rights*—access and withdrawal—and *control rights*—management, exclusion, and the right to subdivide or sell[19, 24]—in addition to due process and compensation. The type of rights afforded to people and communities may differ within and across areas. For example, a community may have full use and control rights over grazing land and may allow access to that land by neighboring communities during certain times of the year or during drought. An area of a lake may be owned by the government, and communities living along the lake may have access and withdrawal rights (e.g., fishing) during the year, except during spawning season. An ocean area may be primarily open access, with traditional management rights recognized and upheld by local and neighboring communities, with access to the area only allowed depending upon the season or withdrawal rights allowed for only specific species.

Importantly, *simply holding rights is not enough*. These rights must be recognized and enforced (i.e., respected). Individuals, households, communities, businesses, and other stakeholders may informally recognize and enforce property rights even if these rights are not formally recognized by the government (i.e., de facto rights). Formally, the government may provide documentation and legal recognition of rights to the rightsholder (i.e., de jure rights). Depending on the context, communities may need both informal and formal recognition and enforcement, while in some instances informal recognition may be sufficient to provide tenure security for the time being. Whether formal rights are needed ultimately depends on whether the government or other actors uphold or contest the system. The interplay between formal and informal recognition and enforcement of property rights is a key factor in determining tenure security.

Tenure Security

> See **"Tool 3: Tenure Security Assessment"** for a diagnostic to help understand tenure security in a particular context, as well as how it might be supported in partnership with Indigenous Peoples and local communities.

Tenure security is the perception or belief a rightsholder has that property rights will be upheld by society, including communities, the government, and other actors.[23,25-26] It is ultimately a subjective view that people have over the rights to lands, waters, and resources, and is the interaction of property rights and the formal and informal institutions dictating use and access. As a result, it is possible to have tenure security without formal title—as mentioned above, people may feel very secure in their customary tenure if it is not challenged. For instance, there are few cases where legal title to water is held by individuals or communities, but many water users often feel they have security over access to and use of water. We often focus on tenure security because the perception of security over lands, waters, and resources is a key factor in the decisions people make about how to use and manage their property. For instance, if a rightsholder perceives that they have insecure tenure, they may be less likely to make long-term investments (e.g., manage their timber harvest sustainably, invest in soil and water conservation practices) because any benefits from these decisions would not be realized for years and there is no guarantee that rights would still be held at that time. In comparison, a rightsholder with secure tenure may have greater assurance that they themselves will benefit from any investments or resource use decisions because there is little worry of encroachment, conflict, or other actions that would result in losing use or control over the lands, waters, or resources. Simply put, the more secure communities are in their tenure, the more likely it is they will engage in sustainable use and management.[27-30]

Table 2: *Illustrative examples of common tenure security issues and activities one might pursue to address them.*[27] *A full risk assessment is necessary to understand the potential unintended consequences of tenure security actions (such as increased conflict or retaliation) since rights can be contentious. Ultimately, the appropriateness (and likelihood for success or failure) of any strategy to strengthen tenure security will depend on the context, source and drivers of insecurity, and enabling conditions. See Tool 3 for more information.*

Tenure Security Issue	Example Activities to Strengthen Tenure Security
Communities hold informal or customary rights, but these are not recognized or upheld by the government or other actors	Mapping and planning support, legal aid to navigate legal and bureaucratic systems, coupled with capacity-building to exercise rights, and pursuing government support in recognizing and enforcing community rights
Communities hold formal rights but are unaware of these rights	Awareness raising campaigns, coupled with capacity-building to exercise rights
Communities hold and are aware of formal rights but do not know how to exercise them	Legal aid to navigate legal and bureaucratic systems, coupled with capacity-building to exercise rights
Multiple actors exercising formal and informal rights or claims over the same lands, waters, or resources	Facilitating conflict resolution between rightsholders, legal aid to clarify rights, and pursuing government support in enforcing community rights
Legal instruments exist for communities to pursue formal rights, but they do not hold formal rights	Mapping and planning support, legal aid to navigate legal and bureaucratic systems, coupled with capacity-building to exercise rights
No legal instruments exist for communities to pursue formal rights	Policy advocacy in support of regulatory reform

Tenure Form

Tenure form determines who can use what resources, for how long, and under what conditions.[21] For example, there may be restrictions or limitations on property rights that impact which specific resources those rights apply to (e.g., rights to manage one species but not another), and for how long those rights apply (e.g., rights that are maintained until they are transferred vs. a time-limited lease). This needs to be considered in determining how secure rights are. For example, if a community has use and control rights to a forest for 20 years, but subsurface rights were leased to a company in a mineral-rich area, the communities may not feel and be secure in their rights.

In the contexts where Indigenous Peoples and local communities reside, there may be some mix of public, private, communal, collective Indigenous, and/or customary tenure form. In cases where Indigenous Peoples have been stripped of their communal or collective tenure, we often work in partnership to restore this tenure (e.g., repatriation of private lands, waters, or resources to communal or collective tenure; policy advocacy for the creation of Indigenous protected areas) or restore and support Indigenous and local community authority. In public, communal, and collective tenure forms, resources are often common pool—in that many have use rights (i.e., access and withdrawal/extraction) without the easy ability to exclude people (e.g., coastal fisheries, forests, grasslands, and aquifers). In these cases, it can be important to clarify who or what determines control rights (particularly management and exclusion rights) if the context allows, and strengthen common pool governance systems (covered in next section), particularly in the absence of a strong stewardship ethic or in the presence of diverse sets of actors or strong economic drivers.

Emerging Evidence

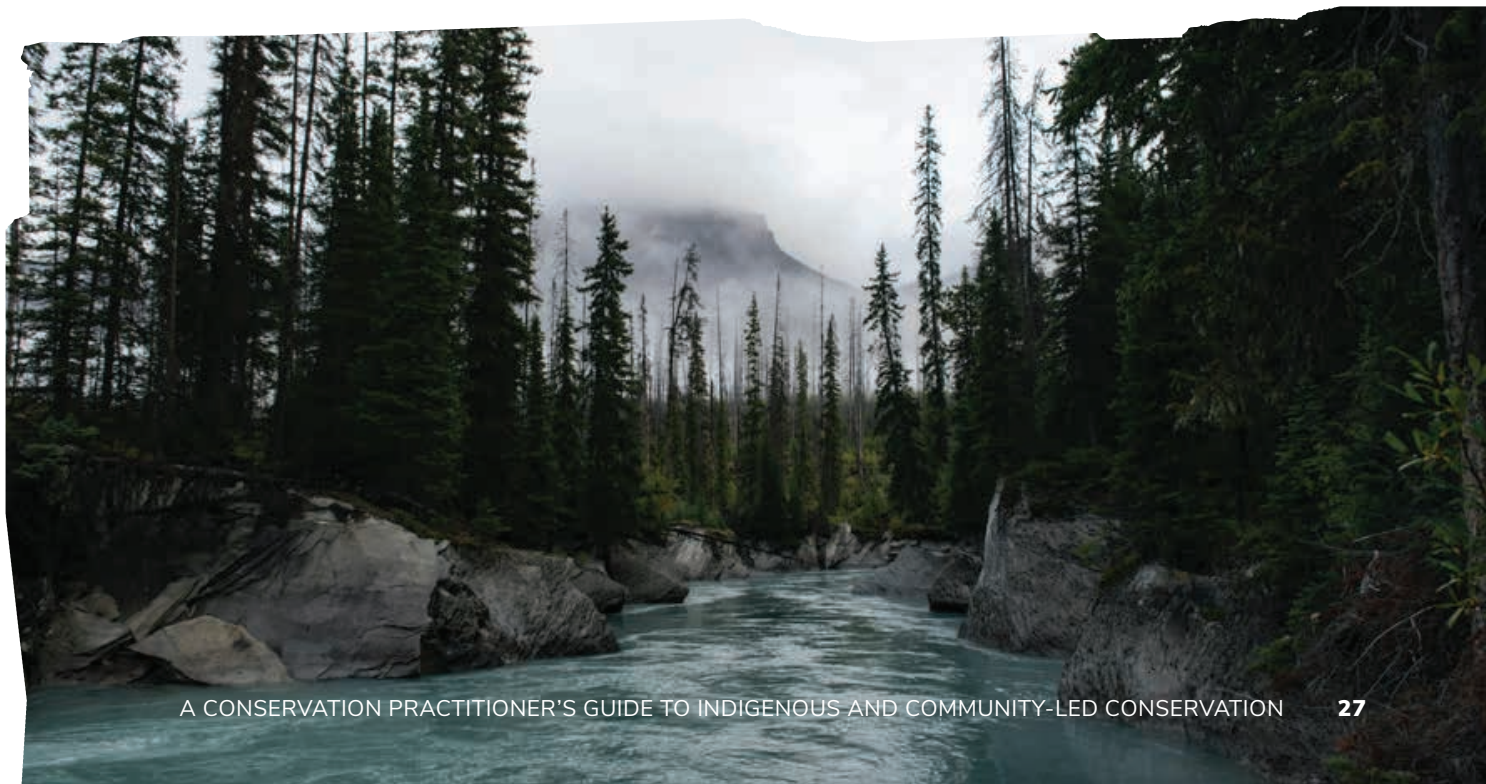
The logic behind why and how strengthening tenure security can lead to overall positive benefits is clear: securing tenure can reduce uncertainty, provide clarity in who has say in use and management decisions, identify who will benefit from the lands, waters, and resources, and be a key component in unlocking capital (e.g., providing access to credit, empowering rightsholders to take part in decisions).[31-34] However, in general there is greater evidence that strengthening tenure security is positively associated with human well-being outcomes compared to environmental outcomes, and recent systematic reviews indicate that evidence on environmental outcomes across biomes, populations, countries, and other factors is inconsistent.[27] For example, there are cases of top-down titling programs that have led to undesirable outcomes such as greater conflict and greater tenure insecurity because they ignored or were incongruent with customary institutions and natural resource governance systems.[35]

Because evidence is still emerging on the likelihood of whether strengthening tenure security will lead to positive environmental and human well-being outcomes, careful monitoring is needed to avoid or address unintended consequences. For example, strengthened tenure security can increase incentives to make long-term land investments, but this may lead to greater investment in agriculture or infrastructure than in sustainable land management or protection.[27] On the other hand, areas where communities have greater tenure security may see reduced deforestation by incentivizing benefits accrued from forests through other means, such as payment for ecosystem services.[36] For aquatic systems, secure tenure—which clarifies who has rights to certain water or aquatic organisms and when—can set the stage for negotiating extraction and use agreements, as well as how rightsholders will monitor and enforce these

agreements.[37] In coastal areas, establishing rights-based management systems for fisheries can lead to positive impacts on fish stocks and variable social and economic outcomes. However, this may not be adequate to address the broader environmental impacts of fishing, for example on non-target or protected species as well as the surrounding ecosystem.[38-39]

Special Considerations for Rights in Freshwater and Coastal Contexts

Because of their fluid nature, freshwater and coastal resources are less likely to be "owned" like land or other properties. Rather, it is necessary to look at who holds different (and often overlapping) "bundles of rights," including use rights and control rights, and how rights to water are tied to rights to land. For example, with many freshwater resources, the scale of rights and management of resources does not match the ecological scale of the systems (e.g., rivers often cross multiple political boundaries). Further, even if a community has rights to use or manage a freshwater resource, if the resource is depleted upstream, they may never be able to exercise these rights. As a result, it is critical to carefully assess how the characteristics of freshwater and coastal resources can create challenges or opportunities for tenure security, and the various threats to tenure security that can stem directly from the characteristics of a particular natural resource. Rights alone do not guarantee the ability to use or benefit from freshwater and coastal resources. Many water bodies have been over-allocated, so rights exceed the available resources (e.g., freshwater withdrawal rights, coastal fishing rights). In the freshwater context, this is exacerbated during drought years. Similarly, many water bodies are contaminated, making the available resources unusable for some purposes. For this, it is important to take power dynamics between freshwater and coastal resource users into account because imbalances can prevent certain groups from asserting their rights.



Case Studies

Securing Rights to Territories and Resources in Tanzania

Tanzania's northern rangelands stretch across 8 million acres (3.2 million hectares) and include some of Africa's most important wildlife migration sites, including the Serengeti and the Ngorongoro Crater, as well as the homes of Maasai pastoralists and the Hadzabe and Akie, some of the last remaining hunter-gatherer Tribes on Earth. Population density has nearly tripled in this region in the last 40 years, which is leading to competition between land uses (mainly agriculture and grazing), threatening pastoralists and hunter-gatherer ways of living, as well as the wildlife that depend on these lands for grazing and migration. Local villages have the right to subdivide all their village land, and once land is officially given to an individual, that land can be further subdivided to sons. This law favors local and individual ownership. Additionally, the Tanzanian central government has significant authority and can expropriate land for large commercial farms if the village does not hold official title (ownership) via a Certificate of Customary Right of Occupancy (CCRO).

TNC in Africa is working with communities and partners to secure legal tenure and management rights for pastoralist and hunter-gatherer communities through collective CCRO designations. This legal tool—pioneered by partner Ujamaa Community Resource Trust and building off existing CCRO designations for individuals—allows communities to own and manage traditional lands and earn benefits from natural resource-based enterprises such as ecotourism and carbon credits. The collective CCRO provides an additional layer of protection for common pool resources that is helpful for long-term management and improved and secured grazing access over time.

By expanding this model across Tanzania's rangelands, we are seeing more equal access and ownership, and more secure communal rights to land over the long-term as the basis for pastoralist livestock production and land management systems. When cross-border grazing corridors are kept open, livestock and wildlife become healthier, which reduces conflict between villages and can increase their revenue via sustainable livelihood opportunities. The tenure mechanism itself is linked to sustainable land management via the requirement for Village Land Use Plans and provides a basis for negotiating with government and tourism operators. Although some cases of farming encroachment exist, when tested, the courts have ruled

ICON LEGEND
VCA Framework Biomes

TERRESTRIAL FRESHWATER COASTAL

in favor of the CCRO and easements. Over the past nine years, 5 million acres (~2 million hectares) have been put under Village Land Use Plans (the first step in obtaining a CCRO designation). In the entire landscape, 4.2 million acres (~1.7 million hectares) of rangelands have been protected via 80 CCROs and two Wildlife Management Areas (areas of communal land set aside exclusively as habitat for wildlife by member villages), with additional CCROs covering 370,650 acres (~150,000 hectares) expected by June 2022. The success of CCROs demonstrates a pathway for preventing land conversion that could lead to loss of grazing areas.

However, there are still ongoing challenges that must be resolved. Even after land use plans were demarcated and CCROs were formed, there was some overgrazing in CCROs. TNC's holistic grazing management program aims to promote best grazing approaches in the CCROs, such as rotational grazing, blocking systems, and bunched herding that can reduce grazing pressure on CCRO lands. The program will also help secure inter-village grazing agreements that seek to connect CCROs with other grazing areas. While CCROs are increasingly recognized as legitimate by local stakeholders, there are ongoing governance challenges and a need to ensure that all CCROs are equally respected.

Addressing Water Scarcity Through Indigenous Rights in the Colorado River Basin

The Colorado River Basin is one of the United States' most iconic landscapes, home to the Grand Canyon and an array of diverse traditional and Tribal stewards. It supports a wide variety of freshwater and terrestrial ecosystems that host enormous biodiversity, and it is home to many cultures, communities, and economic interests. For thousands of years, water from the Colorado River and its tributaries has been the life source for local Indigenous Peoples, and is essential to their cultural and economic well-being. Colonization of lands and waters by settlers drastically altered the ability of Indigenous Peoples to continue to inhabit, use, and care for the rivers and lands in this area. Genocide, forcible removal from ancestral lands, broken treaties, and a host of federal laws and policies designed to undermine Tribal control of resources and to assimilate Indigenous Peoples deprived them of access to the lands, waters, food, and other natural resources of the Basin. In addition, building of the extensive water infrastructure system of dams, canals, and reservoirs further degraded the natural environment and largely neglected the water needs of Indigenous Peoples, who were forced into non-Indigenous farming and ranching and life on arid reservations.

With more than 40 million people depending on its water for both agriculture and domestic needs, the Colorado River is intensively controlled, and a complex set of rules and laws dictates water management and use across the Basin's many interested parties. Legal precedent entitles Tribal Nations to substantial, senior-priority water rights[e] in the Basin. However, major water-related decision making forums and processes have yet to sufficiently recognize the role of Tribal management of water and natural resources. Currently, 22 of the 30 Tribal Nations in the Basin have quantified water rights in at least one state in which their reservations are located, and control about 3.5 billion cubic meters of water per year, which is approximately 20 percent of the water in the Basin. That amount is expected to increase as Tribal Nations with remaining claims

e. The allocation and use of water by non-federal entities in many states in the Western U.S. is governed by the Doctrine of Prior Appropriation, whereby the first entity to appropriate a quantity of water from a source for a beneficial use acquires the right to its future use as against later users. Federal reserved water rights, including those reserved on behalf of Tribal Nations, are linked with the United States' federal reservation of lands and usually have a priority date tied to the date of the federal reservation of lands. Because of this, Tribal water rights in the Western U.S. are often administered with a very early and senior priority date.

in some Basin states quantify their water rights. Significant portions of these Tribal water rights are currently undeveloped (i.e., not being exercised or used) but will likely displace current water uses when they are developed.[f] Despite the amount of Tribal water, many powerful actors in the Basin (e.g., federal and state governments, major water users including municipalities and agricultural businesses) have intentionally and systematically excluded Tribal Nations from efforts to protect and develop their water rights, and thwarted voluntary Tribal participation in policy negotiations. As recently as 2019, because of the unwillingness of state and federal negotiators to take a hard look at the role of Tribal water in assessing water scarcity risk and solutions, the Tribal Nations have been mostly excluded from participating in creating programs designed to reduce water scarcity risk. This exclusion has resulted in solutions that fail to recognize and respect treaty and other rights of Indigenous Peoples, and missed opportunities to work with Tribal Nations to mobilize Tribal water to address the Basin's socio-economic and environmental challenges. These policy processes are also missing a critical opportunity to integrate Indigenous perspectives on the stewardship of resources—including Indigenous cultural and spiritual connections to the lands and waters in the Basin—to shape the future of this shared and sacred river.

TNC's Colorado River Program works across all seven Basin states in the United States (Wyoming, Colorado, Utah, New Mexico, Arizona, Nevada, and California), in Mexico, as well as at a Basin scale. The focus is on three strategies: working to balance water needs among the many users (including nature), improving water infrastructure and other operations to improve environmental flows, and advancing a Tribal Water Initiative. Through the Tribal Water Initiative, we are working with Tribal Nations to advance their interests and their positioning to address the pressing socio-economic and environmental challenges, by elevating Tribal voices in critical policy discussions to support their stewardship of the Basin, as well as creating innovative on-the-ground freshwater conservation projects that support more equitable and durable solutions for people and nature. For instance, in the renegotiation process of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lakes Powell and Mead, TNC was invited to work with Tribal Nations and multi-Tribal organizations to understand and advance their goals, such as ensuring that the next guidelines reflect a comprehensive understanding of Tribal water rights.

Engaging Tribal Nations in the Colorado River Basin is changing TNC's approach to water scarcity work. Our initial engagement is showing promising opportunities for both project and policy work to address water scarcity and environmental needs in the Basin. It also requires us to begin considering some of the critical equity and human rights implications for Indigenous Peoples in our work, including the need for reconciliation processes addressing past resource deprivation and acknowledgement of the conservation sector's role in that legacy. We are committed to crafting solutions that do not further disadvantage vulnerable communities but, rather, build partnerships to amplify the strength and power of these communities to co-create mutually beneficial solutions and projects.

f. This is because of both the senior priority date of Tribal federal reserved rights claims and because of multiple articles in the Colorado River Basin compacts that state that Tribal rights are not subject to compacts.


© MWANGI KIRUBI

Communal Rights in Kenyan Coastal Fisheries

Sitting at the northern edge of Kenya's coast, the Lamu-Tana Seascape hosts rich and diverse coastal resources, including over 66 percent of Kenya's mangroves, some of Kenya's highest densities of inshore finfish and crustaceans, and a unique mix of Arabian Gulf with East African coral and fish species. Rare and endemic corals along with endangered fish, sea turtles, coastal sharks, and a very small number of dugong also occur here. Livelihoods of the coastal communities in the area are largely dependent on these natural resources, and with few employment alternatives, pressure and over-exploitation are increasing. Along with ongoing conflict and remoteness that have restricted development and access to markets, the livelihoods and resources in the area are at risk.[40]

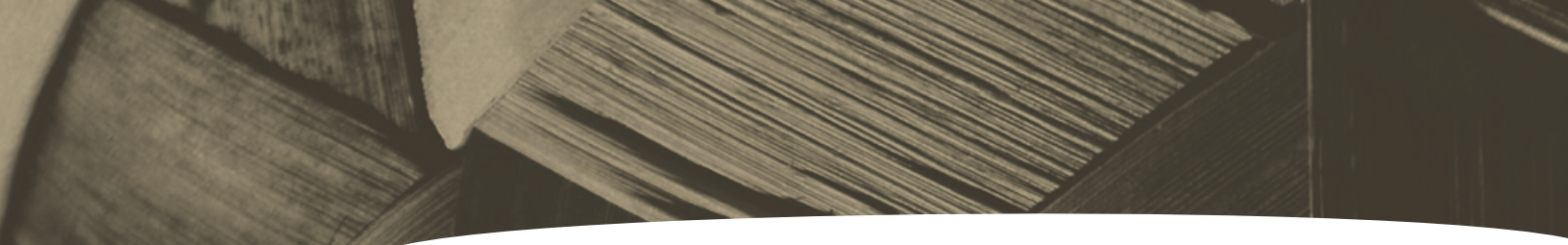
To increase local ownership and management of these resources, TNC, Northern Rangelands Trust (NRT), and other partners are supporting communities in securing co-management rights across multiple natural resource management jurisdictions and communities to integrate a holistic resource management approach for the area's coastal ecosystems. The "community conservancy" model, regulated under the Wildlife Conservation and Management Act (2013), has been applied broadly for community management of terrestrial areas. With the support and technical guidance of NRT and TNC, this approach has been adopted in the Lamu-Tana Seascape for coastal communities and marine areas, connecting multiple villages, fisheries, and habitats under an overarching Conservancy Development Plan. This plan incorporates important design guidelines necessary for effective coastal conservation.

Four coastal community conservancies—Kiunga, Awer, Pate, and the Lower Tana Delta—have been established, and within those conservancies multiple community resource management institutions must be authorized to provide legal empowerment to the conservancy and communities in managing the full suite of coastal resources, given the various laws and jurisdictions at play. Community-run co-management units, called Beach Management Units (BMUs), are responsible for managing artisanal fishery use and access. BMUs are supported by a legal framework within Kenya's Fisheries Regulations (2007), and are intended to bring resource user groups and governmental bodies together to share fisheries management and conservation responsibilities. Within the four community conservancies, 21 fisheries BMUs

have been established and training conducted on leadership, fisheries co-management, and financial management. Each BMU submitted their by-laws to county governments for review and received a new BMU registration certificate, effectively empowering communities' control over their fisheries resources. The establishment of the conservancy and associated BMUs have enabled the Pate Marine Community Conservancy to create temporary octopus closures (a type of locally managed marine area) that have led to increased participation of women in conservation activities, increased catch and size of the octopus, better market price, increased population of other fish, and improved habitat condition.

Learning exchange visits between Pate and the Kiunga and Lower Tana Delta conservancies inspired the Kiunga Community Conservancy to implement similar closures in their fishing areas within the Kiunga Marine National Reserve (KMNR). Marine protection and conservation are managed by the Kenya Wildlife Service (KWS) in the form of marine parks, which are well-enforced no take zones protecting key fisheries and marine reserves, where subsistence fishing with traditional fishing gear is allowed and is poorly enforced. Because of Kiunga's marine reserve designation, a more complicated, formal process, and approval at the national level was required to secure community management authority under KWS. This included completing, village-by-village, community awareness and capacity building meetings on establishing temporary octopus closures, changing the conservancy name to Kiunga Community Wildlife Association (KICOWA) to operate within a gazetted area, and presenting a letter to KWS on the community's decision to establish temporary octopus closures within KMNR. Upon completion of this process, KICOWA successfully established two temporary octopus closures in March 2021, which were the first to be completed within a national marine reserve and a significant development in integrating a more community-based approach in Kenya's marine protected area management.

Achieving effective management of coastal ecosystems in northern Kenya requires a complex alignment of the laws and institutions associated with each resource and tenure designation. TNC and local partners' work has focused on strengthening governance by supporting communities in establishing and staffing the necessary institutions to collaboratively manage natural resources, and enabling synergies to be developed across the various community-led conservation institutions.



Tools and Resources

TOOL 2: TEMPLATE—RIGHTSHOLDER AND STAKEHOLDER MAPPING

Since the rights held (or not held) over lands, waters, and resources are critical to understanding the underlying context of a place, it is important to undertake an exercise to better understand the tenure form of a resource, the suite of actors with a right or stake in a resource, the type of recognition they hold, and potentially overlapping rights or claims. This template can be used during situation analysis to document this information by consulting local, regional, and national policy instruments, the department of natural resources (or similar government institutions), and the community or its representative institution. This exercise should be followed by "Tool 3: Tenure Security Assessment" to determine security of the rights, and which activities might be appropriate to address sources of insecurity.

TOOL 3: DIAGNOSTIC—TENURE SECURITY ASSESSMENT

Tenure security is a complex topic with multiple intersecting and influencing considerations. In "Tool 2: Tenure Rightsholder and Stakeholder Mapping," we determined the tenure form of a resource, the suite of actors with a right or stake in a resource, the type of recognition they hold, and potentially overlapping rights or claims. Using this information, we now identify potential sources of tenure insecurity faced by Indigenous Peoples and local communities, and what actions conservation organizations might take in partnership with Indigenous Peoples and local communities to support strengthened tenure security. This information should be discussed with the community, or its representative institutions, during situation analysis using key informant interviews and focus group discussions.

Please note, **a full risk assessment is necessary to understand the potential unintended consequences (e.g., increased conflict or retaliation) of mitigating actions, since rights can be contentious. Ultimately, the appropriateness (and likelihood for success or failure) of any strategy to strengthen tenure* security will depend on the context, source and drivers of insecurity, and enabling conditions