USAID PROGRAM BRIEF
LAND TENURE & PROPERTY RIGHTS

KENYA

OVERVIEW

A major attempt at land reform in Kenya in the 1950s involved a large-scale conversion of customary land tenure systems to private, individualized ownership. However, land privatization failed to increase agricultural productivity or provide the level of tenure security anticipated. Many smallholders lost land to wealthy, influential individuals. A system for land administration was developed, but it was highly centralized and lacked transparency, facilitating extra-legal land allocation of prime lands to influential individuals and land speculators. Efforts were also made to secure group tenure for pastoralist communities residing on lands in arid and semi-arid areas, which comprise about 80% of the country, while other communities, particularly along the coast, were left as squatters on government land.

KEY LAND TENURE ISSUES

Until the adoption of the National Land Policy in late 2009, the land tenure legal framework in Kenya included: 1) Government Lands—all unalienated land including protected areas and reserves; 2) Trust Lands—land held by County Councils on behalf of the residents mainly in the arid and semi-arid areas; and 3) Private Land—individual and collective land holdings such as group ranches. Kenya has had a multitude of overlapping and conflicting cross-sectoral laws and policies related to land and natural resources. This had significant implications for agriculture, economic growth, and natural resource management and governance. The statutory laws failed to recognize customary land rights, and there was violation of both statutory and customary land laws on Trust and Government Lands. Customary land and resource rights were eliminated in reserves with no compensation. On Trust Lands, customary land administration was weak, while existing dispute resolution systems were often ineffective in resolving conflicts over land, pasture, and water. Similar problems of weak governance have threatened the integrity of group ranches. These factors contributed to tenure insecurity and the rising conflicts over land and resources. Tenure insecurity also contributed to unsustainable land and resource use.

> **Land: A Driver of Conflict in Kenya**
> Poor land governance has a long history in Kenya fueling frequent large-scale conflict. Irregular land allocations and ethnic favoritism in issuance of land grants and establishment of settlement schemes has heightened inequity, fractured the society along ethnic lines, and solidified mistrust of the government. Post-election violence in December 2007 and early 2008 are evidence of the deep-seated rivalries over access to land and natural resources. The rising scale and frequency of such conflicts will have important implications for political and economic stability in Kenya and for East Africa as a whole.

Land pressures are severe due to rising population and there is high level of land fragmentation to uneconomic farm sizes.

Meanwhile, land fragmentation and landlessness increased, while speculative land hoarding resulted in unproductive use of large tracts of land. Prevalence of short-term leases prevented long-term investments in land, such as soil and water conservation.

Under customary tenure traditions, women's land rights have been highly dependent upon male kin, and loss of land rights has resulted at times in widows and orphans engaging in risky income-generating activities such as sex trade, contributing to the spread of HIV/AIDS.

GOVERNMENT OF KENYA (GOK) LAND REFORM INITIATIVES

In December 2009, the GoK adopted a National Land Policy (NLP) with the purpose of resolving myriad land tenure problems. In August 2010, Kenya then adopted a new Constitution that incorporates many aspects of the NLP. The NLP and the new Constitution usher in fundamental changes to the existing categories of property from government, trust, and private land to public, community, and private land, respectively. Public lands are heretofore administered by a National Land Commission (to be established) and its decentralized entities. A new harmonized Land Act will be developed, customary law codified, and the remaining customary holdings converted to community land managed by

residents. For private lands, the NLP emphasizes equity and secure access over freehold. It mandates land restitution or resettlement on new land as compensation for those dispossessed due to historical injustices. The NLP and the Constitution provide an important opportunity to address land-related injustices and governance problems, but they also raise concerns regarding continued corruption in land management and escalation of conflict due to weakening private property rights. The GoK, with donor assistance, has established the Land Reform Transformation Unit (LRTU) to implement the Land Reform Support Program (LRSP) to help refine and implement the NLP. As part of these efforts, the LRTU is supporting the development of new consolidated legislation, piloting a new land administration and management system, and raising public awareness on new laws and policies.

USAID INTERVENTIONS

USAID began support to land tenure reform activities in Kenya through the LRSP in 2007 with the goals of: 1) improving livelihoods by strengthening property rights; 2) promoting political stability by reducing conflict over land and scarce resources; 3) improving land related governance; and 4) sustaining the natural resource base and critical areas of biodiversity. Since then, USAID has engaged in a series of land tenure activities including Land Tenure and Property Rights trainings, tenure assessments, project design, and project implementation. These activities have promoted dialogue on international better practices and created political champions that now advocate for land tenure reform and institutional change. Two of the long-term initiatives are summarized below. All project reports are available through USAID and/or Tetra Tech ARD.

The SECURE Project—Kenya's north coast is an internationally recognized hotspot for biodiversity and home to three national reserves that incorporate 2,500 kms^2 of coastal forest, mangrove, estuarine, and marine ecosystems hosting numerous vulnerable and endangered species. This region has long been the site of extralegal land allocations of prime beach plots and entire islands to outside investors and/or local elite resulting in marginalized land and resource rights of indigenous communities who have never had their customary rights recognized.

The USAID-funded SECURE Project is a pilot activity that is supporting the Ministry of Lands (MoL) to develop a participatory and transparent customary land rights recognition process. In addition to securing land and resource rights, the project is facilitating the improved biodiversity conservation and sustainable use of natural resources in partnership with the Kenya Wildlife Service, Kenya Forest Service, and Department of Fisheries through community co-management initiatives. The key anticipated outcomes and outputs of the project are:

- 9 villages (1,100 households) with improved tenure security via demarcated community lands;
- A tested model for community land rights recognition that the GoK can utilize throughout the country and steep in law;
- 150 people and 50 institutions trained in conflict mitigation/resolution through alternative dispute resolution mechanisms;
- Natural resource co-management agreements signed with government agencies; and
- Improved management of ecologically fragile forest, marine, and wildlife habitat.

The ProMara Project—The Mau Forest Complex (MFC) is the largest (416,000 hectares) of Kenya's five montane "water towers"—recognized for their vital roles in water catchment, biodiversity conservation, and climate regulation. Parts of the Mau have been centers of violence related to land and natural resources with every election since 1992, and more recently 2007, where several thousands were displaced (Internal Displacement Monitoring Centre 2008). The eight major rivers with sources in MFC now experience historically low dry-season flows, threatening vital foreign revenue earners such as tea and tourism (Lake Nakuru, Maasai Mara) as well as millions of rural livelihoods. In the past 15 years, nearly 25% of the MFC has been deforested as a result of GoK forest excisions, settlement schemes, private land sales, unregulated logging concessions, exotic plantations, and illegal encroachments. Nationwide and regional publicity of the issue, and the Prime Minister's recent initiatives, led to the development of a comprehensive GoK program to reclaim and rehabilitate the forests by removing an estimated 34,000 households from the MFC. A USAID-supported assessment conducted in February/March 2010 recognized the importance of MFC restoration but recommended more equitable and humane approaches in place of the "command approach" adopted so far. To implement these recommendations, USAID designed ProMara to demonstrate co-management approaches linking communities, government, and the private sector in developing sustainable landscapes and livelihoods in the upper Mara River catchment. By providing better information, advice, and clear roles and responsibilities for communities, ProMara is expected to mitigate conflicts while improving forest management and providing equitable benefits to Mau residents.