

Best Practices in Documenting Customary and Statutory Land Access, Control, and Ownership Among the Indigenous Mijikenda of Kenya's Coastal Region

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Abstract: This paper examines best practices in documenting customary and statutory land access, control, and ownership among the Indigenous Mijikenda communities of Kenya's Coastal Region. Land constitutes not only an economic resource but also the foundation of the Mijikenda's cultural identity, spiritual life, and social cohesion. Yet, inadequate documentation, weak legal recognition, and external encroachment have historically undermined the community's land tenure security and socio-economic development. Drawing on qualitative research in Kwale County – including interviews with Mijikenda sages from Kaya Kinondo and Kaya Mtswakara – the study investigates the intersections of customary tenure systems and statutory frameworks. It details how communal ownership, clan and family allocations, ritual practices, and elder-led dispute resolution form the backbone of traditional land governance, while statutory instruments such as the Kenyan Constitution (2010), the Land Act, the Community Land Act, and forestry policies attempt to formalize these rights. By analysing the effectiveness of customary governance structures and identifying barriers to secure tenure, the paper highlights how inclusive and participatory documentation processes can safeguard indigenous rights, strengthen environmental stewardship, and promote gender equity. Linking these findings to the African Continental Free Trade Area (AfCFTA), it argues that secure indigenous land rights are essential for sustainable resource management, poverty reduction, and equitable participation in emerging regional markets. The study proposes a set of best practices – ranging from community-driven mapping and legal reforms to capacity building, multi-stakeholder collaboration, and recognition of traditional conflict-resolution mechanisms – that can inform policy and practice across Africa. In doing so, it contributes to the broader discourse on sustainable land governance and underscores that protecting the Mijikenda's land rights is not only a matter of justice but also a catalyst for socio-economic transformation and environmental sustainability in the context of AfCFTA implementation.

Keywords: Indigenous Knowledge, Land Rights, Ownership, Access, Customary Law, Mijikenda.

INTRODUCTION

Context and Introduction

The Indigenous Mijikenda communities residing in Kenya's Coastal Region possess a rich cultural heritage deeply intertwined with their land. However, the lack of proper documentation and recognition of their customary and statutory land access, control, and ownership has posed significant challenges to their socio-economic development and rights protection. This presentation aims to explore the best practices in documenting land-related rights and practices among the Indigenous Mijikenda, with a focus on fostering sustainable land governance and facilitating the accelerated implementation of the African Continental Free Trade Area (AfCFTA) in Africa.

Drawing upon qualitative research methods and community engagement, this study investigates the complexities surrounding customary land tenure systems, customary boundaries, and indigenous land rights among the Mijikenda communities. It identifies the barriers and gaps in existing land governance frameworks, including inadequate legal recognition, limited institutional support, and the encroachment of external actors on indigenous lands. Additionally, the presentation highlights the adverse impacts of these challenges on the Mijikenda communities' economic prospects,

cultural identity, and environmental sustainability. This study delves into the specific land-related issues faced by the Mijikenda community and examines successful approaches to documenting land access, control, and ownership. It focuses on both customary and statutory frameworks to provide a comprehensive understanding of the complex land governance system in the region.

This presentation aims to explore best practices in documenting customary and statutory land access, control, and ownership among the Indigenous Mijikenda community in Kenya's Coastal Region. As the African Continental Free Trade Area (AfCFTA) gains momentum, it is crucial to ensure sustainable land governance to facilitate accelerated implementation and equitable participation in economic activities. Indigenous communities, such as the Mijikenda, often face land tenure challenges that hinder their social and economic development. By promoting inclusive and transparent land governance practices, the presentation argues that the Mijikenda communities can secure their land rights, enhance their economic activities, and contribute to the successful implementation of the AfCFTA.

The presentation highlights key findings related to customary practices and statutory regulations

governing land access, control, and ownership among the Mijikenda community. It will identify the challenges faced by the community, including conflicting land tenure systems, insufficient documentation, and inadequate recognition of customary practices in the formal legal framework. Additionally, the presentation will emphasize the importance of inclusive and participatory approaches that respect Indigenous rights, traditions, and cultural norms. The presentation will emphasise the importance of multi-stakeholder collaboration, including the engagement of Indigenous Mijikenda communities, government agencies, civil society organizations, and international partners, in developing and implementing sustainable land governance strategies.

The best practices identified in this study will contribute to the broader discourse on sustainable land governance in Africa. By examining successful strategies employed by the Mijikenda community, policymakers, land administrators, and researchers can gain insights into effective methods for promoting equitable land access, control, and ownership. These practices can serve as a foundation for policy recommendations and interventions aimed at supporting the implementation of the AfCFTA and ensuring the inclusive participation of Indigenous communities in the economic development process. By recognizing the significance of customary practices alongside statutory regulations, policymakers can foster sustainable land governance systems that promote social justice, economic empowerment, and the realization of Indigenous rights in the context of the African Continental Free Trade Area.

Goal and Objectives

The main objectives of this study are to:

- To document the customary land tenure systems, practices, and traditions of the Mijikenda communities in the coastal region of Kenya.
- To identify and analyze the statutory and legal frameworks governing land rights in Kenya, particularly as they pertain to Indigenous communities like the Mijikenda.
- To evaluate the effectiveness of customary governance structures within Mijikenda communities in managing and safeguarding land rights.
- To propose best practices on how Indigenous land rights within Mijikenda communities can support sustainable land governance and

contribute to the successful implementation of the AfCFTA.

METHODOLOGY

This study was conducted in Kwale County as part of the IOCE and EvalPartners funding to EvalIndigenous to conduct an Indigenous Voices Project among the indigenous communities in Kenya, and in particular the Mijikenda of South Coast of Kenya in Kwale County. Drawing upon qualitative research methods and community engagement, this study investigates the complexities surrounding customary land tenure systems, customary boundaries, and indigenous land rights among the Mijikenda communities. It identifies the barriers and gaps in existing land governance frameworks, including inadequate legal recognition, limited institutional support, and the encroachment of external actors on indigenous lands. The research was a desktop study supplemented by qualitative interviews with 6 Sages in Kwale County of South Coast of Kenya. The interviews were done with 3 Men and Women who are knowledgeable about the history and cultural practices of the Mijikenda, especially those living within the 2 Kayas of Kwale, Kaya Kinondo and Kaya Mtswakara.

Background to the Study

The Indigenous Mijikenda communities residing in Kenya's Coastal Region possess a rich cultural heritage deeply intertwined with their land. However, the lack of proper documentation and recognition of their customary and statutory land access, control, and ownership has posed significant challenges to their socio-economic development and rights protection. This presentation aims to explore the best practices in documenting land-related rights and practices among the Indigenous Mijikenda, with a focus on fostering sustainable land governance and facilitating the accelerated implementation of the African Continental Free Trade Area (AfCFTA) in Africa.

According to Kariuki (2021), the name Mijikenda is a Swahili derivative from the expression *midzi chenda* (nine homes) referring to the nine constituent sub-communities. According to historians, the Mijikenda migrated into the coastal area in the 16th century or earlier from a northern homeland known as Singwaya or Shungwaya. When they migrated into Kenya, they settled in fortified hilltop villages known as kaya (meaning a settlement, village or home) as they were at risk of attack from other communities. Each Mijikenda

sub-community has its own kaya, which is a political institution and a settlement with a closely-knit society controlled by a council of elders, the *kambi* or *ngambi*.

Kenya has a wide range of traditionally conserved areas, such as numerous Sacred Natural Sites, such as the Kaya forests of Kenya, among which is the natural abode of the Mijikenda of the South Coast of Kenya. Some recent developments in African jurisprudence have strengthened local communities' legal claims, as well as the recognition of indigenous people's rights (and indeed the very definition of 'indigenous peoples' in the African context) (Stockholm University, 2012). There is increasing recognition that the territories and areas governed or managed by indigenous peoples and local communities contain significant levels of biodiversity (and related cultural diversity), and that the knowledge and practices of these people have contributed to conservation of ecosystem, species, and genetic diversity (Kothari, et al. 2012).

Land is not merely a physical asset; it is a repository of culture, history, and identity. For Indigenous communities across Africa, including Kenya, land holds a profound significance that extends beyond its economic value. It serves as the bedrock of their livelihoods, the foundation of their social structures, and the embodiment of their ancestral connections. Yet, the struggle for land rights and equitable land governance remains a persistent challenge for these communities, who often find themselves caught in the crosscurrents of modernization, economic development, and competing interests.

According to Wayumba (2015), the Kayas are an outstanding and unique African example of how the collective attitudes and beliefs of a rural society have shaped or sculpted a landscape over time in response to prevailing needs. In effect they can be said to be the product of a collective conscious and unconscious act of creation of a people. The Mijikenda have a natural abode in the Kayas in South Coast of Kenya.

This paper embarks on a journey to explore the complexities of land governance within Indigenous communities in Africa, with a particular focus on the case of Kenya. Indigenous communities across the continent share common threads of history, dispossession, and resilience in the face of changing landscapes. They grapple with issues of customary land tenure, statutory land regimes, and

the delicate balance between preservation of culture and participation in national development efforts. This comparative analysis seeks to shed light on the dynamics of land governance, access, control, and ownership among Indigenous communities, while also highlighting the unique characteristics of the Kenyan context.

The exploration of the indigenous land rights and governance will be gauged from the lens of the African Continental Free Trade Area (AfCFTA). This is a landmark trade agreement that is aimed at creating a single market for goods and services across the African continent. It is one of the largest free trade areas in the world in terms of the number of participating countries. AfCFTA was officially launched on May 30, 2019, and it represents a significant step towards achieving economic integration and fostering intra-African trade. The objective of the Protocol on Trade in Goods is to establish a liberalised market in trade in goods in accordance with Article 3 of the African Continental Free Trade Area (AfCFTA) Agreement, through:

- the progressive elimination of non-tariff barriers
- improving the efficiency of customs procedures, trade facilitation and transit
- enhanced cooperation on technical barriers to trade and sanitary and phytosanitary measures.
- development and promotion of regional and continental value chains.
- enhanced socio-economic development, diversification and industrialisation across Africa.¹

For purposes of this study, we shall be limited to linking the indigenous land rights to the objective on enhanced socio-economic development, diversification and industrialisation across Africa. Special emphasis will be on socio-economic development and indigenous land rights and governance systems.

Africa is a tapestry of diverse Indigenous groups, each with its own traditions, languages, and land governance systems. These communities have historically maintained intricate relationships with their territories, practicing sustainable land management and preserving their cultural heritage.

¹ The African Continental Free Trade Area (AfCFTA) Protocol on Trade in Goods: Five key annexures for Trade Union attention. Available online at: <https://tradeunionsinafcfta.org/afcfta-protocol-on-trade-in-goods-five-key-annexures-for-trade-union-attention/> [Accessed on 23 September 2023]

However, external pressures, such as urbanization, infrastructure development, commercial agriculture, and mining activities, have increasingly encroached upon these ancestral lands. This encroachment raises questions about the recognition of customary land rights, the role of state institutions, and the protection of Indigenous land tenure systems.

In Kenya, a nation renowned for its rich cultural diversity and natural beauty, Indigenous communities like the Mijikenda, Samburu, and Maasai have confronted the challenges of land governance with resilience and determination. The Kenyan government has taken steps to address these issues, including the 2010 Constitution, which recognizes and protects the land rights of Indigenous peoples. Nonetheless, the practical implementation of these policies and their alignment with customary land practices remains an ongoing endeavour.

This paper's objectives are twofold: First, to provide a comprehensive overview of land governance issues among Indigenous communities in Africa, exploring the historical context, legal frameworks, and key challenges faced. Second, to conduct a comparative analysis that delves into the specific case of Kenya, examining the country's efforts in reconciling customary land tenure with statutory land regimes, the impacts of land-related policies on Indigenous communities, and the prospects for sustainable and inclusive land governance.

Through this comparative lens, we endeavour to offer insights, lessons, and recommendations that can inform policies, practices, and interventions aimed at safeguarding the land rights and cultural heritage of Indigenous communities, not only in Kenya but across the African continent. As the world grapples with issues of land degradation, environmental sustainability, and social justice, it is imperative to recognize the pivotal role Indigenous communities play in preserving ecosystems, biodiversity, and traditional knowledge. Their voices and land governance systems are integral to shaping a more equitable and sustainable future for all.

LAND GOVERNANCE AMONG INDIGENOUS COMMUNITIES

Land is not merely an economic or physical resource; it is deeply intertwined with the cultural identity and heritage of Indigenous communities. Land represents the spiritual connection to

ancestors, the repository of traditional knowledge, and the physical embodiment of cultural practices and rituals. Indigenous land governance often centres on collective ownership and control. Despite the very visible progress in recognizing and supporting indigenous peoples access to land, there remain huge weaknesses and gaps. Most countries have no or very inadequate legal and policy mechanisms to respect indigenous peoples and local communities (especially with regard to territorial, collective, and tenurial rights), and in many the existing policy environment may actually be against their interests (Kothari *et al.*, 2012).

Land is viewed as a communal asset held in trust for future generations, rather than as individual property. Decisions about land use, allocation, and management are typically made collectively within the community. Land governance is closely linked to the recognition of Indigenous land rights and the principle of self-determination. Indigenous communities seek autonomy over their lands and resources and advocate for legal recognition and protection of these rights. Land governance among Indigenous communities in Africa is about preserving cultural heritage, ensuring sustainability, and protecting the rights and interests of these communities in the context of their ancestral lands. It reflects a holistic approach to land that goes beyond economic considerations, encompassing spiritual, cultural, and ecological dimensions.

Documenting customary land tenure systems among the Indigenous Mijikenda

Land governance among the Mijikenda people of the Kenyan coast is influenced by a combination of customary practices and statutory regulations. The Mijikenda, a Bantu ethnic group, have a rich cultural heritage and traditional land tenure systems. Over time, these customary practices have intersected with national laws and regulations. The kaya forests are a highly aesthetic symbol of the interrelation of man and nature, a rich blend of natural and cultural values (Government of Kenya, 2008). Here are some of the main customary practices and statutory regulations governing land among the Mijikenda. Some of the customary land tenure systems among the indigenous Mijikenda include:

Communal Land Ownership

Communal ownership is a core feature of Mijikenda land tenure. Land is typically owned and managed collectively by the community rather

than by individuals. Families or clans within the community have specific areas allocated for their use, but these allocations are often subject to communal decisions. According to Blackett (1994), the Kaya forests are highly biodiverse and have high cultural significance to the Mijikenda people, who consider them sacred and have used them for traditional religious and spiritual ceremonies for centuries. This cultural and spiritual value of the forests has contributed to their conservation over millennia. Furthermore, the Kaya have recently spurred the growth of forest tourism in the coastal region (NEMA, 2009).

Clan and Family Allocation

The ability of local communities to secure clear rights over their traditional territories, and the natural resources therein, is fundamental to the effective functioning and maintenance of the Indigenous People's and Local Community Conserved Territories and Areas (ICCAs) (Stockholm University, 2012). Within the larger communal ownership framework, land is allocated to specific clans or families for various purposes, including farming and settlement. This allocation is often based on historical or traditional affiliations.

Land Allocation Rituals and Land Use

Traditional ceremonies and rituals may be performed when allocating or transferring land rights within the community. These rituals are important for maintaining cultural ties to the land and confirming the legitimacy of land transactions. According to the study by Wayumba (2015), the Kayas are still used for traditional ceremonies led by Elders to this day, typically for rain and a good harvest as well as for healing within the community. The most important rituals of the Kayas are accompanied by cleaning of the paths (*mwara*) and central clearing (*Kaya*), a symbolic 'sweeping of the home'. According to the report by NEMA (2009), The land tenure system in the coastal region has had a bearing on the conservation of the environment and its resources. Without ownership documents, many households show little concern for the application of appropriate farming technologies or long-term sustainability. Kariuki (2021) notes that at the community level, certain rituals or ceremonies are conducted by initiated elders for community benefit including: prayers in times of drought or famine; cleansing of land; thanksgiving prayers and blessing of the harvest; prayers for healing community members; prayers for peace; and divination.

Land Dispute Resolution

Customary mechanisms, such as councils of elders and clan leaders, play a vital role in resolving land disputes. These mechanisms often prioritize consensus-building and community cohesion. According to Kariuki (2021), apart from holding traditional knowledge and conserving the kaya forests, the elders play a key role in promoting unity, conflict resolution, rule-making, and enforcement of those rules. The elders and forests are a symbol of unity and cultural identity for the Mijikenda people. Moreover, elders are the first port of call wherever there are disputes (including land, family and political) in the community.

Inheritance Practices

The Mijikenda Sacred Kaya forests are an outstanding and unique African example of how the collective attitudes and beliefs of a rural society have shaped or sculpted a landscape over time in response to prevailing needs. They contain the traces of historic fortified settlements of the Mijikenda ancestors which serve as a focus of cultural and ritual activities continuing on the sites today (Government of Kenya, 2008). Inheritance of land rights among the Mijikenda is typically governed by customary rules, where land rights are passed down through generations within a family or clan. The eldest son or designated family member may inherit the land.

Rituals associated with customary land transactions and rights among the Indigenous Mijikenda

The Mijikenda have a rich cultural heritage and perform various rituals that establish a deep connection between the land and the people, particularly during land transactions or rights of passage. These rituals demonstrate the Mijikenda's deep-rooted belief in the spiritual significance of the land and their commitment to maintaining a harmonious relationship with it. Through these ceremonies, they seek blessings, protection, and guidance from ancestral spirits, ensuring that land transactions and rights of passage are conducted in accordance with their cultural traditions.

Some of these rituals are as mentioned below:

Planting the Sacred Stick

This ritual is conducted during land transactions or when establishing new settlements. A sacred stick is planted in the ground to mark the boundaries of the land and symbolize the connection between the people and the land. The ritual involves prayers, offerings, and the participation of community elders and spiritual leaders.

Sharing the Wilderness

When a family or an individual is granted the right to use a specific piece of land, this ritual takes place to seek the permission and blessings of the ancestral spirits. The person or family is required to offer sacrifices and perform rituals to honour the spirits and demonstrate their commitment to the land. It is believed that this ritual ensures a harmonious relationship between the land and its inhabitants.

Circumcision Ceremony

The circumcision ceremony is a significant rite of passage for young Mijikenda males. It marks the transition from childhood to adulthood and the acquisition of land rights and responsibilities. During this ritual, the boys are circumcised, and they undergo various tests and teachings to prepare them for their roles as custodians of the land. The ceremony often involves the presence of community elders, spiritual leaders, and the entire community.

Planting the Dance

Ngoma is a traditional Mijikenda dance performed on special occasions, including land-related ceremonies. Before the dance begins, a symbolic planting of ngoma is performed. Ngoma refers to a small wooden post decorated with colourful ornaments and believed to possess spiritual power. By planting the ngoma, the Mijikenda seek the blessings and protection of the ancestral spirits for the land and the people.

Reading the Leaves

This ritual is performed by diviners or Kaya Elders. During land transactions or disputes. The Kaya Elders are consulted to interpret the signs and messages from the spirits. They use various methods, including reading the patterns formed by leaves scattered on the ground, to provide guidance and resolution. The ritual serves as a means to ensure fairness and justice in land-related matters while acknowledging the spiritual connection between the land and the people.

Other rituals associated with land transactions and ownership include:

Ancestral Consultations and Ritual Sacrifices

Before any land transactions or allocations, there may be consultations with ancestral spirits. The Mijikenda often believe in the importance of involving their ancestors in decision-making processes, especially concerning matters as vital as land. Ritual sacrifices and offerings might be made to appease the spirits and seek their guidance and

blessings for the land transfer. This could include the sacrifice of animals, such as goats or chickens.

Elders' Involvement: Elders play a crucial role in land allocation ceremonies. They are typically responsible for overseeing the process, ensuring that it adheres to traditional customs and norms.

Dances and Music: Traditional dances and music are often part of the ceremonies. These cultural expressions serve to celebrate the occasion and express communal joy. Dances may have symbolic movements related to the land or ancestral spirits.

Libation and Prayer: Pouring of libations and recitation of prayers are common during these ceremonies. This serves as a way of seeking divine intervention and blessings for the land transaction.

Symbolic Actions

Symbolic actions may be performed during the ceremony to represent the transfer of land rights. This could involve the symbolic exchange of items, such as soil, seeds, or symbolic objects representing the connection between the land and the community.

Oath-Taking: In some cases, an oath or pledge might be taken by the parties involved in the land transfer. This is a solemn commitment to adhere to the agreed-upon terms and to respect the customary laws associated with land ownership.

Feasting and Community Gathering: The ceremonies often conclude with a communal feast where community members come together to share food and strengthen social bonds. This fosters a sense of unity and shared responsibility for the well-being of the community.

Statutory Regulations Governing Land Rights in Kenya

As agrarian society has changed, so have the regimes and the rules through which rights in land are organised, exercised and upheld. Four inter-related trends have marked the passage over the last century: first, there has been a strong shift in the locus of authority over land holding from community to state, from periphery to centre; secondly, land has become a commodity detachable from inhabitant or tiller, and even tradable in the marketplace, altering the meaning of tenure considerably; thirdly, through the processes of social transformation, distribution of land, and rights in land, have become profoundly less even, leading to outright landlessness and land shortage; and lastly, the rights of women to land

ownership have been obfuscated and demeaned (Wily & Mbaya, 2001).

The main statutory regulations governing customary land tenure systems in Kenya include:

Kenyan Constitution (2010)

The Kenyan Constitution recognizes and protects the land rights of Indigenous and local communities, including the Mijikenda. It emphasizes the need for equitable access to land and provides for the establishment of a National Land Commission to address land issues. However, the study by Stockholm University. (2012), holds the opinion (*and rightly so*) that, while the land reforms in the constitution, specifically the devolution of greater powers to local governments and the replacement of trust land with community land, are of enormous significance, there is broad concern that legislators and ministerial officials will subvert or dilute the critical reforms and, ultimately refuse to implement the new constitution that Kenyan civil society has worked so hard to achieve. Wayumba (2015) however, holds a differing opinion, that with the promulgation of the new Constitution in Kenya, all the customary land will be administered under the Community Land Commission, but the inhabitants will still enjoy all the customary rights they have had in their areas. The main objective of the Community Land Commission is to determine and register such rights. Previously, such rights have not been recognized in the laws of Kenya neither have they been registered.

Land and Forest Laws and Acts

Various land laws and acts in Kenya govern land ownership, management, and transactions. These include the Land Act Kenya (Government of Kenya, 2012a), Land Registration Act (Government of Kenya, 2012b), and the Community Land Act 27 of 2016 (Government of Kenya, 2012c). The Community Land Act, in particular, seeks to address issues related to community land ownership and management. Kenya has the National Forestry Policy 2014 (Government of Kenya, 2014) and the Forests Act No. 7 of 2005 (Government of Kenya, 2012d) through which the position of communities in the law has slowly increased over several years of legal drafting; and the Forest Conservation and Management Act 34 of 2016 (Government of Kenya, 2019). The greater preoccupation of the law is however, was the creation of a semi-autonomous Kenya Forest Service (Wily & Mbaya, 2001).

Land Registration

The Kenyan government has established a land registration system aimed at formalising land ownership. Some Mijikenda individuals or communities may choose to register their land holdings under this system. Wayumba (2015) argues in a paper that the imposition of Western-style land tenure system into Kenya has not killed the spirit of the customary tenure. Instead, the customary system only went underground where it continued to grow despite the overlay of statutory law that was designed to replace it. Many communities in Kenya continue to implement customary law in a way that indicates that customary tenure provides better solution to societal problems than the western statute laws. Consequently, many communities in Kenya continue to rely on customary tenure methods to solve land disputes as they claim that western-based courts are expensive, cumbersome and the judiciary system can be compromised. According to the Government of Kenya (2009):

Land administration refers to the process of determining, recording and disseminating information about ownership, value and use of land. An efficient land administration system guarantees the recording of land rights, promotes tenure security, and guides land transactions. Further, it provides land users with appropriate forms of documentation to guarantee land rights, and supports the processes of land allocation, land dispute resolution and fiscal management of land. [Section 3.5 (144)].

Land Use Planning

Local land use planning and zoning regulations, as well as county-level land management institutions, have a role in determining land use patterns and development within Mijikenda territories. The Mijikenda Kayas are forested sacred sites that dot the coastal strip of Kenya covering a total area of 5,056 Ha and spanning a distance of approximately 200 Km along the Eastern Coast to the South of Kenya. They are a representation of the formation and identity of the Mijikenda peoples of Kenya Coast (Wayumba, 2015). The Kayas are shrines with a powerful link to the past. They are the burial places of the elders, the symbol of the well-being of a nation, the nation of the Mijikenda. The Kayas are the ceremonial ground for occasioning rain, good harvest and healing with the community; the heart and soul of a people [National Museums of Kenya, 2014]. In a study on the Millennium Villages Project (MVP) the author noted that indigenous knowledge can help to

alleviate poverty if it is effectively applied in agriculture and supported by appropriate technology interventions that consider peoples' circumstances. Sustainable productivity of crops for food security usually entails efficient utilization of locally available resources (Ponge, 2011, 2013).

Environmental and Conservation Regulations

In areas with significant natural resources and conservation concerns, statutory regulations may impact land use practices and resource management. According to Stockholm University (2012), Kenya also has propagated a framework for the development of coastal marine Indigenous People's and Local Community Conserved Territories and Areas (ICCAs), through regulations providing for Beach Management Units under fisheries legislation, that allows coastal communities to establish and enforce territorial rights over in-shore waters and reef fisheries.

The National Land Policy

According to Government of Kenya (2009) at Section 64 (b) the policy provides that ignoring customary land rights not deemed to amount to ownership, such as family interests in land, the rights of "strangers" (for example *jodak* among the Luo and the *ahoi* among the Kikuyu), and communal rights to clan land (such as rights to *inkutot* land among the Maasai and rights to *kaya* forests among the Mijikenda). And at Section 66 (a), it provides that to secure community land, the Government of Kenya 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;

Effectiveness of customary governance structures in managing and safeguarding land rights

The effectiveness of customary governance structures within Mijikenda communities in managing and safeguarding land rights can vary based on several factors, including the specific community, the strength of traditional institutions, and external pressures. Some of the manifestations of the effectiveness of the customary governance structures include.

Community Variability

Mijikenda communities consist of several distinct sub-groups, each with its own customs, traditions,

and customary governance systems. Therefore, the effectiveness of customary structures may differ from one Mijikenda sub-group to another. What works well in one community may not necessarily apply to another. Among the Mijikenda, it has been noted that poverty leads to over-use and destruction of natural resources, where short-term livelihood goals are pursued at the expense of long-term environmental sustainability. There is need to ensure that environmental concerns are integrated into development planning and that development plans lead to the empowerment of local communities to engage in sustainable livelihood activities (NEMA, 2009).

Strength of Traditional Institutions

The strength and resilience of customary governance institutions play a significant role in their effectiveness. In some Mijikenda communities, traditional leaders, councils of elders, and community assemblies continue to wield considerable authority in land-related matters. In others, these institutions may have weakened over time due to external influences.

Recognition of Customary Practices

The degree to which governmental and legal systems recognize and respect customary practices and land rights is a critical factor. The Kenyan Constitution (2010) recognizes and protects the land rights of Indigenous and local communities, including the Mijikenda, which has provided a legal framework for customary land governance. However, the implementation of these legal provisions can vary.

Conflict Resolution

Customary governance structures often excel in conflict resolution related to land disputes. Elders and traditional leaders are frequently involved in mediating disputes, and their decisions are respected by community members. This can contribute to the peaceful resolution of conflicts and the preservation of land rights. However, in the Kenyan case, outright manipulation of informal and formal resolution processes has been rife in one or two countries, including by its own admission, Kenya (Wily & Mbaya, 2001).

FOCUS ON INDIGENOUS LAND GOVERNANCE AND SUSTAINABLE DEVELOPMENT

Indigenous communities often inhabit and manage lands with rich biodiversity and play a critical role in environmental conservation. The Mijikenda of the South Coast of Kenya are not an exception.

Recognising and respecting their land rights can contribute significantly to several SDGs. Some of the SDGs that are directly linked to indigenous land rights are as follows.

SDG 1: No Poverty

Secure land rights for the indigenous Mijikenda communities can provide a foundation for poverty reduction. When indigenous people have control over their lands and resources, they can engage in sustainable agriculture, forestry, and other economic activities, leading to increased income and improved livelihoods.

SDG 2: Zero Hunger

Indigenous land management practices among the Mijikenda, often prioritises food security and sustainable agriculture. By protecting their traditional lands and forests (*the indigenous Kayas*) and agricultural systems, indigenous Mijikenda can contribute to reducing hunger and ensuring food sovereignty.

SDG 5: Gender Equality

The Mijikenda community have distinct gender roles related to land management and resource use. Recognising and respecting their indigenous land rights can empower their women and promote gender equality within the community.

SDG 6: Clean Water and Sanitation

The Mijikenda indigenous lands often border the Indian ocean and encompass critical water sources and ecosystems. Protecting these lands and marine ecosystem can help ensure access to clean water and maintain water quality for both indigenous communities and downstream populations.

SDG 13: Climate Action

The Mijikenda are often at the forefront of climate change impacts. Secure land rights can enable them to engage in sustainable land management and natural resource conservation practices, thereby contributing to climate resilience and mitigation efforts.

POLICY IMPLICATIONS OF THE STUDY

The main findings of the study on the role of indigenous land rights and governance in the realisation of enhanced socio-economic development highlight a strong correlation between secure land tenure for indigenous communities and positive socio-economic outcomes. Firstly, the recognition and protection of indigenous land rights provide a foundation for sustainable resource management. Indigenous

communities, often residing in ecologically sensitive areas, employ traditional knowledge and practices that support environmental conservation and biodiversity. This stewardship not only ensures the long-term health of ecosystems but also bolsters local economies by sustaining agriculture, forestry, and fisheries. Furthermore, secure land rights empower indigenous communities to engage in economic activities, including small-scale agriculture, tourism, and handicraft production, which can generate income and alleviate poverty.

Policy implications from the Study's Findings Land Adjudication and Settlement

The government may undertake land adjudication and settlement programs to address land disputes and ensure that land ownership is clearly defined and documented.

Mining and Extractive Industry Regulations:

In regions with mineral resources, statutory regulations govern land use and resource extraction, and communities may be involved in negotiations and benefit-sharing arrangements.

Empowerment and Inclusivity

The effectiveness of customary governance structures is often enhanced when they are inclusive and empower marginalized groups, including women and youth. Efforts to promote gender equity and youth participation can strengthen these structures.

Education and Awareness

There is need to identify national and local expertise and build the capacity for rehabilitation through the development and/or dissemination (in local languages where necessary) of best-practice guidelines and training. Building awareness within Mijikenda communities about their land rights and customary governance systems can also enhance effectiveness. This includes educating community members about their legal rights and the importance of preserving their cultural practices.

Governmental Support

It is important to investigate the underlying causes of unsustainable exploitation of resources, such as poverty, vulnerability and livelihood insecurity, and to identify and promote livelihood activities that are acceptable, sustainable and have genuine development potential. Collaborative efforts between governmental authorities and Mijikenda communities can contribute to the effectiveness of customary governance structures. Support for community-led land management initiatives and

sustainable development projects can align with traditional practices and enhance land rights.

Adaptation to Contemporary Challenges

Inadequate government budget constrains effective coastal zone management in Kenya. It is therefore important to identify sustainable financing mechanisms for coastal ecosystem conservation. Customary governance structures may need to adapt to contemporary challenges such as environmental degradation and climate change. Incorporating sustainable land management practices into customary systems can improve resilience.

Contribution of Findings to the Successful Implementation of the AfCFTA

Legal and Policy Reforms

There is need to effect legal and policy measures, most crucially towards recognizing indigenous peoples' and local communities' rights as legal subjects, rights to territory, natural resources, and collective governance, respect of customary knowledge and practices, and other such conditions relevant for secure land rights. Because of the gaps and inconsistencies between customary practices and statutory regulations, there is need for legal reforms, which can ensure that customary land rights are recognized and protected within the broader legal framework, promoting legal certainty and stability for land transactions. There is need for legal protection to be given to unregistered rural rights and indigenous communities in general, including those deemed to be customary. This position is supported by the findings of the study conducted by Wily and Mbaya (2001).

Conflict Resolution Mechanisms

Understanding the effectiveness of customary conflict resolution mechanisms can be valuable for promoting peace and stability in the region. The findings can inform efforts to strengthen these mechanisms and ensure that land-related disputes are resolved peacefully and justly. Kanyinga (1998) addressing the issue of the politics of land tenure reform in coastal Kenya, noted that most disputes centred around boundaries and ownership of land. Some of the disputes were occasioned by disagreements between and among family members. Arbitrators in some of these disputes were village elders who were assumed to have had the knowledge of which family used to own what and where. They heard these disputes in the presence of both the local chief and the adjudication officers. This explains the need for recognition of traditional dispute resolution

mechanisms in addressing land right disputes. Kanyinga (1998) adds that the modern courts responsibilities are currently confined to giving the decisions of the elder's courts legal force by certifying the proceedings of the elders courts.

Environmental Sustainability

This study sheds light on how the Mijikenda communities have historically practiced sustainable land management. These practices can serve as valuable models for promoting environmental sustainability, conserving biodiversity, and combating land degradation, aligning with the goals of the AfCFTA.

Land Tenure Security

This study identifies challenges to land tenure security among the Mijikenda and suggests mechanisms for strengthening land rights and ensure that individuals and communities have secure access to their lands. Land tenure security is essential for attracting investments and promoting economic development, which aligns with AfCFTA goals. It is equally critical for local communities to possess, or to be able to create, local governance organs that are democratically constituted and accountable, and have the formal status required to effectively engage with external parties (Stockholm University, 2012).

Investment and Development

By addressing land governance issues and providing clarity on land rights, the study's findings can create an environment conducive to responsible investments in agriculture, infrastructure, and other sectors. This can facilitate economic development and regional integration, a key objective of the AfCFTA.

Inclusive Decision-Making

Recognising the role of customary governance structures, the study can advocate for the inclusion of Mijikenda communities in decision-making processes related to land and natural resource management. This aligns with the principles of inclusivity and participation advocated by the AfCFTA.

CONCLUSION AND FUTURE RESEARCH

This study concludes that indigenous land rights and governance, especially among the indigenous communities like the Mijikenda, plays an important role in the realisation of enhanced socio-economic development, which is a key objective of AfCFTA. The study's conclusion underscores that the effective governance of indigenous lands

contributes to social cohesion and cultural preservation within these communities. When customary governance structures are respected and empowered, they facilitate conflict resolution, community decision-making, and the preservation of traditional knowledge. This social stability, in turn, promotes education, healthcare, and gender equity, aligning with broader socio-economic development objectives.

By recognising the unique cultural and spiritual connections indigenous peoples have to their lands, societies can foster a sense of pride and identity that underpins community resilience and well-being. In conclusion, the findings emphasise that secure land rights and effective governance mechanisms for indigenous communities are not only a matter of justice but also essential for achieving sustainable and inclusive socio-economic development, which is a key objective of AfCFTA.

For purposes of future research on the area of the interconnect between indigenous land rights, governance and the realisation of enhanced socio-economic development and the realisation of the SDGs, the following two areas need consideration.

Economic Impact and Livelihood Diversification

One critical area for future research is a deeper examination of the economic impact of secure indigenous land rights and effective governance systems. This could involve assessing the direct and indirect contributions of land rights to household income, food security, and poverty reduction among indigenous communities. Researchers might explore how land tenure security enables communities to engage in diverse economic activities, such as sustainable agriculture, eco-tourism, and natural resource management, and how these activities translate into improved livelihoods. Additionally, research could investigate the potential for indigenous communities to leverage their land rights for access to credit, investment, and market opportunities, ultimately contributing to broader economic development goals.

Social and Cultural Dimensions

Another important area for future research is the social and cultural dimensions of indigenous land rights and governance. This might involve exploring how secure land tenure and the preservation of customary practices impact social cohesion, cultural identity, and community well-

being. Researchers could investigate how indigenous governance structures promote inclusive decision-making, gender equity, and the transmission of traditional knowledge within communities. Moreover, future studies might delve into the role of indigenous land rights in fostering intergenerational resilience and cultural preservation, examining how a strong connection to ancestral lands influences indigenous youth's aspirations, education, and cultural engagement. Understanding these social and cultural dimensions can provide valuable insights into the holistic benefits of indigenous land rights and governance on socio-economic development.

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