Community Protocols: A Bottom Up Approach to Community Participation

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Abstract
The paper discusses the development of community protocols to address potential impacts from an extractive industry project (Ghana) and a large government infrastructure project (Kenya), through the experiences of Natural Justice and its community partners. Community protocols are increasingly recognized as an effective tool for mobilizing and building community capacity, in addition to engaging and empowering communities in situations where communities’ rights to land, resources and/or traditional knowledge have been undermined. Community protocols articulate community-determined values, procedures and priorities. They set out rights and responsibilities under customary, state, regional and international law as the basis for engaging with external actors, such as governments, companies and NGOs. They can be used as catalysts for constructive and proactive responses to threats and opportunities posed by land and resource development, conservation, research and other legal and policy frameworks.

This case study focuses on the use of community protocols in two contexts:

a) The Upper West Region of Ghana, where an Australian mining company was given permission to prospect for gold, in turn attracting illegal miners to the area. These activities led to significant pollution of both land and water resources while threatening the sacred groves of the local Tanchara community.

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b) Lamu, Kenya, where, as part of a massive infrastructure project to transport oil from South Sudan to the Kenyan coast, a deep-water port is being constructed that will significantly impact local indigenous communities in a currently pristine mangrove ecosystem.

1 Introduction

The effective participation of Indigenous peoples and local communities¹ in decisions that affect them is vital to ensuring that their rights are upheld. This paper presents two cases studies in which community protocols have been used as a means to support community mobilization and increase community capacity to engage with external actors who have impacted or threaten to impact their rights. The paper discusses Natural Justice’s² experiences with the development of protocols by communities to address potential impacts from an extractive industry project (Ghana) and a large infrastructure project (Kenya). These examples analyze the past and ongoing process of developing community protocols in both settings. They demonstrate that community protocols can serve as useful mechanisms to address mobilization and capacity gaps of disadvantaged groups to participate effectively in decisions that affect them.

2 Community Protocols – A Brief Introduction and History

Many communities have unique customary laws, practices, procedures, and rules, (collectively “customs”) that regulate their interactions within and between communities and with the territories and natural resources upon which they depend (Shrumm and Jonas 2012). Customs provide clarity to community members about rights, responsibilities, and appropriate behaviour. Respecting and acting according to community customs helps ensure social cohesion and reinforces customary laws, values, and decision-making processes.

Communities are increasingly engaging with external actors such as governments, corporations, researchers and their associated institutions, and non-governmental organizations (NGOs). In addition to a growing rate of development that impacts more and more communities around the world, there is also greater recognition of community rights in relation to land and natural resources at the local, national, regional and international levels. Moreover, better informed and empowered communities are eager to see their rights realized at the local level. Many of these rights relate to state obligations to recognize communities’ customary laws and

¹ Throughout this paper the term “communities” may be used interchangeably with “Indigenous peoples and local communities” as appropriate.
² Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa since 2007. Our vision is the conservation and sustainable use of biodiversity through the self-determination of Indigenous peoples and local communities. We work at the local, national, regional, and international levels with a wide range of partners. We strive to ensure that community rights and responsibilities are represented and respected at the broader scales and that gains made in international fora are fully upheld at all levels. For more information see www.naturaljustice.org.
procedures, free, prior and informed consent when engaging in activities that affect communities, and the right to self-determination. However, external actors often do not understand the internal practices and governance systems of communities because they are enshrined in unique ways. Failing to recognize community rights and respect community customs, whether intentional or not, often leads to a deterioration of otherwise constructive relations, or outright conflict, between communities and external actors (Shrumm and Jonas 2012).

To address this issue, communities are not only asserting their rights codified in national, regional and international law, but they have also begun to document their customs in diverse ways, including in written form, so that they can be more easily communicated to others. These forms, referred to as “community protocols,” are subsequently used to ensure that external actors respect communities’ customary laws, values, and decision-making processes, particularly those concerning stewardship of their resources, territories and areas. Communities are actively seeking recognition of customary systems of governance and management, including traditional knowledge and practices, and their roles in the conservation and sustainable use of biological diversity and ecosystem adaptation (Shrumm and Jonas 2012). Furthermore, developing community protocols also supports communities in formulating a common position in relation to external actors such as mining companies or governments and provides their leadership with a respective mandate to engage with such actors. Communities can be divided in their views of how to respond to threats and opportunities from outside parties, and protocol processes can support communities to establish a joint position while embedding them in larger community visioning processes.

2.1 Purpose of Community Protocols

Communities develop protocols for a variety of different reasons, but in general they are either aspirational, defensive or a combination of both. In developing aspirational protocols, communities can invite external actors to develop relationships that are of mutual interest to all parties. This could include sustainable business relationships based on the sourcing of natural products or eco-tourism models. Such partnerships are usually based on external parties recognizing the role of communities as right holders rather than simply being the subject of corporate social responsibility projects. It also requires the recognition of the community’s particular ways of life and relationships with their territories and areas. It could constitute working collaboratively toward a tangible outcome such as a Memorandum of Understanding and/or benefit-sharing agreement that could serve as the basis for a business relationship.

Defensive community protocols are generally developed in response to activities that are impacting or that have the potential to impact communities if plans progress unchecked. Many such scenarios involve infrastructure developments such as the construction of dams or extractive industries, such as the imposition of mining projects on community land without community consent. In these situations, protocols inform external actors of community customs
and seek recognition from such actors of communities’ procedural and substantive rights. Communities may also seek redress for past injustices or mediation for conflict resolution.

The process of documenting and developing a community protocol is as important as the outcome, and it should be an empowering process driven by community members themselves. A number of participatory methods are used to assist community members to prioritize issues, clarify messages to external actors, and consolidate the information into an appropriate format. Depending on whom it is directed toward and for what purpose, protocols have consisted of, for example, a written document, digital or physical maps, films, photographs, or other appropriate formats. Whatever format is used, it should be meaningful to the community and should instill a sense of ownership over the process and outcome. Often outside help is sought for a clarification of community rights in national, regional and international law.

Each protocol is as unique and diverse as the communities who develop them. However, most community protocols contain certain key themes. These themes include:

- The community’s identity, story of origin, and core values and norms;
- Relationships between culture, language, spirituality, customary laws, resource use practices, traditional knowledge, and their territories and areas;
- Customary institutions, decision-making processes, and other aspects of self-governance;
- Challenges and concerns and how the community would prefer to address them;
- Locally defined development plans and priorities;
- Specific rights and responsibilities in customary, national, and international law; and
- Specific calls to external actors.

2.2 History

While the concept of community protocols has been around for some time, protocols began gaining international prominence in 2008, as a community-based response to implementing the Convention on Biological Diversity (CBD), and in particular rights related to access and benefit sharing (ABS). Around that time, a number of organizations including Natural Justice and its partners began assisting communities to develop protocols with support from the ABS Capacity Development Initiative (Natural Justice, 2009). Under CBD Article 8(j), Parties are required to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities” and are further encouraged to equitably share “the benefits arising from the utilization of such knowledge, innovations and practices”. Community protocols were considered

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3 These efforts built on earlier initiatives, such as the development of community protocols facilitated by indigenous organisations ANDES (Peru) and the Fundación Dobo Yala (Panama), with support from IIED and IDRC (Canada), and by the NGO SEARICE (Southeast Asia Regional Initiatives for Community Empowerment) in the Anti-Biopiracy Programme in Southeast Asia funded by HIVOS, DANIDA and GIZ (1998-2001). They also build on previous efforts to support community participatory processes to defend customary rights, such as work by Kalpavriksh Environmental Action Group in India.
a useful way of establishing an appropriate basis on which such benefit sharing discussions could take place.

In November 2009, the African Group (a negotiating group within the CBD negotiating system made up of African countries) proposed references to community protocols in a subsidiary treaty to the CBD known as the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol). The proposal was accepted, and in the context of ABS, CBD member states are now required to recognize community protocols when it comes to the use of the traditional knowledge of indigenous peoples and local communities (Nagoya Protocol, Article 12).

With the recognition of community protocols in international law, governments are now integrating support for protocols in their own national legislative process in the context of ABS. In the meantime community protocols have been used as powerful mechanisms for communities articulating both rights and customary procedure in a number of contexts, including mining and infrastructure development as demonstrated in the below case studies.

3 Tanchara, Ghana

3.1 Background

The Tanchara community is a small local community located in Lawra, in the Upper West Region of Ghana, along the border with Burkina Faso. The Upper West Region covers a geographical area of 18,476km$^2$, with a population of about 702,000 people. The Tanchara community consists of approximately 3,800 people governed by intricate traditional governance structures consisting of the Divisional Chief, the Pognaa (the female equivalent), and the Tingandem (spiritual leadership). The landscape in Tanchara contains fruit and nut trees (including shea), small farms, and groves, the latter held sacred and preserved by the community because of the cultural and spiritual links such groves hold, as well as the abundance of plants with medicinal properties they contain (Guri et al. 2012). The entire region is ecologically fragile, with low rainfall and low soil fertility. Communities are heavily dependent on their land for their livelihoods.

In 2004, the Australian mining company Azumah Resources Limited (Azumah) was granted rights to prospect for gold in Tanchara by the Ghanaian government. As in many areas marked for resource extraction around the world, the grant of prospecting rights caused an influx of illegal miners (galamsay) to excavate for gold. This led to degradation of the environment through the pollution of water sources, creation of large pits (resulting in the deaths of adults, 

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children, and cattle, who have fallen in and drowned), and partial destruction of some of the community’s sacred groves. Although Azumah has attempted to liaise with the community (on the company’s own terms), the community refuses to consent to a large-scale mining project given the lack of adequate consultation with the community prior to granting prospecting rights to Azumah, and particularly given Ghana’s human and environmental rights obligations as set out in regional and international law. Ghana is also a part of the Economic Community of West African States (ECOWAS), which has made a specific commitment to the free, prior and informed consent of communities, articulated in Directive C/DIR.3/05/09 on the harmonization of the Guiding Principles and Policies in the Mining Sector.

3.2 Tanchara Community Protocol Process

The Centre for Indigenous Knowledge and Organisational Development (CIKOD), a Ghanaian NGO, works with communities across Ghana to develop methodologies for the strengthening of traditional authorities and civil society organizations to facilitate sustainable grassroots organizational development. CIKOD began working with the Tanchara community in 2003, and has since supported it to collectively mobilize around mining issues. Building on the community’s existing internal skills, knowledge, structures, institutions, and resources was an important first step in CIKOD’s work with the community around these issues, given the fact that diverse views within the community often cause conflict when natural resources are at stake.

Engagement with the community

For the Tanchara community, the community protocol process began well before contemplating developing a formal written protocol. CIKOD engaged with the Tanchara community using a number of participatory methodologies, including community visioning, development action plans (arising from those visions), and mapping out community institutions and resources (including natural, cultural, spiritual, informal/formal resources).

The community organizational tools that CIKOD used to engage with the Tanchara community strengthened the community’s traditional governance structures, so that members are more empowered to negotiate within their community and with outsiders. In response to the illegal mining operations, the Tanchara spiritual leaders articulated their concerns about the destruction of their environment by drafting of a statement setting out their unhappiness with the actions of the illegal miners, and “asking the government to safeguard their sacred groves and sites from both legal and illegal mining” (Guri et al. 2012, 124).

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5 For example, Ghana voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UN Declaration), and has ratified the CBD, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.
6 See Article 16(3).
7 For more information see www.cikod.org.
Results of engagement process

The actions of the spiritual leaders raised awareness and led to interest in mining issues within other sections of the community’s traditional structures. CIKOD worked further with the community to assess the impact of mining activities through the community’s own lens, based on its own indicators of health and well-being of the community. The results of the assessment were discussed at a community workshop, involving the participation of local government officials who were also keen to hear the views of community on these issues, given the likely impacts of mining on the Upper West region (Guri et al. 2012). Following the workshop, a regional forum on gold mining was held in 2010, which the country representative of Azumah attended. Community leaders and representatives were well-prepared to engage with mining issues at the forum, having extensively discussed them with their communities. These community discussions involved community visioning and planning and helped them decide whether future mining (and the current influx of illegal mining) fell within the community’s short, medium and long-term objectives (Guri et al. 2012). As a result of community mobilization around the mining issue, Azumah postponed its mining activities until 2013, and as of August 2014 it has not started mining.

It was against this backdrop that CIKOD raised the concept of community protocols to the Tanchara community in 2011. Having already worked with the community for several years, sufficient trust existed between CIKOD and the Tanchara community to develop a formal written protocol, and much of the work necessary to develop it had already taken place as part of CIKOD’s previous work with the community. The decision to document its customs through a community protocol process to support engagement with outsiders was a natural next step. Once a draft was prepared with the support of CIKOD, it was shared with a variety of different community groups including traditional structures, women, men, youth and elders, to document their feedback and inputs, and to make the necessary changes.

To support the use of the community’s protocol as a tool for rights-based engagement, CIKOD began working with the country’s National Human Rights Institution, known as the Commission on Human Rights and Administrative Justice (CHRAJ), to expand the community protocol by providing training and adding sections addressing relevant national laws (rights and obligations) that affect the community (Guri et al. 2012). Natural Justice also supported this process by working on an overview of relevant regional and international laws. The legal sections are a significant part of the community protocol, as they provide a rights-focused basis for the community to engage with external actors.

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8 Referred to as the Community Health and Well being Assessment Tool, or CHIAT.
3.3 Overview of the Outcome in Tanchara

The process of community mobilization prior to and concurrent with the drafting of the protocol has been critical to the Tanchara community in defending its rights and dealing with the intrusion of mining (both at the hands of illegal miners as well as Azumah). The Tanchara community formalized and articulated its governance structures to external actors thus giving these structures legitimacy to represent the community. Methodologies used in the run up to protocol further challenged the findings of an official environmental impact assessment (EIA) addressing the development of gold mines in the region. Based on the community’s reflections on its ways of life, livelihoods, and intricate connection with the environment, the Tanchara community was able to quickly respond to the EIA, by articulating members’ concerns and predictions of the impacts of the project that had not been contemplated within the EIA. In addition, in subsequent evaluation discussions with the community it was concluded that the community protocol process in Tanchara has been a useful tool for engagement as it allowed the community to articulate the traditional structures, decision-making processes, timeframes and cultural practices that it wanted outsiders to respect.

In the time that has passed since the protocol process, and the activities and discussions that led up to it, began, a few key observations can be made:

First, the process of community engagement in itself is one that has inspired the community across gender, generations, and other categories to recall their ancestral past, reflect on how far they have come, and analyze their current resources (social, spiritual, and material), in order to develop a common vision. As a result, today there is broader community consensus and awareness of its past and future, which informs the collective decision-making about resource use and exploitation.

Second, the Tanchara community strengthened its internal governance structures and members have become more aware of their rights, which they are using to try to postpone and subsequently influence decisions that will impact on their lives and livelihoods, their culture and spiritual practices.

Third, the written draft of the community protocol itself was finalized as a “living document” that contains many of the elements of community protocols discussed above, including the policy framework of national, regional and international law relevant to the Tanchara community. At the time of the writing of this paper, the latest version of the draft of the community protocol is printed for the study and signature of the Chief. The community protocol will then be presented to the Government of Ghana and local authorities for recognition.
Fourth, the community has substantially increased its capacity to engage external actors in a more empowered way and has helped it to resist both sanctioned and illegal mining. The very actions of the Tanchara community to: mobilize and openly discuss mining issues; raise awareness with local government authorities (including the Environmental Protection Agency) on activities conducted by Azumah without their consultation and by illegal miners that are destroying the environment; and articulate and advocate for their rights to external stakeholders – including the rights to FPIC; directly correlates to the work of CIKOD with the community, leading up to and including the development of the community protocol.

4 Lamu, Kenya

4.1 Background

Lamu County, situated in northeastern Kenya near the Somali border, consists of a strip of mainland on the coast, in addition to an archipelago of both inhabited and uninhabited islands. Lamu Old Town, on the main island of Lamu, is internationally regarded as “the oldest and best-preserved Swahili settlement in East Africa” (UNESCO 2014). Once the most important trade hub in East Africa, Lamu has retained its significance as a center for education in Islamic and Swahili culture, its preservation of cultural festivals and its abundant classical architectural styles. Due to the richness of this distinct culture, Lamu Town is recognized as a UNESCO World Heritage Site. In addition to its rich cultural history, Lamu County is endowed with abundant biological diversity and marine ecology, and it contains two national reserves, Dodori and Kiunga. In particular, Kiunga Marine Reserve, north of Lamu Island and located 16km from the Somali border, is rich in pristine, sandy beaches, mangroves and water habitats that shelter a variety of nesting species, and is internationally recognized as a UNESCO Man and Biosphere Reserve (UNESCO MAB Programme 2014).

Lamu has a current population of over 100,000 people consisting of a number of different ethnic groups. Its four main indigenous peoples include the Sanye, the Aweer (Boni), the Orma and the Bajuni. The Sanye and Aweer are hunter-gatherer communities, who primarily live off forest resources and some shifting cultivation. The Orma, largely geographically located in the south of Lamu County (bordering Tana County), are primarily pastoralists, who depend on these resources not just for food, but also sell animal-related products for income. The livelihoods of the largest group, the Bajuni, consist of fishing, farming and, in recent times, tourist-related activities.

Lamu County forms an integral part of the Kenyan government’s plan to transform the country – as set forth in its Vision 2030 – into a middle income country in the next twenty years (Government of Kenya 2014). At the heart of this vision, with an estimated cost of USD23 billion, is the proposed Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor.
project, described by the office of the Deputy President as the “first single gigantic, integrated, transformative and game-changer infrastructure project” (Kenya Office of the Deputy President 2014). If implemented, the LAPSSET project will result in the creation of a deepwater port in Lamu County that will have massive effects on mangrove systems and fishing corridors, as well as an influx of at least 1 million people (Save Lamu 2014). As a consequence, it will significantly impact, if not destroy, the backbone of livelihoods in Lamu County and its indigenous communities.

In 2010, Natural Justice was contacted by Inuka Kenya Trust, a small NGO based in Nairobi, which had an existing relationship with a local community-based organisation in Lamu called the Lamu Environmental Protection and Conservation (LEPAC). LEPAC and other like-minded community based organisations (CBOs) were deeply concerned about the LAPSSET and wanted to unite groups and individuals in Lamu to save the environmental and cultural integrity of the Lamu archipelago. Indeed, some efforts to form a unified community response had already been made through consultative meetings held in Lamu Fort in March 2009. From these meetings, the “Fort Zahidi Mngumi Declaration” emerged, which called for access to information on the Port project, an independent environmental impact assessment, mitigation of the harmful impacts of the project, affirmative action for locals in terms of employment, adequate benefit-sharing of Port income, land issues to be dealt with, and compensation for displacement, among other things.

Familiar with community protocols and their potential to facilitate shared community expression, Inuka Kenya Trust invited Natural Justice to speak to local CBOs in Lamu about community protocols, to build on momentum gained through the Lamu Fort meetings. Natural Justice members travelled to Lamu in August 2010, and again in December 2010, during which substantial community consultations took place. After these consultations, community members independently came together and agreed to create their own community protocol to capture the experiences of as many communities within Lamu County as was possible. To facilitate this process, the community-based organizations that were part of these initial meetings formed a coalition, now known as Save Lamu.9

Since 2011, Save Lamu has led, developed and refined the community’s protocol process. The aim of the community protocol, at its inception, was to further the goals of the communities articulated at the Lamu Fort meeting, including advocating for their rights to access to sufficient information, adequate community consultation and, where relevant, consent, and an independent environmental, social and cultural impact assessment of the proposed port.

9 For more information on Save Lamu visit http://www.savelamu.org/.
4.2 Lamu Community Protocol Process

With the support of Natural Justice, Save Lamu proceeded to map out and plan the community protocol process that they wished to engage in with the Lamu communities. This included identifying issues that warranted articulation, including the Indigenous peoples and local communities they hoped to approach to sensitize, raise awareness with, and collate information from relevant to the LAPSSE Project. Save Lamu began work on a questionnaire to elicit the required information and trained community members to travel to communities and engage in the process of gathering information.

Over a period of about eighteen months, community representatives travelled to 46 different local communities within Lamu County, spanning Lamu East and surrounding islands, Lamu West, including Lamu Island and the mainland. Representatives raised awareness of the LAPSSE Project and collected information from over a thousand people from different indigenous groups and livelihoods. In addition to larger community meetings, Save Lamu engaged in a number of focused group discussions with external researchers, to incorporate multi-stakeholder processes into community meetings and to engage with external parties, including local council members, provincial administration and county government where it was possible. Where particular gaps in information were evident, Save Lamu then interviewed individual representatives to supplement existing information in their community protocol. During this process, Natural Justice also engaged in preliminary legal training, mapping out existing rights that apply to community members as a result of the LAPSSE Project.

A first draft of the Lamu community protocol was finalized in early 2014, and the draft was presented to community members in ten stakeholder meetings across Lamu County. During these meetings, Save Lamu took the opportunity to continue community sensitization on the LAPSSE Project, as well as the oil and gas exploration activities that are currently taking place in the region, in addition to the likely impacts such activities will have on natural resources, the environment, culture, land and livelihoods. Feedback on the community protocol as well as the community’s concerns on LAPSSE were documented, and will now be used to amend the current draft.

In addition, Save Lamu is conducting participatory mapping of natural resources to further supplement the information in the community protocol, so as to gain a better understanding of the community’s use of natural resources such as fish, mainland and coastal forests (such as mangroves), to document species-rich areas (such as sacred sites, which often contain diverse biodiversity) and biodiversity hotspots. The benefit of such a mapping process, in addition to building the capacity of community members around such issues is that the maps will eventually become a source of knowledge that can be compared against plans for the development of the
Lamu Port. Save Lamu will also engage in participatory video, which will help to document issues in another participatory form, as well as the community protocol process.

4.3 Overview of the Outcome in Lamu

A draft of the Lamu Community Protocol has recently been distributed for comments among Lamu communities, a process that was slowed down due to recent tensions in some of Lamu’s communities. In the meantime we can already observe a number of outcomes from the process.

First, the development of the community protocol in Lamu has served as an effective mechanism for various indigenous peoples and ethnic groups to come together and jointly mobilize to address the proposed port as well as other issues including land and environmental rights, monitoring developments and disseminating information regarding the LAPSSET project, and engaging with the County Government on community concerns. Developing the community protocol has created space for different communities and Indigenous groups to engage, discuss and to learn about the project and their rights. Whilst the process has been challenging, it has created opportunities for engagement within and between the community and external actors that may not otherwise have occurred. It has allowed for the sensitization of remote communities within the district (that would otherwise not have the opportunity to be approached) and the implementation of participatory tools that ordinarily may not have been utilized.

In addition, Save Lamu has successfully initiated and coordinated a coalition of communities and organizations affected by the LAPSSET project across the entire corridor of planned development. Referred to as the LAPSSET Community Forum (LCF), it is a coalition of community-based organizations across the LAPSSET corridor from Lamu, Tana, Garissa, Isiolo, Marsabit, Meru, Laikipia, Samburu, Baringo and Turkana, spanning over the entire country from the Indian Ocean to the borders of both, Ethiopia and South Sudan. The purpose of the LCF is to develop joint advocacy strategies across the corridor, to strengthen the community voice of those affected by the mega project.

Second, the process has provided a foundation for Save Lamu’s advocacy work. It facilitates community engagement in a productive and positive initiative with the aim of developing a holistic document that outlines the community’s cultural traditions, conservation methods and nature-based livelihoods. This helps to refute narratives constructed by proponents of the port that Save Lamu is ‘against’ the port and thus anti-development. In the protocol process, communities themselves are constructively involved in the discourse of sustainable development.

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10 For example, the security issues that have plagued the region since the abduction of foreigners in Lamu County in 2011 by Somali pirates, the violence between ethnic groups on the border of Lamu and Tana Districts in 2012 and, most recently, the killing of community members in Mpeketoni, Hindi and Witu in July 2014 (allegedly at the hands of Al-Shabaab), have affected the development of the community protocol.
affecting their lands and environment, while at the same time highlighting that they are aware of their role as rights holders in this process.

Third, the community protocol will also set out the community’s rights as enshrined in the new Kenyan Bill of Rights, as well as regional and international agreements, which will support communities to demonstrate their role as rights holders. It will also allow Save Lamu to use the protocol as a tool for engaging in dialogue with the county and national government in order to raise the concerns of the community, press for free, prior and informed consent, benefit sharing, inclusive mitigation methods to offset negative impacts of the port, participation of monitoring of the impacts and demand a strategic environmental assessment of all the components of LAPSSET along the corridor.

Finally, and most impressively, as a result of the initiative, dedication, and commitment of Save Lamu’s volunteers, the communities’ advocacy throughout the community protocol process catapulted its concerns from initial internal discussions at the Lamu Fort in 2009, through broad community consultations and into the international arena. Although it is the first infrastructure project at this scale that the community has dealt with, Save Lamu’s advocacy has extended to a number of United Nations human rights mechanisms, including the Special Rapporteur on the Rights of Indigenous Peoples and UNESCO. In the past three years, Save Lamu has: successfully advocated for and responded to an environmental impact assessment of the Port project; supported its members to file a legal petition to the High Court of Kenya; supported the drafting of a Human Rights Assessment by independent consultants on behalf of UNESCO; attended international meetings such as the United Nations Permanent Forum on Indigenous Issues to advocate on their community’s behalf; written numerous articles for media outlets around the world; and engaged with the public on these issues particularly during events of cultural significance.

5 Conclusion and Lessons Learned

Viewed together, the experiences of communities in Tanchara and Lamu demonstrate that the process of developing a community protocol has been beneficial in a variety of different situations. The experience of the Tanchara community in Ghana is one where an NGO had already been working within a formalized community governance structure for a number of years before their community protocol was drafted. The endogenous development processes that had been taking place over that period of time allowed a transition between process and documentation. In Lamu, on the other hand, several different communities came together through the protocol process to form a joint coalition in response to a mammoth infrastructure project. Unlike Tanchara, where the community was already largely unified, in Lamu a new community based organization, Save Lamu, was created to engage in the community protocol

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11 Chapter 4 of the 2010 Kenya Constitution.
process. Despite their differences, however, both protocol processes allowed for communities to mobilize, address gaps in capacity, and participate more effectively in decisions that affect them.

With regard to mobilization and capacity gaps, the protocol processes integrated the communities’ response to a particular issue within a discussion of a larger vision of the communities’ future. It thus managed to pull in larger audiences who may have had different views on how to respond to the particular issues at hand. Because protocol processes are holistic, community members were more inclined to participate in its development, as opposed to a process that is focused solely on responding to a particular issue and may lead to a polarization within the community. In the context of Lamu, the protocol process led to mobilization of a much larger group of affected communities, and now the LAPSSET Community Forum has formed to address issues along the entire LAPSSET corridor. The process also includes capacity development with regard to the community rights under national, regional and international law.

With regard to effective participation, the protocol process allowed communities to articulate their views of how to participate and engage in decisions that affect them or their areas, territories and natural resources. Through a process that respects community customs, the communities took ownership over the protocol outcome, which is essential to reduce misunderstanding and conflict in the future. Furthermore, such processes help to provide community leadership with guidance and a mandate as to how to address and respond to opportunities and challenges faced by the community.

Of course, community protocols are not a panacea, and their development can involve significant challenges. Participatory processes with broad community involvement often take time and resources, especially where community decision-making processes on new topics are unclear or where governance structures have suffered due to colonial heritage and other challenges. Where these issues are present, it may take time for communities to take ownership over the development of the protocol process, which is essential to its overall validity. Additionally, the outcome of a written document is not by itself of particular use if not embedded in a broader movement. Instead, the community protocol serves as one tool at a community’s disposal when addressing challenges and opportunities.

12 As of August 2014 LCF only includes communities in Kenya, but there is potential to coordinate with communities in Ethiopia and South Sudan as well.
References

   http://www.vision2030.go.ke/index.php/vision


