



Pastoralist Parliamentary Group-PPG
Pastoralism: Our Pride and Our Life!



Drylands Learning and
Capacity Building Initiative
for Improved Policy and
Practice in the Horn of Africa

DISCUSSION BRIEF: The threat and potential of the Community Land Act to protect the community land and pastoralist livelihoods

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Summary

Around 80% of Kenya's land is in the drylands. Before devolution, the vast majority was community land (previously trust land). However, recent estimates suggest that this is now as low as 60%, as much has been expropriated by the private sector and government in recent years. Examples include the acquisition of large tracts of land for energy projects, conservancies, and abattoirs.

The 2010 Constitution Article 63(5) classified community land alongside public and private land as having equal status and protection. However legislation to give effect to this Article was not enacted until September 2016, when the Community Land Act was passed and the Trust Land Act and Land Group Representative Act were repealed. The guidelines for the registration of the community land are finalised but yet to be gazetted, although they provide limited clarity on the practical implementation of the Act. There is no coherent strategy for the roll out of the Act either from the Ministry of Lands, National Land Commission or the county governments and development actors are focusing on land registration alone, which is likely to cause conflict and undermine efforts to protect community land. In the meantime, community land continues to be expropriated without due process and or consultation with communities by both public institutions and private individuals. This is causing considerable consternation and conflict and undermining pastoralist livelihoods.

Thus there is an urgent need to promote an understanding of the legal protections for community land and ensure a robust process for conversion to other uses. There is also a need to ensure the Community Land Act is rolled out in a positive and productive way so that strategic grazing areas and mobility and marketing routes are protected, reciprocal resource agreements promoted and conflict is mitigated. Key to this is promoting an understanding among the communities that are working together to protect community land against external expropriation, this is more important and urgent than parcelling off tracts of lands that are of little use on its own alone. This approach also requires a common strategy among the governments and non-governmental actors promoting the roll out of the Community Land Act to protect communal rights and its productive potential to the benefit of all communities.

Background

Land is the critical resource for pastoralism, the most productive livelihood in the arid lands of northern Kenya which still supports majority population¹ (over 60% in 14 Counties). Livestock contributes over 12% to the national GDP² 70% of agricultural GDP contribution in Kenya is by pastoralism and tourism is largely supported by the pastoralist areas³. If the community land is fragmented or pastoralist mobility is constrained, pastoralism cannot function, and the people will lose their cattle due to shortage of water and pasture, joining the increasing number of peri-urban drop outs, who

¹ Kratli, S. & Swift, J. (April 2014). Counting Pastoralists' in Kenya <http://www.dlci-hoa.org/?p=2696>

² <https://www.kevevapi.org/index.php/about-us/item/4-livestock-sector-contribution>

³ <https://knoema.com/atlas/Kenya/topics/Tourism/Travel-and-Tourism-Total-Contribution-to-GDP/Contribution-of-travel-and-tourism-to-GDP-percent-of-GDP>



are some of the poorest people in Kenya today. Thus the management of land should continue to support and develop pastoralism, while enabling other developments and livelihood diversification to gradually grow in complimentary, sustainable and of benefit to the local people. This requires very careful planning to protect mobility and critical dry season grazing areas, migration and marketing routes, while enabling other developments. This cannot be done if communities start to focus on individualising of large community land and fencing their plots or excluding other users from common natural resources. It is more likely to result in conflict and rangeland degradation which will undermine the communities and other users' livelihoods.

Government institutions often do not seem to understand the real issues, and are not acting in accordance with, the laws protecting the community land. This is evidenced in the multiple interpretations and processes on conversion of community land being promoted by County land offices, who are often under considerable pressure from political leaders to make land available for public and private uses. Political power under devolution is now held by elites who are often disconnected from poor, rural communities and whose vision for development is focused more on infrastructural developments that require always large areas of prime rangeland, with no clear benefit to the local communities. Some NGOs and development partners are also promoting demarcation and registration of Community Land, without first promoting a common understanding across communities of the need to collaborate in protecting community land and pastoralist livelihoods.

Land is an extremely sensitive and conflictual issue in Kenya, particularly in pastoralist areas, where historical grievances abound and triggers of inter community conflicts. There are already on going active conflicts along boundaries and between communities. Land is generally seen as belonging to the majority ethnic groups who hold the devolved political power, while it is also claimed by multiple other groups. Pastoralists from neighbouring areas have for generations relied on strategic grazing reserves on community land during drought, and the protection of these areas and ensuring access by all other communities is critical for drought resilience, climate change adaptation and conflict mitigation.

Recommendations

There is an urgent need to promote an understanding and strengthen processes for protecting community land among communities customary leaders, county governments and other key land actors. This requires careful information dissemination, training of county governments and other actors, dialogue and mediation between communities and establishment of coherent and collaborative dialogue platform among all actors.

There is also a need to change the narrative around the Community Land Act roll out away from land registration to focussing more on the potential of the new law to protecting community land to avoid pitting communities against each other. This requires giving priority to processes that will protect critical grazing resources and ensuring collaboration among communities around mobility of livestock not being undermined. Intensified and collaborative efforts among governmental and non-state land actors are needed to develop strategies of support to communities and county governments to roll out the Community Land Act in a productive way.

DLCI and the PPG is prepared to call on all actors, especially the Counties and National Government actors, ASAL donors, and other key development partners to urgently come together to address these challenges and avert major conflict in Northern Kenya that is more likely to undermine livelihoods of millions of the poor in Kenya that still reliant on common land resources for their survival.

For feedback and suggestions on this brief, please contact: jmoku@dlci-hoa.org

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