

Towards Securing Community Land Tenure in Kenya

A holistic approach to community-based natural resource governance:

*The case of Wayu Community in Tana River County and Lokapel Community of Turkana County in
Kenya*



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Abstract

In Kenya a constitutional milestone that was achieved within the new constitutional dispensation was the recognition of '**Community Land**' as one of the three legal land categories in Kenya; the others being private and public land. Indeed, Kenya's constitution, under Article 63 (1) directly vests ownership of all community land in communities that are identified on the basis of ethnicity, culture or similar community interests. It further emphasized the need for legal **Recognition, Protection and Registration** of communal land rights, through an act of parliament to be formulated to put into effect article 63 on Community land. The enactment of the Community Land Act 2016 couldn't emphasize further on the Management of resources by the people sustainably. The Recognition, protection and registration of community land is key to the sustainability management and administration of community lands.

The 'How' is what is the main question on the effective and implementation of the spirit and the letter of the law.

Key:

Constitution of Kenya 2010

Community Land Act 2016

Voluntary Guidelines on Responsible governance of Tenure of Land, Fisheries and Forest in the Context of national Food Security VGGT

In the ASALs, high levels of human poverty co-exist with a rich stock of natural wealth and biodiversity. Livestock, wildlife, forests, pasture, minerals, and medicinal plants are all critical resources upon which the people of the region depend. However, natural resource management systems have come under increasing pressure from competing forms of land use, successive and more frequent droughts, and the proliferation of ever-smaller administrative units. These present real challenges to the sustainable use of land resources. Over the years people in the ASALs, such as pastoralists and those living in coastal region, have been dispossessed of their land and resources. Conflicts between traditional practices and modern technology raise questions of ecosystem sustainability and equitable use of resources with regard to pastoral practices. The current land tenure system poses a number of challenges to pastoralism as a livelihood system, including land sub-division within the pastoral areas into uneconomic units; lack of good physical infrastructure in pastoral areas and general insecurity, and inefficient livestock marketing outlets (e.g. during drought seasons). The historical injustices against pastoralists, hunters and gatherers thus include displacement and dispossession by colonial and post-colonial government; inappropriate land tenure system for common pastoral lands; conflicts with other land use system (e.g. wildlife, forest development and agriculture); marginalization of pastoralism; and negative perception about pastoralism and pastoralists.

Land tenure Most pastoral lands are managed communally, because resources are sparsely distributed and highly unpredictable and mobility is a vital management strategy, and as a result pastoral lands are easily damaged when their use is individualised. Where government

conflict, impoverishment of herders and degradation of the environment. Where government policy has firmly supported communal land tenure, the opposite outcomes can be found. In most pastoral regions sustainable land management requires protection of pastoralists' communal land rights and recognition of pastoralist territories.

Securing Pastoral Community land tenure and users rights in Tana River County and Turkana County

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interests. It further emphasized the need for legal **Recognition, Protection and Registration** of communal land rights, through an act of parliament to be formulated to put into effect article 63 on Community land. The enactment of the Community Land Act 2016 couldn't emphasize further on the Management of resources by the people sustainably. The Recognition, protection and registration of community land is key to the sustainability management and administration of community lands.

The Participatory Land Delimitation (PLD) process that FAO put to the test had already been tested in countries such as Mozambique and Angola with much success for the past 15 years. For the case of Kenya however, there was an additional challenge to consider: these were not sedentary farmers whose land have a fixed set of recognizable boundaries in terms of land use, these were pastoralist and mobile communities who use and perceive land differently. This dynamic demanded a much higher level of engagement not just with the community in question but with the other neighbouring and moving pastoralists whose land use was also determined by the rain and available pastures.

The PLD is an approach that puts as much emphasis on the process as it does on the end result. This is a crucial factor because as communities engage in the process, there is an awareness that comes with it that can bring an abstract concept, such as 'rights', into a more tangible and achievable objective for them. The PLD can lead to the realization of:

1. Vibrant, engaged communities with accountable governance structures, empowered to participate and advocate for themselves in wider political and governance systems;
2. Inclusive, diverse communities that respect the rights of women and other marginalized groups;
3. Sustainable local economies, connected with regional markets, that enable a diversity of livelihood options while maintaining protections for community members who rely upon communal lands and resources to support their families;
4. Effective local environmental stewardship that results in flourishing **ecosystems, food security**, and the protection of future **biodiversity**; and
5. The revival, maintenance, and inter-generational transfer of dynamic local cultures, languages, ceremonies, and traditional knowledge.

Thus, aspects of the community that PLD mainly considers and assists in documenting are:

- land use patterns and production systems

- land management systems
- historical occupation
- social organization
- common use of cultural sites
- relationships with neighbours and confirmation of shared resources

In recognition of the centrality of land to sustainable development and food security, and as an effort to address the problems arising from poor governance of tenure, especially in relation to the most vulnerable and marginalized people, in May 2012 the international community approved the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) in the context of national food security, through the Committee on World Food Security.

The VGGT spell out the recognition and protection of tenure rights, identify best practices for registration and transfer of tenure rights, make sure that tenure administrative systems are accessible and affordable, ensure that investment in agricultural lands occurs responsibly and transparently and include mechanisms for resolving disputes over tenure rights. This indicates that many governments accept that upholding community tenure rights is part of the solution for sustainable development.

The Tana River County fails no description of agro-pastoral community in the North and agro along the Tana river and Turkana description of pastoral in the North and agro along the Turkwel river have to live harmoniously and cohesively.

Challenges

- Although the experience was very rich for the county government who was trained on PLD, in the absence of the Community Land Act, the process could not have the full legal support from the County. This also meant that although the community was informed of the incomplete legal framework, a certificate or community land title could not yet be issued.
- Individual or family interests tried to monopolise the use of the communal land and its resources. Such actions can distort the expectations of the rest of the community members who might differ from communal access and individual interest, thus letting the delaying the process.
- The delimitation process may involve many meetings, resulting in logistical arrangements which need financial resources to be supported. County budget allocations need to be considered in order to sustain activities related to land.

- The terrain was vast and parts of it were very remote. At times, the teams had to divide in smaller team so that the entire perimeter could be covered. This led to moments of poor coordination and longer days in rough terrain under the sun and surrounded by prickly shrubs.

Recommendations

Actions to support improved equity and governance of pastoral land

- Develop accountable decision-making and effective representation
- Ensure inclusive, equitable and transparent participation
- Recognize local and indigenous knowledge to ensure cultural and ecological diversity
- Recognize customary systems and build synergies with statutory law
- Strengthen the capability of local organizations, social networks, and the institutional space in which they operate
- Avoid and manage conflict
- Foster collaborative learning

Further

- Reversing environmental degradation in pastoral lands requires an overarching policy goal of promoting pastoralism
- Governments should legitimise pastoralist governance of rangeland resources, strengthen pastoralist governance capacity, and promote equity in the operation of customary institutions
- Policy makers should recognise that land use planning in the rangelands requires protection of pastoralists' territorial rights and security of their land tenure
- Pastoral economies should be developed by strengthening market integration for diverse goods and services and strengthening pastoralists' rangeland management capacities

The process in Wayu and any other community should be aligned to the National and County government priorities so that full engagement from the public sector can take place from the beginning. Further the process of customization of all land and natural resources laws to impact positively to the communities. One of the most important parts of the process to be included is to Preparing for communities' prosperity which can enhance the protection and management process to be sustainable and with a purpose..

The PLD process only opens the first window of identifying a land claim that a community makes and supports the empowerment of what it means to have rights to legally recognizable land, through the

establishment of a community land management committee. In order to foster long-term community growth and prosperity, according to each community's self-defined plans and intentions, a management and land use plan must also be put in place by each community. That is a second level of support to the community, to assist in the pursuit of a range of livelihoods, regenerate local ecosystems, prepare for potential negotiations with investors, and take specific steps to actualize their shared community vision.

Preparing for communities' prosperity includes trainings on:

- a. Livelihood diversification, to support communities to earn a sustainable income off their land;
- b. Community planning, to support communities to plan for their own future development;
- c. Negotiation, to prepare communities to negotiate with investors or other outsiders seeking land; and
- d. Ecosystem regeneration, to ensure a thriving natural environment and promote sustainable land and natural resource use.

The participatory community land delimitation process should always be guided by the following **VGGT** principles;

1. Communities drive and direct the community land delimitation work according to their own expertise and priorities. The community land delimitation is most successful when it is powered by the energy, motivation, and efforts of community members themselves who are fully aware of the reasons behind the mapping exercise.
2. Full community participation is essential. The entire community must take part in the community land delimitation process for it to be successful. All community members, including women, men, youth, elders, traditional leaders, seasonal users and members of minority groups should be invited to all meetings and encouraged to participate and speak their minds.
3. Strong programme management must be paired with heart-centred leadership. The community land delimitation process is most successful when communities make clear work plans; define specific roles and responsibilities; set clear deliverables, expectations and goals; and create clear accountability mechanisms. In other words, when the governance rules are transparent and in place for everyone to adhere to. Staying open-minded and predisposed to accept diversity is essential. The community land delimitation process is very challenging, and may bring up significant intra and inter communal conflict. Enhancing local culture and spirituality will help keep leaders in the

community land management committees and the community assembly stay focused on protecting their lands and natural resources rather than on their own personal agendas.

4. Governance and by-laws drafting and adoption is key to community land management after the delimitation process. However it is an issue that needs to be discussed even in the phase of securing tenure. Community land delimitation activities must combine the technical work of mapping and documenting community lands with the governance work of strengthening land and natural resource management, holding leaders accountable, and ensuring intra-community equity. If community land documentation efforts are undertaken without empowering communities to establish good governance over their lands and natural resources, power imbalances may be further supported unwarily.
5. Thriving local ecosystems, sustainable natural resources use, and the protection of women's and minority groups' land rights are core values of the community land delimitation approach. So the environmental aspects of the land and ecosystem are just as important as having a rights based approach.
6. Lessons learned during grassroots fieldwork should influence policy advocacy efforts. The community land delimitation and protection processes is an opportunity to gather data that can be used to advocate for improvements to national land policy, laws and practice. Through thoughtful data analysis and reflection, as well as effective strategies that should be supported by government agencies.

Conclusion

Land degradation can be effectively addressed in many countries by enabling the land management practices of pastoralists, harnessing their indigenous knowledge and benefiting from their local experiences and adaptations. Such "social" solutions are not a weak alternative to technological solutions: they are a proven way of reversing land degradation at a scale that few technological solutions can realistically attain. These solutions can be delivered through appropriate policy support and through relaxation of policy disincentives. It is doubtful that they can be delivered by a purely sectorial approach to conservation.

Securing sustainable pastoral livelihoods in the long term will require going beyond the relaxation of policy disincentives. Constructing a livelihood in marginal and remote lands faces numerous challenges and the key to the sustainable development of those livelihoods is to capitalise on the strengths of local adaptations. This means building on the inherent environmental friendliness of pastoralism: marketing products on the basis of their 'green' or other credentials; complementing pastoral livelihoods with tourist revenues; and accessing public and private sector payments for a wide range of environmental services such as carbon sequestration, biodiversity protection or maintaining ecosystem services. If the environmental benefits of pastoralism are to be increasingly marketed then policy and planning needs to be much better tailored to the complex requirements of the pastoral agroecosystem.

Reference:

2013 by the International Fund for Agricultural Development (IFAD) Smallholders, food security, and the environment

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security known as the VGGT promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment.

This is as per the KNBS census 2009

Land Rights Mobilizers are people elected by the community from each of the villages representing communities to actualized the work.