



**Responsible Land Governance:
Towards an Evidence Based Approach**
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**PERSPECTIVES ON PROGRESS AND
CHALLENGES OF AFFIRMATIVE ACTION AND
THE MAINSTREAMING OF THE COMMONS IN
KENYA**

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Introduction

The need for affirmative action and the mainstreaming of the commons community plus a comprehensive strategy to secure indigenous and community land has become a major global concern of the 21st century. To achieve this will require out of the box reform mechanisms and the participation of the communities concerned, such that the reforms recognize and embrace indigenous systems and structures that offer avenues to secure collective rights, land use and management of commons resources; namely pastures, water and forests among others.

Kenya has made credible incremental progress towards achieving secure tenure and land use for the commons.

The vision 2030 strategy for the (Arid and Semi-Arid Lands) ASALs

The ASALs comprise 80% of the land mass in Kenya and the land that is held under communal systems of tenure and land use. The vision strategy for the ASALS is to reduce poverty, safeguarding the state of the environment and promoting sustainable management of natural resources.

Eradication of marginalization, enhancing of community resilience, empowerment and food security of the commons communities is therefore the main strategy for the Kenya government. This will be achieved through activities organized in four components: a) community land reforms b) Demand-driven development planning and investments; c) ASAL Knowledge Management; and d) Private sector and other partnerships.

The above reflects a fundamental shift in development and governance heralded by Kenya's new Constitution and legislative reforms in land sector. For community lands, the goal is to reinforce their authority and capability, and to model scalable approaches to land use development, planning and investment. These should accommodate the unique challenges and opportunities of environments, and harness the contributions of both state and non-state actors, and empower commons citizens in their search for a more just, secure and prosperous future.

The ASAL Policy; Sessional Paper No. 8 Of 2012

Kenya prepared and adopted the Sessional Paper No. 8 of 2012 which aimed at reducing the developmental gap between these regions and the rest of the country, which is a product of its historical experience. The sessional paper also aimed to protect and promote the mobility and institutional arrangements which are essential to productive pastoralism; and to ensure food and nutrition security across the region, and mitigate the uncertainties that is certain to increase with the impact of climate change.

The Community Land Act, No. 27 of 2016 (the Act)

The Act Provides for:

- Classification of community land and pronounces that community land shall vest in and be held by communities.
- Recognition, protection and registration of community land rights.
- Management and administration of community land.
- Role of county governments in relation to unregistered community land and related matters

With regard to registration of community land rights, the Act requires community land rights to be registered in accordance the Land Registration Act, 2012. The registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land, Where land is held by the county government on behalf of the community, and where the county governments for national or community interest approve investment in such lands, moneys accruing from such investments shall be deposited in a special interest earning account and shall be released to the community upon registration of the community land. A County Government is prohibited from selling, disposing, transferring, and converting for private purposes of any unregistered community land.

The Act also provides for benefit sharing, in which case an agreement relating to investment in community land benefits Include. Payment of compensation and royalties, capacity building of the community and transfer technology to the community.

The main challenges in securing rights to the commons?

- Low levels of human capital development, reflected for example, in low adult literacy rates and limited presence of professionals.
- Strong influence of clan/tribe dynamics on the socio economic process which perpetuate resource use conflicts.
- Poor infrastructure particularly transports and communication networks in remote and extensive areas with populations which are dispersed or mobile.
- Gaps in policy, legal and institutional framework (both formal and informal) for management of commons resources and resource-based conflicts in the areas
- Lack of plans, strategies and comprehensive development approaches and implementation plan for natural resource conflict management and resolution
- National political dynamics and fiscal management systems that sees the commons as net consumers of national wealth without tangible pay back.
- The livelihood systems in most parts of community land areas are mobile and event driven. These different livelihood systems among the different populations always become causes of conflicts in land and natural resources due to interactions between the different livelihood systems

What should be done to mitigate these challenges?

Deliberate measures to remove marginalization

- Develop a package of fiscal and other incentives that will attract private sector investment particularly if investing in the region's core resources, such as livestock, or its social and economic infrastructure.
- Ensure that all investment and economic development protects the environment, provides compensation where required, and delivers maximum benefits to communities in the region. This includes developing an investment framework and appropriate mechanisms that channel a fixed percentage of the proceeds from natural resources, including oil and mineral resources, directly to local communities.
- Implementing the equalization fund as provided in the Kenya constitution 2010

Security and the rule of law

- Insecurity is primarily driven by competition over natural or political resources or by a group's desire to assert itself. The security infrastructure is inadequate for such a large area with poor communication networks, a dispersed population, and a heavy presence of illegal firearms. Insecurity in this border region has international ramifications, but there is no comprehensive regional framework governing cross-border interaction.

Institutional reforms

- Identify whether existing institutional structures and processes within ASALS are appropriate or need to be improved
- Ensure that devolved structures accommodate mobility and resource-sharing across administrative boundaries and draw on the knowledge and experience of customary institutions.
- Protect and promote indigenous knowledge and practice, promote environmental education and awareness, and intensify environmental conservation efforts.
- Prescribe policy interventions that might need to be reexamined with view to plug in the gaps

Land use planning

Land use Plans as instruments that will set the development agenda for the region. The plans will be implemented through lower level plans which include; Sectoral Plans subject plans and Integrated Development Plans The recently completed Lamu County Spatial Plan Kitengela-isinya sub regional land use plan

The planning framework is given in the county spatial planning (CSP) guidelines which Provide for;

- a broader planning framework for the community integrated development
- an Integrative planning strategy
- How communities participate and benefit from planning and harnessing of commons resources including wildlife resources
- Conservation of critical resources to rangeland communities
- Map and document natural resources, land use and tenure systems

Through these plans the counties have addressed

- Strategies for human settlement in relation to service centres, growth centres, transport and communication network, environmental conservation and rural development;
- Efficient and sustainable utilization and management of land and land based resources;
- Framework for public participation in the land use and development; and
- Effective framework for coordination of land use plans to ensure implementation of the planning proposals and regulations.
- Agreeable seasonal access rights to land and mechanism for regulating these access rights taking into account the need to protect agricultural production, community peace and harmony

Livelihood Systems and Zones

- Map natural resources and land use as part of the community-based participatory planning approach (CBPP);
- Mapping and analysing the local dynamics of natural-resource based conflicts which would cover history of conflicts, nature of conflicts, parties to conflicts, institutions involved in conflict management, their strengths and weaknesses, opportunities and challenges,
- Undertake community capacity and training needs assessment to establish a baseline for development and improved community management of natural resources

Political and social dynamics

- Massive sensitization of the community leaders, religious leaders, women and the entire community on the user rights
- Ascertainment and codification of the local community land laws into the statutory laws or codification of the customary laws
- Formation of land institutions for land administration and management specific to community lands

Dispute Settlement

Mainstreaming and encouraging alternative and traditional dispute resolution mechanisms as opposed to the formal justice systems

Role of actors in land governance to secure the commons?

- Resources mobilization
- Capacity development and empowerment
- Strategy facilitation
- Change management
- Mainstreaming commons rights in the global agenda for action. Of significance is the recognition that the commons exhibit ecological constraints which set limits to their exploitation.
- Institutional development for effective service delivery
- To develop and operate an efficient institutional system, the land, and land use and related natural and land based resources should be allocated, managed and developed within the context of the principles that support sustainability.

Conclusion

The need to address the fundamental unique and dynamic state of the commons remain a challenge. There is need also to ensure the commons resource endowments are fully harnessed without destroying their assimilative and regenerative capacities.

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