



Policy Options for Sustaining Productive Pastoral Systems

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SUMMARY

Pastoral communities in East Africa are found in areas characterised by arid and semi-arid conditions such as low rainfall and high temperatures. Therefore, these areas are suitable for extensive livestock production systems, and are predominantly under collective land tenure regimes. Pastoral communities have continued to use customary laws in management of land under collective access with mixed results. Expanding urbanisation, large public investments and potential to change use of land have negatively affected collective land tenure regimes, and hence the sustainability of pastoral systems. Enactment of policies that recognize customary laws, strengthen community mechanisms to enforce land rights and ensure fairness in use of land and resources derived from land will help communities in the maintenance of collective land access regimes, thereby improving the sustainability of pastoralists' production systems.

BACKGROUND

In East Africa, land under collective access occupies more than half of the countries' land mass i.e. 67% in Kenya, 50% in Tanzania and 40% in Uganda. A large majority of these lands are found in areas that are characterised by arid and semi-arid climatic conditions such as high temperatures and low rainfall. Hence, these lands are mainly inhabited by pastoral communities who practise livestock keeping under extensive production systems, which is best suited for these environs. The land is predominantly under collective land tenure systems. Intrinsically, these systems play a key role in the socio-economic and political status of pastoral communities. Previous studies on land tenure advocated for privatisation as a way to improve investments in land, productivity and household welfare. However, more recently, emerging literature suggests that maintaining collective land access can have positive effects on households' livelihoods. Key questions that persist on this include the conditions under which maintaining collective land tenure improves livelihoods and what policy options can be considered in this regard.

This study looks at the evolution of collective land regimes in East Africa. Specifically, the study focuses on the drivers of change in collective land tenure and how these changes affect the communities that live on these lands. By identifying the drivers of change, we seek to understand why the changes occurred and identify the turning points in policy that facilitated these changes. Further, by demonstrating the effects on communities, we aim to learn from both the intended and unintended consequences of these changes, and draw recommendations for shaping the current policy discussions about collective land tenure regimes.

Methodology

We perform an extensive review of literature on collective land tenure regimes in East Africa supplemented with qualitative analysis of secondary data and primary data collected using Focus Group Discussions. We develop three cases based on ownership and land access arrangements in pastoral communities. The cases are, un-adjudicated communal lands; Group Ranch A, which are group ranches that have collapsed; and Group Ranch B, which comprises of functional group ranches. Further, for each case, we identify three communities: Kiina, Ngaremara, and Oldonyiro Communities in Isiolo County for the un-adjudicated communal lands; Naroosura, Olekepedong in Narok County and Mailua in Kajiado County for Group Ranch A; and Ilpolei in Laikipia County, Losesia in Samburu County, and Eselenkei in Kajiado County for Group Ranch B.

Change in Collective Land Tenure Regimes in Pastoral Areas in East Africa

We explored factors leading to changes in collective land tenure regimes with a view to understand what these changes meant for the livelihoods of the pastoral communities. We identified four time periods that were important in explaining the changes in collective land access regimes for the identified cases.

The first period is the colonial era (1900-1960). Kenya and Uganda were colonized by the British while Tanzania was first colonized by the Germans, then the British. Pastoral communities such as the Maasai found in Kenya and Tanzania, Turkana, Samburu and Borana in Kenya and Karamojong, Dodoth and Teso in Uganda were isolated by colonial land policies. Land under use by pastoral communities was considered not productive by the colonial governments because they did not understand the nature of nomadic pastoralism. These governments implemented privatization policies such as the East African Royal Commission 1953-1955, and the Swynnerton Plan of 1954. Although land belonged to the colonial government by virtue of the crown lands ordinances (first in 1902 then revised in 1915), communities used customary laws to govern land use, which they knew and believed to be theirs. However, the land was not adjudicated.

The second period is the post-colonial/independence era (1960-1980). Land regimes at this time were led by the State in each of the three East African Countries although with differing results. In Kenya and Uganda, the State continued to implement colonial period land laws. Tanzania embraced Ujamaa (African socialism), where all land was considered

public with the President serving as a trustee for the people, such that any property rights granted to people were just land use rights. Uganda maintained colonial land policies with pastoralists retaining customary laws for use of land. However, Uganda experienced military rule and civil strife in different periods between 1971 and 1986. In Kenya, the government promoted the formation of group ranches in pastoralist areas. This was a form of privatisation where land is adjudicated and registered to a group of people. Pastoral communities registered as clans or communities and maintained customary laws for access and use of the land.

The third period is from early 1980s to 2000. Tanzania reversed the Ujamaa policy and enacted new land laws, i.e. the Land Act, 1999 and Village Act, 1999. Although implementation started much later, the new laws allowed for customary land to be held at the village level, where a village council could issue rights to individuals or groups. However, land could also be allocated by the government if it was considered unutilized. In Uganda, the military rulers had changed the tenure systems reverting ownership of all land to the state. However, after political stability was attained in 1986, changes in land tenure systems came with the promulgation of a new constitution in 1995 and enhancement of a new land Act in 1998. This Act re-established customary land tenure, which was mainly used in the pastoral areas. In Kenya, although the government continued to promote privatization policies, group ranches started to collapse. The collapse was attributed to lack of enforcement of customary laws, mismanagement of land and natural resources in the group

ranches, urbanization pressure, emergence of second generation of pastoralists who were not initially registered as members and did not maintain close cultural ties, increased demand to own land and use as collateral to get loans, and policy changes on group ranches as initially the government was opposed to group ranch subdivision but later changed its position. The collapse of the group ranches negatively affected less wealthy households and widows and favoured the local elite and households who were connected to the management committees.

The last period is from 2000s to date. All the East African countries implemented broad economic liberalization policies supported by donors and the World Bank Group. In Kenya, a new constitution was promulgated in 2010 followed by subsequent enactment of new land laws such as the Land Act, 2012 and Land Registration Act, 2012. Currently, a community land bill is under debate. A critical issue in the three East African countries is to stop alienation of community land to private land, large scale land investors and institute mechanisms to improve management of land livelihoods of pastoral communities.

FACT

- ✓ In the colonial and post-independence periods, changes in collective land tenure regimes were State driven.
- ✓ Currently, privatisation of land is taking place in pastoral areas in all East African countries
- ✓ Governments are facing pressure to stop the alienation of community land to private land

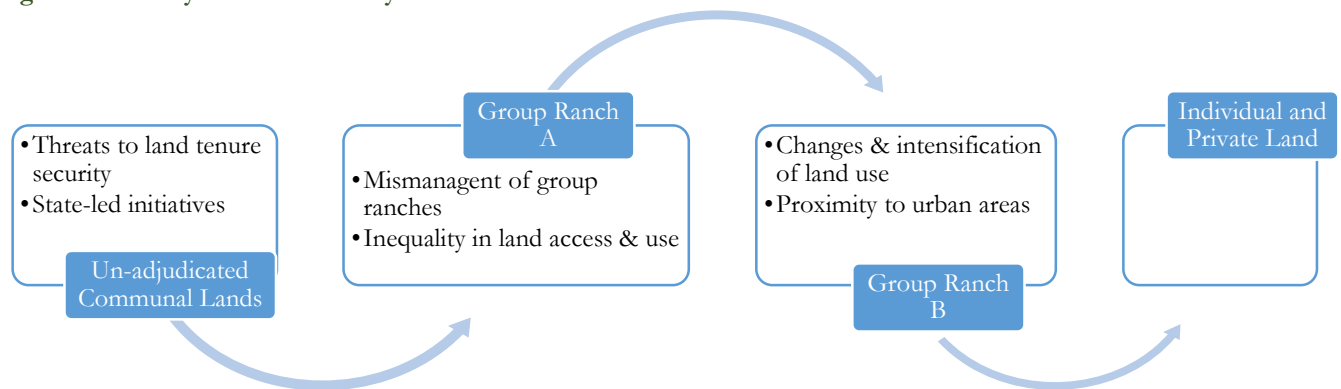
Evolution of Collective Land Tenure Regimes in Pastoral Areas in Kenya

The changes in collective land access in pastoral areas in Kenya have over time leaned towards privatisation of land. We illustrate this pathway in Figure 1. Communities started with un-adjudicated communal lands. Due

to threat to land tenure security posed by colonial governments and initiatives by the post-independence administrations to modernise pastoralists, communities formed group ranches. Although group ranches privatised land ownership to a group of people, land was still collectively accessed and utilised under customary laws. However, owing to mismanagement

of resources within the group ranches and unequal use of land, the pressure to individualise land within the group ranches increased. The potential to change land use, or to use land intensively, or proximity to urban areas piled pressure to establish individual private land rights.

Figure 1: Pathway from Community to Individual Private Land



CASE STUDY FINDINGS

We make the following findings from Kenyan case studies that explain observed changes in collective land access. This evidence has implications on the current policy debate on protecting communal land:

- i. One of the reasons for establishing group ranches was to guard against land concentration that would have led to landless pastoralists. However, high inequality in use and utilization of collective land was one of the triggers of collapse of group ranches and movement towards individual private tenure.
- ii. Pastoral areas that had arable land were individualised. This arose as pastoral communities started farming such as in Olekepedong and Naroosura group ranches. Crop agriculture was supported by growing markets such as Naroosura and Narok markets and the increasing number of crop farmers among pastoralists. In Kiina, although the land has potential for crop farming, the

community reverted to livestock due to constant destruction of crops by wildlife therefore maintaining collective access to land.

iii. Population grew in all pastoral communities. However, population growth on its own was not responsible for changes in land tenure. Growth was higher in pastoral areas near urban centres as a result of migration and the emergence of active land markets as the communities sold land. However, even with high population some pastoral communities such as Ilpolei, Losesia, and Eselenkei group ranches have maintained collective access. On the other hand, pastoral communities near urban areas faced strong pressure to subdivide and sell land mainly to immigrants. Additionally, large infrastructure projects have created insecurity in land tenure among pastoral communities leading to demand of formal recognition of land rights mainly to prevent encroachment or displacement.

iv. A majority of the pastoral communities live in areas that are underdeveloped. In addition, the communities maintained close cultural ties

that were beneficial to their production and marketing systems, such as security against cattle rustling. However, although markets were accessed communally, participation was on individual basis.

A combination of factors accounts for changes observed in collective land tenure regimes in Kenya.

- ✓ Inequality in land use played a primary role in changing community's perceptions about collective access to land. The inequality was brought to fore by changing social dynamics within the communities such as education.
- ✓ The potential to change land use e.g. to engage in crop farming, which the communities perceived could only be carried out on individual private land as was the case with other farming communities in the country, raised demand for private land.
- ✓ In addition, as population in urban centres expanded, demand for land for settlement may have created a ready market for land, prompting the pastoralists to individualise communal land and participate in land markets.

✓ Further, consistent government policies biased towards privatisation and individualisation of land tenure helped speed up the process of change to individual land tenure.

Policy Implications

Our findings are relevant to the ongoing policy debate on community land in Kenya and provide lessons for communities in East Africa. Pastoral communities inhabit lands where the ecological environment best suits extensive livestock production systems. To sustain these systems and pastoralist communities' livelihoods, the following need to be considered.

1. To help enforce customary rights used in the management of community land, we recommend **inclusion of customary laws in the legal framework.**

2. Pastoral communities used customary norms to manage land even when it was privatised to group ranches. Mismanagement of land accessed collectively triggered individualization. **There is need for strengthening of community mechanisms to manage land under collective tenure regimes** such as providing semi-formal training and

enforcing accountability procedures such as record keeping and holding of annual general meetings.

3. Most pastoral communities live in areas that are under-developed economically and socially. There is need for **increased investments in and delivery of public goods in pastoral areas** such as infrastructure, schools, hospital, livestock markets and veterinary services.

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This brief was developed as part of the [ELLA Programme](http://ella.practicalaction.org/). ELLA, which stands for Evidence and Lessons from Latin America is a south- south knowledge and exchange programme that mixes research, exchange and learning to inspire development policies and practices that are grounded in evidence about what works in varied country contexts. The programme has been designed and is coordinated by [Practical Action Consulting \(PAC\) Latin America](http://practicalaction.org/), in line with the objectives agreed with the funder, the [UK Department for International Development \(DFID\)](http://www.dfid.gov.uk/), [UK Aid](http://www.ukaid.gov.uk/). The [Institute for Development Studies \(IDS\), Sussex University, UK](http://www.ids.sussex.ac.uk/), supports on research design, methods and outputs. For other ELLA publications and knowledge products go to ella.practicalaction.org/

