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***SUSTAINABLE NATURAL RESOURCES
MANAGEMENT AND LAND POLICIES:
A Review In Kenya And Burkina Faso***



***Sustainable Natural Resources Management And Land
Policies:***

A Review In Kenya And Burkina Faso

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LIST OF ABBREVIATIONS AND ACRONYMS

AU	African Union
BSL	Bio Safety Level
BVD	Bovine Virus Diarrhoea
CAHWs	Community Animal Health Workers
CBPP	Contagious Bovine Pleuro-pneumonia
CCPP	Contagious CaprinePleuro-pneumonia
CCTA	Commission for Technical Cooperation in Africa South of the Sahara
cDNA	Complementary DeoxyRibo-Nucleic Acid
CVO	Chief Veterinary Officer
EAC	East African Community
ECCAS	Economic community for Central African States
ECOWAS	Economic Community of West African States
EHD	Epizootic Haemorrhagic Disease
EIDs	Emerging Infectious Diseases
ELISA	Enzyme-Linked Immunosorbent Assay
FAMA	Foundation for Mutual Assistance in Africa South of the Sahara
FAO	Food and Agriculture Organization of the United Nations
FMD	Foot and Mouth Disease
GHA	Greater Horn of Africa
GIS	Geographic Information System
IAEA	International Atomic Energy Agency
IBAH	Inter-African Bureau of Animal Health

IBAR	Interafrican Bureau for Animal Resources
IBR	Infectious Bovine Rhinotracheitis
IGAD	Intergovernmental Authority on Development
ILRI	International Livestock Research Institute
IRCM	Integrated Regional Coordination Mecahnism
MCF	Malignant Catarrhal Fever
NGO	Non Governmental Organization
OAU	Organization of African Unity
OIE	Office International des Epizooties/World Organization for Animal Health
PACE	Pan African Programme for the Control of Epizootics
PANVAC	Pan African Vaccine Centre
PARC	Pan African Rinderpest Campaign
PDS	ParticipatoryDisease Search
PPR	Peste des Petits Ruminants
REC	Regional Economic Community
RNA	Ribo Nucleic Acid
RVF	Rift Valley Fever
SADC	Southern Africa Development Community
SERECU	Somali Ecosystem Rinderpest Eradication Coordination Unit
SES	Somali Ecosystem
STRC	Scientific and Technical Research Council
TAD	Transboundary Animal disease
UNICEF	United Nations Children’s Fund
WTO	World Trade Organization

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EXECUTIVE SUMMARY

The Dryland Livestock Wildlife Environment Interface Project overall objective is was to mainstream biodiversity and livestock resources at the interface between mixed production ecosystems and protected areas in Africa (Kenya and Burkina Faso) through promotion and support of sustainable land use management systems of livestock and wildlife. This interface is expected to improve community livelihoods, biodiversity conservation and reduce land degradation. However, it is only when people can, have control of the resource base as well as have secure land tenure that long-term objectives of environment protection can be satisfied. Therefore the ownership of land and natural resources, access and the right to use them are of fundamental importance, not only for more balanced and equitable development, but also to the level of care accorded to the environment.

Many of the challenges arising from land policy and tenure in Africa stem from the colonial legacy of dual or pluralistic systems of tenure and authority related to land. Throughout Africa, colonial powers imported European systems of civil and common law for their own purposes, to guarantee settler interests in land. These were operated alongside continued customary management of land by indigenous African people, frequently co-opting traditional leaders and Chiefs to colonial rule by granting them administrative powers over so-called communal areas. Within these areas, responsibility for land management was allotted to local chiefs and village headmen, and in turn to family heads and individual household members. Substantial areas were reserved for grazing and other forms of communal use and land rights could be transferred through indigenous inheritance practice, and when sanctioned by the community or kin group, to outsiders.

In Kenya and Burkina Faso over half of the rangelands are under some form of collective customary management. These Common Property Resources (CPRs) such as grazing and woodlands are still vital for the community, yet there are growing pressures on these resources, and trends towards privatisation and enclosure. In many cases, the breakdown or absence of management rules creates a situation of unregulated access by multiple users, leading to unsustainable levels of use and degradation.

I. INTRODUCTION

Africa's land development and implementation has been greatly hampered by a combination of factors, including Africa's colonial legacy, cultural practices and poor governance. Colonial governments brought to Africa systems of land governance that were heavily borrowed from their respective governments and, when combined with African customary systems of land governance, these resulted in pluralistic property regimes which continue to pose challenges for land management to this day.

Throughout sub-Saharan Africa, land is a fundamental issue for economic development, food security and poverty reduction. Land is of crucial importance to the economies and societies of the region, contributing a major share of GDP and employment in most countries, and constituting the main livelihood basis for a large portion of the population. In many areas, however, land is becoming increasingly scarce due to a variety of pressures, including demographic growth. These pressures have resulted in increased competition for land between different groups, such as multiple land users (farmers, herders, etc.), urban elites and foreign investors.

The sustainable management of biological diversity is major concern of the international community which now realizes that this diversity is being eroded at an alarming rate due to consumptive uses of species as well as the excessive alteration of habitats owing to human activities such as cultivation, pastoralism and urbanization.

Governments are devolving natural resource management to local communities. This reflects a dual trend within international donor and government circles toward participatory development and decentralization of resource control. The goal of these efforts is to enhance sustainable natural resource management by involving local communities in project design, management, and resource control, ultimately increasing and encouraging local capacity for resource-use planning and development (World Bank, 1998)

The ownership of land and natural resources, access and the right to use them are of fundamental importance, not only for more balanced and equitable development, but also to the level of care accorded to the environment. It is only when people can satisfy their needs, have control of the resource base as well as have secure land tenure that long-term objectives of environment protection can be satisfied.

II. OVERVIEW: THE IMPORTANCE OF LAND RIGHTS FOR AFRICA'S DEVELOPMENT

1. Land registration in Kenya

Because of its longstanding land registration programme and of the substantial number of studies documenting its impact, Kenya is a landmark case study for the policy debate on land titling and registration. Under the colonial rule, land dispossessions confined Africans to reserves, where agricultural development was hindered by colonial policies (e.g. prohibition of profitable crops). However, in 1954 the Swynnerton Plan reversed this approach, promoting agricultural commercialisation in the reserves inter alia by granting "secure" individual land titles to African farmers. The Plan was implemented with the Native Lands Registration Ordinance 1959, replaced after independence by the Registered Land Act 1963 and the Land Adjudication Act 1968. Land has been registered systematically (i.e. not upon application by landholders) in three phases: adjudication, i.e. ascertainment of existing customary land rights; consolidation, i.e. aggregation of fragmented holdings (with landholders exchanging dispersed for contiguous plots); registration, i.e. recording of titles over consolidated plots and their conversion into freehold.

Overall, available evidence from Kenya does not provide conclusive evidence that registration has increased tenure security and agricultural productivity. In Kisii District (where adjudication started in 1963), tenure disputes before African Courts decreased from 1,181 in 1962 to 246 in 1967, and three quarters of the interviewed farmers declared that registration had increased their tenure security. However, in other areas, while boundary disputes decreased, new types of disputes emerged, such as challenges of registered titles and disputes over land sales (usually arising from individuals registering and selling family land). Furthermore, the registration process itself generated insecurity, as land disputes (e.g. between first occupants and latecomers) mushroomed in an attempt to grab permanent land titles. While this insecurity is limited to the duration of the registration process, this process can be very long. Moreover, high costs have discouraged the registration of land transactions (by inheritance or sale), thus making the register rapidly outdated and undermining its ability to secure land rights.

Post-independence Kenya had substantial increases in agricultural productivity, especially in the smallholder sector. Agricultural GDP grew at annual rates between 5.4% in 1967-1973 and 4.4% in 1982-1984; this boom has generally been attributed to agricultural policies (adequate crop prices, extension

services, etc.), including land tenure reform. However, in the former reserves, where regression analysis has been used to test the effect of land registration on investment no significant correlation has emerged.

As for the "collateralisation" effect, the limited use of land as collateral, and no significant correlation between land title and use of formal credit, and between title and nature of credit (e.g. duration). Moreover, in Nyanza Province, by 1982 (seven years after the completion of registration) fewer than 3% of registered plots had been used as collateral. In Machakos District, little use is made of credit, and investments have mainly been financed through off-farm incomes.

As for land markets, the effects of registration in the former reserves have been limited. In some areas, land markets already existed under customary tenure. After registration, freeholders' reluctance to sell their land (because of its social insurance function), controls on land transfers (by Land Control Boards), and survival of customary norms hindered the development of land markets where they did not exist.

On the other hand, evidence shows negative repercussions of land registration on the land rights of vulnerable groups.

Indeed, although all land rights had to be considered during adjudication, adjudication committees lacked skills and time to do so. Registration was usually made to male household heads, thus increasing their security but undermining women's (unregistered) secondary rights. In Kanyamkago, for instance, only 7% of the plots were registered to women.

- **Land policy in the sessional papers from 1965 to 2005**

Sessional Paper No. 10 of 1965

One reason there is such inequality in land ownership is because the first postcolonial government under the Kenyatta regime continued blithely with a development model the colonialists had used, making no attempt to change the previous distribution pattern that neglected non-high potential areas. The first national development policy, Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya ensured that the country's wealth would remain in the productive areas, which included the former White Highlands and those covered by early registration under the Swynnerton Plan. It asserted that: to make the economy grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having natural

resources, good land and rainfall, transport and power facilities (Republic of Kenya, 1965: 46).

Thus, instead of putting up industries in all parts of the country, for instance, everything was to be concentrated in the region, while other regions of the country were only to act as a source of labour. This was essentially a case of winner-takes it all capitalism disguised as African socialism.

According to section 134 of the Sessional Paper, if an area is deficient in resources, this can best be done by investing in education and health, and encouraging some of the people to move to areas richer in resources. With the adoption of Harambee philosophy, education and health facilities were to be provided by the people themselves. This worsened the disparities as those with resources built more of these facilities, as they did with agricultural infrastructure such as cattle dips, formation of agricultural cooperatives, etc. While these issues were not directly related to inequality in land distribution, they affected people's capability to chart out their direction.

Sessional Paper No. 1 of 1986

The second major economic policy document in independent Kenya was Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth, which reemphasized that agriculture, remains the leading sector in stimulating growth and job creation. The Paper stated that the nation's farmers must continue to lead the country in economic development for the rest of the century and to a limited extent the production pattern "will be diversified in favour of crops such as tea, coffee and vegetables that produce much higher incomes and generate considerably more employment per hectare than other crops and livestock. Small shifts in land use can yield relatively large gains in income, employment and export revenue when these crops are involved" (Republic of Kenya, 1986:63). The Paper further observed that these three crops occupy only 5 percent of medium to high-potential agricultural land and produce 37 percent of the total agricultural value in comparison to other crops (maize, beans, sorghum, root crops) and milk that occupy 84 percent of this land, but produce only 43 percent of the agricultural value. Coffee, tea, vegetable and pyrethrum employ 1.4 to 2 persons per hectare compared to only 0.3 to 0.6 for the other products, and they also earn five to ten times the foreign exchange per hectare than can be saved by import substitution for food grains.

These observations led to the conclusion that rapid growth of rural incomes

and gross domestic product would be served by greater output of coffee, tea and vegetables through both intensification and acreage expansion, while the acreage for other products is maintained. Thus, as had been the case previously, greater investment would be devoted to regions where the higher income-earning crops grow, which happen to be the former White Highlands.

In terms of land tenure, the policy paper observed that there had been no major review of land policy since independence. The government was therefore to appoint a commission in early 1986 "to review the land tenure laws and practices of the country and to recommend legislation that will bring the law into conformity with Kenya's development needs" (Republic of Kenya, 1986:90), but no such appointment took place until the Njonjo Commission (Republic of Kenya, 2002a) was appointed in 2000 and presented its report in 2002.

Poverty Reduction Strategy Paper 2001-2004

A third major economic policy document in Kenya was the Poverty Reduction Strategy Paper (PRSP) 2001-2004, which was also used as basis or an input to the *Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007*.

The Paper reported that many communities identified landlessness as a major underlying cause of poverty. The causes of poverty included high population growth, poor land tenure systems, poor utilization of land resources, customary laws of inheritance and land fragmentation. It concluded that inadequacy of land policies has adversely affected agricultural production. Consequently, the government during the PRSP period, expected to implement the recommendations of the Njonjo Commission Report of 2002 for better land management.

2. Land Issues in Burkina Faso

Prevailing land law in Burkina Faso does not recognize customary land rights: all land is considered state property, and anyone seeking access to land must apply for use rights. On the other hand, local communities do not recognize this monopoly ownership and regard themselves as the true owners of their land by virtue of their ancestral rights. While the state's monopoly of landownership is theoretical, it has resulted in great insecurity with regard to land tenure for the 90 percent of the population whose rights to land are customary.

It is also at the root of the enduring conflict between the legality of state monopoly of land and the legitimacy of communities' land claims.

Land conflicts are developing everywhere at the local level: between herders and farmers over grazing areas and water; between villages over boundaries; between autochthonous people and migrant farmer populations over agricultural lands; and between state and local communities over incursions into reserved forests. Complicating matters is that most regions in Burkina Faso deal with very diverse local realities: the northern pastoral part of the country, for instance, has nothing at all in common with its forested south.

This wide variation rules out a one-size-fits-all solution. The judiciary system is not prepared to address land disputes at the local level. Hence, many conflicts are settled through alternative dispute resolution mechanisms involving traditional chiefs and other local institutions.

Rapid change is part of the complexity of the situation in rural areas. There is a trend toward land concentration among the urban elite and agro-businessmen. These groups take advantage of people's poverty and lack of information to buy communal rural lands at below-market prices. The state encourages this trend because it believes that smallholder farming cannot meet the country's food production requirements. It thus provides incentives to agro-businesses by giving them access to credit facilities as well as political support.

Rapid population growth is strongly affecting land relationships in rural areas. The population of Burkina Faso is expected to increase dramatically in the next few decades, and such growth will create land scarcity for agriculture, increase competition for land, and create more land conflicts. It also will put more pressure on natural resources and the environment. Another major change trend is rapid urbanization. By 2025, the majority of the population of West Africa will have moved to major cities in search of economic opportunities. Such a change will greatly affect land issues in rural and peri-urban areas.

• *Evolution of Land policies in Burkina Faso*

Before colonization, land management and tenure were handled by customers landowners based on family groups ownership.

Since 1904 in all French colonies, land policy has gone various reforms amongst which are:

- 26th July 1932 : Land policy for French West African colonies

- 12th July 1960 : law n° 77 /60

These land policies recognize customary rights and were based on pacific cohabitation with the two parallel systems.

- 4th august 1984: Previous policy abolished and promulgation of a new law under which land is own by the Government; and the customary land ownership was not recognized.
- 4th June 1991: recognition of possibility of private ownership but land was still owned by the government who could retrieve it when needed.
- 23rd may 1996 : liberalization of land market; land policy reform and acting of a new law : law n° 14/96/ADP ;

This Land policy recognizes six (6) kinds of titles for land occupation:

According to the land policy, every land occupant must have one of the following titles according to land use:

- “ Arrêté d’ affectation “ for public offices ‘ occupation and activities
- “ Arrêté de mise à disposition “ for non economic activities as culture, church
- “ Permis d’ occuper” for temporary activities ; this kind of title is not permanent as the other ;
- “ Permis urbain d’ habiter “ for housing ;
- “ Pemis d’ exploiter” for industrial or commercial use;
- “ Bail “ (Lease) for any permanent activities

These titles provide use rights to the occupant but after investment ;

All the permanent titles can be transformed into “titre foncier” to make the occupant owner of the land.

According to the new land policy (2007), the following key orientations guide the government of Burkina Faso in land tenure:

- Acknowledge and protect the rights of all rural actors over land and natural resources
- Promote and sustain the development of local institutions sat by communities

- Clarify the institutional framework for conflict management at local level and to improve the efficiency of the local institutions in charge of conflicts resolution
- Improve the management of rural areas
- Set-up a coherent institutional framework for the management of rural land
- Build capacities of governmental agencies, municipalities and civil society in the domain of land tenure

III. LAND TENURE

Land policy, consideration of indigenous tenure systems and legal frameworks are experiencing some of the same profound shifts in thought and application as depicted in the preceding sections. In recent years, it was assumed that policies linking privatization, land registration and titling with the provision of credit would lead to the subsequent “take-off” for agricultural (or pastoral) development. Since it was assumed that individual control of land and resources would lead to more efficient production, an elaborate train of investment and political commitment was engaged to privatize land holdings which would in turn allow for the creation of collateral for further capitalization. This would positively affect production leading to increased levels of output for export. The corresponding hard currency inflows would then further stimulate investment, jobs and production. Hence, the conception of a “take-off.” It was thought that in this way another struggling country would be lifted from poverty to at least a sustained process of wealth generation. And yet these assumptions and development process are now seen as seriously flawed. A great number of African development projects have been premised on these points so the shift in thinking is significant.

These flaws derive from a common belief that indigenous tenure systems impede productivity (a parallel to the former mistaken notion of pastoralist overstocking and mismanagement).

Ever since Garrett Hardin’s provocative piece, “The Tragedy of the Commons,” nearly three decades of pastoral development has drawn sustenance from his tragic depiction of individual herders, each independently pursuing separate welfare strategies by making use of the common pasture for individually owned livestock until the resource is extinguished and all the herders reap their own

self-made destruction. As Hardin put it, “ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.” (Hardin 1968). So influential was Hardin’s argument among academics, development practitioners and government workers that a variety of corrective treatments over the last three decades to correct this “tragedy” were prescribed, particularly in Kenya’s drylands among pastoralists. These prescriptions fitted well with previous late colonial and post-independence government schemes whose goal seemed to be a properly sedentarized, services and loyal population where, as much as possible, private property regimes (whether as group ranches or individual holdings) were to be encouraged. This move was made under the assumption that the national economy would benefit as agricultural productivity increased due to the imposition of “modern” tenure and the “rationalization” of the livestock economy. It took nearly twenty years for the cracks in the “tragedy of the commons” to manifest itself. Apart from the increasing failures of pastoral development projects based on this vision and the increasing evidence from anthropologists and ecologists that sustainable resource use was often practiced by herders, economists also began to weigh in, distinguishing both the individual and collective dimensions of economic rationality in pastoralist behavior .

As in Kenya, customary tenure exists with western property law as the dominant overlay. Pastoral land rights are a “peripheral system”, in both a symbolic and literal sense, corresponding to pastoralists’ lack of political power to protect their land tenure system. As in Kenya, a series of land acts, implemented on top of surviving customary tenure, has had the effect of creating great confusion as to the land allocating authority. This confusion enables proper procedures, if not justice, to be subverted especially when the interests of marginalized groups are at stake. This point is well illustrated in the case of the Barabaig pastoralists of Tanzania. The Barabaig were illegally dispossessed of their land for the state-sponsored development of several large wheat farms totalling in excess of 100,000 acres. Court action to overturn this action has met with a very limited success though a precedent has been established recognizing customary rights to land. Equally important has been the establishment of a community-based, Barabaig organization, “Bulbalda”.

Placing the difficulties of pastoral land rights in the context of “human rights” or “indigenous rights” in an effort to exert more influence in a state where pastoralists exercise little political power, can, however, entail its own pitfalls. Indigenous rights entail retention of traditional lands and resources as well as a

certain degree of political autonomy. Yet human rights are seen to be universal for all peoples (c.f. the United Nations Declaration of Human Rights). Given the system of sovereign states, indigenous peoples are represented by national governments which in many cases are enmeshed in the gutting of those indigenous rights. Moreover, a human right enforced by the state related to the right of free movement and settlement would give rights to those who occupy and maintain lands among indigenous people. Thus, pastoralist land claims based on “indigenous rights” will continue to be undercut by state interests, the politics of the powerful utilizing “human rights” particularly where the ethnic group of the powerful is served.

In the face of these difficulties, what is justice and for whom is justice served? One could simply pursue “legal rights”, engage a lawyer and argue on those grounds which do in fact allow for rights to land, even communal tenure. The importance of enlisting legal aid in challenging pastoralist land alienation has been noted. And yet the expense and difficulties of sustaining a legal case are immense. Parallel strategies involving both the legal system and community action may be more helpful. Lawyers themselves acknowledge this reality. In an ongoing land claims case involving the Kenyan Maasai of Loodariak Group Ranch, allegations of corruption in the granting of land title deeds to outsiders without consultation of the group ranch members has led to both court challenges and political action designed to overturn the current legal reality of Maasai dispossession in their own homeland. The experience of the Loita Maasai in pursuing the integrity of their forest from outside commercialization and control has also followed this same strategy of legal engagement and community education coupled with appropriate action. It has been suggested that customary pastoral tenure and the social values that uphold it cannot be wished away. Statutory legislation or Constitutional reform to incorporate customary pastoral tenure must be pursued.

A few examples from elsewhere in Africa may shed more perspective on the foregoing East Africa discussion. A slow deliberate process of land tenure reform has been under way in Niger, Mali and Burkina Faso over the last decade. In all, a decentralization of political control and the upholding of “traditional” land and resource tenure is in process. Since 1986, land tenure reform has been under way in Niger. A careful, consultative process has educated people to the issues. Radical tenure change has been rejected in favor of “elevating traditional tenure rights to formally recognized laws of tenure.” However, this slowly moving process has “amplified the tenure insecurity” as people maneuver for favorable positions. While reliance is placed on traditional tenure systems for

both the farmers and herders, the “Gestion de Terroir” (“the land to which you belong”) approach calls for the development of management plans based on local level participatory process often at odds with the decision-making process derived from tradition.

1. Common Property Systems

The study of common property systems by a growing array of political scientists, economists, anthropologists and policy planners provides additional support to changed perspectives regarding pastoralist land management and tenure. Property is seen as a claim to a benefit stream rather than a static entity. Moreover, the importance of social context in either validating or rejecting claims to benefits is highlighted. The joining of case studies from the field to theoretical formations of common property regimes remains key. For example, a forester at work among the Turkana helped convey to the wider world the importance of trees to these people and elaborated on the nature of access rights to the “ekwar”, individually “owned” trees along river courses in the central Turkana area. Importantly, this researcher found that the owner had to maintain communal agreement that his rights were established by usage. As a prominent resource economist puts it, “property is not an object but rather a social relation that defines the property holder with respect to something of value (the benefit stream) against all others”. Tragedy with respect to the commons is avoided through the emergence of coordinated rather than independent actions of individuals.. Several principles for the long endurance of these coordinated common property systems are manifested.

These principles include:

- 1) Clearly defined boundaries - the group should be relatively small and stable with membership and group space easily identified by the members,
- 2) Congruence between appropriation/provision rules and local conditions - usage of common property resources should parallel that available for sustainable harvest,
- 3) Collective choice arrangements - generally participatory and egalitarian decision-making should avoid both unanimity (i.e. the danger of high transaction cost) and oligarchy or majority rule (i.e. the danger of high deprivation costs),
- 4) Monitoring - information on resource conditions and others’ usage is available at low cost,

5) Graduated sanctions - infractions of rules are clearly coupled to punishments proportional to the severity of the offense,

6) Conflict resolution mechanisms - approaches to peacemaking are actively pursued for the common good. The development of these methods is in particular seen as the key to achieving efficient and equitable performance,

7) Minimal recognition of rights - recognition by larger political entities of the common property regime's legitimacy allows for its continuity and supports the establishment of more effective norms and rules over time,

8) nested enterprises (for common property systems embedded in larger systems) - long duration regimes may be part of larger structures that provide important inflows (e.g. capital) and outlets (e.g. markets) contributing to the stability of the system.

The title vs rights debate

During the 20th century, the dominant approach to tenure reform has been the provision of land titles on a western, developed country model. Titles have been promoted in the belief that they will lead to higher levels of investment in the land, and so to higher levels of productivity and growth, by facilitating access to credit and a free land market, which would transfer land from less to more efficient users,

The argument that the law must recognise the land claims and settlements of the poor through land titling is developed in a recent, influential book by Hernando de Soto *The mystery of Capital: why capitalism triumphs in the West and fails everywhere else* (2000). De Soto concludes that the formal recognition of property rights provides a solution to the problems of poverty and the need for capital accumulation in poor countries. In particular, formal titling of informal property should enable the mortgaging of property in order to "unlock the hidden capital assets of the poor" for investment in other economic activities.

De Soto has succeeded in re-focusing global attention on the importance of tenure reform, and the importance of legal recognition of the property rights of the poor and marginalised in order to promote social and economic inclusion. However, his arguments risk being narrowly interpreted as a restatement of simplistic beliefs in land titling as a universal requirement.. Where land laws and institutions have not been developed in an equitable, democratic way, titling can also be a recipe for social and economic exclusion.

In practice, land titling programmes run the particular risk of land capture by elites at the expense of the poor, creating opportunities for the powerful to assert absolute property rights and concentrate land at the expense of weaker community members. In both urban and rural areas titling programmes have created market distortions, which have displaced tenants and vulnerable land users. Moreover, titling is also a very expensive and long term process, relying on detailed surveys, comprehensive registration and adjudication of land claims, and formal administrative procedures, which are frequently unfeasible on any significant scale in poor, developing countries, and difficult to maintain over time.

Freehold titles are unlikely to meet the needs of many of the poor, and titling has not in general led to improved access to formal credit. Banks are not generally willing to lend to poor communities and farmers even with clear land titles, and there is little to be gained from seizure and dealing in small plots of land in the event of loan defaults. It is generally expensive for the poor to acquire freehold rights on the market, since this necessitates loan finance, and leaves the poor vulnerable to dispossession.

Tenure security is a critical condition for both farm and urban neighbourhood investment by the poor. However, tenure security requires both social legitimacy and formal, statutory legality, and need not necessarily be delivered through freehold titling. A variety of incremental improvements to tenure security are possible, through the legal protection of existing rights and the provision of intermediary forms of tenure. These include land rental, leasehold, rights to occupy and the formation of communal property associations and housing co-operatives, which can acquire land title on behalf of their members. In urban areas this has led to substantial environmental improvements in slums and poor neighbourhoods. Tenure security is often a question of perception and interpretation of the socio-political climate in relation to land rights, and in this context the law is critical. The law must protect established legitimate rights and provide the right not to be evicted without due recourse to full legal process. Advocacy for land rights for the poor is therefore important.

Where tenure reform is on the agenda it is essential to review and identify the diverse forms of tenure and property rights that enjoy social legitimacy and can form the basis for improving both urban and rural land management and living conditions. While freehold tenure may have its place, frequently rights can be strengthened within existing tenure systems, and without an often costly and inappropriate formal titling process. A diversity of forms of tenure can increase security without distorting local land and housing markets.

Sources: Payne 2001, Quan 2000, de Soto 2000

2. Land Tenure and Needs for Reform in Pastoral Areas of Kenya

Land ownership, access and management, to the extent that they have been articulated, have usually been one of “common property” within a defined group or community.

Through systems of social structures and institutions, these traditional societies learned to cope with climatical and ecological variations. The animal husbandry, gathering and crop cultivation practices were well adapted to sustainable use of the resource base.

Since the advent of colonialist the practices were seriously challenged and radically changed to the disadvantage of the indigenous communities. Much of the most resourceful parts of the dry-lands were alienated and turned into extensive livestock ranches set aside as wildlife sanctuaries, or put under crop cultivation Law was effectively used to legitimize actions of the alien Europeans who through force or fraud encroached on the lands of the native communities.

- Pastoralists and Consequences of Land Alienation

The pastoralists are said to be the ‘aborigines’ of the plains of the Eastern Africa, which is believed to be the cradle of mankind. They had lived in the dry lands over the centuries having adapted to a livelihood centered on livestock keeping. According to some scholars this “adaptation is at least 4000 years old in this part of Africa.

However with the onset of the colonial rule the pastoralists and other groups lost much of their resourceful land to advancing white settlers. Moreover, outright land alienation and restrictions upon pastoralist’s mobility struck directly at the heart of their survival strategy

The colonial administration either used force or fraud to displace them from their resourceful grazing lands. For example, approximately 17,200 Maasai with over 2,000,000 million livestock surrendered their lands and moved from the central Rift Valley to Laikipia after 1904 “Agreement” for the benefit of 48 Europeans, only in turn to be removed from Laikipia to an extended reserve in Narok and Kajiado after the 1911 “Agreement” for further European settlement

The net effect of the colonial tenure regime imposed on the traditional African society, including the pastoralists can be summarized in the following points.

1. Loss of land and other natural resources leading to instability and impoverishment.
2. Violent conflicts among neighbouring communities over scarce resources.
3. Insecure land tenure in pastoral areas.
4. Administrative control over land has insidiously led to growth of bureaucracy in management of land resources.
5. Alienation through process of adjudication and registration continue to threaten survival of pastoralists and other natural resource-dependants like hunters and gatherers.
6. Social problems like inheritance and perpetual land suits.
7. Accumulation of large tract of land as individual holdings such as ranches leading to shrinkage of land under pasturage.
8. Population pressure on high potential areas encouraging in-migration in pastoral areas.
9. Proliferation of land allocating authorities, which often disregard or bend the procedures in favour of privileged groups.
10. Commoditization of land i.e. drawing land into market economy.

Even today threat to pastoralists due to pressures on land is real. The pastoralists who live in close proximity to agricultural communities continue to face challenges in their own ‘home turf’ as they get displaced as a result of political expediency or misconceived tenure practice. The Maa Speaking community of the southern rangelands have been at the receiving end of this lopsided ‘displacement’ policy.

As sedentarization and urbanization continue to expand from the centre, pastoral grazing lands are increasingly compressed and circumscribed.

Pastoral land rights and sustainable rangeland management in Africa

Across much of East, West and North-central Africa the movement of livestock herds has allowed marginal grazing resources in semi-arid areas to be used effectively and sustainably as the basis of the livelihoods of pastoral peoples. The pastoral economy has always been an integral part of a wider socio-economic system involving long-established exchanges of resources and the circulation of people between interdependent and complementary crop and livestock production.

However pressures on the pastoral environment have increased owing to expanding numbers of different land users, the withdrawal of pastoralist land and resource rights, and closure of livestock corridors, as land is converted to other uses. This has led to growing levels of conflict between pastoralists, government agencies and arable farmers, alienation of pastoralists from mainstream society and the deterioration of the remaining environments on which they depend for their livelihoods.

- In Sudan pastoral areas have been taken over by large-scale mechanised and irrigated farming, often with little attention paid to environmental impacts. River basin development has disrupted livestock routes and blocked access to water sources. Grazing conditions around livestock watering points tend to deteriorate and water pollution and shortages have increased, exacerbated by periodic droughts.
- In Nigeria state authorities have been reluctant to enforce legal provisions for protection of pastoral areas and stock routes. Conflicts are exacerbated when farmers block access to pasture or water supplies, and when pastoralists allow livestock to damage growing crops. Demands for the resettlement of pastoralists in designated reserves are not feasible since reserve areas remain insufficient and sometimes ecologically unsuited to grazing, whilst also generally without investment in infrastructure and perceived as government owned.
- In Kenya conflicts over common land have become increasingly frequent, mainly as a result of policies that favour privatisation, and state control over areas reserved for wildlife conservation and tourism. Both the constitution and the overall legal framework for the management of land and natural resources have undermined the sustainable management of customary common property and served the interests of those who seek individual title deeds to land taken from public lands. Natural forest widely used by

pastoralists has been degazetted, subdivided and allocated to individuals, with the frequent loss of biodiversity and environmental damage.

A preferred option for herders is often to continue traditional land use practices, supported by stock route and grazing area development programmes. Pastoral organisations need strengthening to enable them to negotiate tenure and access rights. Consultation is required with sedentary farming communities and other stakeholders to mitigate land use conflicts. Grazing reserves need to become legally defensible common property rather than open access resources, to enable pastoralist groups to invest in rangeland development, manage limited grazing resources sustainably and thereby improve their livelihoods. The devolution of power to manage land resources and access rights to local institutions involving pastoral communities can assist these processes.

Sources: Toulmin, C. and Quan, J. (2000)

The majority of the new immigrants were from the Kalenjin and Kikuyu tribes. These newcomers are primarily small-scale farmers who are located the fertile Highlands engaged in crop farming. Another group, which has been favoured by Colonial tenure changes, were large-scale commercial farmers of white and Asian Descent.

There is also a politically connected and wealthy families who acquired large tract of land for commercial wheat, barley and dairy farming.

The threats on pastoral land also appear to come from other forms of land use now on the increase. While the southern rangelands, because of its proximity to land -'hungry' agro-based economy as opposed to 'passive' pastoral-oriented economy have faced more serious than the northern range lands (Including Turkana in Pokot and Samburu) who also are incrementally challenged by competition from other land use system such as wildlife conservation areas, camps, military installation, mineral exploitations, extension of urbanization, etc.

As indicated earlier trust land and land (Group Representative) Act are dominant legal and policy framework currently operating in pastoral areas. The practical evidence shows the two dominant laws in the pastoral lands have failed to protect interest of local communities, particularly against arbitrary disposition of their lands. We also saw that the laws failed to respond to the emerging scenarios where pastoral lands were arbitrarily expropriated by unscrupulous

council or government officials. The weaknesses of the laws were as result of their failure to provide clear policy and institutional innovations to govern land and lack of effective participation of the local community the local community in resource management. The Trust land Act has been ineffective in protecting the rights and interests of the local community in spite the fact it is the only legal concept of tenure that is entrenched in the constitution.

According the constitution land is vested in the county council for the benefits of the residents and to give effects to rights under the customary law. In effect that provision is a mere gimmick considering the fact that other written laws supersede whatever rights customary laws bestow. No right, interest or other benefit under African customary law shall have effect... so far as it is repugnant to any written law (s.115 (2)).

The Constitution further confers far- reaching power to the parliament and president to alienate Trust land thus extinguishing the rights under customary law.

The land (Group Representatives) Act also provides an element of confusion and uncertainty respectively in regard to the aspect of disposition of land. Although the group representatives are to hold the land and other assets on behalf of the group for collective benefit of all members/ disposition of group land may be made simply with approval of the group representatives themselves.

3. Zoning of land: Gestion des Terroirs approach

In Francophone West Africa, both governmental and nongovernmental organizations are promoting participatory village resource management programs under the Gestion des Terroirs villageois banner. International donors have applauded this approach as a model for environment and development programs in West Africa. Organizations ranging from the World Bank to those promoting grassroots development have generously funded Gestion des Terroirs (GT) programs.

Burkina Faso has been a leader in the development and implementation of the GT approach. GT programs in Burkina Faso (and throughout West Africa) attempt to improve natural resource management at the village level by introducing soil and water conservation technologies and restructuring institutions that control how land is allocated. The emphasis on redefining land rights emerges from the idea that increasingly uncertain land rights have exacerbated the problem

of land degradation. The uncertainty arises, supposedly, from changes brought about by drought, population growth, and poor agricultural practices. Insecure land rights pose the largest problem in areas of widespread immigration, where migrants are thought to settle in an anarchic fashion, cutting down trees, reducing soil quality, and causing widespread land degradation in the process.

The goal of the GT approach has been to serve as a project paradigm that will improve natural resource management at the level of the village `terroir a unit of analysis that encompasses the social and physical space controlled by villagers.

Contemporary GT programs use the terroir concept in their attempts to promote sustainable management of village agricultural, fallow, and forested lands. The main way they go about this is by creating representative village committees that redefine the spaces of control over natural resources through village mapping. Village committees, assisted by teams of experts, create maps of village territories, with the ultimate goal of zoning land into different land-use categories, generally forest, fallow, and agricultural fields. The predicted consequence of this new `conservation territory' is better resource management and fewer conflicts.

Despite the active participation of many villagers in this process, attempts to restructure landholding have failed in south western Burkina Faso. Part of the failure has come from using village mapping techniques that create the village terroir as a defined territory with distinct boundaries in areas where resource boundaries have historically been flexible and negotiated.

Certainly, in Burkina Faso, where land is already a major site of uncertainty and debate, the delineation of village spaces has exacerbated conflicts. Southwestern Burkina Faso is a region of fast-paced social and economic change, as a result of rapid population growth through migration and a burgeoning agricultural economy. This has resulted in land shortages and intensified competition for and increased individual control over land. Local landholding authority systems are under challenge and conflicts rampant. Part of the problem is that individuals are uncertain where authority over land actually resides. In Burkina Faso, land officially belongs to the state. In practice, however, the state is far removed from decisions about agrarian landholding. Decisions about landholding have historically been made by customary authorities. It is no surprise, then, that GT attempts to define spatial boundaries of land, therefore, become caught up in local political struggles over redefining rights to land. The conflicts partially arise because GT projects

are seen as a potential source of political and economic resources, as different groups act in ways to exclude other groups. In the study areas, locals have attempted to exclude migrants from land; juniors have attempted to usurp power from elders. The participatory committees created to represent the interests of different groups break down over factional lines.

Outside projects add yet another layer of uncertainty regarding the power to allocate and control land because their actual authority to restructure landholding is unclear both to local villagers and to regional politicians. Although the national government in theory supports decentralized attempts at land management, whether the community is actually given real powers to manage their land remains to be seen. This uncertainty leads to strategic behaviors by individuals and groups who are vying

IV. PASTORAL LANDS: FUTURE CHALLENGES AND OPPORTUNITIES.

The constitutional provisions for trust land/ while providing nominal protection for African customary law/ also legitimize the continuation of the colonial land system that was designed to transfer customary rights from indigenous communities.”

Throughout our discussion in this paper we were dealing with problems of land ownership in pastoral areas since the advent of colonialism, which radically disrupted the pre-existing traditional systems. The post- independent African government did nothing to change the situation. In any case, the government encouraged continued application of the inherited laws and ignored to reform such tenure system as trust land to be able to effectively accommodate changes in the society.

In effect trust land and other ‘community’ land tenure practice have been rendered to operate as ad hoc arrangements that can hardly respond to continued onslaught adjudication and registration processes. It is agreed that apart from the absence of any legal protection for the pastoral communities... ‘government policy on trust land appears to view them as an interim holding pending registration under the Registered land Act”

It is also noted that government drives for registration and individualization of common resources like land is likely to escalate landlessness and impoverishment among the pastoral communities.

The existing legal and policy framework, which inordinately concentrate power of resource control in government, have little management content/ being almost entirely dealing with appropriation and transmission of land.

However the last decade which is generally acknowledged as period of “awakening” in Kenya and other developing countries/ has offered enormous opportunity for debates on land within legal and constitutional reform framework. This is in contrast to almost 40 years of unquestioned operation of ‘received’ colonial laws.

The government has also made some efforts in recent past to create an environment for land policy debates. In Sessional Paper No. 1 of 1986’ government agreed that there was need for a major review of land policy. It further recognized that the “existing situation combines colonial land tenure laws with recent practice in a complex pattern that makes it difficult to operate a land policy”

The government had since then established a number of task forces and commissions to seek public views in order to reform tenure systems. Some of these were:-

- (i) The Ministerial Land Reform Task Force
- (ii) Land Use Commission
- (iii) Commission of Inquiry into the Land Law System in Kenya (“Njonjo Commission”)

The debate on Land law reform has been immensely reinforced by the on-going review of the Constitution. The reform process has offered a window of opportunity for the rights of communities to access, manage and control their local resources including land to be incorporated in the constitution.

V. CONCLUSION.

Land tenure in Africa is characterised by the persistent prevalence of customary systems of land management and customary rights, embedded in culture and social practice. These have changed over time and in many cases were used by colonial governments as a basis for political administration, under the recognised authority of customary chiefs. Over time these rights have been consolidated, with rights to agricultural plots tending to become more individualised, especially under conditions of population growth. Customary tenure systems permit a wide range of mechanisms for people to access and transact in land. The result is that they support a range of derived or secondary rights, not only within the household but also, and most evidently in West Africa, across wider communities and between distinct social groups. Such rights include grazing, manuring contracts between farmers and pastoralists sharecropping, and arrangements for land loans, rental and forms of mortgage. Imported formal property rights have also failed to deal with the common property resources which support livestock grazing and the harvesting of wildlife, bush products and aquatic resources fundamental to African tenure and livelihood systems. Although innovative solutions, have tried to address these problems, with some success, they have fallen short of granting secure proprietary resource rights to the communities involved.

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