POLICY BRIEF

RETHINKING LAND POLICY FOR KENYA'S PASTORAL COMMUNITIES

The path to sustainable development

Ken Otieno, Fiona Flintan, Michael Ochieng Odhiambo, Professor Collins Odote and Charles Kagema

Key messages

- **Policy and legal frameworks are pillars for securing rights for societies**, either individually or collectively. Pastoralists share resources collectively, including land and other natural resources. Therefore, these instruments should ensure the full realisation of land tenure and resource rights for pastoralists.

- **Land use patterns are changing**. These changes affect traditional land use systems and, as such, must be guided to ensure that affected areas and people do not lose their rights, including access, use and management.

- **Pastoralism is a livelihood system often not recognised by most governments during national planning**. This is partly due to its inherent nature of being far from the centre of power, but equally because existing data on its contributions is not convincing enough for government technocrats.

- **Conflicts in the pastoral areas are common** and, by the very nature of shared resources, remain inevitable. However, these conflicts can be controlled to avoid becoming protracted. Policy reviews present the opportunity to recognise traditional institutions for conflict management.

Conversion of pastoral land into other uses in Narok County Kenya
© Ken Otieno

Introduction

This policy brief makes key recommendations to ensure that the review of Kenya's National Land Policy (NLP) by the Kenyan government (GOK, 2009) and many stakeholders addresses the needs of pastoral communities.

These recommendations have policy implications for recognising and managing pastoralists' land, as well as its governance.

They cover:

- how the statutory systems relating to land policy need to recognise and complement the traditional governance systems that are pertinent to pastoralists and not undermine or be in competition with the statutory/formal institutions

- the place of customary tenure rights in the context of a secure tenure system for pastoralists within the policy review and subsequent new land policy

- how technology can leverage the tenure and resource rights of pastoralists and other resource users.

The land reforms in Kenya instigated by the NLP 2009 were pivotal to the country: Kenya implemented a comprehensive roadmap for land administration and management (Kenya Vision 2030, n.d.).

However, while the review of the NLP should have been completed 10 years after implementation, the exercise did not start until 2023. Fourteen years on from the implementation of the NLP, changes including commercial land pressures, climate change and extractives are such that it is critical for more policy measures to be introduced.

In this context, this policy brief is in fact timely. It aims to inform the Kenyan government's review of the NLP 2009 from a pastoralism perspective, to ensure that the NLP recognises and secures pastoralists' land tenure rights.

Moreover, it is in line with the Constitution of Kenya (GOK, 2010), which requires the National Land Commission (NLC) to research and recommend a land policy for action through the Ministry of Lands, Public Works, Housing and Urban Development – within the state department of Lands and Physical Planning.

Alongside this policy brief is a [deep-dive position paper](#) that was prepared with support from the Supporting Pastoralism and Agriculture in Recurrent and Protracted Crises (SPARC) through the International Livestock Research Institute (ILRI).

The NLP has given greater premium to the land of pastoralists. Thus, the land and resource rights of the pastoral communities, and the vast areas of arid and semi-arid lands (ASALs), should be protected and secured. These vast regions are home to millions of pastoralists and not empty expanses of open land; as such, they are fundamental to a way of life that has endured for centuries.

It is worth recognising that the current NLP has sought to secure pastoralists' land rights. But the review process has the potential to reshape land governance to support sustainable development while preserving the cultural heritage and livelihoods of pastoralist communities in Kenya.

Critique of the NLP review

The NLP review proposes the introduction of new priority themes. These have implications, both positive and negative, for pastoralist communities, depending on whether and to what extent the voices of pastoralists themselves are incorporated.

Emphasis has been given to themes that have a bearing on pastoralism and rangelands. It is generally understood that pastoralism is more than just a livelihood; it is a dynamic system of managing land and natural resources that have sustained communities in Kenya and the world for generations.

The current NLP has only five chapters, of which Chapter 3, Sections 3.3 and 3.6 are key to pastoralists and pastoralism. While such inclusion has been important, the proposed draft delves deeper and includes new areas such as: surveying, mapping and geo-referencing; land for agriculture and food security; land for investment; housing and infrastructure; and land dispute, conflict prevention and resolution.

These new themes thus create new and greater opportunities for pastoralists and pastoralism and are a departure from the current policy. Moreover, the first stage of auditing the current policy recommendations by the Land Commission and synthesis documents (NLC, 2023) has given pastoralists and other actors the opportunity to contribute to the ongoing exercise.

There are challenges with pastoral livestock mobility across large landscapes. Partly, problems arise from large-scale land acquisitions and investments by both governments and private investors in the pastoral lands.

As such, pastoralist land tenure issues are a matter of great concern. The review process must recognise and give direction to this in the form of the most effective mechanisms to secure both tenure and rights. Beyond

pastoralism, there is also the issue of food production, biodiversity conservation, and the maintenance of ecosystems.

As part of the process towards addressing some of these issues, a [position paper](#) has been prepared for submission to the Ministry of Lands, Public Works, Housing and Urban Development on the state of rangelands and pastoralism.

The paper provides several policy recommendations and integrates pastoralist perspectives into the national discourse.

Land use planning and development control

Pastoralists rely on being able to move across large areas to access seasonal pastures and water sources. The new proposed policy integrates Indigenous land use practices into formal planning frameworks, ensuring that pastoralists' need for movement is respected and facilitated.

The review process must recognise the emerging trends of individualisation and privatisation of former trust and group ranches as something that would undermine pastoralism. In addressing this, the new policy needs to provide direction in the review and alignment of the Community Land Act (GOK, 2016) to redefine the planning units deemed consistent with and desirable to pastoralism.

Land administration and management

The application and enforcement of policies and laws have often been a way to disempower traditional institutions, rather than empower them. As such, establishing a mechanism of engagement and strengthening the functionality of these traditional institutions through legal systems would be important guidance by the policy.

While secure land tenure is essential for pastoralists, as with other land ownership, the current system often fails to recognise collective land ownership and tends to favour individual ownership. The new policy must strengthen community governance structures by blending traditional and formal institutions to better manage and administer pastoral lands and protect collective tenure systems in pastoral areas.

Survey mapping and geo-referencing

The sustainable management of rangelands is crucial for the long-term viability of pastoralism. Accurate and comprehensive mapping of pastoral lands is necessary to protect these areas from encroachment and mismanagement. The use of technology in surveying and mapping can enhance the protection and sustainable use of rangelands, with well-defined rangeland units for planning and development.

Land tenure

The policy should clearly define and secure collective tenure rights, recognising the unique relationship that pastoralists have with their land. Customary institutions should be empowered and enabled to use the policy-provided opportunities to manage these rights effectively, ensuring that pastoralists can continue their traditional practices without fear of displacement.

Natural resources, environment and conservation

The sustainable management of natural resources is crucial for the survival of pastoralism as a system and livelihood. The new policy should promote adaptive management strategies that protect rangelands and biodiversity while supporting the livelihoods of these resource-dependent communities.

Conflict resolution

Land disputes are common in pastoral areas, fuelled by a mixture of resource variability and oftentimes scarcity of resources such as water and pasture. But the vastness of ASALs also presents challenges. There is also abundance of and competition from other land uses, such as agriculture and infrastructure development, which also present challenges to the pastoral livelihood system.

Strengthening customary conflict resolution mechanisms and integrating them with formal legal frameworks will help reduce these conflicts and ensure more equitable access to resources.

Land for agriculture and food security

Kenya's ASALs are increasingly under pressure from agricultural expansion. This competition for land resources can lead to unsustainable use of pastoralists' grazing and reserve areas. This restricts mobility, thereby undermining pastoralists' capacity to manage variability.

The new policy needs to balance the needs of agricultural development with the protection of pastoral lands, ensuring that pastoralists' access to resources is not compromised. Furthermore, it should address climate resilience by supporting diversified livelihoods and sustainable land management practices. Finally, it must encourage the use of technology to improve land management and agricultural productivity in pastoral areas.

Each distinct land use is unique and there is competition for resources between the two. The policy should emphasise the importance of considering this type of competition, both from ecological and economic standpoints.

Land for investment, housing and infrastructure

The expansion of infrastructure projects, housing developments and large-scale land investments has

increasingly encroached on pastoral lands. These developments often lead to the displacement of pastoral communities and the loss of vital grazing areas.

The new policy must include safeguards that protect pastoral lands from being unfairly targeted for such investments, ensuring that any development in these areas is conducted with full consultation with and compensation for the affected communities.

Equally important is the inclusion and full application of free, prior and informed consent, which can only be fully realised through a framework for community empowerment.

National Land Information Management System

The establishment of the National Land Information Management System (NLIMS) was envisioned as a way of establishing digital land administration and management in Kenya. There are challenges in its functionality, even as it expands, and concerns about the security and reliability of land data have emerged. Land tenure in pastoral communities is often communal and based on customary practices, which is why it is crucial to ensure that the land data is accurately captured and securely stored.

Any errors in the system could lead to disputes or loss of land rights. A policy review should focus on strengthening security measures within NLIMS to protect the interests of all landholders, particularly vulnerable communities such as pastoralists.

The policy should also include initiatives to improve digital literacy among pastoral communities and increase their access to the necessary technology. This could involve setting up community access points where pastoralists can engage with the NLIMS and receive assistance in navigating the system.

Conclusion

The ongoing review of Kenya's NLP is both a constitutional imperative and a policy implementation necessity. It is however important to recognise that the NLP 2009 made significant gains that must be protected and strengthened within new policy.

The review process is an opportunity to address longstanding inequities and build a future where pastoral communities can thrive. The NLP 2009 progressed towards securing pastoralists' tenure rights by recognising the unique challenges and contributions of pastoralists.

A new policy can build on this and lay the groundwork for sustainable development in Kenya's rangelands. As the review process continues, the voices of those who live and depend on these lands must be heard and understood as central to the decision-making process.

This is not just about land; it is about people, livelihoods and the future of Kenya's ASALs. The success of this policy review will be measured by its ability to secure the land rights of pastoralists, ensuring that their way of life is protected, and that their contributions to the country's economy and culture are fully recognised.

Policy recommendations

This policy brief makes several recommendations to ensure that the land policy review addresses the needs of pastoral communities:

- **Codification of indigenous practices:** Integrating indigenous land use practices into the formal planning framework will help protect pastoral lands and ensure their sustainable use.

- **Strengthening community governance:** There is a need to reflect on the composition and coherence of Community Land Management Committees (CLMCs) with regard to how pastoralist traditional governance systems are established and function.

  Based on the realities, it would be important for CLMCs to empower local communities to manage their lands effectively, blending traditional knowledge with modern governance practices.

- **Technological integration:** The use of geographic information systems and other technologies should take into account the complex systems that govern pastoral land tenure, which should thus be promoted to improve the management and protection of pastoral lands.

- **Recognition of collective rights:** The new policy must provide clear guidelines for the recognition and protection of collective land rights, ensuring that pastoralists' access to land and resources is secure.

- **Participatory land use planning:** Engaging pastoral communities in the planning process ensures that their needs and practices are understood and respected. Participatory rangeland management and other inclusive planning methods can influence policies that are not only effective but are also supported by the communities they affect and are meant to serve.

About SPARC

Climate change, armed conflict, environmental fragility and weak governance, and the impact these have on natural resource-based livelihoods, are among the key drivers of both crisis and poverty for communities in some of the world's most vulnerable and conflict-affected countries.

SPARC aims to generate evidence and address knowledge gaps to build the resilience of millions of pastoralists, agro-pastoralists and farmers in these communities in sub-Saharan Africa and the Middle East.

We strive to create impact by using research and evidence to develop knowledge that improves how the FCDO, donors, non-governmental organisations, local and national governments, and civil society can empower these communities in the context of climate change.

How to cite: Otieno, K., Flintan, F., Odhiambo, M.O., Odote, C. and Kagema, C. (2024) 'Rethinking land policy for Kenya's pastoral communities: a path to sustainable development'. Policy brief. London: Supporting Pastoralism and Agriculture in Recurrent and Protracted Crises (SPARC) (https://www.sparc-knowledge.org/publications-resources/rethinking-land-policy-kenya).

References

GOK (Government of Kenya) (2009) *Sessional Paper No 3*. Nairobi: Government of Kenya (https://lands.go.ke/wp-content/uploads/2023/11/Sessional-paper-on-Kenya-National-Land-Policy.pdf).

GOK (2010) *Constitution of Kenya*. Nairobi: Government of Kenya.

GOK (2016) *Community Land Act*. Nairobi: Government of Kenya.

Kenya Vision 2030 (n.d.) 'Land, policy, legal and institutional reforms' Webpage (https://vision2030.go.ke/project/land-policy-legal-and-institutional-reforms/).

NLC (National Land Commission) (2023) *Recommended Land Policy*. Nairobi: Government of Kenya.

Funded by

sparc-knowledge.org

@SPARC_Ideas