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The land question in many African countries has geographical, political, economic, social and demographic nuances. These factors colour land and resource rights for pastoral and forest dwelling communities. Land therefore represents the earliest form of property and includes resources on the land such as trees; pasture; water and wetlands. Land tenure—the nature and manner in which rights and interests over various categories of land are created or determined, allocated and enjoyed—is pivotal to land as property especially for resource-dependent communities for whom land and livestock comprise the only property and source of livelihood.

The introduction of a modern tenure system through colonialism and continued by post-independence government policy and legislation has made the rights of pastoralists and forest dwelling communities insecure. Pastoralism, a livestock-based land use that has flourished in arid and semi-arid lands, requires a supportive tenure system for both land and related resources. Tenure reform for the most part has come with subtle delegitimation of pastoralism especially nomadic pastoralism as boundaries and fixity are the norm. Pastoralism depends on flexible and negotiated cross-boundary access to land and resources which have not been provided for in many land reform processes. The boundaries demarcating different parcels of land have over time cut off pastoralists' access to vital water resources and pasture in individually and publicly owned land. It is therefore not surprising that rights of pastoralists are a recurrent theme in policy discourses in east Africa. The rights of pastoralist communities to land have become very tenuous over time as land holding and land use patterns have changed. National law and policy have emphasized agrarian reform even in areas more suited to pastoralism, with pastoral communities encouraged to settle and change their way of life. However, despite the efforts of governments to alter the lives of pastoralists and make them settle in one place, pastoralism as a land use has persisted. The failure of policy and law to recognize and provide for the strategies of production of pastoralists has resulted in great vulnerabilities of the people living in arid and semi-arid lands of eastern Africa. Pertinent issues for these people include tenure security, political marginalization, citizenship for some groups whose existence is not recognized in national discourses, livelihood security, conflicts and insecurity and degradation of ecosystems. The relegation of pastoralism to a back seat has also impacted negatively on their governance systems regarding the allocation and use of land and related resources.¹ These systems have been systematically replaced by state legal and social ordering structures. Where these structures lack the force that the norms they seek to replace have, the result is resource degradation and increased vulnerability for pastoralists. Indeed the transfer of authority over common resources from the realm of communal rules to the individual or the state may lead to over-exploitation due to the sweeping aside of more widely accepted traditional structures that regulate use.

Another factor that has affected pastoralists is climate change which has resulted in reduced pasture and water. Pastoralists' ecosystems are threatened by desertification resulting from global climate change and conversion to agricultural land uses. Within a context where national policies have put great emphasis on agriculture and neglected pastoralism, the contribution of

grasslands and pastoral ecosystems to economies as habitat for wildlife and biodiversity is relegated to the back seat.² The pastoral communities' mistrust of government, rooted in both neglect and unpleasant encounters has contributed to these communities' continuing with outmoded stock management and environmental practices when governments have enacted sustainable natural resources' laws and policies at the national levels. Not surprisingly, the quest for tenure security for pastoral communities has become a running theme in national land policy formulation processes in countries in the region. It has become clear that individualization of land rights is not suitable within these areas. This has led to the search for land tenure policies that are suited to the pastoralists' way of using the land. Other issues of concern are the role of pastoral communities in pastoral land management within the context of a changing climate and equality of access to pastoral resources for women and youth.

It is within this context that this special issue focuses on securing land and resource rights of nomadic communities in East Africa. The running themes of the issue include: land use changes; mobility; marginalization; climate change; tenure transformation; and the quest for a supportive tenure regime supportive of pastoral and forest dwelling communities. There is discussion about the potential of community land rights to secure land rights of pastoralist and forest dwelling communities. The authors are drawn from universities, international foundations and local and international non-governmental organizations. They include seasoned scholars as well as upcoming scholars who have only recently attained their doctorates.

The issue begins with a discussion on community land rights' recognition in the 2010 Constitution of Kenya within a context of historical neglect of the tenure category and over-emphasis on individual and public holding of land. Nyamu Musembi and Kameri-Mbote provide a broad conceptual overview of tenure issues for pastoral and forest dwelling communities particularly the struggle for recognition of community rights within a context of policy and legal preference for public and private land rights. It draws on a case study of a Kenyan community – the Ogiek in the Rift Valley – in which tenure and land use are changing rapidly and where tension exists between individual and communal tenure, and among contending visions of future community land rights. They argue that official recognition is one thing while realization of the rights by communities is another. The situation, in their view is compounded by the fact that land tenure and land use change have been greatly impacted on by over a century of neglect and outright subjugation and discrimination. Moreover the determinants of community as provided for in the Constitution—ethnicity, culture or similar community of interest—are not very clear and require further elaboration. It is also their view that community claims may on the one hand be used to exclude other groups and mute other claims by groups excluded within the community such as women and the youth on the other.

Along the same lines, Odote discusses the implications of the constitutional recognition of community rights for the pastoral Samburu in Kenya who have also embraced wildlife conservancies as a land use compatible with pastoralism. He argues that while Constitutional recognition and the envisaged legislation on community land provide important operating conditions for the success of communal land tenure, it is not yet time to celebrate freedom (*Uhuru*) for this tenure regime and its beneficiaries in pastoral areas. In his view, while law is a useful tool for guaranteeing rights, it can also act as a disempowering or inhibitive force if its content is not tailored to be empowering to those it seeks to benefit. Along these lines, he

proposes the need to properly map communal lands across the country and practices of local communities in managing such lands so that the legislative framework supports and does not replace the existing arrangement. He warns that community rights within the context of the previously recognized group ranches (the closest approximation to community rights) had been subverted and ended up being counter-productive to the envisaged ends. This, in his view, should be avoided in implementing the constitutional provisions on community land rights.

Ole Seno and Tome in their piece on the socio-economic and ecological viability of pastoralism in Loitokitok district problematise the paradox of the interest in pastoralism as a livelihood strategy that is compatible with wildlife conservation and sustainable development and the seemingly insurmountable threats that it faces. They aver that pastoralism in the Amboseli ecosystem is threatened by sedentarization, environmental degradation, changing weather patterns, labour constraints as children embrace education and an increase in conflict with other land uses. They argue for policy changes on access to land and land use arguing that pastoralists' ability to adapt and cope has been severely compromised by restrictions to their movement in search for scarce pasture and water resources. This paper also hints at the tenure transformation and the threat that it poses to pastoralism as a land use and the conflict between pastoralism and wildlife conservation hinged on land ownership and control.

In *Tenure in Mystery: Status of Land under Wildlife, Forestry and Mining Concessions in Karamoja Region, Uganda*, Rugadya and Kamusiime argue that communities in the Karamoja region have not benefitted from land tenure changes. In contrast, they have become more marginalized as others who are more powerful and have access to necessary information, have benefitted from the resources and tenure changes in the region. Like in the Loitokitok case, communities compete for land and related resources with wildlife which they have traditionally lived harmoniously with over the years. Law and policy on land tenure, wildlife conservation and catchment preservation have conspired to make the Karimojong pastoralists vulnerable as their access to critical resources is curtailed. Their plight is further complicated by the minerals on their lands which are owned by the government and mining concessions for which are offered to private companies. In this scenario, access to resources is curtailed with no benefit sharing arrangements instituted. Like the pastoralists in Kenya, the Karimojong are viewed in law and policy as chaotic, economically backward, irrational and environmentally destructive in their persistence on a pastoral land use and production system. The themes of marginalization and the vulnerability to internal and external factors are particularly articulated in this piece.

Coming at a time when pastoralism is receiving renewed interest and community land rights are being articulated in law and policy, the issue contributes to research, policy and advocacy. Security of tenure to land and resources has been recognized as critical to national development and national cohesion. These are important in East African countries and inclusion of marginalized pastoral and forest dwelling communities is an important first step towards creating cohesive communities.

Notes

- ¹ Lenaola, I. et al. 'Land Tenure in Pastoral Lands', in *In Land We Trust – Environment Private Property and Constitutional Change*, ed. C. Juma and J.B. Ojwang. Acts Press, Nairobi. 231-257 at 253
- ² AU & UNECA, Framework and Guidelines On Land Policy in Africa: A framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, Revised Version, March 2009

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