

Formalisation of Land in Tanzania. The
Challenges of Collective Privatisation among
Pastoralists

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1. Precis




- Individualisation and privatisation of land seem to be high on the agenda of land reform in many African Countries.
- Lack of formal property rights explains why people in developing countries have not been able to transform their natural resources into productive capital.
- The above argument emanates from the charismatic ideas Prof De Soto of Peru.



- Many policy makers nationally and internationally have fallen in love with De Soto's argument. In Tanzania, it explains the infancy narratives of our MKURABITA.
- A few experiments of formalisation have taken place through MKURABITA giving us opportunity to take early stock of challenges and opportunities.




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- When it comes Pastoralism and formalisation precedent is not rich from within we can draw lessons from other jurisdictions. We draw lessons from West Africa and other countries in East Africa.
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2. Pastoral Land Tenure in Tanzania



- Pastoral land tenure systems are a response to the challenges posed by the natural environment.
- Pastoralists in Tanzania live mostly in arid and semi-arid lands whose resources are heterogeneous and dispersed, varying spatially and temporarily. Climatic patterns are erratic and highly unpredictable.



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- To survive under these conditions requires creativity and mastery of the environment.
 - Crucial for the many survival mechanisms is the practice of mobility, which enables pastoralists to access these spatially and temporally varying resources and avoid overgrazing.
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- The way land is held, owned, used, and managed are essential in sustaining the practices of pastoralism, and especially mobility.
 - Land is mostly owned communally but also individually for particular resources. These arrangements allow for reciprocity and flexibility in accessing resources.
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3. Pastoralism and formalisation



- Formalisation requires some form of privatisation, many times implying individualisation
- When it comes to Pastoralism, the challenge has been how to balance the collective nature of pastoral resources and the need to privatise the same. We look at attempts from Tanzania and other countries in East and West Africa.




3.1 Common property ownership in the Tanzanian land legislation



- The Village Land Act 1999 provides for a group of people to register a customary right of occupancy.
- On the face of it, pastoralists who can prove that they constitute a defined group, and whose use of grazing land within a village has been such as to create a customary right of occupancy, should be able to obtain a CCRO in the name of their group.



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- Ranching Associations is the closet we can get into a pastoral collectivity of owning land...
 - In any case, the challenges of formalising common property are unresolved.
 - The practical and legal conditions for constituting a collective right of occupancy on village common land may vary sharply between villages depending on whether they are wholly or largely pastoral, or areas of very mixed land use.
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- Pastoralist claims to common land may be fiercely resisted by non-pastoralists in such mixed communities, as may the idea that village common land could be controlled by any group other than the village as a whole.




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- There is some confusion about what ‘customary’ means for the purpose of establishing a customary right of occupancy.
 - The definition of customary claims is confused by various factors: in-migration and new tribal mixes in many communities in recent decades; attempts to withhold the privileges of village membership from relative newcomers; absentee land claimants; and uncertainty about the status of land rights that were disrupted by villagisation.
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In short there are some unanswered questions in respect of the Tanzanian land Law and Pastoralism

- In what conditions can a collective customary right of occupancy be established on village common land?
- What is the scope in law for formal registration of a customary right of occupancy that is not 'exclusive'?




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- How strong is the argument that only the village as a whole may hold title to common land within its boundaries?
 - In what circumstances may a sub-group of people in the village, and in particular pastoralist land users, claim a customary right of occupancy to common land?
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- How can the group be defined? What factors should determine membership of the group?
 - What form/s of legal identity and constitution are likely to be most viable for the group? In particular



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- How can membership be constituted with enough flexibility to accommodate local demographic and livelihoods changes?



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- how can the rules of membership and operation of the group accommodate traditional decision making on use of the pastoral commons?
 - In a group that includes pastoralists and non-pastoralists, how can rules of membership and operation of the group accommodate legitimate non-pastoral land-use rights, while safeguarding against fragmentation
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Some benefits of formalisation to pastoralists?

- registration of collective rights of occupancy may offer a strategy for protection against existing and predictable threats to pastoralist access to common land.
- Will give pastoralists a weapon against encroachment, reduce the risk of loss through central government decision, mitigate the consequences of such loss through compensation,



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- It will enforce and secure pastoral land-use systems through enforceable agreements for seasonal movement of herds across adjacent collectively-occupied grazing land, and
 - They could, where possible, use title to leverage capital.



Some disadvantages of formalisation to pastoralists?

- privatising control of land runs counter to collective rights of use of common land,
- Could lead to loss of grazing land as a result marketability of titled land a fact that can lead people to claim pieces of common land for financial gain.



3.2 Experiences from Kenya



- Kenya has tried to address the Problem of the pastoral land question through the Group Ranches but many of them were later privatised and individualised.



3.2 Pastoral laws in West Africa



- In 1993, Niger passed legislation that explicitly addresses pastoral land use through provisions for the definition of pastoral “home areas” and the identification and delimitation of livestock corridors.
- Various pastoral laws have since been passed in Guinea (1995), [Mauritania (2000), Mali (2001) and Burkina Faso (2003), while Niger is in the process of defining specific legislation to regulate the pastoral sector.



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- pastoral laws bring innovations to the management of pastoral resources in the Sahel, they contain many conceptual and practical problems that ultimately risk further marginalizing pastoral people, depriving them of their land and resources, and exacerbating conflict between different groups of users.



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- Crucially, by seeking to control the conditions of access to resources through complex, bureaucratic and technical procedures controlled by the State and/or local government, these laws disempower pastoral communities.



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- The ambiguities surrounding the notion of productive land use and the confusion reigning over the water and land rights are critical in this regard, and need urgently to be addressed.
 - The pace of policy reform in support of pastoralism has been considerable



Key positive features of the laws

- (i) The formal recognition of pastoralism is in itself significant, and in many respects these laws do provide an improved institutional framework for the better management of rangeland resources in the Sahel. This is an important step towards securing better livelihood opportunities for pastoral and agro-pastoral communities in these areas.



ii) Recognition and protection of mobility.

- The pastoral charter (Mali) devotes a whole chapter to this issue, specifying that pastoralists have the right to move with their animals both within and between countries. The pastoral code in Mauritania is uncompromising on this issue stipulating that “*pastoral mobility is protected under all circumstances and can only be limited temporarily and for reasons of the safety of animals and crops, and this in accordance with the provisions of the law*”



iii) Recognition of priority rights.

- There are provisions for giving herders' rights over the common use of rangelands, priority - albeit not exclusive - rights over resources in their "home areas" as well as rights to compensation in the event of losing their lands to public interest needs.



iv) Greater recognition of customary tenure arrangements, including the principle of decentralised natural resource management, the multiple and sequential use of resources by different actors at different times of the year (e.g. herders' access to harvested fields) and the need to manage conflict at the local level, are other innovative features of significance.

Pastoral Charter (Mali)

- Throughout the country, livestock may be moved for sedentary livestock keeping, transhumant livestock keeping and nomadic livestock keeping
- Livestock mobility takes place on livestock corridors. There are local corridors and transhumant corridors



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- Local government is responsible for managing livestock corridors with the help of pastoral organisations and in collaboration with all concerned stakeholders
 - Any form of occupation, blockage or use of a livestock corridor or any infringement whatsoever is strictly forbidden



Pastoral Code (Burkina Faso)

- In special grazing reserves, only those pastoralists with permission or a title to remain have access to pastoral resources” (Art 13).
- Special grazing reserves ...are integrated into the domain of the State who then surveys, demarcates and registers these areas in its name” (Art 18).



- Special grazing areas require land-use plans designed by staff of the ministry of livestock in collaboration with pastoral and farmer organisations, village and inter-village land management groups and local government” (Art 19).
- “Conditions of access and use of special grazing areas are specified in a management plan whose conditions are fixed by decree

4. Conclusion



- Dealing with pastoral land tenure has not been easy anywhere in the World.
- This is because Govs are allergic to anything that moves
- Traditional livestock keeping which banks on mobility to access variable resources cannot be accommodated in a land tenure regime which is individual in character.





Thank you for listening!

