

Registration of Pastoral Commons: A Report of an informal Meeting, Held at the Equator Hotel, Arusha on 3rd July 2007

Summary

An informal discussion meeting took place for one day to examine the question: ***Should Registration of Collective Customary Rights of Occupancy for Pastoral Common Land be Tested?*** Seventeen people took part, each person having extensive practical experience or legal knowledge of the issues concerned. Participants came from non-state organisations that work to improve security of pastoralist land use, as well as from the Ministry of Lands, Housing and Human Settlements Development and the Property and Business Formalisation Programme (MKURABITA). The meeting was jointly funded and organised by Norwegian's Peoples Aid (NPA) and the Joint Oxfam Livelihood Initiative for Tanzania (JOLIT)

The principal outcome of the meeting was a consensus among the great majority of participants that the current threats to pastoral land use are so pressing that the scope for formalising customary rights of occupancy on common land should be tested as a way of offering some protection under the present legal regime. Despite this, most participants have serious misgivings about the potential risks of creating formal title to the commons. Comments by various participants suggest that testing should be designed and implemented very carefully, with much discussion among the community or communities involved, and carefully monitored so that lessons can be clearly presented for policy advocacy. At the same time, most participants maintain that the longer-term aim should be more fundamental change of land law to secure recognition of wider territories involved in pastoralist production.

1. Rationale for the Meeting

The organisers of the meeting took some time to highlight the reasons why they thought it was timely to discuss the possibility of titling among pastoralists. The following were some of the key points raised:

- It is important to discuss how pastoralist land use can be secured and protected under the new land laws. What do the new land laws say about pastoralism and what opportunities for pastoralism are available in the present legal regime?
- There are enormous variations in the implementation of the land laws, but there is a strong direction towards titling of customary land resources. Some argue that the time is not ripe for this but others say it is time to see how far registration can work to secure land rights. Whatever one's views, the move towards titling needs to be engaged with directly.
- Registration is taking place in widely differing contexts, with varying degrees of power imbalance that impact on rights. When it comes to pastoral land the situation is even more complicated given the already existing policy misgivings about pastoralism and the way pastoralists own and manage their land
- MKURIBITA and others are looking at different ways of formalising land rights among pastoralists but there isn't as yet a clear proposal for how to do it.
- There are provisions in the law, which permit formalisation of collective ownership of common land and shared resource utilisation.
- It is more feasible to use existing opportunities in the law than proposing law reforms, especially for pastoralism, which is contested already as to its propriety as a land use system.
- There is a need to discuss whether there could be interest in testing some form of collective titling. The purpose is not to achieve complete consensus but to identify as far as possible the common ground and to define the reasons for differences of opinion as tightly and clearly as possible.

2. The Implementation of the Land laws: The State of Play

The Ministry of Land and Human Settlement Development gave a brief presentation on the implementation of the land laws, highlighting the following:

- The Ministry has already undertaken or initiated some experimental titling in Mbozi, Iringa, Handeni/Kilindi, Kisarawe and Babati.
- The pace of implementation has been slow due to shortage of funds.
- Land is not being prioritised in Local Government plans. In some Districts there is no funding allocated to land.
- The capacity of many land officers is very low.
- **CCROs in common land** - there have been discussions in government on how to legally allocate land to pastoralists who were evicted from Ihefu in Mbeya. The interest was how to see what kind of ownership should be undertaken when it comes to pastoralists especially those that were coming to areas that did not have pastoralists before like Kisware in the Coast Region. The alternative considered was land use planning. Another problem was how to have land use plans for pastoralists across different villages (through joint- use planning). A big challenge on how to do this was that the task to find land for these pastoralists was given to the Ministry of Livestock Development and not the Ministry of lands.
- The Ministry will soon be undertaking preparations for titling in districts with many pastoralists - Serengeti, Monduli, and Ngorongoro, beginning in August 2007. The meeting is therefore timely. The process is likely to begin with orientating the leaders of that particular district, helping with the issuance of certificates of village land and then assisting in processing a few CCROs; thereafter local governments are left to continue with the implementation process. In these three Districts, the process will begin with farming villages. The Ministry does not know yet how to proceed in respect of pastoralists' lands.

MKURABITA also spoke about their experience of titling, underscoring the following.

- MKURABITA is charged with coming up with ways of helping people to enter into an expanded market using, among others, their land resources.
- MKURABITA does not implement the land laws but rather assists by doing pilots and thus generating lessons for wider replications. The Land Act has already been piloted in Hananasif unplanned settlement in Dar es Salaam, and the Village Land Act in Handeni.
- MKURABITA is using and following current law and government procedures in doing the said pilots.
- There are many hindrances to a smooth implementation of the land laws. It could take 250 years to implement the land laws under existing arrangements. MKURABITA is trying to come up with ways of reducing delays and obstacles.
- When it comes to pastoral lands no pilot of registration of pastoral lands has been undertaken, but in Handeni it was considered as a land use activity for land use planning.
- MKURABITA is about to move to Bagamoyo for more piloting and could use the opportunity to deal with the pastoral situation.
- Local Governments do not see land matters as a priority - in fact there is no budget for it and the necessary infrastructures are lacking. MKURABITA seeks to change this.

CORDS summarised some lessons from their experiences:

- CORDS has participated in the implementation of the land laws in Monduli, Kiteto, Arumeru and Longido. The first assignment involved helping with certificates of village land. Some achievements include issuing certificates to 30 villages in Monduli, 30 villages in Longido, two villages in Arumeru (another 18 are waiting) and some villages in Kiteto. In Kiteto the villages that had already obtained titles have now progressed to another step of zoning to address the different land uses in the District.

- The practical task of mapping zones has not been the main challenge, especially given the availability of GPS: the more important task has been for different villages to agree on boundaries.
- Mobility is another constraint, as pastoralists would claim ownership of land, which they occupied historically and to which they have attachment, even when they have not been using lands for ages.
- Absentee ownership causes difficulties: people who are living outside the village and in urban areas influence or control discussions in the village by phone.
- Difficulties arise in situations where villages have been created in order to serve political interests, and where discussions are dominated by politicians inside and outside the village.
- The capacity of villages to manage their lands is a major constraint. Village leaders have serious capacity constraints in complying with the law.
- In the District Council, the same applies to land officers, who often do not have the capacity.
- Courts do not respect dispute settlement mechanisms in the land laws-and they don't respect decisions of lower tribunals.

3. What are the issues to consider?

Participants had opportunity to brainstorm some issues at stake:

Legal opportunities for protection of pastoralist land use

- Is titling of common land truly available under the law - do we need to reform the law? If so, consider the complications of cross-referencing with other laws affecting land, natural resources and investment, including minerals.
- The main problem at present is how to find opportunities in the current law in support of pastoralists interests. A radical proposal for reforms is not easy to achieve, since it raises the whole question of the basic development approach: how is Tanzania balancing capitalist and socialist approaches? What are the difficulties of owning land across territories? If this is too difficult then it is better to proceed towards individual titling and depend on traditional mechanisms of agreement to keep rangeland open across individual holdings.
- The law is not completely useless. We must begin with what we have.
- The land tenure system favours the rich and outsiders. Then there are political problems of pastoralism being recognised as a proper land use system. Because farmers have a problem with pastoralists, this has become the leading political position. But even if there are limitations we can begin with what we have – by formalising rights to village pastoral land at least pastoralists can exclude others from encroaching. The system is not perfect but we must begin somewhere and there is no other option for the short term.

International experience

- There is a need to learn from other countries what has worked well, and what hasn't: what legal and administrative instruments; what governance processes. There is very interesting experience from Mongolia, Spain, West Africa, and elsewhere. In Kenya(see , they have been pursuing land reform under the guise of historical injustices. In Tanzania, the law provides first for defining communal land and shared resources before defining individual land. There is clear competition between shared and individual resources. The law recognises customary usage of land and gives opportunity for formalising them without titling, eg through land use planning. For pastoralists the main risk in titling is that land will be parcelled up, as was the case in the group ranches experiences in Kenya where the fragmentation of the commons was done without having regard to the ecology and other factors necessary for effective use of the commons (see Box below for the Kenyan experience).

Box1: Experiences from Kenya

- There are two legal bases for control of pastoral land: group ranches and trust lands (controlled by the District councils).
- The objectives included, among others: reducing the number of animals, improving stocks, and provision of services through settlement.
- Services have not been provided as promised.

Negative outcomes

- The elite in group ranches, and local authorities controlling trust land thought they could do anything they deem fit such as turning land into conservation areas, etc
- Resources are controlled by a few people.
- For trust lands, the District councils assume that the land is theirs and sometimes use the land in a manner they deem fit much against the interest of pastoralists.

Positive outcomes

- Pastoralists do have some control and decision-making over their lands.

Village-based definition of land vs territorial definition.

- The division of rural land into village areas is in sharp opposition to the concept existing in some other countries of indivisible, unalienable commons.
- Pastoralism transcends village boundaries: definition of rights needs to be defined at a higher level.
- Administration of village lands is clearly under the control of the Village, although implementation is problematic. The main challenge in pastoral villages is how to manage access to land across several village territories. The best thing to do is for pastoralists villages to make land-use agreements with each other across village boundaries under s.11 of the VLA.
- Under current law, the village is indeed the proper site for land ownership. Pastoralists have their own ways of negotiating the use of resources within and beyond villages.

Who is in the collective, and how can it function to safeguard common rights?

- The experiences from Kenya show that collective ownership can be a danger to security of land use.
- Who should be the custodian of collective title? Who should have authority over pastoral land? Should it be the village, or a group of traditional leaders, or a formally established collective other than the village?

Where to test titling of collective rights?

- Context is crucial, especially whether the community is pastoralist- or farmer-dominated.
- Different pastoralist villages using land together as an entity can be registered but there is a problem where pastoralists are minorities in villages and hence cannot influence land use planning. A good example is from the MKURABITA pilot in Handeni where pastoralists did not get priority in land allocation. They are at the mercy of other groups, who may not be sympathetic. So the issue is where to do the pilot: is it in a purely pastoral context or where they are a minority or both?

Alternatives: gaining political support for pastoralist land use; making local governance work more effectively; gazetting of commons or rangelands

- Is it reasonable to continue to propose collective titling when (a) the underlying problem is that the law doesn't properly recognise pastoralist land use, and (b) central Government continues to have power to alienate lands?
- The President has enormous powers over land and can actually alienate any land whatever the form of ownership.

- The issue is recognition of pastoral lands in Tanzania. Are they recognised? There is no category of common land under the law, and the definition of General Land is very problematic as it speaks of unoccupied or unused land which can thus be termed general land. Pastoralists' lands are often considered to be unoccupied. Is there any option other than registration for recognition of pastoral lands under the current law?
- The land laws are not new. The Village Assembly is alleged to have power over land resources. But why is the Village Assembly not a constitutional category? Administration of land is bureaucratised and peoples' representative bodies are not given opportunities to have a say in the management of land. Why do we need to register common rights? The issue is whether we have pastoralists common land in Tanzania. When we know this then the details of how actually to define pastoralists' rights will follow.
- What are the advantages of titling over empowering local government? Can titling help when that land can still be alienated by central government? Titling should not be seen as an end: one must question whether it will help achieve security in the absence of better, stronger local governance. The issue is that people do not have power over decision-making: the big decisions are taken from above.
- It is important to work on strengthening local governance under the village system at the same time as pressing for recognition of wider rangeland areas and securing user rights on them.
- Government Notices might be used as a quick way of recognising pastoralist commons – but then who would control or oversee access and use? Gazetted Rangeland Development Areas would be under control of the Minister of Livestock and so not necessarily favourable to maintaining pastoralist production.

Title and loans

- There is a need to be clear about the basic agenda for titling? Is it for tenure security or for getting loans?
- Getting loans are not a priority as banks are not ready to give loans anyway using rural lands. Registration can also increase value.
- Commercial banks are not interested in rural smallholdings as security: any threat of losing land is likely to come mainly from more local lenders, although some of these may be capitalised by commercial banks.
- Formalisation can sometimes enable the poor to create wealth, but people need to know the risks of using land as security for loans

4. Weighing the Options: Reasons for and Against Testing Collective Titling

Participants took some time to explore different reasons why they thought it is proper to test collective titling but also the reasons why it should not be tested.

Box 2: Weighing the Options

Reasons for testing collective titling of pastoral common lands	Reasons for not testing
The option for collective titling of common land appears to exist under the law as a possible way to defend against encroachment on rangeland.	The existing land law does not create a clear mechanism for registration of common land.
The political climate and the push for registration and formalisation make non-registered / less formal protection of pastoral land use less effective. Pastoralists lands are considered unowned and unoccupied.	Registration could end up restricting mobility and reducing the collective participation in land-use management.

Testing will show the real challenges, test the law in practice and generate lessons for the future.	The protection afforded by collective titling is limited because the President retains the power to transfer areas to General Land.
Land use agreements can be beneficial for pastoralists who enter into joint land use agreements with other villages, which may already be having land titling.	Using land as collateral can be dangerous to security.
Collective titling may safeguard access to grazing for many poor pastoralists who may not be in position to benefit from individual titling.	In practice, Government will resist collective land ownership: individualisation is the way forward for policy makers
Secure access to grazing land could avert the need for moving into new areas and for conflict with other land users.	Registration can lead to individualisation, which may fit farming but not pastoral production.
It is possible to have standing (locus standi) in land rights litigation and claims.	Registration can be an incentive for alienation as paper evidence makes disposition and transferability easy
A titled collective may find it easier to access loan capital.	Titling could lead to restriction on mobility and on the number of animals that can be reared under certain circumstances.
Collective titling is of potential relevance beyond pastoralists – e.g. to fisherfolk.	If collective titling begins, it can create a new norm; this could weaken the rights of pastoralists who do not have title.

5. What are the alternatives to Collective Titling?

The meeting did also consider other alternatives in the stead of collective titling. Some of these included:

- Joint Land Use Management –Section 11 of the Land Village Act
- Strengthening local Governance
- Fix principles related to pastoral lands in the Constitution

6: How to test Collective Titling

When participants agreed in principle that testing of some sort was the best way to proceed, they went giving recommendations on how this could actually be done. These are listed in the box below together with some of the issues to take into consideration when actually doing it

Box 3: Considerations for how to test titling among pastoralists

- Look into existing traditional land management and ownership systems and see how a collective could be formed and operate based on those principles.
- The central question is: who is a member of the titled collective?
- It is worth considering who should be the registered owner of the collective title.
- Pastoralists should be given adequate knowledge of the land laws and the opportunity to participate in thinking about how to do collective titling.
- Is it possible to register an association or federation to own land collectively?
- It is possible to Villages Councils to hold collective CCROs in trust for members of the village – but in a mixed village, can that be restricted to only pastoralists?
- Traditional leaders representing a designate community could hold the collective title in trust for the group – or title could be held by the collective association.
- However, it is risky for a few people to own land in trust: in the Kenyan situation it has led to ordinary land users losing control. To what extent can it be said that existing customary institutions among pastoralists have been compromised and participate in the alienation of pastoral lands?
- To manage grazing regimes going beyond village boundaries, village councils could be assisted to enter into inter-village agreements. Alternatively associations holding collective title could contract with each other for access.
- A highly informed legal opinion on the feasibility of different options is needed.

7. The Way forward/Next Steps

- Distribute the draft report within one week for comments by participants. It should then be copied to the Ministry of Livestock Development.
- Come up with concrete options for testing collective titling of common land among pastoralists and obtain legal opinion on them from e.g. Dr Ringo Tenga.
- Explore with MKURABITA whether the forthcoming pilot in Bagamoyo could be an appropriate way to test collective titling of common land.
- Use the experiences and ideas from the Workshop to explore possible testing in Monduli/Ngorongoro/ Serengeti following initial preparatory work by the Ministry of Lands.
- Organise another meeting in October to update ourselves on what has taken place and clarify issues that arose in the meeting
- Keep each other informed about what is taking place in different areas: share any case materials and lessons that seem relevant.
- NPA and JOLIT to liaise with MKURABITA and the Ministry of Lands in their works with titling to try to generate lessons for further implementation
- The Ministry of Lands and MKURABITA should where possible involve pastoralist organisations in their works in pastoralists areas
- NPA/JOLIT should continue temporarily to be the communication hub for this group until such other time when a pastoralists NGO with experience and capacity to lead the process is identified. Possibilities include the Rangelands and Livelihoods Task Force that has established by some of the organisations participating in this meeting.
- Produce a digest of the most relevant experiences of obtaining legal security for pastoralist land use in other countries.
- In parallel with the above, keep attention on the long-term with a visioning exercise among civic actors concerned with pastoralism.

Specific responsibilities for much of the above were not assigned: the assumption is that the convenors will, for the time being, negotiate responsibilities for specific actions and where necessary make modest funds available for them. A review meeting in October will act as a stimulus to action.