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Rights and Resilience
Kenya Policy Brief

The Community Land Act (CLA) 2016 and Pastoralists' Access to Land for Adaptation



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Key Takeaways

- **The pace of the CLA implementation process is slow**
- **Government officers at county level face many implementation challenges, including the dual land governance structures, distrust, insufficient information, and fierce conflicts over land in the communities**
- **The CLA creates a parallel system to pastoralists' customary institutions. This creates conflicts and undermines the authority of elders in land governance**
- **The implementation of the CLA creates uncertainty and new fierce conflicts over land within communities and families, and it pushes communities leading to the existing trends of subdividing and individualizing communal lands.**
- **The implementation process results in an increasing numbers of landless and marginalized people, and therefore in reducing their resilience**

The issue at a glance

Climate change has caused new and unforeseeable weather patterns, such as prolonged droughts and erratic rainfalls in the arid and semi-arid areas in Kenya. This has placed a lot of difficulty on pastoralists, forcing them to evolve new patterns of migration, and to seek new sources of livelihoods. As a result, their land needs and land uses are changing. At the same time, there is increasing competition for pastoralist lands, which have become the new frontier for large-scale land investments and green energy. Moreover, pastoralist areas are prone to on-going processes of privatization and individualization through subdivision of rangelands into individually owned plots open for market sale. Most of these developments threaten pastoralists' mobility and access to land for pasture.

The Community Land Act 2016 provides a legal basis for the protection, recognition, and registration of community lands and has provisions for ownership of land by the communities themselves. However, our research in the County of Samburu, Kenya, shows, first, that there are multiple challenges for the local authorities in implementing the Community Land Act. Second, the CLA implementation process, contrary to expectations, has adverse impacts on pastoralists. Due to the scale of community lands in Kenya and the significance of communal lands for pastoralists' livelihoods and adaptation, there is a need to find a direction forward to address these challenges.

Challenges to the CLA implementation process

Currently, the CLA implementation process progresses at a very slow pace and authorities from both national and county governments face many challenges. First, the dual land governance structure constrains the process. Both the national and county governments have responsibilities in land governance at the county level, but there is limited understanding of who has what roles and responsibilities. This creates confusion among the authorities involved and opens tensions and "blame games." For instance, some county governments pay private companies to survey community land before registration, but this function belongs to the national government. Government officials contest the legality and validity of the county government's survey results. The county governments, on the other hand, complain about considerable delays in national government's land surveys. They claim that the national government officials fail to consult with them, and that this was a problem, especially at the beginning of the implementation process.

Second, there is distrust between the public officials and the pastoralist communities. Some public officers dislike the pastoralist lifestyle or consider the mode of production unsustainable. For this and many other reasons, pastoralists are skeptical towards national and county government officials. Some pastoralists simply view the CLA as "a law of Nairobi people." Many of them do not feel confident handing over their land documents to the registration office; they are afraid of misuse and misappropriation. Yet others are concerned about some government officials, who are buying up land in the area.

Third, public officers and NGOs provide conflicting and inaccurate information to the pastoralists about the CLA. For instance, some public officers and NGOs emphasize that the CLA provides the communities the opportunity

to subdivide their land, although in reality the Act is about securing their community ownership. The conflicting and inaccurate information creates anxiety and distrust among and within the communities about the consequences of the CLA, deepens their disagreements, and slows down the implementation process.

Fourth, there are fierce conflicts over land both within and across communities as well as within families. Some of these conflicts existed prior to the introduction of the CLA, but, as explained below, the CLA implementation process has exacerbated them and created new ones. The land transition process requires that the communities themselves find consensus, therefore such conflicts cause considerable delays in the implementation process.



The office of the county commissioner, Samburu. Photo: Iben Nathan 2022



Livestock market in Samburu. Photo by Iben Nathan, 2019

Contrary to what was expected, the implementation of the CLA tends to undermine rather than secure land access and land rights for pastoralists in Samburu. The process, moreover, exacerbates existing conflicts over land and arouses new and fierce ones.

The new CLA system grants equal rights to women and young adults, who have previously been excluded from co-owning and accessing community land, but it neglects the pre-existing role of the customary councils of elders. The new system, moreover, undermines the patterns of reciprocity that traditionally have allowed pastoralists to access other communities' grazing and watering areas during droughts, and which relied on negotiations between elders. Many elders prefer, and still have the authority, to subdivide rather than having their authority eroded by the

new management system. Some young adults resist subdivision because they will have to share inherited land with siblings resulting in very small shares. Finally, despite the legal provisions, women and youth remain excluded from decision-making processes about land. Practical obstacles like distance and societal norms hinder their participation and influence.

The implementation of the CLA's new land governance system, thus, creates tensions and conflicts within communities, between traditional and new institutions of land governance, and between older and younger generations. Furthermore, it does not, as stipulated, secure the inclusion of women and youth in important land management and governance decisions.

Some communities have disagreed on whether they should convert their group ranches into community land or pursue subdivision. In some communities, this decision has already caused deep conflicts. Over time, however, community group members tend to lean stronger and stronger towards subdivision. One of the driving forces behind this is apparently the strong recommendations from public officials and NGOs to subdivide.

Conflicts also arise from the CLA's land registration process, which requires updating registers to include all adult members in a group ranch. However, the complexity of determining who should be included in the register and be entitled to a share of the land, especially in case of subdivision, exacerbates these fears. For instance those, who are already in the registers, favor a limited uptake of new members, so that they can secure larger land allocations for themselves in case of subdivision. They also prefer to subdivide now, since population growth could result in smaller shares per community members over time. In-migrant community members, who live in and have been accepted by their group ranch for years but never registered, now face the risk of being pushed out due to the registration process. Women, and in particular unmarried women and women who have no sons, are also at risk of not gaining any shares because of the exclusive nature of the traditional gendered land management and governance systems. Further, the registration process has given rise to conflicts within families, where some adult sons have been registered while others have not.

The challenges related to registration, subdivision, and slow implementation, thus, not only create uncertainties and conflicts, but are also likely to result in an increasing number of landless people in the near future. Indeed, many families will not make it into the registers, and therefore will not get any land shares. Others, who get individual parcels, will be tempted or forced to sell their land in times of crisis. Individual parcels of land, thus, will be subdivided further down through the generations. In other words, the individualization and commodification of land is likely to create a large class of landless people. This is unprecedented among pastoralists, and has repercussion of reducing their options for subsistence and undermining their resilience.

We thank the Samburu Communities and government authorities in Samburu for informing this research.



Fencing of private land constrains pastoralists' mobility. Photo: Iben Nathan, Samburu, 2022

Policy recommendations

- There is a strong need for the National Government to review the process and progress in the CLA implementation to address current implementation challenges
- The Ministry of lands, the National Land Commission, County government and Civil Society Organizations (CSOs) should coordinate the provision of civic education on CLA with a view to curbing inconsistent and inaccurate information about its implementation.
- County Governments should put much effort into coordinating all public and private actors involved in implementing the CLA within the county.
- There should be renewed focus on the process of land registration and related land conflicts. Thus,
 - Community land registrars should be strengthened in pastoral areas in order to facilitate the implementation of CLA
 - The judiciary and the courts responsible for land should be enabled to address pending land issues and land claims, as well as address potential land conflicts before, during, and after the transition.
 - Land issues should be addressed through a consultative process led by the judiciary and include councils of elders, the county government, national government, and representatives for local organizations, women and youth, and (other) marginalized groups.
- While a focus on land registration is important, the Ministry of Lands needs to work with local community institutions and networks in a participatory manner to support pastoralists' tenure security beyond registration. This includes protection and recognition of communities and the marginalized and vulnerable groups who are likely to become landless due to not being included in the registers.



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