



Regional Learning & Advocacy Programme for Vulnerable Dryland Communities

Uganda's National Land Policy: What it means for Pastoral Areas By Lisa Baumgartner, REGLAP Uganda Country Lead, DanChurchAid January 2014¹

Introduction

In August 2013, the Government of Uganda gazetted the National Land Policy (NLP) after having initiated the policy process over three decades ago. The NLP is to provide an over-arching policy framework for land governance and management, consolidating the many other policies and laws that have governed land and natural resources since colonial times. The NLP's overall goal is "to ensure an efficient, equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development."

It is hoped that the policy will be able to address the disparities in ownership, access, and control of land that are present throughout the country. Historical injustices, conflict, demand for land for investment, poor planning and ineffective governance are all factors that have contributed to land grabbing, landlessness and displacement. For marginalized populations, these effects have been felt more sharply and have often escalated their vulnerability.

Karamoja, a pastoral region that has been traditionally marginalized within Uganda, has specific issues and needs that the NLP can be harnessed to address. The nature of mobile livestock production systems means that factors such as cross-border movement, ecosystem level management of natural resources, and the importance of securing access to customary and communal lands are all critical and need to be made a priority for action. With increasing population pressure and the impacts that climate change will bring to dryland areas, addressing these factors that are inherent to pastoral production systems is crucial. The NLP provides an opportunity for citizens, civil society and local government to take up the specific needs of pastoral areas, to ensure their efficient, effective and ultimately, productive use, for generations to come.

This Policy Brief provides an overview of the policy and what its implications are for pastoral areas. The organisation of the Brief follows the layout of the policy, pulling out relevant policy statements and strategies that are critical for pastoral land and resource needs. The Brief ends with a summary of the policy's weaknesses and challenges and an overview of what Civil Society Organisations, Local Government, and MPs can do ensure the NLP supports pastoral livelihoods.

¹ This policy brief was prepared by the REGLAP which is a consortium project of ECHO funded project partners. However this brief may not represent ECHO's views or those of all consortium member organisations.



Objectives of the National Land Policy:

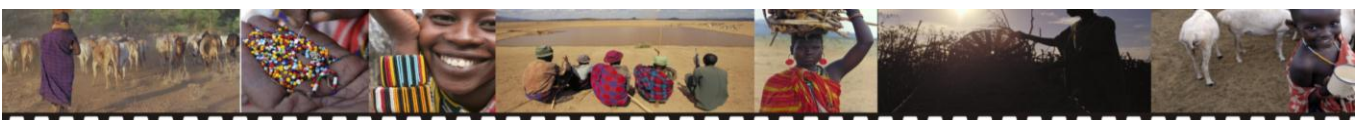
The policy has been designed to show the centrality of land to Uganda's national economic development and therefore places emphasis on land ownership and land development. However, it also acknowledges that development through investment can compromise vulnerable groups within society and the environment and therefore safeguards need to be put in place to counteract that while simultaneously enhancing land utilization for development. The complicated socio-cultural norms, the dependence on land for livelihoods, coupled with the multiple sectoral strategic policies mean that land governance is a complicated and dynamic process. The NLP therefore is necessary to negotiate these complexities. Within this context, the NLP sets out eight main objectives:

1. Stimulate the contribution of the land sector to overall socio-economic development, wealth creation and poverty reduction in Uganda;
2. Harmonize and streamline the complex tenure regimes in Uganda for equitable access to land and security of tenure;
3. Clarify the complex and ambiguous constitutional and legal framework for sustainable management and stewardship of land resources;
4. Redress historical injustices to protect the land rights of groups and communities marginalized by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity;
5. Reform and streamline land rights administration to ensure the efficient, effective and equitable delivery of land services;
6. Ensure sustainable utilization, protection and management of environmental, natural, and cultural resources on land for national socio-economic development;
7. Ensure planned environmentally friendly, affordable and orderly development of human settlement for both rural and urban areas including infrastructural development;
8. Harmonize all land-related policies and laws, and strengthen institutional capacity at all levels of Government and cultural institutions for the sustainable management of land resources.

Objective 4 speaks to the situation that pastoral communities have faced throughout history. The policy is very clear on the exploitation of land that pastoral regions have undergone due to their communal nature and the movement towards private property systems as well as the fact that pastoral lands are home to critical biodiversity reserves that has put them at odds with conservation efforts (see Box. 1). In turn, the NLP provides prescriptions to shift the way in which these regions and or groups of people can obtain land security in order to avoid further exploitation. These prescriptions are documented below.

Box 1: NLP reference to Pastoral Areas (pg. 2)
"Land rights of pastoral communities and ethnic minorities have registered exploitation for a long time. Many pastoral communities and ethnic minorities have lost their land right to conservation projects, mainly national parks, and other government projects including government ranches. This has led to a depletion of their resources or landlessness. Privatization of communal grazing lands and other pastoral resources has forced some pastoral communities and ethnic minorities to invade other people's land or to encroach on protected areas in their neighborhood."

Former Public Lands: Government as Trustee:



Importantly and historically, the 1995 Constitution of Uganda (Article 237(1)) states that land belongs to the Citizens of Uganda. In relation to public land, the NLP elaborates that the Government of Uganda will “exercise residual sovereignty” and “guarantee title to land on behalf of and in trust for the Citizens of Uganda” (pg. 10). The NLP goes on to clarify that District Land Boards shall hold and allocate land that is not owned by any person or authority as well as “exercise reversionary interest in respect of leaseholds granted out of public land” (pg. 10).

As part of the public trust doctrine, the policy elaborates how the Government will act over the land on behalf of the Citizens of Uganda, the Government as part of its legal ‘fiduciary duties’ to the Citizens of Uganda, is expected to make decisions based on public interest. Fiduciary duties mean that citizens instil in the government an “ethical relationship of confidence” that is based on the government making accountable and transparent decisions (pg. 12). As the NLP acknowledges, governance over land resources in Uganda has not always lived up to the principles of fiduciary duty, rather management of land, including land allocations, acquisitions, and titling has often been carried out for the benefit of few and at the expense of many. The NLP states that Government deals with “government land and public land without regard to public interest as if the two estates are held for the beneficial interest of government as an institution” (pg. 13). It goes on to say that District Land Boards are “failing to observe that they hold public land in trust for the Citizens of Uganda” (page. 13). The outcome of the National Land Policy will provide more guidance and direction so that the Government of Uganda will have the mechanisms to ensure fiduciary accountability and the Citizens have a policy document to guide oversight and monitoring of these duties.

National parks/wildlife reserves:

The 1995 Constitution of Uganda (Article 237(1)(b)) vests natural resources such as lakes, rivers, wetlands, forest reserves, game reserves and national parks on the Government to be reserved for tourism or ecological purposes. As a Trustee of the land on behalf of the Citizens of Uganda, the Land Act (Cap 227), allows the government to grant licenses and/or permits, but prohibits leasing or alienation of natural resources. For areas that are gazetted as National Parks and/or wildlife reserves, but where the population has access to the natural resources, such as grazing land for pastoralists, the government is to “institutionalize mechanisms for the joint and participatory management of the natural resources with communities owning land adjacent to, in or over which the resources are situated” (pg. 13). Moreover, the policy states that criteria should be developed for the “equalization and compensation for foregone opportunities as part of a benefit sharing scheme for districts or populations where such resources are located” (pg. 13).

Within the context of the policy trying to address imbalances of land access and ownership, this means in Karamoja that where there are resources that communities depend on within a national park, such as Kidepo Valley National Park and the various Wildlife Reserves in the region, communities should be consulted on how to manage the resources in and around the park/reserves for their sustainable use, particularly in relation to grazing.

Minerals:

As per the constitution minerals and petroleum are vested in the State for the beneficial interest of all citizens of Uganda. The NLP explicitly states that in areas where mineral deposits exist, the Government will protect the land rights and land resources of customary owners, individuals or



communities while also guaranteeing land owning communities right to share in the benefits of the minerals. According to the Mineral Policy of Uganda (2000), land owners are to receive a percentage of all royalties from minerals exploited on their property.² Additionally, the NLP stipulates that communities and local governments must consent to any prospecting and/or mining.

The mining potential in Karamoja has meant that licenses for mineral exploration and mining itself cover most of the land area of the region. Potential investors are able to purchase these licenses and exploit the mineral wealth throughout the region. As the majority of land in Karamoja is not titled, customary or otherwise, the royalty profit will be lost to the communities. Strengthening the titling process for customary tenure over communal lands needs to be made a priority. The following section expands on the framework that can support such action.

Types of Land Tenure Systems:

As laid out in the 1995 Constitution and the 1998 Land Act, Uganda maintains four types of tenure systems. These are: Customary, Freehold, *Mailo*, and Leasehold.

The NLP acknowledges that the Land Act needs to be amended to better allow for these tenure systems to evolve and remove uncertainties. This will allow the tenure systems to develop in response to changes in social structures, technologies of land use and market demands while also “strengthening the legitimacy of socially and culturally acceptable forms of tenure to preserve access rights to common property resources” (pg. 15).

Customary Land:

The NLP illustrates how Customary Tenure regimes have been looked down upon and not treated with the same legal respect as the other tenure systems, which overall, has weakened the strength of customary tenure. As a response, the NLP states: “The State shall recognize customary tenure in its own form to be at par (same level) with other tenure systems; The State shall establish a land registry system for the registration of land rights under customary tenure” (pg. 16).

To facilitate this, the NLP proposes strategies that will create a land registry system, that will issue Certificates of Customary ownership (CCO) that would provide the same rights as a freehold tenure, document customary land-tenure rules with the Sub-county and district, promote demarcation as well as inventory common property resources that are owned by communities and “vest those resources in the communities to be managed under their customary law” (pg. 17).

In short, this means that the communal land that is held by communities in Karamoja can be issued with a CCO and the piece of land can be managed under customary law when its management plan is documented properly with local government and the Land Board.

² It should be noted that it is extremely difficult for communities to access information about the total sum of a company's royalty. This is important because the community's royalty percentage is based on the total sum of the company's royalty. Moreover, different minerals have different royalties (ranging from 3-10%) based on the contract negotiations between the company and the government.



It is worth noting, that the NLP addresses the gender disparities that can be present in customary land tenure and specifies that in such an instance, rules of transmission of land rights under customary land tenure should be modified to ensure gender equality and equity, as to be in line with the Land Act that states that customary land transactions that are against the rights of women are illegal. In order for customary tenure to be effective, the NLP suggests strengthening customary institutions for land management while also ensuring their legal standing as a mechanism to allocate land rights, decide on land use, and resolve land disputes. Importantly though, the NLP states that customary institutions must uphold the constitutional rights of gender equity. Therefore, it encourages the use of customary institutions but only if they can ensure the rights of women.

Common Property Resources:

Common property resources are normally managed through an institution, custom or social convention that allows rights of access and benefit sharing. Community land that may be utilized for grazing, has water resources, and forest reserves are considered communal property resources. Notably, the NLP acknowledges that grazing land in particular has been subject to land grabbing, sold illegally, and/or privatized. In this regard, the NLP stipulates:

- a) Government will reform laws and regulations for the management of common property resources to conform with standards for sustainable use and development;
- b) Government shall, in collaboration with individual or community owners, ensure the sustainable use and management of privately owned land-based resources (pg. 21).

In order to operationalize this, the NLP focuses on strategies that will institute the following reforms (pg. 21):

- i. Identify and gazette access routes or corridors to common property resources for public use.
- ii. Enact appropriate legislation to clarify who may have access to what categories of common property resources and how such access may be secured;
- iii. Identify and document all common property resources wherever located and irrespective of their tenure status;
- iv. Ensure that common property resources exclusively used or available to particular communities are directly held and managed by them;
- v. Develop mechanisms with will mediate between state, local authorities, communities and individual interests in particular common property resources;
- vi. Facilitate communities and their traditional institutions to register and legalise their ownership over common property resources; and
- vii. Build capacity for management of common property resources by local government and communities by recognizing their roles.

These policy prescriptions are very important to the Karamoja region and its mobile livestock producers. The directives in the policy would support identifying, documenting, and securing communal resources such as seasonal grazing lands, water sources and importantly, mobility routes. This is further supported and expanded in the section below.

Land Rights of Pastoral Communities:



The NLP stipulates that “land rights of pastoral communities will be guaranteed and protected by the State” (pg. 23). This policy statement takes into consideration the variable and severe climatic and ecological conditions of grazing lands and the competition that has ensued between pastoralists and cultivators. Recognition is given to the historical marginalisation and reduction of pastoral lands due to private and individual gain, government actions, the establishment of national parks and wildlife reserves, and the push towards ranching systems.

The strategies that the NLP sanctions the government to utilise to protect the land rights of pastoralists and to support pastoral development are described in the table below:

To protect land rights, government shall:
Ensure pastoral lands are held, owned and controlled by designated pastoral communities as common property under customary tenure.
Develop particular projects for adaptation and reclamation of pastoral lands for sustainable productivity and improved livelihood of communities.
Protect pastoral land from indiscriminate appropriation by individuals or corporate institutions under the guide of investment.
Promote the establishment of Communal Land Association and the use of communal land management schemes among pastoral communities.
Establish efficient mechanisms for the speedy resolution of conflict over pastoral resources in pastoral communities and sedentary communities.
Consider land swapping, resettlement or compensation for pastoral communities displaced by government from their ancestral lands.
To support pastoral development, government shall:
Prescribe clear principles for the ownership, control and management of pastoral lands in a policy by The Ministry for Agriculture, Animal Industries and Fisheries (MAAIF).
Prescribe clear principles for voluntary resettlement of pastoral communities with approval of local governments in a resettlement policy.
Ensure zoning to establish appropriate agro-ecological zones, pastoral resource areas and access, maintaining an equitable balance between the use of land for pasture, agriculture, energy, industry and for wildlife protection.
Establish mechanisms for flexible and negotiated cross-border access to pastoral resources among clans, lineages and communities for their mutual benefit.

Protecting and Promoting Land Rights:

Under the current land governance infrastructure, the NLP admits that land registration is expensive and burdensome. In turn, the policy addresses this by the policy statement that “Government shall develop and implement measures for effective assurance of enjoyment of all land rights by all citizens” (pg. 31). This would entail, among other measures, regulating the costs of demarcation and registration, ensuring that land delivery services are decentralized to local authority levels, and to promote the participation of non-state actors (who are certified by the Ministry of Lands to do so) to support protecting land rights.

Land Demarcation, Surveying and Mapping:



The high demarcation and survey costs are adequately discussed in the NLP. It is suggested that community-based boundary-marking systems (within all tenure systems) be recognized and conferred to official status. The policy also advises that communities should be educated about surveys and mapping and traditional institutions should be incorporated into the process.

In order to effectively store land information efficiently, the NLP mandates that the government establish and maintain a Land Information System (LIS) to support improved planning and development. This system is meant to be computerized and eventually decentralized and presented in multiple languages, so that the LIS will be understood by community-level land managers and users.

Dispute Resolution:

Currently, the law does not recognize traditional or customary dispute resolution mechanisms, yet for land held under customary tenure, the use of such mechanisms is a practical consideration. Moreover, the statutory institution for land dispute resolution, the Land Tribunal, is not currently functioning throughout the country. The NLP addresses these gaps and proposes that the Land Tribunal system be reinstated and resourced. Importantly, the policy calls for a reform of the Land Tribunal system to permit a “hierarchical application of state and customary law” based on the circumstance, facts and characteristics of the dispute (pg. 36). For land held under customary tenure, indigenous principles and practices will be granted priority in proceedings. Even though the policy supports the use of customary dispute resolution mechanisms, particularly in terms of the efficiency and speediness they can contribute to the process, the NLP admits that clear definitions of a hierarchy for dispute resolution structures to “guarantee the finality and authoritativeness of decisions” needs to be put in place (pg. 36).

Land Use Planning and Regulation

Comprehensive land use planning to coordinate the productive sectors of the economy that depend on land for productivity (agriculture, livestock, energy, minerals) while also sustaining the natural land resources (water, wildlife, forests) is paramount. Presently, although Uganda has a National Land Use Policy, it is not implemented effectively or enforced; competing uses of the land from productive sectors as well as competition of these sectors with conservation means that the sustainable management of land resources is insufficient. Acknowledging the usefulness of land use planning and regulation, the NLP sets out a framework to operationalize land use planning, regulation and compliance by strengthening relevant institutions and their capacities. Importantly, the existing un-coordinated environmental policies need to be a factor in all land use plans in order to ensure sound environmental management. This includes biodiversity preservation, soil and water protection, and conservation of forestry and wetland resources. The NLP stipulates that these existing policies need to be operationalized and enforced in order to ensure compliance.

In Karamoja, the benefits of land use planning are manifold. Effective land use planning would allow for the region’s population to plan how to share land resources between the current competing livelihoods, namely crop agriculture, livestock production, and mineral exploration and mining. Furthermore, communities could institute by-laws to support regulating land resources to halt land degradation and move towards sustainable management of critical land resources such as water, trees and grazing land. The NLP also encourages community participation in the management of



natural resources, which links nicely to the natural management plans that are required for customary tenure status.

Management of trans-boundary resources:

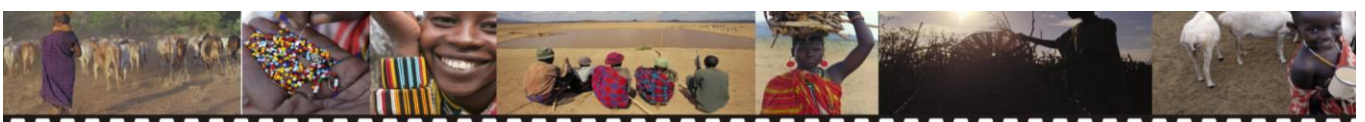
In regions like Karamoja, it is well accepted that there is cross-boundary movement of animals and herds as a coping strategy to the variable climate. The NLP states that the government will develop a framework for participation in development of policies and protocols to manage trans-boundary and shared natural resources. This would include monitoring the effects of migratory species (both livestock and wildlife) on the environment. The movements of cattle-keepers across the borders between Uganda and Kenya/Sudan could benefit from such provisions within the policy.

Remaining Challenges:

The completion of crafting this policy as well as the successful gazetting of the policy has been no small feat for land advocates—both within government and civil society. The policy is inclusive and comprehensive, covering all the major aspects of land governance while addressing critical gaps or problems with the current policy and legislative environment for land issues. Nonetheless, the approval of the policy is only the first step in the process of moving towards sustainable and equitable management of land and resources. Adopting and operationalizing the policy is the second part of the process needed to actualize the benefits that the policy was designed to provide. The institutions, mechanisms and frameworks that the policy prescribes to implement its’ mandates, are numerous. To create, reform, transform, and build institutions that will operationalize the policy will be one of the greatest challenges to the success of the policy prescriptions.

Another challenge that will need to be overcome is the overlapping mandates of the multiple authorities that manage and regulate natural resource use. The NLP concedes that coordination between these government entities has been greatly disjointed and characterizes the relationship as led with no clear policy guideline on how they are supposed to work together to address overlapping mandates and authority. This results in internal fragmentation, conflict and competition over state resources, and in turn, a highly centralized framework. To address this, the policy suggests that all relevant agency mandates are refined and harmonized with the each other. Such agencies include the National Forest Authority, the Uganda Wildlife Authority, and the National Environmental Management Authority. Within the ministries, the Ministry for Lands, Housing and Urban Development, the Ministry for Water and Environment and the Ministry for Agriculture, Animal Industries and Fisheries will be central to Ministerial coordination. Based on the history of low multi-sectoral collaboration in the country, this will be a major challenge to overcome.

The diversity of ethnic groups within the Karamajong may also present a challenge to ensuring customary rights throughout the region. This is because customs, and potentially, land use systems, may vary among the many ethnic groups. Additionally, many of the customary systems are evolving to take into consideration modern issues such as governance, education and diversified livelihoods, which could affect the traditional land use systems and their customary rules.



In terms of the policy content, a potential problem for pastoral areas relates to land that may have been appropriated. If land has historically been appropriated to new landowners, as per the constitution, there is no provision that ensures this land is returned to its' traditional owners. Therefore, if pastoral lands were appropriated to individuals, ranches, etc. the NLP does not guarantee that the original or customary owner will have any rights to that land. This is one of the largest faults of the policy that could negatively impact pastoralists.

What action can be taken?

For Civil Society Organisations:

- Lobby for operationalization and a financing plan for the policy;
- Advocate for the rights granted to pastoral communities;
- Support pastoral communities to organize themselves around their customary lands;
- Support pastoral communities to create natural resource/land use management plans;
- Support demarcation of communal grazing lands/grazing corridors;
- Sensitise pastoral communities to the policy;
- Lobby for a registry for customary titles;
- Support CBOs and community representatives to participate in future processes surrounding the policy (consultations, meetings, trainings, sensitisations, etc.);
- Initiate discussions about gender equality and land rights in relation to customary law with communities. Sensitise communities to the gender equity and equality protections in the constitution and in the NLP.
- Produce and disseminate IEC materials on the policy in local languages.

For Local Government:

- Lobby for the harmonisation of the various natural resource policies and actions taken by the multiple authorities responsible;
- Advocate for the budgetary needs to have fully functional and capacitated local land administration institutions (staff, technology, infrastructure);
- Lobby for a policy implementation strategy to be put in place that will prioritise the actions that will need to take place in order for the policy to be successful.
- Institute mechanisms for managing land resources that are shared by two or more districts.

Members of Parliament:

- Oversee and monitor the progress of the Policy implementation;
- Support planning for the roll-out of the policy;
- Prioritise funding for the operationalization of the policy;
- Amend the various Acts that the policy recommends such as the Land Act (Cap 227) and the Registry of Titles Act (Cap. 230).



More information on REGLAP/DLCI can be accessed at: <http://www.disasterriskreduction.net/east-central-africa/reglap>



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