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Critical Pastoral Issues and Policy Statements For the National Land Policy in Uganda

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ABSTRACT

Land is the single most important source of livelihoods for pastoral communities who predominantly inhabit arid and semi-arid rangelands of Uganda. In Uganda, the livestock sub-sector contributes about 8% of the country's GDP, 90% of which is produced by small herders, with only 10% deriving from commercial ranches. This production level makes Uganda almost self-sufficient in meat, a position similar to that of the food crop production sub-sector. Pastoralists in the rangelands support about 90% of the national cattle population, mainly kept by pastoral and agro-pastoral communities. About 85% of the total marketed milk and beef in the country is produced from indigenous cattle, which thrive on natural rangeland pasture.

Livestock constitutes a crucial part of Uganda's food production, accounting for roughly one third of the total value of agricultural output. Cattle rearing is the predominant livestock enterprise in Uganda and pastoralists keep large herds of cattle on rangelands. Pastoralists also keep herds of goats and sheep, which have an untapped export. Hides and skins have for long been an important source of foreign exchange for the Ugandan economy.

Yet, the overall picture for pastoralists is one of increasing impoverishment due to failure to take advantage of the opportunities created by increased demand for animal products. This is worsened by lack of viable alternatives for the majority of pastoralists. Increasing numbers of pastoralists have lost most of their livestock, due to pressure on land resources leading to restrictions in mobility in search of pasture and water. They have generally become less able to withstand the effects of shocks and often require external assistance, usually in the form of food relief. The National Land Policy in recognizing the rights of pastoralists, as one of the vulnerable groups will pave way to achieving its stated objectives on sustainable livelihoods through out the cattle corridor

The process of formulating a National Land Policy in Uganda is already in progress, with the Issues Paper completed and several studies commissioned by Ministry of Water, Lands and Environment, to fill information gaps. This brief highlights existing submissions in the *Issues Paper for the National Land Policy* that are supportive of pastoralism on the one hand and issues that have either been skipped, ignored or not considered at all in the existing framework of the paper.

This brief raises policy issues pertinent to pastoralists, contextualized by analysing the key features that have characterised pastoral rights in this country since the colonial period, pointing out the relevance of pastoralism to the policy debate and making recommendations for specific to ensure the inclusion of pastoral rights interests in the national land policy.

1. THE PASTORAL LAND QUESTION

Pastoralism is a natural resource based system of livestock production that relies predominantly on communal or free range grazing of livestock on natural pastures involving a level of mobility to track seasonally available pasture resources. Uganda's rangelands cover an estimated area of 84,000 sq. kms. or 43% of the country's total area where pastoralism is pre-dominantly practiced, accounting for a population of 6.6 million people¹. Pastoralism is a livelihoods strategy for 29 out of 56 districts in Uganda². These districts constitute the cattle corridor, stretching diagonally from South-Western to North-Eastern Uganda, comprising a total of 102,000 km (42% of the country) 51% of the land area, 40% of the human population, 55% of indigenous cattle, 42% of exotic cattle, 42% of sheep and goats, 36% of pigs and about 38% of poultry. About 60% of households in the cattle corridor are livestock keepers compared with 22% nationally³.

In Uganda, pastoralists range from agro-pastoralists, who are largely sedentary and combine livestock keeping with crop production to more mobile transhumant pastoralists, who maintain a home base where a core herd is kept and a satellite herd that moves in search of water and pastures as seasons demand. The *Babima* in western Uganda are agro-pastoralist, whose communal grazing land has been phased out to introduce individual titling under the ranching schemes by government. The *Karamojong* who are more marginalized of the two groups, still view their land as customarily held by clans and any notion of individualization has been fought vehemently, although their land has been gazetted for different land uses.

1.1 Recognition in Law and Policy

In Uganda, land is at the core of pastoral production systems and access to land determines access to key pastoral resources. For its survival and sustainability, pastoralism depends on the availability of natural resources (pasture, water, salt licks etc.). The land question among pastoral communities has several attributes to it. There is the question of justification for current land usage, the issue of transhumance vis-à-vis ownership of land, the question of whether pastoralism should be promoted at the expense of agriculture and wildlife, and the need to recognize the importance of pastoralism within the livestock sub-sector. The features of the pastoral land question in Uganda hinge around failure to recognise pastoralism as the predominant production system in the dry lands. These areas are mainly arid and semi-arid agro-ecologies.

Although pastoralism is the basis of survival for (as a livelihood and land use system) most of the inhabitants, its reputation and economic contribution to local

¹ Mpaire Denis (PHD), 2003.

² Mubereza Frank and Ossija Sarah (2003)

³ Mubereza Frank (2004)

communities and nations is yet to be exploited and has not been well recognized. This has resulted in low investment and the marginalization of pastoralism in general and pastoralists in particular. Secondly, despite the numerical and economic significance, pastoralists remain grossly marginalized in policy and development initiatives.

Poverty in Uganda is strongly exemplified in pastoralist districts, notably those that constitute the Karamoja region, which have the lowest human and district development indices. In all regions, the three worst performing districts in terms of human poverty indices are pastoralist districts⁴. Worse still, insecurity and conflicts are perhaps the most popularised images of pastoralist regions. The natural resource challenges that underlie conflicts are often not articulated or analysed, fuelling mythological and negative perspectives of pastoralists.

Production policies in Uganda focus on an agricultural paradigm that offer little insight into pastoralism, but rather utilizes strategies, geared towards addressing the challenges and vagaries of a harsh and precarious environment. Appropriate policies to support and harness the potential of pastoral livelihoods are lacking. Conventional ways of working with pastoralists have had a dismal track record of success; as a result, pastoralists are more vulnerable economically and politically. Three interrelated ways of working have contributed to this failure more than any other:

- A reluctance to take the lead by pastoral communities, which has resulted in inappropriate programs with little relevance to the real issues,
- An over-emphasis on technical solutions, and little attempt to deal with policy and governance issues that work against pastoralists, and
- Sectoral approaches (in this case the Land Sector Strategic Plan-LSSP) that do not engage with pastoralism as part of the broader social, cultural and economic system.

Policies toward pastoralists have been shaped by fundamental misunderstandings of how pastoral livestock production systems work. The movement of pastoralists and their herds in search of water and pasture over a common range is thought to be unproductive, backward and unsustainable, while practices such as grass burning to rejuvenate pastures is seen as destructive.⁵ It is also a generally held view that the holding of land in common prevents pastoralists from attaining high levels of commercial off take, since no one is charged with the responsibility of ensuring that the land is conserved for future generations and pastures are not over used.

Failure to understand the pastoral context has contributed to depletion of rangeland resources and impoverishment of the pastoralist communities through:

⁴ UNDP (2003)

⁵ Kisamba Mugerwa (1998)

- Misguided government policies such as allocation of pastoral land for other uses such as ranching in Mbarara, Masaka, Rakai and Nakasongola districts;
- Failure to provide social services including schools, health centers, veterinary services, etc;
- Lack of an integrated approach to development projects.

1.2 Establishment of Protected Areas

In the past, pastoralists co-existed along side wildlife. However, continued decline of wildlife observed over the years led to the creation of National Parks and Game Reserves. After 1950, the Government of Uganda gazetted vast stretches of grazing land used by pastoralists and demarcated them into three categories of wild life protected areas; national parks, game reserves and controlled hunting areas.⁶ The establishment of reserves had a major impact on land use in Karamoja. Of the total area for the whole of Karamoja, 36% is gazetted as government land (protected areas) for wildlife and forests, while the remaining 64% is designated as a controlled hunting area. Karamoja is thus made up of one national park, the Kidepo Valley National Park and three game reserves of Matheniko, Bokora and Pian-Upe. The game reserves alone cover 6,908 sq. km, in addition to, 19 forest reserves taking up 2,307 sq km and three controlled hunting areas occupying 19,922 km.

By 1996, it was estimated that 22,010 sq. km of land in Karamoja was licensed to 13 companies who either engaged in mining of marble or gemstones or are according to the department of mines, holding exclusive or special prospecting licenses.⁷ A new status plan is currently being approved by parliament to rearrange, under which the games reserves will become Wildlife Protected Areas and the Controlled Hunting Areas will be partly degazetted and could fall under a new status of Community Wildlife management areas⁸.

Although pastoralism is permitted in some game reserves in Karamoja, and cattle still exist alongside wildlife, the case is different in Lake Mburo National Park in South Western Uganda where the *Bahima* are located. The Lake Mburo reserve was a very strategic area for livestock due to the availability of water from the lake and rivers nearby. After it was declared a national park it became restricted to pastoralists, all human activities with the exception of those connected with the management or utilization of wildlife resources, were strictly prohibited thus, fuelling of resource use conflict.

This pressure on land use has led to encroachment by pastoralists on gazetted land. This is most common around Lake Mburo, Kibaale, Katonga and Karamoja. Recent developments have led to the adoption of a seemingly anti-pastoralist

⁶ *Kisamba Mugerwa (1998)*

⁷ *Uganda Land Alliance (2000)*

⁸ *Ruben de Koning (2003)*

management approach, reminiscent of the colonial period when pastoralists were marginalized as enumerated:

- First was the development of a very strong environment-oriented pressure group, which has caused the displacement of the encroachers on gazetted land, such as forest reserves. Kibaale has been one of the most affected areas.
- Secondly, the development of tourism, which is a very important source of foreign exchange, has further marginalized the interests and the rights of pastoralists whose land has been turned into national parks, wildlife reserves or wildlife sanctuaries.

To mitigate the negative impacts of these trends, NGOs especially those involved in environmental management, have devised programmes to make tourism acceptable to the local communities. The management of such programmes is focusing on the community and entails a reasonable degree of local community participation in the share of the benefits from tourism. These programmes include community wildlife areas and cover about 70% of all the protected wildlife land in the cattle corridor.

1.3 Access and Ownership of Land

Land under the communal land tenure system, as practiced in most pastoral areas does not conform to the standard definition of common pool resources. Access to natural resources for pastoralists is mediated by the imperatives of the natural systems on the one hand and the imperatives of governance on the other. The customary right (based on the history of usage and the accepted strategy of opportunistic tracking) guarantees access to security for herders. Land use in pastoral societies was traditionally governed by a set of rules and institutions that provided access to vital resources. The use of land and other natural resources such as water, trees and salt licks was regulated to avoid degradation through over use. The use of land by pastoralists as a common property resource has increasingly come under pressure. User rights based on residence have been replaced by legal formalization of group or individual ownership of land.

Until 1998, it was impossible for tenants in Karamoja to obtain titles for their land, as one or the other state authority officially held the whole region. The wildlife areas under the Uganda Wildlife Authority, the forest reserves under the Forest Department and the controlled hunting areas under the Uganda Land Commission are examples of such authority. Under these conditions, customary tenants faced extreme insecurity. Although the Land Acts of 1962, 1969 and the Land Reform Decree of 1975 increased opportunities for those with influence to obtain long leases, subsistence farmers and pastoralists had no access to these legal arrangements, nor any legal voice to resist dispossessions. The Land Act cap 227 (s.16) recognizes customary tenure and the rights of pastoralists to form Communal Land Associations, and at the same time provides for the registration of their interests. This common interest in natural resources and other common

pool resources is not registered in the names of the communal land associations but rather in the management committees under the Common Land Management Scheme.

There has been a high level of individualization of the communal pastoral land throughout the entire cattle corridor. The areas most affected are Ntungamo, Mbarara, Rakai, Kiboga, Luwero and even Karamoja.⁹ Multiple land users who have settled on previous pastoral land and practice crop production together with livestock keeping have spearheaded this move. There has been a reduction in the available communal grazing land in these areas. Displaced pastoralists can only access the reduced grazing areas on the communal grazing land. This has led to overgrazing and land degradation while others have either become landless or have moved outside their traditional grazing area, hence increasing livestock population densities in the new areas of mobility with resultant overgrazing.

The most serious incidence of landlessness to pastoralists has occurred as a result of crop farmers' encroachment of land in Kasese where the *Basongora* pastoralists have been completely displaced by the *Bakonzo* agriculturalists. The incidence of conflicts between the displaced and the encroachers, at the local scene, has reached alarming proportions resulting in violent encounters. This is the experience in Ntungamo and some parts of Nyabushozi and Karamoja. In Kabarole, conflicts have also risen between old pastoralists, and croppers, and new comers, leading to violence.

1.4 Land Use and Sustainability

Since the colonial days, the law has been used extensively as a tool for intervention in land management in pastoral rangelands. The introduction of private ownership and individualized interests has always been the core of land reforms in Uganda. The degree of privatization varies, and has affected pastoral communities differently across the cattle corridor, mainly to their disadvantage.

Often, the state has intervened on the claims that herders will degrade their resource if left on their own. However, current research is revealing that this trend is creating very difficult outcomes than intended, breaking open and degrading customary tenure regimes without replacing them with an effective alternative. The State is unable to provide adequate protection hence an ambiguous tenure system emerges where certain interests prevail. State officials are increasingly gaining significant formal and informal revenue from the arbitration of conflicts, while allowing the elite to have access to pastoral resources through ownership to which they never had rights before.

Sedentary communities believe that because of the innate incompetence of herders, their mobility is evidence of their disorganized lives, hence the need to

⁹ *Kisamba Mugerva (2003)*

impose policies aimed at settling them down, often in unsuitable places. Herders are viewed, as people who escape government administration, are a potential threat to security and are tax evaders, and as such, there is a need to sedentarise their nomadic and transhumant populations. Settlements constitute the greatest single transformation of pastoralism as both a production system and a way of life. It contradicts the need for mobility to exploit natural resources effectively. Throughout Africa, governments are investing in land titling programmes in the belief that these will provide higher security levels to achieve higher levels of production and protect resources from destruction.

1.5 Conclusion

In the past, governments have invested funds in isolated components of pastoral development, which have failed to achieve sustainable resource use. This is because they have tended to disrupt the traditional pastoral rangelands tenure by introducing resource management systems, which threaten sustainable production. It is important to note that traditional pastoral land has not been given adequate attention in land related policies. Since such policies and other government programs tend to focus on individualization of land, consequently, pastoral areas have been taken over by non-pastoral development activities.

Uganda has ratified several international conventions on the rights of minorities. These include the African Charter on Human Rights, the International Covenant on civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties have not been fully domesticated through domestic law except for the Bill of Rights in the 1995 Constitution of Uganda. In Article 36, minority rights in decision-making processes are recognized and in Article 37, the right of people to culture is recognized. It has been noted that “the lack of a framework to implement provisions of the international conventions and the Declarations for the protection of minorities hampers the harmonization of constitutional rights for minorities with internationally required standards and makes enforcement very difficult.”¹⁰

¹⁰ *Wairama G.B Uganda (2001) p.10*

2. PASTORAL RIGHTS IN POLICY

From the introductory part of the *Issues Paper for the National Land Policy*, the Government of Uganda through the Ministry of Water, Lands and Environment, which is responsible for preparing the national land policy, expresses the justification for this submission in the extract below:

“In Uganda the centrality of land in the economy; the political ambiguity on the land question; the social and cultural complexity of the land question, particularly the fact that for many communities land relations are also social relations and finally, the overall governance framework in which land issues are played out and resolved are important. Secondly, account must be taken of other macro and micro-economic policies impinging on the land sector. These include policies on agriculture, poverty reduction, industrialization, the environment, infrastructural development and urbanization. Thirdly, an adequate framework for land policy development must take into account the current international discourse on land and the environment. The concern here is to ensure that emerging global principles are incorporated into and domesticated as part of national land policy. Finally, land policy principles must address not only specific components of the land question, but more importantly, the essential values which society seeks to promote or preserve. Ultimately, it is these values, which define optimum and sustainable land development”¹¹

In essence, the issue of whether pastoralism should be included or excluded is not debatable. Rather the debate should assess the content of what is to be included. Secondly, the discussion of key features of the pastoral land question in the first part of this brief disentangles the dilemmas that pastoralists communities face and the need for policy to delve into this area and embark on disentangling the issues while providing strategic direction. It is imperative that the land sector ensures that the interests and voices of pastoralists are incorporated in the national land policy-making processes through participatory involvement of pastoralists.

2.1 International Research and Regional Developments

In the section of learning from research and regional policy developments, in the *Issues Paper* it is already acknowledged, that pastoral tenure and land use, are important, this is reflected in three aspects:

(a) On Land Tenure, the following conclusions are already adopted:

- *The importance of rights in land and their distribution lies in their potential impacts (negative and positive) on growth, poverty reduction and social peace and good governance.*
- *Property rights evolve over time depending on economic and political factors. Inability to adjust property rights regimes can have very expensive and punishing consequences.*
- *There are multiple paths for increasing the security of different tenures*

(b) On Land Administration and the following conclusions are already adopted:

- *Investing in securing tenure pays off (property values can increase between 40-80% with registration-transferability is an important component of increased value), a welfare effect*

¹¹ 2004, Page 5

is created by reduced spending on security, and the potential for better resource management and conservation is increased.

- *The principles of subsidiarity and non subordination should apply to decentralized land administration systems*

(c) The last aspect is Land Management and the following conclusions are already adopted:

- *Increased security of tenure can improve the sustainability and conservation of marginal areas and conversely weak property rights can contribute to overexploitation of natural resource, but more generally.*
- *Lack of enforceability of rights is the key contributing factor in excessive and unsustainable resource use.*

In this respect, scholars and scientists alike have, based on empirical evidence, argued that despite their fragility, dry lands have for centuries supported indigenous pastoral people and their livestock and remain the better option. With this in mind, inclusion of pastoral rights in the National Land Policy is a foregone conclusion, clearly reflected in the policy framework.

2.2 Conceptual Framework for the Policy

Within the Conceptual Framework for the Policy outlined in the *Issues Paper*, the following aspects are of relevance to pastoral land rights.

2.2.1 Policy Goal

The stated policy goal for Uganda's national land policy is "*Sustainable utilization of Uganda's land resources for poverty eradication*" to be attained through these specific goals;

- *To create an enabling environment for equitable access to land and security of tenure.*
- *To increase land productivity through optimal and sustainable use.*
- *To promote an integrated approach to planning and management of land resources.*
- *To enhance the role of the land sector in poverty eradication.*

The concept of sustainability whether in utilisation or development is generally associated with the use of natural resources to meet the needs of the present, without compromising the ability of future generations to meet their own needs. Sustainability is a long-term undertaking, only attained or seriously considered by the rangeland user when the practices pertaining to it facilitate access to and use of the rangeland with ease for immediate needs. Access to rangeland use under an equitable environment is crucial for survival. The primary concern of a rangeland user is ones immediate survival. Pastoralism requires some level of mobility, depending on availability of pasture and water. Since they are so dependent on land and its whole ecosystem, pastoralists form an integral part of it. Pastoralists rely heavily, although not exclusively, on livestock production for their livelihood.

The critical land question for the National Land Policy in Uganda is the rights of

pastoral people in the face of competing interests; the relationship between pastoral land use, wildlife conservation and the regulation of tenure. To a limited extent, there is increasing recognition of its ecological viability¹² without any policy commitments or tools of analysis to understand that pastoral development is unique and should be tackled differently. This will enable the different players to exploit the sector potentials for the benefit of pastoral communities and the nation at large. In a comprehensive study of household survey data from Ghana, Kenya and Rwanda in 1987¹³, it was found that land rights are a significant factor in determining levels of investment in land improvements, use of inputs, access to credit, and the productivity of land. Including pastoral rights in the national land policy will not only support the stated policy goal, but also contribute to its attainment.

2.2.2 Policy Principles

Policy principles serve as the guiding philosophies to be fulfilled by implementers. Out of the 15 stated principles in the *National Land Policy Issues Paper*, the following 8 principles are relevant to recognition of pastoral rights and embrace their integration into the Land Policy.

- i. Land is a common heritage of all Ugandans. It is the duty of everyone to ensure that it is sustainably managed and productively used.*
- ii. Land is a basic resource central to the overall development agenda of Uganda and is a productive asset instrumental to poverty eradication.*
- iii. Every one has a right to own land alone as well as in association with others.*
- iv. Government holds land reserved for ecological and touristic purposes in trust for the common good of all Ugandans, the terms and conditions of which should be defined. Trusteeship of natural resources by government should not be equated to ownership.*
- v. All Ugandans, irrespective of gender, have equal rights to ownership and equitable access to land whether this is through the market, or through any system of inheritance; customary or statutory.*
- vi. Sustainable management of land is a prerequisite to productivity.*
- vii. Stakeholder participation is integral to land development and the harnessing of indigenous knowledge for the management of land based resources.*
- viii. Uganda maintains a multiple tenure system. Tenure systems that promote productivity and sustainable development should be encouraged.*

2.2.3 Objectives of the Policy

In the *Issues Paper*, the proposed objectives of the National Land Policy are stated within the 6 specific elements of the policy. Review of these proposed objectives reveal that they rhyme with the need to recognize pastoral rights within the Land Policy.

¹² Kisamba Mugerwa (2003)

¹³ Ruben de Koning (2003)

Element 1: Land and Sustainable Livelihoods

The relevant stated objectives for this element are,¹⁴

- *To eradicate poverty and ensure food security through a more equitable distribution of land access and ownership, and greater tenure security for vulnerable groups*
- *To promote equitable access and ownership of land resources for poverty eradication*

In Uganda, the livestock sub-sector contributes about 8% of the country's GDP, 90% of which is produced by small herders, with only 10% deriving from commercial ranches. This production level makes Uganda almost self-sufficient in meat, a position similar to that of the food crop production sub-sector. Pastoralists in the rangelands support about 90% of the national cattle population, mainly kept by pastoral and agro-pastoral communities. About 85% of the total marketed milk and beef in the country is produced from indigenous cattle, which thrive on natural rangeland pasture.

Livestock constitutes a crucial part of Uganda's food production, accounting for roughly one third of the total value of agricultural output. Cattle rearing is the predominant livestock enterprise in Uganda and pastoralists keep large herds of cattle on rangelands. Pastoralists also keep herds of goats and sheep, which have an untapped export. Hides and skins have for long been an important source of foreign exchange for the Ugandan economy.

Yet, the overall picture for pastoralists is one of increasing impoverishment due to failure to take advantage of the opportunities created by increased demand for animal products. This is worsened by lack of viable alternatives for the majority of pastoralists. Increasing numbers of pastoralists have lost most of their livestock, due to pressure on land resources leading to restrictions in mobility in search of pasture and water. They have generally become less able to withstand the effects of shocks and often require external assistance, usually in the form of food relief. The National Land Policy in recognizing the rights of pastoralists as one of the vulnerable groups will pave way to achieving its stated objectives on sustainable livelihoods through out the cattle corridor.

Element 2: Land Tenure

The relevant objectives under this element are:

- *To facilitate and ensure access to land and the security of tenure for all socio-economic groups.*
- *To create an enabling environment, which ensures women and men have equal access to land.*

Land tenure is defined as the manner and conditions under which land is held and used. It refers to the nature and range of rights individuals or groups have to access land resources in relation to rights exercised by other individuals and groups. "Resource tenure" derives its meaning from the structure of rights that

¹⁴ *In the National Land Policy Issues Paper, 2004*

characterize the relationship of individuals to one another while the nature and number of rights contained in an individual bundle¹⁵ indicate the individuals freedom of use of the resource and thus reflects the management style of the resource. The basic issues addressed are:

- The rights to land access,
- The security of tenure, and,
- Equity in the distribution of the rights of access.

This is true regardless of what use land is put to or who the users are, whether crop producers, livestock producers or any other users such as estate developers. Customary tenure is the most common tenure system throughout the pastoral and non-pastoral areas of Uganda. Under this tenure system, land is held, used and disposed of following customary regulations of the concerned community. The system has in-built capability of excluding non-members and adequate rules for allocating the resources among the members, managing conflict resolution and guarantee the security of tenure to its members. Its main advantage is its equitable distribution of rights; there is no landless class. In its pure form, it offers limited incentives to the land user to invest in land improvement technologies due to the weak security it offers. Lack of titles to land limits the land user's ability to invest in farming since the formal sources of credit require titles to land as collateral. The stated objectives of the policy appropriately embrace the pastoral rights.

Element 3: Land Markets

In this element, the relevant objective is:

- *To mitigate the negative socio-economic effects of a land market*

Land markets in Uganda have been said to be beneficial for increased production. However, this theoretical analysis has not been proved with any empirical data or example of success. It is one of the key features of the liberalization and privatisation policy adopted by the Land Sector Strategic Plan (2001-2011), a document which operationalise the land reform process in Uganda. It notes that the process of land reform is expected to impact on the land market with improved land management and information systems. This thinking is also supported by the PEAP¹⁶ and the PMA¹⁷. All the above documents stress that the advancement of the land market cannot be stopped; rather efforts should be made to mitigate its negative socio-economic effects.

Mitigating the effects of the land market is crucial for disadvantaged groups such as pastoralists. Most pastoralists have not had a chance of their land being opened up to the market in Uganda. Instead, it is often assumed that government makes decisions for this backward and more or less primitive society on what constitutes

¹⁵ Bromley (1989)

¹⁶ Poverty Eradication Action Plan

¹⁷ Plan for Modernization of Agriculture

optimal and sustainable use of land. Government has, therefore, granted concession and mineral exploration licenses to investing companies without consulting communities, because of the nature of tenure regimes.

Evidence from scholars and researchers, demonstrate that privatization of pastoral land has led neither to better resource management nor to an improvement in herders' livelihoods. It provides neither equity nor efficiency for pastoralists in non-equilibrium environments where pastoral resources are subject to high variability within and between seasons and across large areas. This can have debilitating effects without providing alternatives. Policy today, has to deal with the growing conflict of interest that is pitting pastoralist communities against governments and other land users. On the one hand, pastoral production demands mobility as a basic and sustainable pattern of production; on the other hand, government regards permanent settlement (read agriculture) as a solution to the pastoralists' problem.

Element 4: Land Administration

In this element, the relevant objectives are:

- *Develop land codes and legal frameworks that define the nature of land and rights that are formally recognized.*
- *Ensure simple procedures for the transfer of land and conversion*

The Land Act Cap 227 decentralised the land administration function from the centre to the districts and from the districts to the grass roots. The key elements include the decentralisation of services, the devolution of decision making, planning and monitoring responsibilities to local governments, and the review of the balance between public and private sector's provision of services. The manner in which authority is attributed and exercised is an important aspect of land management in pastoral areas. The extent of incorporation and inclusion of traditional pastoral authorities in land administration are key to the implementation of any reforms in the rangelands.

Element 5: Land Use and Management

In this element, the relevant objectives are:

- *To adopt and promote a participatory and integrated approach to planning and management of land resources*
- *To promote productive and sustainable use of land resources*

There is recognition that opportunistic rangeland management is the most cost effective and profitable way to sustainably utilise rangeland resources in their entirety. However, it remains one of the major challenges facing researchers, policy analysts and development agencies in Africa. Uganda is not exceptional to this challenge. Both colonial and post independence governments have invested funds in rangelands with particular emphasis of developing pastoralism, but have in most

cases failed to achieve sustainable resource use. The objectives under this element recognise the crucial aspect of participation and integration of pastoralists in the management of land resources, if sustainability of the rangeland is to be achieved.

Element 6: Natural Resources and Environment

In this element, the relevant objectives are:

- *To promote management and use practices of natural resources to ensure environmental sustainability*
- *To promote optimal use of productive land in urban and rural areas*
- *To protecting fragile eco-systems and environmentally vulnerable areas from the negative impacts of land use.*
- *To ensure the conservation of the environment, and the equitable sharing of benefits arising out of the utilization of natural resources*

Pastoralists are the most dynamic managers of the environment since they entirely depend on it for their livelihood. For that environment to be conserved, pastoralists must be integrated into the management regimes. They ought to benefit from conservation, if they are to see it as worthwhile to invest their time and effort in conservation.

3. ISSUES FOR POLICY

3.1 Sovereignty Over Land

Government exercises the doctrine of the police power of the State, through article 242 of the Constitution; that states, “government may under laws made by parliament and policies made from time to time regulate use of land”. Also in article 245 of the Constitution, the state is duty bound to protect and preserve the environment from abuse, pollution and degradation, manage the environment for sustainable development and to promote environmental awareness. This power is operationalised by Section 44 and Section 46 of the Land Act, Cap 227. It is apparent that there is a stated need in the *Issues Paper for the National Land Policy* for clear national standards, which override proprietary land use practices and which landowners, occupiers, and holders of interests in land would be required to comply with.

Recommendation

The standards to be developed should recognize the uniqueness of the pastoral production system, that is characteristically a natural resource based system of livestock production in the dry lands, mainly in the arid and semi-arid agro-ecologies and a basis of survival for a large percentage of Uganda’s population.

3.2 Land Tenure Systems

In general, Uganda lacks a land tenure system that appropriately recognizes the rights of the pastoralists and allows them to have control over rangeland resources. The provisions of the Land Act Cap 227 are too generalized that they overshadow the unique features of pastoral land tenure. Consequently addressing tenure concerns of pastoralists in practice has become a complex issue requiring further intervention through policy and legislation.¹⁸

The following issues need to be considered:

- Given the unpredictable nature of the rangelands, it implies a flexible tenure system which allows herders to move at short notice to areas of higher productivity and by extension must not have cumbersome and time consuming management rules.
- The development of appropriate tenure rights for herders needs a many-stranded approach, which allows for secure access to a range of agro-ecological areas.
- The issue of historical injustices in relation to pastoral territory in the creation of state property and the need for transitional justice mechanisms such as restitution or compensation must be considered
- It is argued that kinship and other linkages that held the pastoral communal tenure in the past have either been destroyed or severely undermined. There is

¹⁸ Mwebaza R., 2000.

diversity of interests within the pastoral sector and increasing divergence between rich and poor herders.

Recommendations

1. *The National Land Policy should offer alternative adoptions that stabilize pastoral production in the face of recurrent climatic and natural hazards.*
2. *The national land policy should legally recognize the rights of pastoralists over rangeland resources to ensure security of tenure and strengthen the property rights of pastoralists as a disempowered group¹⁹.*
3. *Where pastoralists lose tenure rights due to government action, the policy should consider restitution or compensation.*
4. *Any tenure policy for pastoralists that ignores divisions based on kinship and other linkages elaborated above is unlikely to succeed.*

3.2.1 Customary Tenure

With the implementation of the 1995 Constitution and enactment of the Land Act Cap 227, customary tenants were for the first time recognized as legitimate land owners. Furthermore, they are able to apply for a certificate of customary ownership as conclusive evidence of customary rights and interests in land²⁰. What is even more important in the pastoral context is that the Land Act legally enables groups to establish Communal Land Associations. These are enabled to come up with Common Land Management Schemes, for example for grazing pastures, in order to manage and protect community interests in land against state or private-commercial interests. There are however, several issues that still need to be resolved:

- Accessibility and affordability of land registration services for pastoral communities.
- Coherence of provisions in the Land Act with other policies and laws concerned with natural resource management
- Registration of land is likely to regress the rights of users; because the Land Act does not separate user-rights from ownership rights on customary tenure, both are vested in the customary certificate holder.
- Through the Land Act Cap 227, customary ownership of land is legally secured over pastoral lands that are not located inside the protected areas. The question raised however, is whether or not the Land Act can truthfully represent the nature of customary ownership of pastoral grazing lands.

Recommendations

1. *The Land Policy should consider special schemes or systems of securing pastoral rights in rangelands, in consultation with and with the participation of the pastoralists that are accessible and affordable.*

¹⁹ Draft PEAP, 2004, page 97

²⁰ Margaret Rugadya (2002)

2. *There is need to expedite implementation of the Land Act provisions, which relate to securing land rights for pastoralists, including rights of access to land resources for sustainable utilization of rangelands.*
3. *The Land Policy will have to clearly distinguish between user rights and ownership rights over pastoral land in the rangelands.*
4. *Communal Land Associations are a good first step in securing pastoralists' rights over pastoral lands. However, the policy should allow for flexibility in the definition of their roles over pastoral areas.*

3.2.2 Government Land

Land managed, as state property comprises delineated parcels of land that are gazetted and set aside for special purposes. The administration of these lands is entrusted to special agencies. In Uganda, state land includes national parks, national forest reserves, wildlife reserves, wildlife sanctuaries and community wildlife areas totaling up to 30,011 sq. km. The cattle corridor is sprinkled with several lots of protected forests. The existence of these protected areas within the cattle corridor has created management problems between the pastoralists, and the forestry and wildlife authorities. As such, the policy needs to deal with the following issues:

- In statutory law and policy, no regulations are provided to organize and legalize restrictions on livestock rearing inside the reserved areas.
- The new wildlife plans state that livestock use in wildlife areas will be restricted, unless it contributes to better wildlife management. It is not specified what better wildlife management means in this case.
- Pastoral settlements have emerged on government land prior to their gazettement or after their gazettement.

Recommendations

1. *The National Land Policy should ensure that grazing rights are;*
 - a. *Recognised in decisions to create and manage protected areas;²¹*
 - b. *Protected or designated in areas for mining;*
 - c. *Compensated when land is appropriated.*
2. *The legal position on access to protected areas (which are part of government lands) by pastoralists must be clarified by this policy in a precise manner.*
3. *Where pastoralists' settlements have emerged in wildlife management areas prior to their gazettement, the Land Policy should consider restitution. Where they have emerged after gazettement due to factors beyond pastoralists' control, compensation should be considered.*

3.2.3 Common Property Resources

Protectionist interventions of the State for wildlife, forestry and mining are increasing pressure on pastoral lands. In order to secure communities' interests in land, the Land Act Cap 227 provides for establishment of Communal Land Associations, which develop Common Land Management Schemes to organize

²¹ Draft PEAP, 2004, page 78, page 174

access to communal resources held and used in common under customary tenure. The most important power of the Communal Land Association is to set aside one or more areas of land for common use by members of the group when requested to do so by the community. The management of these areas is according to the terms of the common land management scheme. Two issues arise here:

- The ability of the Communal Land Association to represent the process of resource allocation in pastoral areas, given the specific characteristics at the time of formalizing tenure rights. Although general patterns of movement and land use can be established, these are flexible and under continuous negotiation, this nature of resource cannot be caught in clear-cut rules as dictated by the Land Act.
- Are Communal Land Associations allowed to hold and manage common resources inside the protected areas or in the commercial mining areas? It is a contradiction that they are allowed to hold and manage customary land on former 'public land', yet pastoralists determine and control common property resources even within the boundaries of protected areas.

Recommendations

1. *The tenure policy should consider the co-existence of private and common property rights within the pastoral system.*
2. *Mechanisms and regulations for implementing Communal Land Associations in pastoral areas should be cognizant of the unique livelihoods strategy for pastoralists in order to safeguard communal grazing resources.*
3. *The Land Act Cap 227 is elusive on how it will address the increasing shrinkage of common property resources. The policy therefore must be explicit on this matter.*

3.2.4 Other Tenure Issues

- Increasing attention needs to be paid to the *physical characteristics of resources and their relationship to tenure systems* and to the relationship between tenure systems and institutions.
- The principles of *equity within the pastoral sector will have to be enforced in a procedural manner* during the process of land registration for pastoralists.
- Government's *emphasis on grain production and subsequent toleration of cultivators' encroachment on pastoral land must be halted.*

3.3 Livelihoods and Poverty Eradication

In Uganda, the importance of rangelands and the need for their proper management is reflected in their contribution to the livelihood of the people and the importance of livestock in the national economy. The livestock sub-sector contributes about 8% of the country's GDP, 90% of which is produced by small herders, with only 10% deriving from commercial ranches. This production level makes Uganda almost self-sufficient in meat, a position similar to that in the food crop production sub-sector. Two crucial issues arise:

- National governments need to recognize the importance of the livestock sector to their national economies, and develop the political will to support it.
- On protection of rights of marginalized and vulnerable groups, The Land Act Cap 227 does not pronounce itself on the need to protect the basic rights of the pastoralists as a category identified as vulnerable in other government frameworks and policy documents²².
- Understanding property rights in the rangelands needs to start with the local perspectives of those who use the resource, their daily experiences, the meanings through which they conceive the resources and the rights and options they have available for acquiring the resource and defending their access and ownership to this vital resource.

Recommendations

1. *The National Land Policy should provide pastoralists with a more clearly recognized tenure system over their resources. The empowerment of pastoralist is an important way of addressing their relative poverty and an incentive for investment in pastoralism.*
2. *In addition to women, tenants and other secondary users of land, it is imperative that the National Land Policy recognizes pastoralists as one of the vulnerable groups that have to be protected in the national land policy framework.*
3. *The Land Policy should recognize that much of the increased conflict and growing poverty in pastoral areas is a direct result of the diminishing natural resource base.*

3.4 Land Markets

The introduction of private ownership and individualized interests has been driven by the desire to ensure that land reforms are market driven. The degree of privatisation varies, and has affected pastoral communities differently across the cattle corridor, mainly to their disadvantage. Therefore, mitigating the negative effects of the land market on pastoralists is crucial for sustenance of levels in this system of production. Two major issues emerge:

- Resource tenure insecurity resulting from privatisation of pastoral resources such as leasing of pastoral land in the ranching schemes in Southern and Central Uganda.
- Reduction of pastoral land resources, arising from the operations of the land market, does not offer alternatives for the pastoral production system.

Recommendations

1. *The land tenure policy should be cognizant of the resilience of pastoral land use in the face of reforms that undermine the viability of this production system.*
2. *The National Land Policy should recognize that in pastoral land use, optimal mobility is required to ensure access to scarce and unevenly spread natural resources.*

²² See the Draft PEAP 2004, Page 74. Defines the vulnerable and marginalized on land as women, orphans, tenants and pastoralists

3.5 Land Use and Management

Secure access to pasture land is threatened by developments in state law and policy towards protected areas and mining. The impact of these development policies varies according to the aridity of the rangeland. These changes reduce the rangeland area available to traditional pastoralists, and become a source of conflict, both within the cattle corridor and with neighbouring districts. Besides, it is difficult to statutorily define the users and conditions of use since these are highly flexible and negotiable. Since colonial times, a number of changes have taken place in the management of rangeland resources in Uganda and raise the following issues:

- Changes in land use are reducing pastoralists' access to key resources such as water, grazing land, dry season refuge grazing areas and natural resources with commercial value like gum Arabic, honey, wood, medicinal plants, etc.
- Rangeland management practices fall short of recognizing pastoralism (livestock farming) as an economic activity. For a long time pastoral livestock has not been deemed as an efficient mode of utilization of the land. As a result, government has neglected policies that would promote investment in the management of rangelands.
- Pastoralists' lands have often been termed as undeveloped by virtue of the fact that they do not carry crops or buildings. Policy has not recognized that these lands provide a sanctuary for vegetation.
- Imposition of institutions and conflicting land uses such as establishment of government ranching schemes, army barracks, and airfields in pastoralist areas still poses a problem.

Recommendations

1. *The need for land use plans is very strong in the light of the multiple uses of rangelands.*
2. *It is crucial to explore and understand in practice what sustainable strategies for pastoralists versus conservation techniques, are and who implements or adopts them and for what purpose.*
3. *There is need to transform socio-economic institutions governing rangelands under pastoralism to an equal footing with institutions governing other farming systems.*
4. *There is need to strengthen the management capacity of rangelands through measures that enhance pastoralists' control over and the wise use of natural resources.*
5. *Pastoralism should be clearly defined in policy as a legitimate and productive livelihood so that authorities are able to appreciate its adoption for rangelands production.*

3.6 Land Administration

There is a limited level of integration of traditional pastoral authorities in dispute settlement in the Land Act Cap 227, although no specific roles were assigned in land administration. Traditional authorities such as the council of elders are involved in such processes at the initiative of the parties in conflict or discretion of the land tribunal. Traditional authorities are likely to fulfil an advisory role on the request of the formal institutions. This raises the following issues:

- The provision for land tribunals in the Land Act Cap 227 will not prevent, hinder or limit the exercise of traditional authorities in administering or in determining disputes over customary land or acting as mediators.
- Traditional authorities have not been recognized in land administration and in the delivery of land services on customary tenure.
- Traditional authorities play a prominent role in land administration and must be recognized in policy.

Recommendations

1. *The policy should be cognizant of the traditional pastoral tenure institutions for resource allocation and dispute resolution in the pastoral areas.*
2. *Local governance should also be improved so that fair and effective community decision-making mechanisms can be established.*
3. *The role of traditional authorities in land administration has not been properly supported in any legal or policy framework. The policy should appreciate their role in settling disputes over customary land.*

3.7 Natural Resources and Environment

From time immemorial, the conservation areas in the cattle corridor have been used for wet and dry season grazing. Restricting animal grazing in conservation areas damages the pastoral economy and the natural eco-system. Besides, the conservation policy has displaced people in areas declared as National Parks, Game and Forest Reserves. Pastoralism is the main economic activity in the rangelands. Rangelands exhibit most of the characteristics of low and erratic rainfall regimes leading to frequent and severe droughts, and fragile soils with weak structures, which render them easily eroded. The following issues should be considered:

- The conservation policy assumes that humans are not part of the environment, and so excludes them from conserved resources creating a totally artificial environment. It is important that such a policy for preserving the natural eco-systems includes a balance of all species, including humans and livestock. Such a move would have a positive impact on tourism.
- There is need for provisions to protect the fragile arid and semi-arid environments from encroachment that seek to modify them in an unsustainable manner e.g. opportunistic cropping.
- Tenure policies that contribute and avail opportunities for disenfranchisement of pastoralists should be discouraged or be outrightly avoided. Indeed, gazettelement of pastoral land has not stopped pastoralists from using the land for grazing.
- Alternative land uses such as tourism, have had limited benefits in the past for pastoral communities hence the need to recognize the synergetic relationship between pastoralism and tourism.

Recommendations

1. *The national land policy should sort out the issue of national parks and sanctuaries, the lack of mechanisms for consultation of communities prior to gazettelement as well as models for benefit sharing of revenues accruing from the resource.*
2. *The policy should also address the low levels of awareness and knowledge of the legislation.*
3. *Government should impress it upon the Uganda Wildlife Authority to allow pastoralists' into protected areas for purpose of grazing their cattle.*
4. *The argument that animal grazing is incompatible with wildlife should be revised.*
5. *The National Land Policy should not aim at restrictive measures against pastoralists in access to pasture lands. Rather, permissive and flexible options should be considered.*

3.7.1 Minerals

Article 244 (2) of the Constitution states that “Minerals and mineral ores shall be exploited taking into account the interests of the individual land owners, local governments and the Government”. The Mineral Policy of Uganda (2001) does not appear to comply with Article 244(2) of the Constitution, since it does not take into account the interests of the individual landowners. The policy states that royalties shall be shared between Central Government and local government from where minerals are produced. The national land policy therefore needs to address,

- How the interests of the communities such as pastoralists who own land communally under customary tenure are taken care of?

Recommendation

The Policy should define local communities' interests in benefits sharing arising from prospecting and mining on communal land under customary tenure.

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In Uganda, the livestock sub-sector contributes about 8% of the country's GDP, 90% of which is produced by small herders, with only 10% deriving from commercial ranches. This production level makes Uganda almost self-sufficient in meat, a position similar to that of the food crop sub-sector. Pastoralists in the rangelands support about 90% of the national cattle population, mainly kept by pastoral and agro-pastoral communities. About 85% of the total marketed milk and beef in the country is produced from indigenous cattle, which thrive on natural rangeland pasture. Yet, the overall picture for pastoralists is one of increasing impoverishment due to failure to take advantage of the opportunities created by increased demand for animal products. This is worsened by lack of viable alternatives for the majority of pastoralists. Increasing numbers of pastoralists have lost most of their livestock, due to pressure on land resources leading to restrictions in mobility in search of pasture and water. They have generally become less able to withstand the effects of shocks and often require external assistance, usually in the form of food relief. The empowerment of pastoralist is an important way of addressing their relative poverty and an incentive for investment in pastoralism. It is imperative that the National Land Policy recognizes pastoralists as one of the vulnerable groups that have to be protected

The Steering Committee of the Coalition of Pastoral Civil Society Organisations in Uganda (COPASCO) comprising the following Organisations supports the contents of this publication.

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