



Extract of the approved NLP

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1. Introduction:

The National Land Policy (NLP) was approved in February; 2014. This paper extracts and compiles a list of the major “highlights” on customary tenure, on trusteeship, and on dispute resolution. It seems that the Policymakers envisioned trusteeship of communal lands - Communal Land Associations are only mentioned once in the entire policy, and only with respect to pastoral communities.

These are important because they provide guides to stakeholders on how to work directly in line with the stated intentions of Central Government.

2. Extract of the NLP relevant to customary land and pastoralism.

ON CUSTOMARY TENURE

S. 32. Policy Statements:

(b) The State shall clarify the nature of property rights under the designated tenure regimes to remove uncertainties and allow for evolution.

S. 33. To clarify the tenure regimes, the Land Act and other relevant laws will be amended to:

(ii) Reaffirm and strengthen the legitimacy of socially and culturally acceptable tenure systems as a means of preserving access rights to common property resources

S. 40. **To facilitate the evolution and development of customary tenure** in relation to social, economic, political, and other factors, Government shall take measures to:

(i) Design and implement a land registry system to support the registration of land rights under customary tenure;

(ii) Issue Certificate of Title of Customary Ownership based on a customary land registry that confers rights equivalent to freehold tenure;

(iii) Facilitate conversion of customary land which is already privatized and individualized into freehold tenure;

(iv) **Document customary land tenure rules applicable to specific communities** at the district or sub-county levels;

(v) **Promote systematic demarcation** as a measure to reduce the cost of registering rights under customary tenure; and

(vi) **Make an inventory of common property resources owned by communities** and vest these resources in the communities to be managed under their customary law.

S. 41. To facilitate the design and evolution of a legislative framework for customary tenure, Government shall:

(i) – Amend the Land Act (Cap 227) to permit **only individually owned customary land** to be converted to freehold;

(ii) – **Amend the Registration of Titles Act (Cap 230) to place customary tenure at par** (same level) with other tenure systems;

(iii) Modify the rules of transmissions of land rights under customary land tenure to guarantee gender equality and equity;

(iv) Make provisions for joint ownership of family land by spouses;

(v) Recognise the role of customary institutions in making rules governing land, resolving disputes and protecting land rights.

(vi) – **Define family and individual land rights, from communal rights under customary land tenure and distinguish the rights and obligations of customary institutions vis-à-vis those of the community and individuals;** and

(vii) – Provide for **registration of customary land held under trusteeship by traditional institutions or cultural leaders on behalf of communities in the names of trustees.**

ON DISPUTE RESOLUTION

- i. 42 To strengthen traditional land management and administration institutions, Government will take measures to: Recognise and enforce decisions of traditional land management institutions by local government and state institutions;
- ii. Ensure full judicial backing for traditional institutions as mechanisms of first instance in respect of land rights allocation, land use regulation and land dispute for land under customary tenure;
- iii. Ensure that the decisions of traditional land management institutions uphold constitutional rights and obligations with regard to gender equity;
- iv. Develop guidelines and procedures under customary land law for the allocation and distribution of land complying with the principles of equality and natural justice.

S. 116 – Legislative and other measures will be taken to: ((i) to (viii) but only (iii) to viii) produced below)

- v. (iii) Provide clear rules for application of law by land tribunals to **permit hierarchical application of state and customary law** depending on the circumstances, facts, and characteristics of the dispute in question;
- vi. (iv) **Accord precedence to indigenous principles and practices in dispute management** institutions in respect of disputes over land held under customary land tenure;
- vii. (vi) **Define a clear hierarchy for dispute resolution structures** to guarantee the finality and authoritativeness of decisions, subject to appeal to higher levels of jurisdiction;
- viii. (viii) **Encourage and build capacity for alternative dispute resolution** on land matters and application of principles of natural justice.

PART 4.7 – COMMON PROPERTY RESOURCES ON PRIVATE LAND

53. Common property resources are usually managed through institutional arrangements, customs and social conventions, designed to induce joint solutions to issues of access and benefit-sharing. These resources are often, situated on land owned privately by individuals and/or communities. “The 1995 Constitution and Land Act (Cap 227) do not take into account the role of local communities in the preservation and management of common property resources. Common Property Resources, especially communal grazing land have in the past been grabbed, sold illegally, or individualized by some members of the local communities.”

S. 54. Policy Statements:

(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.

S. 55. Government will take measures to institute the following reforms:

- (i) Identify and 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 by or available to particular communities are **directly held and managed by them**;
- (v) Develop mechanisms which 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 legalize their ownership over common property resources**; and
- (vii) **Build capacity for management of common property resources** by local governments and communities by recognizing and regularizing their roles.

4.9 LAND RIGHTS OF PASTORAL COMMUNITIES.

59 Pastoral communities occupy rangelands with harsh climatic and ecological conditions. The severity of competition for grazing and water resources with neighboring communities has increased as cultivators expand into areas suitable for grazing. Pastoral mobility is constrained, yet it is a key ingredient in managing the low net productivity, risk and unpredictability in the rangelands. Access to land resources has also progressively reduced, as successive individual, private and government agency actions, alienated grazing areas for the establishment of national parks, wildlife reserves, protected areas, government or military schemes and ranching schemes. Whereas nomadic pastorals practices are allegedly associated with land invasions or grabbing and “illegal” land buying in some areas, it is necessary to protect pastoral land rights, but not at the expense of non-pastoral communities.

S. 61. – To protect the land rights of pastoralists, government will take measures to:

- (i) Ensure that pastoral lands are held, owned, and controlled by designated pastoral communities as common property under customary tenure;
- (ii) Develop particular projects for adaptation and reclamation of pastoral lands for sustainable productivity and improved livelihood of communities;
- (iii) Protect pastoral lands from indiscriminate appropriation by individuals or corporate institutions under the guise of investment;
- (iv) **Promote the establishment of Communal Land Associations** and the use of communal land management schemes among pastoral communities;
- (v) Establish efficient mechanisms for the speedy resolution of conflict over pastoral resources in pastoral communities and sedentary communities; and
- (vi) Consider land swapping, resettlement or compensation for pastoral communities displaced by government from their ancestral lands.

62 To support pastoral development, Government shall:

- i. Prescribe clear principles for the ownership, control and management of pastoral lands in a policy by the Ministry responsible for livestock;
- ii. Prescribe clear principles for voluntary settlement of pastoral communities with approval of local governments in a resettlement policy;

- iii. Ensure zoning to establish appropriate agro-ecological zones, pastoral resource pasture, agriculture, energy, industry and for wildlife protection; and
- iv. Establish mechanisms for flexible and negotiated cross-border access to pastoral resources among clans, lineages and communities for their mutual benefits.

S. 97 – To support land rights, measures will be put in place to:

- (i) **Ensure land rights and land administration are integrated in the national school curriculum**

ON TRUSTEESHIP

PART 3.6 – PUBLIC TRUSTEESHIP OVER NATURAL RESOURCES

S. 19”In the absence of regulations or guidelines to govern the management and use of such resources (natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes) by the State as a trustee, including accountability and transparency principles, **the “trustee” has carried on as if it is the “owner”**, thus breaching the public trust doctrine. Safeguards in legislation have not deterred extensive degeneration, occasioned by administrative abuse.....”

S. 22 – To stem abuse, in management and the use of natural resources held under the public doctrine trust, measures will be put in place to:

- (ii) **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.

S. 28 – “As a trustee, the Government has not fully exercised ethical relationship of confidence embracing principles of democratic governance, accountability, and transparency.”

S. 41. To facilitate the design and evolution of a legislative framework for customary tenure, Government shall:

- (vii) – “Provide for **registration of customary land held under trusteeship** by traditional institutions or cultural leaders on behalf of communities in the names of trustees.”

ON BOUNDARY DEMARCATION.

S. 109 To review and update the legal and regulatory framework on demarcating, surveying and mapping, Government will take measures to: (i) to vii) strategies but only (v) is stated below:

(v) Recognise and confer official status to community-based boundary marking system in all tenure systems.

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Date: 17th January, 2014

17th March, 2017.

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