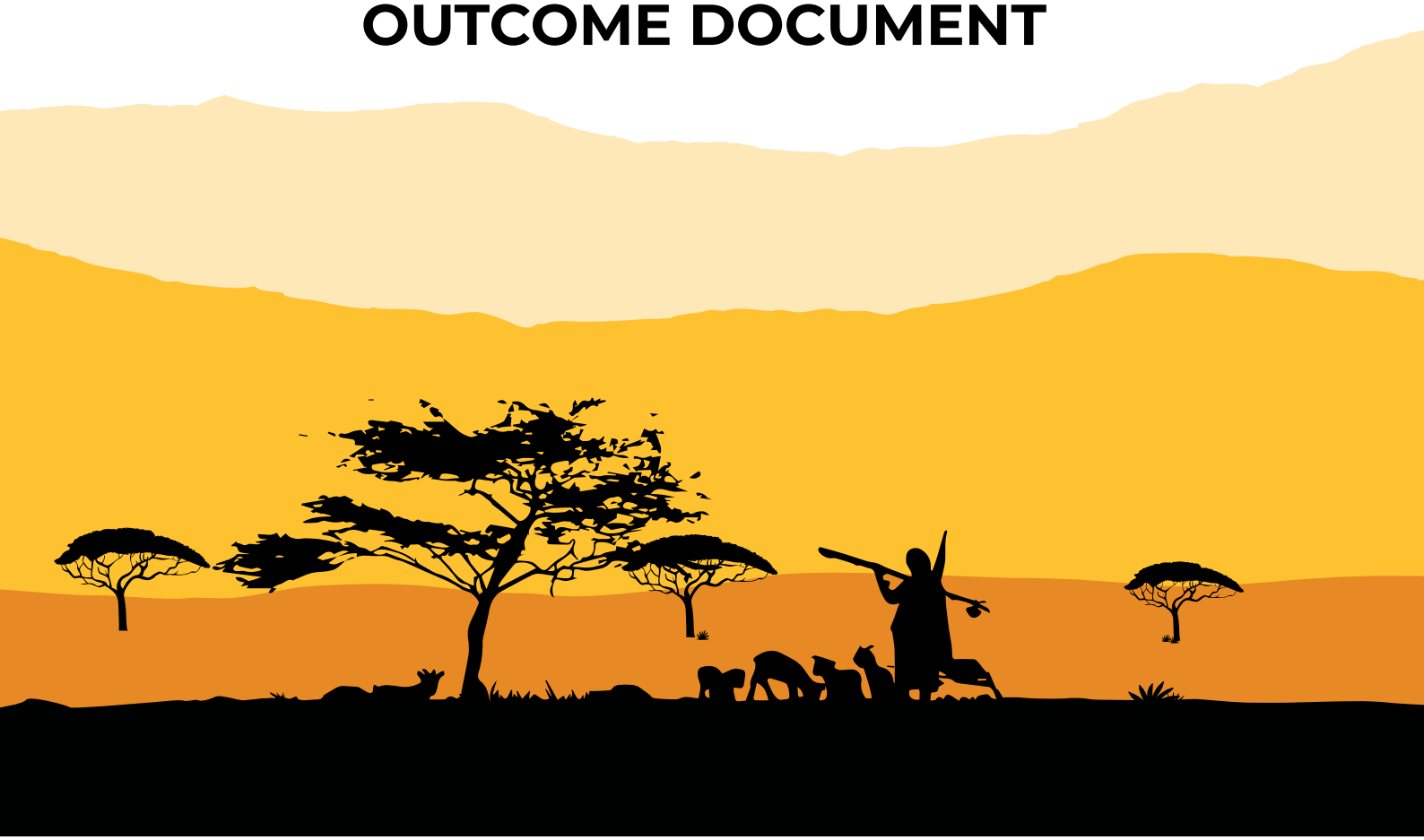
HIGH LEVEL CONFERENCE ON CUSTOMARY TENURE RIGHTS IN EASTERN AFRICA

17th - 19TH October 2023
NAIROBI, KENYA

THEME:
Making Land Policy Reforms Work for Communal Land Rights in Eastern Africa

OUTCOME DOCUMENT



REGIONAL CONFERENCE ON CUSTOMARY TENURE RIGHTS IN EASTERN AFRICA

THEME: MAKING LAND POLICY REFORMS WORK FOR COMMUNAL TENURE RIGHTS IN EASTERN AFRICA

OUTCOME DOCUMENT

BACKGROUND

The larger Eastern and Horn of Africa have registered changes in the last decade with regards to policies developed at national level and even regionally. However, the tenure security for customary land is still confronted with many challenges. The Food and Agriculture Organization of the United Nations (FAO) & European Union (EU) through the Digital Land Governance Programme, Resource Conflict Institute (RECONCILE) and Welthungerhilfe (WHH) in partnership with the International Land Coalition (ILC) Africa, jointly organized a regional conference themed; "Making Land Policy Reforms work for Communal Land Rights,". The conference was in full understanding that the quest for land reforms in Eastern Africa region gathered momentum over the past two decades with the adoption of new policies, enactment of new laws and establishment of new institutions to strengthen democratic governance of the land sector and secure communal land rights. A common thread running through these new policies and laws is the recognition of communal land tenure and customary laws and institutions. Yet throughout the region, communities are yet to enjoy the full benefits of these reforms; in fact, there is evidence that despite the recent reforms, tenure security for indigenous peoples, pastoralists, women and other minority and vulnerable groups is weakening. Diverse participants, including government representatives, Civil Society Organizations (CSOs), development partners, UN agencies, private sector actors, academia and research institutions, INGOs, NGOs, the technical units of the Africa Union Commission (AUC), the IGAD Center for Pastoral Areas and Livestock Development (ICPALD) and the IGAD-Land Governance Program, donors (the European Union, The Christensen Fund, BMZ), as well as community representatives all gathered and deliberated for three days in Nairobi, Kenya from 17th -19th October 2023. In this conference, actions were agreed upon and captured in the conference outcome document and clustered for execution by actors at local, national and regional levels.

The outcomes were decided upon after presentations from research papers, policy reviews, government interventions, community voices, as well as feedback on project implementation, lessons learned and case studies from Ethiopia, Somaliland, Somalia, Sudan, Kenya, Tanzania and Uganda. It is envisaged that the outcomes will provide an opportunity for robust policy advocacy and fast tracking of policy implementation, follow-up and reporting at national and regional levels.

Conference Outcomes

OUTCOME AREA 1: Land and Conflict: Dynamics of land-related conflicts in the Horn of Africa, have impacted negatively on livelihoods security of pastoralists, indigenous peoples and other resource-dependent communities.

Issues for action at different levels;

1.1 **Develop conflict sensitive and management tools and guidelines for peaceful regional transhumance;**

- Develop standardized guidelines for Member States (MS) to promote pastoral mobility across countries and to operationalize the Transhumance Protocol strengthening cross-border mobility; this should include investment in rangelands and other pastoralist lands.
- Use rangelands resource management and planning tools for Member States to engage cross border stakeholders in the identification of conflict hotspots.
- Map key crossing points and common resource points by applying participatory tools like; Participatory Rangelands Management (PRM) as an approach that would support both restoration and rangelands productivity.
- Undertake inventory guidelines for all policies, guidelines and instruments that are addressing conflict to help generate common interventions and responses.
- Development of knowledge and information gaps: address the lack of awareness and understanding of the policies by implementers.

1.1 **Implementing the AU Policies and Frameworks on Land, Rangelands and Pastoralism,**

- Work with MS to prioritize the implementation of the AU Policy Framework on Rangelands and Pastoralism
- Work with MS to engage with and implement the AU Framework and Guidelines on Land Policy in Africa, especially for countries that are currently reviewing their land policies e.g. Kenya and Uganda
- Support MS in the domestication of regional policies, frameworks and the IGAD Transhumance protocol by supporting greater awareness and participatory development of implementation frameworks/plans at national level.
- Integrate rights-based approaches to managing pastoralists' lands especially with regards to cross-border mobility
- Help define complementarities and overlaps with national laws and their implications on cross border mobility and shared resources (There is need to reconcile/harmonize our laws in the sub-regions. E.g., defining what land is and ownership? Defining who is a community)
- Developing cross border agreements for promoting transhumance including a review of existing frameworks to identify the gaps that need to be addressed before forming more guidelines.
- Establish awareness and sensitization frameworks e.g., thematic Multi Stakeholder Platforms (MSP) on Indigenous Peoples and customary lands. These should include policies, guidelines and regional instruments that deal with peace and security at national and regional levels.
- Establish regional learning and sharing forum/conferences to allow reflection and engagement with developments made with regards to different initiatives.
- Develop a framework mechanism to address interstate conflict in transboundary regions e.g., Turkana and Karamoja and monitoring and reporting systems for human rights violations.

Community level priority issues

- More community level broad based awareness and sensitization on rights, laws, policies and land and resource rights.
- Strengthen community land governance structures for example capacity development and strengthening of the Community Land Management Committees, since they will be managing land on behalf of communities.
- Integrate community mediation approaches and dispute resolution mechanisms to address conflicts through Alternative Dispute Resolution (ADR).
- Alternative justice systems need to be used as a first resort, since land courts are too distant.
- Addressing climate change impacts to deal with forced mobility. This should include implementing conflict sensitive climate change actions.
- Need to develop and reconcile land use planning at local level.
- Regulation of investment and conservation projects in community land areas and emphasizing the need for Free Prior and Informed Consent (FPIC) from communities before any investment is done on community land.
- Developing clear frameworks on benefit sharing mechanisms and building the capacity of communities to negotiate benefit sharing agreements with investors.
- Promote national level initiatives that would promote large scale registration and protection of community/customary land and resource rights.

OUTCOME AREA 2: Securing pastoral land rights for enhanced productivity and sustainable livelihoods

Securing Land rights issues

- A regional framework or Protocol that outlines FPIC guidelines to safeguard customary resource and land dependent communities from governments/investors during any investments and development projects in these lands.
- Strengthen tenure platforms at regional levels where issues can be canvassed and policy be influenced.
- Strengthen the participation of diverse sectors and actors in the Conference on Land Policy in Africa (CLPA) at the African Union.
- Multi-Actor Platforms or government bodies to strengthen tenure platforms at sub-national and national levels where issues can be supported/actioned, and policy be influenced.
- Establish peer-peer policy reflection and engagement to strengthen customary/community lands in the region by borrowing strengths that exist within member state legislations while strengthening weaknesses in laws. For example, changes to the Community Land Act 2016 (Kenya) are necessary to close loopholes since it is too easy to convert community land into private land (cf. Section 23).
- Advocate for resource allocation by local/county and national governments towards community land protection recognition and registration of customary tenure security.
- Establish a working framework with East Africa Pastoralist Parliamentary Groups where they exist e.g in Kenya and Uganda.
- Link land rights with human rights and climate change debates more explicitly as local government sets aside funds for tackling climate change.
- Establish a standardized mechanism for engaging with investors and Carbon Traders to ensure communities are adequately compensated with carbon trading business. Encourage investment in pastoralist land – it is better for land value, carbon sequestration and water retention.
- Since land registration often takes too long, Civil Society should support intermediate arrangements, where a community's right to the land is provisionally recognised by the government, even if the land title is not officially granted.
- Government/CSOs/development partners/UN agencies to support research and document community struggles to capture their experiences (for evidence advocacy, and to help other communities who

go through similar struggles later) e.g. conservation best practices need to be better documented through community experiences.

- CSOs and government to support public education needed on the various regional and national policies and laws. Translate into local vernacular.
- Support large scale spatial planning initiatives to establish the different lands but more importantly the pastoral mobility corridors using GIS mapping processes and establishment of clear boundaries.
- Establish a framework for claiming benefits by countries and citizens, especially pastoralists, to benefit from a larger proportion of the Loss & Damage Fund.

OUTCOME AREA 3: How to make policy, legal and institutional frameworks work for customary land tenure

Issues for policy engagement at different levels

- Need to domesticate AU Policy framework on Pastoralism by the member states and harmonize with existing policies
- Undertake progress inventory with the regional policies at the country level in particular the Framework and Guidelines on Land Policy in Africa (AU) in Africa and Policy Framework on Pastoralism (AU) in Africa to develop a report and a monitoring and evaluation framework.
- Need to push pastoralism as a land use/ economic activity and one of cultural value.
- Policy to have binding effect and obligate the Member states to undertake the aspiration in the policy.
- Development of Implementation Framework at the IGAD/AU – Secretariat or Commission
- Development of policy enforcement mechanism
- Publication and awareness creation on the existing policy – Transhumance Protocol and Framework, Africa Union Policy on Pastoralism)
- The policy making process should be inclusive and take (bottom up) approach
- Translation of policies to the local languages for proper understanding by different states
- Establish a framework for coordination of the policies at national level
- Develop an integrated approach to implementation of the policies in relation to the actors/ institutions charged with the various provision of the policies
- Establish mechanisms for policy visibility across the region