



VOICES FROM THE GRASSROOTS

# OUR LAND IS NOT VACANT

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## BACKGROUND

The discovery and subsequent development of oil in Turkana in northern Kenya has resulted in great optimism that Kenya's economy could diversify further and that the hitherto economically marginalised region could experience significant improvement in economic development. Development is anticipated not only from the direct revenues from oil to the county government and the Turkana community, but also from associated infrastructural developments and businesses. For instance, construction of key roads like the Eldoret- Kitale-Lokichar-Amosing is ongoing and plans are underway for the construction of the 960km Eldoret-Juba road linking Kenya and South Sudan. These developments have stirred up activity and attracted investors setting up colleges, hotels, petrol stations, bars, retail shops and modern residential housing in places like Kainuk, Lokichar, Lodwar, and Kakuma.

But the developments have also exposed widespread abuse of communal lands. Intractable concerns abound over the manner in which communal land has been and continue to be acquired not only for oil & gas and associated businesses but also by speculators. According to some locals, speculators have been buying land especially in urban areas like Lodwar, Kainuk, Lokichar and Kakuma with the intention of selling the same later at inflated prices. Community members are also concerned that Tullow Oil was granted licences to explore and develop oil & gas on communal lands without duly involving community members. Concerns also abound that investors and speculators could have

colluded with group representatives under the since repealed Land (Group Representatives) Act to transfer communal lands without following the due process. As a result, communal lands were fraudulently sold and sub-divided.

## **TURKANA LAND IS NOT VACANT**

Land in Turkana county is predominantly communally owned with only some three people having certificates of title for the land they have acquired and owned (Turkana County Government, 2013). The county's residents are predominantly pastoralists who often move within and even across the county and national borders to Uganda in search of water and pasture for their large herds. During long dry spells and drought years for example, livestock from Turkana herding groups spend several months in a year in Uganda side where water and pasture availability is relatively better compared to the Kenyan side. Due to the nomadic nature of pastoralism, pastoralists' land is often considered "idle", "unoccupied", or "unowned". It is therefore unsurprising that the Turkana community is wary that the government and Tullow Oil and other investors are treating Turkana land as if it is vacant or has no owner. According to some locals, the Turkana have already lost significant portions of grazing lands to oil exploration, including the Ngamia 1 area which is traditionally considered a key livestock grazing route for the Turkana when moving southward towards River Turkwel and Kerio in search of water and pasture during the dry seasons. During the Extractive Sector Forums on the early oil pilot scheme and land access, community members strongly reiterated that

the Turkana's land has its rightful owners which is the Turkana community and that the land is not vacant and must be treated as such.



**Not vacant:** An aerial view of a section of land in Turkana

The local community feels that oil exploration and development, infrastructural developments and the associated existing and emerging businesses will exacerbate their vulnerability as pastoralists if supportive measures are not put in place in time. They have urged the national government, Turkana county government and other concerned authorities to tread carefully on leasing out or selling land to investors at the expense of pastoral livestock production. While indicating they are not opposed to developing the oil, the local community want the

authorities to equally focus on improving livestock productivity and developing water resources and marketing infrastructures, while at the same time enabling local Turkana residents to tap into the increasing buzz of activities in the area. They reiterate that while the oil industry will come and go, pastoralism has been a lifeline of the Turkana community since time immemorial and will still be, in the years to come.

## **LIVE UP TO THE NEW DISPENSATION ON COMMUNITY LAND**

Prior to the promulgation of the Constitution of Kenya 2010, Kenya's land law prioritized privatization of land at the expense of customary or community land rights. There was no official state recognition of community land rights. Communal lands were held as trust lands and vested in the county councils under the Trust Land Act (Cap 288), and as group ranches under the Land (Group Representatives) Act (Cap 287). However, this kind of land tenure system was widely abused. Top officials of the then provincial administration and politicians indiscriminately expropriated communally owned lands and dished them out to their cronies or as reward for political support. It was not until the adoption of the 2009 National Land Policy (NLP) and the 2010 Constitution that Kenya began to give legal attention and treatment to community land. The two documents not only recognize community land but also presented an opportunity to craft laws for the management and protection of community land. The NLP notes that individualization of tenure has undermined traditional resource management institutions;

ignored customary land rights; and led to widespread abuse of trust in the context of both the Trust Land Act and the Land (Group Representatives) Act.

The Constitution for the first time provides for the recognition of community rights to land by including community land as a tenure regime that is equal in stature and protection to the other two regimes, public and private land. Community land is vested in communities identified on the basis of ethnicity, culture or similar community of interest. Any unregistered community land is to be held in trust by county governments on behalf of the communities. Community land comprises: land lawfully registered in the name of group representatives under the provisions of any law; land lawfully transferred to a specific community by any process of law; any other land declared to be community land by an Act of Parliament; land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; and land that is lawfully held as trust land by the county governments.

The constitution predicates any disposition or use of community land on legislation specifying the nature and extent of the rights of members of each community individually and collectively. Accordingly, the Community Land Act was enacted and signed into law in September 2016. Among other things, the Act proposes the establishment of Community Land Management Committees (CLMCs) elected by community

assemblies consisting of all adult members of the community. The CLMCs are to manage community lands on behalf of the respective communities, which are to be registered under the Land Registration Act, 2012. Converting community land to other tenures requires the approval of at least two-thirds of the community members, subject to legal provisions on compulsory acquisition of land. Also, any agreement relating to investment in community land should be free and open and follow a consultative process and involvement of the community. Such agreements should provide for the payment of compensation and royalties, capacity building and transfer of technology to the community.

Local community members from Turkana have great optimism that implementation of the Community Land Act will address some of the communal land-related challenges they are facing. Despite the fairly progressive law and the optimism around it, its implementation is dragging especially due to the fact that the regulations required to operationalize it have not been developed. As a result, the challenges with communal lands, including irregular allocations and non-involvement of community members in land-related decision-making persist. In fact, these challenges are expected to increase with transition to full field development and the construction of the crude oil pipeline. Compared to the exploration phase, full field development, and the oil pipeline development will not only require more land from the communities but also hold onto the same for a longer time. In view of this, many local

community members in Turkana have called on the government and all concerned stakeholders to speedily implement the act. In fact, speedy implementation of the Act was the rallying cry during both the Extractive Sector Forums (ESF) on the early oil pilot scheme and the one on land access. This calls for speedy development of the regulations required to implement the Act, as well as the establishment of the envisaged institutions such as the Community Land Management Committees. But even more importantly, effective implementation of the Act requires the good will of all the concerned stakeholders from the national government, the county government, the private sector, community and all other concerned parties.

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'This 'Voices from Grassroots' was written by Duncan Okowa. It summarises the voices of many local community members in Turkana as expressed during the Extractive Sector Forum (ESF) on Early Oil Pilot Scheme (EOPS) convened by ILEG in Lodwar in April 2018. For further information please email [ileg@ilegkenya.org](mailto:ileg@ilegkenya.org).

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