

# **Policy Reviews Run Riot**

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There are three major Policy Reviews underway in Kenya, on Livestock Policy, on Land Policy and on Wildlife Policy, all aiming for new legislation to be drawn up and adopted by parliament within the next few months.

Why, suddenly, this flurry of activity? Why the almost unseemly haste to define new policy and enact new legislation?

The optimists among us will hold that here we see a Government in tune with the social and economic conditions in Kenya and wishing to keep policy and law responsive to ever changing conditions, challenges and opportunities. Others, perhaps of a more cynical bent, see an approaching election – and a government keen to show that it is actually doing something: you have a problem with livestock? with land issues? with wildlife? well, we have new policies and new legislation to help you.

All three Policy Reviews have profound implications for conservation in general, and for wildlife in particular, both inside the formally Protected Areas and outside on land owned and managed under private or communal tenure. The East African Wildlife Society is deeply involved on behalf of its members in all three of these review processes.

## **The Livestock Policy Review**

The Livestock Policy Review resulted in more of a "wish list" than a policy document, with literally hundreds of proposals for interventions<sup>1</sup> but few guidelines on cost effectiveness, on resource requirements, or on the interlinkages between the proposed interventions, for example which interventions are dependent on others to be effective, or which can only be done if others are also done.

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<sup>1</sup> A good definition of an "intervention" is to do something quite unnecessary with someone else's money.

But the main weakness in the new livestock policy from the viewpoint of conservation was the failure to appreciate the highly dynamic nature of the livestock industry, especially in the high potential rangelands where livestock, and wildlife, are most numerous. There are two critical dynamics in Kenya's rangelands today: first, the increasing rate of agricultural expansion into formerly pastoral areas (more than 50% of the rangelands receiving in excess of 800mm of rainfall a year are now converted to agriculture); second, the rapid evolution of property rights in which large land parcels previously managed under communal, or Trust, tenure are changing to small land parcels managed under private tenure – the most conspicuous example being around the Maasai Mara National Reserve where 38 communal holdings of some 33,000 hectares each have been converted into some 35,000 individually owned parcels of land.

Both trends have significant impacts on livestock and wildlife. Conversion of high potential rangeland to agriculture displaces wildlife completely, while livestock must be managed more intensively within the developing land use matrix. Land conversion from large communal holdings to small private holdings triggers a change from extensive to intensive production, with further negative impacts on wildlife. Small, privately owned and intensively managed farms are simply not conducive to wildlife conservation.

In the face of such rapid changes policy must remain adaptable and flexible – both noticeably absent in the final policy document.

Indeed, wildlife management received at best only cursory treatment, as did the promotion and management of "emerging" livestock – ostrich, crocodile, antelope, and bush meat in general. The new policy also failed to appreciate that wildlife management is included within the definition of agriculture in the Agriculture Act, under which livestock falls, which in turn opens all sorts of possibilities for the integrated management of domestic with wild species.

So in these respects the new Livestock Policy is not at all helpful to the Society's efforts to promote conservation and I fear the Society, although represented on the Steering Committee, missed an opportunity to influence the outcome of the review.

## **The Draft National Land Policy**

Turning to the Draft National Land Policy (DNLP) we see an altogether completely different kind of document, a real "policy document" but one which launches an all out and quite unprecedented assault on private property rights, on the security of such property rights, and on the free and unencumbered transfer of such property rights. The motivation behind this new "policy" seems to be issues of minority land rights and to redress real or perceived injustices dating from the colonial era, but in this case only for one particular ethnic group – the Maasai – who are certainly the largest, and arguably the richest, landowners in Kenya.

This DNLP would be a joke were it not so dangerous to the wealth and well being of millions of Kenyans. Many of its provisions contradict rights that are deeply embedded in the Constitution and if implemented would lead to chaos in the orderly business of land transactions and to endless litigation in the Constitutional court. The proposals also contradict some 17 pieces of major, extant legislation in Kenya including all the customary and religious marriage acts. It also seeks to create a new "super ministry" – the National Land Commission – with extraordinary centralised powers and staffed by political appointees. This National Land Commission would assume some of the responsibilities of a number of existing Ministries; it would have complete control over all land issues including those normally settled by the courts; and it would have new and largely unsupervised powers to devise, impose and collect a whole range of land taxes.

But the most dangerous aspect to this proposed new land policy concerns the outright assault on private land tenure. Most agricultural, urban and commercial land in Kenya is held under private freehold tenure by hundreds of thousands of small holders and other private and corporate landowners. When individuals and corporations have invested in goods and assets, such as land and buildings, and when those investments are threatened by takings, then freedom is diminished and prosperity will inevitably decline.

If implemented, the provisions set out in this Draft National Land Policy will at a single stroke remove the economic foundations of all agricultural and commercial

development in Kenya and thus undermine the creation and accumulation of wealth by its citizenry. It will lead to capital flight and disinvestment, and it will create, accentuate and perpetuate both rural and urban poverty.

The EAWLS is involved in reviewing this proposed policy for two important reasons. First, many of its members, to say nothing of its professional staff, are landowners in their own right who perhaps are not aware of the nature of this attack on their property rights. Second, the assault on agricultural and rangeland property rights will have severe knock on effects for conservation.

If the provisions of the DNLP are adopted, the stringent restrictions and encumbrances placed on the transfer of property rights means that landowners will no longer be able to use their land titles to raise working capital for land improvement and adopting new agricultural technologies, on top of which the proposed taxes on land improvement will create even greater disincentives for investment. In the face of such disincentives, standards of land management will fall as will agricultural productivity.

Wise resource husbandry involves the conservation and sustainable use of natural resources. This is by definition a long term undertaking which calls for the absolute security of property rights and tenure to create and maintain the long term perspective necessary to encourage and sustain long term investment and use.

Remove this security -- or even the sense of such security -- and owners and users of land will invest less in the future and more in the present, leading to the inevitable overexploitation and mining of resources rather than to their sustained use. Under such conditions the conservation and sustainable use of all natural resources, be it of land, of soils, of woodlands and forests, of habitats or of wildlife becomes increasingly difficult and problematic.

Other proposals in the DNLP threaten the very existence of all protected areas, National Parks, County Council Game Reserves and Forest Reserves alike, by allowing "contiguous communities" to participate fully in their management and utilisation of land and land based resources in a manner that confers benefits to them. This legalises and sanctions the invasion of protected areas and the use of the

resources contained within them – grazing, wildlife and forest products. These proposals will also legalise and sanction the invasion of large scale ranches by communities living around them, or indeed the invasion of any land by any contiguous community. The implications are simply staggering.

### **The Wildlife Policy Review**

The review of wildlife policy that is currently underway, through a process of national workshops and regional seminars, and visits by the National Steering Committee to neighbouring and southern African countries, has already received much comment in the pages of SWARA. This policy review was motivated by the loss of some 70% of all wildlife in Kenya over the last 30 or so years – an unprecedented feat achieved nowhere else in Africa except perhaps in countries riven by civil strife. The EAWLS is deeply involved in this policy review and our Director is vice-chairman of the National Steering Committee.

This catastrophic loss of wildlife clearly demonstrates fundamental failures in policy, institutions and markets; and while many of the discussions at these various seminars and meetings have, shall we say, been at times somewhat acrimonious, a consensus seems to be slowly emerging – except perhaps among those immune to objective argument. Specifically:-

- We observe a catastrophic decline in wildlife throughout the rangelands of Kenya; a lack of investment in wildlife by landowners; the elimination of wildlife in favour of agricultural and livestock production; the rapid evolution of property rights from communal to private tenure; and a total disenchantment with national and local institutions that have failed to offer practical support and solutions;
- We diagnose that under current policy, institutional and market conditions wildlife is a liability to landowners, and that it is their best economic interests to disinvest in the resource and eliminate it; and

- We conclude that our overall policy objective must be to transform wildlife for landowners from a liability into an asset by creating economic incentives for landowners to manage, conserve and invest in it.

It is clear that no single policy prescription can address all these problems. Instead, three "policy bundles" are called for, all of which are of equal importance: an **economic bundle** to improve the revenues that landowners receive from wildlife, especially in the 95% of the rangelands where tourists never have and never will venture; a **property rights bundle** to settle issues of ownership and user rights to wildlife; and an **institutional bundle** to create the required enabling environment within which what is essentially private sector conservation can flourish.

The **economic bundle** will aim to improve the revenues that landowners receive from wildlife and create economic incentives for their conservation and sustainable use. This bundle should include the wider and more equitable sharing of protected area revenues with neighbouring landowners and communities; enhanced payments for ecosystem services (perhaps from the NGO and donor communities); the implementation fair and transparent compensation schemes for loss of life and damage to property; and the expansion of wildlife tourism into new areas but without harming the areas where tourists currently go.

But it will also be important to relax at least some of the current restrictions on income generating opportunities from wildlife, and open up again the full range of utilisation and value added activities to landowners especially in the 95% of the rangelands where tourist do not venture. These include live sales of wildlife between landowners and between landowners and the State; wildlife ranching for local and overseas markets; culling of locally over-abundant populations; value added activities of tanning and sales of skins, and production of trophies and curios; and sport hunting of large mammals.

The **Property Rights Bundle** would aim to settle issues of ownership and user rights to wildlife. Not only must wildlife conservation, management and production be recognised as a legal form of land use, but also both ownership and user rights to wildlife should be devolved to the landowners on whose land the wildlife are found.

The legal foundations to the formation and registration of local wildlife and resource use institutions (wildlife forums, conservancies and associations) also require strengthening.

Finally, the **Institutional Bundle** would aim to create the required enabling environment within which private sector conservation can flourish. Of critical importance is to transform the Kenya Wildlife Service from a regulatory and enforcement institution into one that encourages and supports in every way possible the conservation, management and utilisation of wildlife on land outside the Protected areas. The KWS must recognise landowners, wildlife forums, conservancies and associations as the true custodians of wildlife outside the protected areas and use economic incentives, rather than regulation and enforcement, as the basis of an enduring partnership with the private sector in meeting national conservation goals. Ideally, the KWS should also gradually devolve the management of all Protected Areas to Private Sector management – much like the Mara Conservancy is today.

The Conservation NGOs should also reform themselves by avoiding inappropriate investment into trendy "conservation initiatives" and instead support the development of a free and unencumbered market for wildlife goods and services, both non-consumptive and consumptive alike. Their interventions should strengthen the capabilities of local wildlife resource use institutions (wildlife forums, conservancies and associations) by enhancing their skills in wildlife and habitat management and raising their commercial capabilities to develop and profitably manage wildlife utilisation ventures.

## **Conclusions**

We can see clear linkages between these three policy reviews for the future of habitat and wildlife conservation in Kenya both inside and outside of the formally Protected Areas.

The livestock policy review focused attention on the rapid conversion of high potential rangeland to agriculture, and on the rapid evolution of property rights from large land parcels under communal tenure to small land parcels under private tenure. Both trends severely compromise the long term conservation of habitats and wildlife. The new livestock policy sadly fails to address these challenges, even from the viewpoint of their importance and potential impact on the livestock industry.

The new Land Policy, by advocating an outright assault on private property rights, would have a devastating effect on the conservation of habitats and wildlife, while at the same time creating and perpetuating rural poverty – both enemies of conservation. If implemented, these proposals would generate a shift in priorities among landowners from long term investment and sustained use to short term exploitation, to the detriment of conservation values and interests. Furthermore, the proposals to sanction the use of natural resources within the Protected Areas by communities living around them must be fiercely resisted. The EAWLS is fighting against such potentially devastating proposals.

Finally, the Wildlife Policy review is focusing on the absolute necessity to transform wildlife outside the Protected Areas from a liability into an asset, and to design and put in place economic incentives which will encourage landowners to change their long term investment strategies to include habitat and wildlife conservation in their agricultural and livestock production. These efforts are receiving the full support of the EAWLS.

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