

Policy Brief

Land Use, Land Rights and Climate Adaptation and Resilience:

The Case of Vulnerable Groups in Kenya and Tanzania



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POWER SHIFT
AFRICA

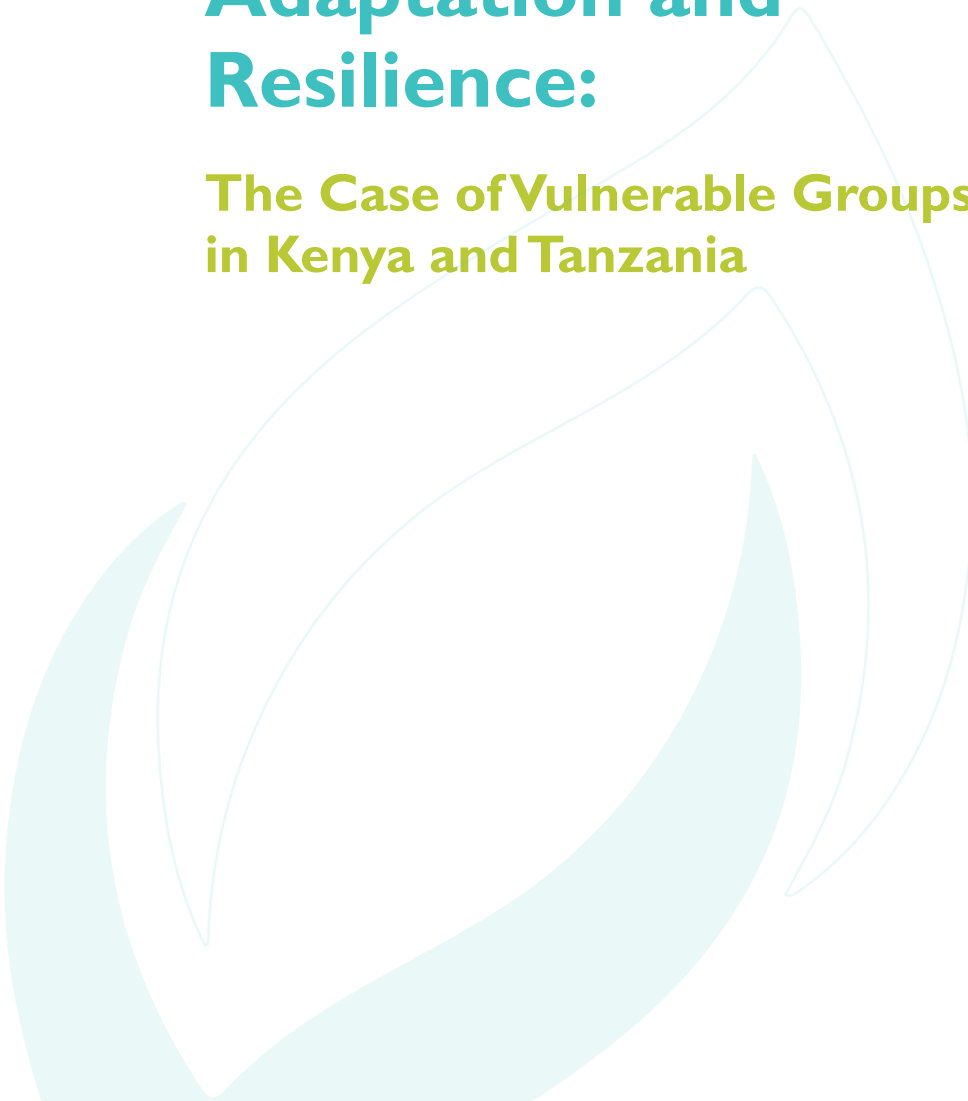


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Policy Brief (2022)

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An aerial photograph showing rows of solar panels installed in a green field. The panels are arranged in long, parallel lines, and the surrounding area is lush with vegetation. The image is positioned on the left side of the page, partially overlapping the text area.

Key Highlights

Communities in Kenya and Tanzania have inadequate knowledge of the constitutional provisions and legal frameworks on communal land governance and climate change. The existing gender norms undermine their ability to effectively respond to climate change.

Resource-based conflicts in both countries are over grazing areas, water resources, boundary disputes, urban expansion, and fencing of livestock corridors. The situation is exacerbated by more frequent and intense climate change impacts such as droughts; with vulnerable groups such as women, children, those living with disabilities and the elderly affected most.

Vulnerable groups, particularly, women and youth, are deprived of rights to own, access, utilize and control land, further raising their vulnerabilities and heralding their adaptive capacity and resilience.

Adaptation discussions at the international level do not highlight the concerns of vulnerable groups; the connection between land rights and adaptation is weak and there exists weak participation of vulnerable groups in key policy processes. The adaptation discussions in the Global Stocktake and Global Goal on Adaptation do not take cognizance of regional contexts in addressing adaptation and resilience including gaps in adaptation related to climate mobility, conflicts and land rights affecting vulnerable communities.

In both countries, insecure tenure exists due to a lack of title documents, with mega projects such as the Lamu Port–South Sudan–Ethiopia Transport Corridor project (LAPSSET), land purchase by investors, and gazettement of forests and ranches posing serious eviction threats.

Introduction

This policy brief presents the key findings of a study conducted by Power Shift Africa (PSA) in Kenya and Tanzania aimed at consolidating communities' and stakeholders' views and perceptions that inform existing structural barriers that hinder communities' effective participation in key adaptation and resilience discourses, at regional and international platforms. The policy brief presents perspectives of women's, youths', and indigenous peoples' ability to own, access and use land and how this affects their respective adaptive capacities, in light of the ravaging brutal impacts of climate crisis.

The brief underscores the fact that even though policy and legal frameworks in these two countries provide for equal rights and non-discrimination in access to resources, particularly land, women, youth and indigenous communities still face many ownership, access and land use-related bottlenecks.

The policy highlights the current situation regarding community land rights and examines impediments that vulnerable groups face in trying to realize these rights in the context of climate adaptation and resilience response. The brief provides recommendations for both policy and practice for the different actors, that can potentially strengthen land rights of these vulnerable groups, in their bid to scale their adaptive capacities. Also provided in the brief are potential pathways that can be utilized to deconstruct the existential barriers to participation of members of these vulnerable groups in climate action discourses.

This brief aims to inform policymakers, administrators, development partners, local communities, and non-governmental organizations to better understand the local dynamics and working to improve land rights and enhance participation and contribution of vulnerable groups to build resilience and enhance their adaptive capacities in the context of the existing climate emergency.

Context

Climate change is causing devastating impacts to the African continent, hitting the most vulnerable hardest, and causing food insecurity, population displacement, insecurity and water stress as a result of recurrent and more intense droughts, devastating floods and an invasion of desert locusts among other impacts. As the impacts increase, socially vulnerable communities such as women, youth and other vulnerable groups in the region are disproportionately experiencing the detrimental effects.

One of the key factors for their particular vulnerabilities to these shocks and stresses is marginalization entrenched in social norms and practices including limited access, ownership and control over land resources, which heralds their adaptive capacity. Climate change adaptation is fundamental for building resilient socio-economic and ecological systems. It is an important part of efforts to implement not only the Paris Agreement and Sendai Framework for Disaster Risk Reduction, but also the 2030 Agenda for Sustainable Development.

From an economic standpoint, land is regarded as a key factor of production against which livelihoods are hinged. Its ownership, access and use are therefore critical in addressing climate action. In both Kenya and Tanzania, the centrality of land is underscored in the respective constitutions, with an entire chapter dedicated to land and the environment, in the case for Kenya. However, realizing marginal groups' rights and particularly, women's right to access, control, and improvement of land and management of natural resources, still remains a challenge, particularly in arid and semi-arid regions.

The unequal treatment between men and women in land governance systems is linked to specific gender roles and relationships that are regulated by socio-cultural norms. As a result, vulnerable groups, partic-

ularly women, have fewer options for participating in land governance and natural resource management and for dealing with related crises. This in turn increases their vulnerability and limits their capacity to access, use, and own land. In agro-pastoral systems, women play a central role as land and natural resource managers, income generators, and service providers.

Pastoral women are not only “primary” users of land, but are also major “secondary” users, collecting rangeland products such as firewood, grass, fodder, wild fruit, medicinal plants, gum, and resin. However,

IN BOTH KENYA AND TANZANIA, THE CENTRALITY OF LAND IS UNDERSCORED IN THE RESPECTIVE CONSTITUTIONS, WITH AN ENTIRE CHAPTER DEDICATED TO LAND AND THE ENVIRONMENT, IN THE CASE FOR KENYA



many pastoralist societies are patriarchal, and men own all the livestock and land resources. While pastoral women's property rights have been afforded a certain degree of protection by customary institutions, the sustainability of such protection is likely to be lost as a result of weakening traditional institutions and new developments in land reforms. In Kenya, the enactment of the Community Land Act aims at operationalizing the provisions of Article 63 of the constitution, which deals with community land. Land reforms seek to harmonize the multiple and often overlapping legal frameworks on tenure of land and natural resources.

Key Findings

Access, Use and Control of Land Resources

► In Turkana and Garissa counties of Kenya, land is either privately or communally owned. Community leaders are the key implementors and executioners of decisions with regard to how communal land is utilized and managed. In Turkana County, access, use and control of land is under the purview of the men/household heads. This has proven challenging as it limits women and the youth in optimizing their productivity and creativity, and, hence curtailing their adaptive capacities. This is slightly different in Garissa County in which some women [at least those in urban set ups] own land and therefore make decisions on access, use and control of this resource.

► In Same and Hai districts in Tanzania, land is either communal or government owned. Community elders oversee implementation and execution of decisions on how communal land is used while the government makes decisions on public land. However, the government can seize part or the whole of communal land for 'government projects' as was the case with indigenous Maasai cultural land in Loliondo¹. Gender norms have however led to women and youth being left out of planning and decision making of land use. Their rights are unrecognized hence limiting their productivity levels by leaving their needs unmet.

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¹. The government cordoned off and forcefully and violently evicted the Maasai community from their 1,500km² ancestral land in favour of a project that they termed, 'wildlife protection'.

Land Rights and Land Use Policy

► Realizing marginal groups' rights to access, control, and improvement of land and management of natural resources, still remains a challenge, particularly in arid and semi-arid regions in Kenya and Tanzania. The unequal treatment between men and women in land governance systems is linked to specific roles and relationships that are regulated by sociocultural norms.

► Women, particularly poor women, and youth, have fewer options for participating in land governance and natural resource management and for dealing with related crises. This in turn increases their vulnerability and limits their capacity to access, use, and own land, and hence their adaptive capacity. In both counties in Kenya, in-

secure tenure exists due to a lack of ownership documents. All that the communities rely on are pronouncements by Council of Elders (CoEs) and allotment letters that are issued by land authorities. Mega infrastructural projects such as LAPSET2 lead to further dispossession of community land, exacerbating their vulnerability to the climate crisis.

► Community members in both countries are not aware of the prevailing climate laws and policies partly due to high illiteracy levels, and lack of access to this information. They however, express interest in being included in decision making platforms around land rights, use and management.

Climate Change Adaptation and Resilience

► Study sites face several comparable ecological, economic, and political challenges, which have had an influence on resident communities. Growing water scarcity, land fragmentation, widespread economic decline and historical privatization of land have come together to de-stabilize local livelihoods. Climate change exacerbates problems caused by ineffective land governance and conflict due to competition over resources.

► The climate crisis has sparked a crisis of mobility in the study sites. Around the world, in 2019 alone, some 23.9 million people were involuntarily displaced by weather-related disasters. That dwarfs the 8.5 million people displaced by the factors we so often associate with migration and displacement: conflict and violence³. Mobile and diversified livelihoods have emerged as key responses to the shifting ecological and economic circumstances.

Rotational and mixed farming for agro-pastoral communities has also been an adaptation strategy. Other strategies include: herd splitting; herd reduction by culling; splitting families; and, engaging in entrepreneurial activities such as sale of charcoal [which has led to more degradation], sale of hay, and other small scale produces.

► For communities to engage in adaptive decision-making, they require information, knowledge and skills that enable them to actively address climate risks to their livelihoods. This includes information on weather and climate projections, market locations and prices and availability of different resources. Knowledge of the costs and benefits of different strategies under different climate scenarios is critical. The skills needed include practical skills in climate-resilient agriculture, livestock rearing and natural resource management, but

² Lamu Port South Sudan and Ethiopia Transport Corridor

³ Environmental and Energy Study Institute, 2021

- also skills to analyze information and use it to make decisions about their livelihoods.
- ▶▶ Adaptation planning requires a long-term and system-wide perspective, accounting for uncertainty about the future. The risks from climate change arise from the interaction of socio-economic trends and climate impacts, both of which are inherently uncertain. Adaptation measures undertaken in isolation may lock-in vulnerability in the longer term, preclude the use of more cost-effective options, or increase the vulnerability of neighbouring communities.
 - ▶▶ Adaptation plans that do not account for uncertainty may lead to costly mistakes when projections diverge from reality. There is a need to package and sequence interventions in ways that account for systemic interactions that are robust to uncertainty.

Recommendations

Different actors have different roles to play as far as tackling the challenges posed by the nexus between land rights and use, climate adaptation and resilience are concerned. The actor-specific recommendations are presented in the subsequent sections.

For Government

- ▶▶ Strengthen climate institutions at the local levels by recruiting the right experts who can connect land rights with adaptation and resilience issues to development, and, provide a budget for the climate institutions to enhance their operations.
- ▶▶ Develop robust climate policy instruments and institutional frameworks to support resource mobilization for climate actions at the local level.
- ▶▶ Entrench ambitious and actionable adaptation strategies related to marginal groups' land rights and access in NAPs and NDCs, as a stand-alone thematic component with measurable outcomes.
- ▶▶ Facilitate horizontal and vertical co-ordination within the public sector to build capacity for adaptation and address risks that lie across sectoral or geographic boundaries.
- ▶▶ While developing adaptation plans, the government needs to be cognizant of the interconnectedness and interdependence of both the rural and urban areas' needs. Young people would ideally migrate to urban areas when the climate crisis bites, with the hope of securing employment. There needs to be policies in place aimed at managing the potential population explosion and risks that this mobility may pose to urban areas even as the government puts in place measures to address the climate crisis in the rural and peri-urban areas.
- ▶▶ Develop partnerships with civil society and other stakeholders to step up efforts on awareness raising and knowledge creation on land rights among climate vulnerable rural communities.
- ▶▶ Ensure that climate adaptation initiatives should identify and address gender-spe-

cific impacts of climate change particularly in areas related to energy, water, health, agriculture, food security, conflict and disaster management. Gender issues associated with climate change adaptation should be considered, such as resource access inequalities, including but not limited to credit, extension and training services, information and technology. Women can be agents of change in managing climate impacts. Progress towards SDG 5: Achieve gender equality and empower all women and girls will facilitate women's active role in adapting to climate change. Adaptation decisions need to be informed by a nuanced understanding of gender dynamics to avoid entrenching inequalities and vulnerabilities. Gender dynamics are context-specific, varying across countries, cultures, ethnicities and communities.

For Policy Makers

- ▶▶ Practitioners and policymakers must not only re-examine established ideas that may lack nuance and complexity, but also strive to incorporate new knowledge and community perspectives about how marginalized groups adapt to and their unique challenges in their shifting circumstances.
- ▶▶ Since it's practically not feasible to eliminate all risks from climate change, policy packages should integrate measures that enhance people's ability to "bounce back" after adverse climate shocks. These would entail improved contingency planning as well as increasing access to financial protection such as insurance and social protection programmes.
- ▶▶ Consider inclusivity and mainstream gender issues in decision making particularly as it relates community resources such as water, land, and biodiversity.
- ▶▶ Access to climate information is critical for adaptive management of livelihoods. Policy makers need to complement communities' wealth of indigenous knowledge with scientific and technical information to enable local adaptive decision-making.

For Civil Society

- ▶▶ Put in place strategies to ensure that adaptation discussions at the international level needs to highlight the concerns of vulnerable groups vis land rights and participation in key policy processes. The Global Stocktake process and design of the Global Goal on Adaptation under the UNFCCC, for instance, needs to consider the different regional contexts in developing the different interventions.
- ▶▶ Ensure that analysis of vulnerability goes beyond exposure and sensitivity to climate impacts, to explore the different dimensions of adaptive capacity and identify barriers that communities face in applying their existing capacity to respond to climate impacts.
- ▶▶ Partner with local and sub-national governments to step up efforts on awareness raising and knowledge creation on land rights among climate vulnerable rural communities.

For Communities

- ▶▶ In order to facilitate risk management and adaptive decision-making, there is a need to overcome traditional perceptions of wealth in pastoral communities and to build understanding of the value and locally specific characteristics of resilience such as diversifying to agricultural practices. Adapting agriculture and broader food production systems to climate change will be instrumental in achieving SDG 2: Zero Hunger as well as the goals of the Paris Agreement.

For Funders

- ▶▶ Given the inextricable connection between land rights and adaptive capacity of vulnerable groups, development partners and funders need to comprehensively integrate women and youth empowerment on land rights and use, as a programmatic outcome. There is need for enlightening of the community on issues around land rights and existential land use policies.



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