NO OPTION BUT TO SETTLE! THE COMMUNITY LAND ACT, DEVOLUTION AND PASTORALISM IN SAMBURU COUNTY, KENYA

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Abstract

This article examines the process of securing land rights for pastoralists in Kenya, applying the concept of sedentism to understand the impact of two recent changes in Kenyan land governance. In 2010, the Government of Kenya passed a new constitution, which devolved government power to the local level. A declared aim was to give communities greater influence over governance of their lands. Then, in 2016, the Government passed the Community Land Act, which aims at formalising community ownership of land through group registration. Drawing on fieldwork among pastoralists living in Samburu County in Northern Kenya, we show that despite ostensibly aiming to empower local pastoralist communities and provide better recognition of their land rights, these two changes interact to promote the sedentarisation of pastoralists. The Community Land Act has treated communal grasslands as clusters of discrete parcels rather than as integrated rangeland ecosystems. In combination with devolution, this runs counter to the flexible and negotiated forms of land governance upon which pastoralists' livelihoods rely, thereby making them susceptible to sedentarism and dispossession.

KEYWORDS: devolution, sedentism, pastoralists, Community Land Act, Kenya

1. Introduction

In the past few decades, several governments in Sub-Saharan Africa have introduced land law reforms with the declared purpose of securing communal land rights (Bruce and Knox 2009; Fitzpatrick 2005). In Kenya, the 2016 Community Land Act called for collective registration of community land, often under customary forms of land tenure, such as those employed by pastoralists (Di Matteo 2021; Gargule and Lengoiboni 2020). One argument in favour of these reforms is that they will ensure pastoralists' access to the large tracts of land they need to maintain their lifestyle and mode of production.

The push to recognise communal land rights stands in the face of a longer

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history of privatisation and individualisation of land, which goes back to the colonial era. In Kenya, the British Government viewed communal land as an obstacle to development and therefore implemented tenure reforms aiming at privatising land, particularly in pastoralist areas (Markakis 1987). During this period, land reforms put land ownership in the hands of individuals expected to manage land in a more rational way (Bruce 1998). Land policies in favour of sedentism, thus, started during the colonial period. The land policies disregarded pastoralists' mode of life, leaving behind far-reaching challenges and changes in social organisation (Simpson and Waweru 2021). First, colonial land policies focused on expropriating large tracts of land for white settlers, some of whom in Kenya directly impacted land occupied by pastoralists in Northern Kenya by constraining their mobility (Okoth-Ogendo 2002). Settler farms were established in exclusive areas, the white highlands, including large ranches in Laikipia next to Samburu (Waller 2012). The expropriation of land for settler ranches and/or introduction of boundaries considerably reduced the amount of land accessible for pastoralists and constrained their effective mobility (Okoth-Ogendo 2002).

In postcolonial times, the trend towards privatisation and sedentarism continued, often in the name of economic development. The push for individual property rights built (and still builds) on neoliberal thinking, exemplified by Hernando de Soto's (2000) argument that land registration and titling promote local development because such reforms will secure benefits to and therefore incentivise individuals to develop their holdings. Even for areas under communal land tenure, there has been a push for legalisation and formalisation of property rights (Benjaminsen et al. 2009; Greiner 2016). Introducing individual property rights in pastoralist communal rangelands has, however, resulted in the fencing of individual lands, which has challenged pastoralist mobility and pushed to sedentarisation, for instance, because these lands are often fenced (Pas Schrijver 2019; Galaty 2013).

More recently, there have been strong voices opposing the trend towards sedentarisation. The argument is, among other things, that pastoralists are used to adapting to extreme weather conditions, and that their mode of production and lifestyle, which implies that they move with their cattle from one place to another in search of pasture and grass, is well suited for them to also adapt to climate change (Scoones 2021; Niamir-Fuller 1999). This is one of the reasons for the recent push for land law reforms and for securing communal land rights.

Some scholars have cast doubt on the prospects of securing communal rights. Di Matteo (2021; 2022) argues that legal processes of land and devolution alone are not solutions for communal tenure reforms. Instead, the political processes that invariably involve local elites hinder the success of land reforms. Boone et.al (2016) and Gargule and Lengoiboni (2020) further

highlight the complexities of implementing such reforms, and the hurdles that the processes place on communities to participate and share their views. This scepticism is based partially on a lengthy record of failed development interventions among pastoralists (Dyer 2013; Fratkin 1997; Niamir-Fuller 1999). Many development projects in pastoralist areas have been organised to benefit settled communities, attracting nomadic communities to these centres (Hassan, Nathan and Kanyinga 2022).

In Kenya, communal land law reforms have taken place in the context of devolution (Gargule and Lengoiboni 2020; GOK 2010), that is, a shift of governmental power from central to local institutions (Oyugi 2000). The proponents of devolution argue, among other things, that devolved land governance is likely to increase local peoples' ability to influence decisions of importance to their own situation (Rondinelli 1981; Oyugi 2000; Boone et al. 2016), such as decisions concerning access to land and resistance to land grabs and large-scale infrastructure projects (Lind, Okenwa and Scoones 2020). Furthermore, it is hoped that a transfer of power and resources to local institutions will increase local peoples' opportunities to participate in government and put them in a position to hold public officials accountable (Nathan and Boon 2012). Specifically in relation to land, some scholars consider devolution an avenue to promote good governance of land, and secure rights for local individuals as well as communities (Gargule and Lengoiboni 2020).

Not all agree that devolution will necessarily lead to increased participation and accountability, or secure local communities' access to land. Lind (2018) and Rodgers (2021) argue that some of the processes of devolution have potential to create tensions at local levels. Other studies show that devolution has added to the institutional complexity of land administration, sometimes leading to disputes between different government institutions and internal resistance and stalling of services to the citizens (Boone 2012; Bassett 2020). Devolution has brought about a web of powerful networks that seek to benefit from land in Kenya and the central role that political influence and power struggles play in land management (Klopp and Lumumba 2017; Kanyinga 2009). According to Di Matteo (2022), and Klopp and Lumumba (2017), neo-patrimonial state structures and elite patronage have continued to define land policy reforms in Kenya.

For many pastoralist communities in Kenya, there have been tensions over the complex and contested meanings of land, including the notions of belonging that underlie identity-based claims to place (Drew 2022). In terms of securing community rights, not all agree that these formalisation processes will necessarily support pastoralists' mode of production (Hassan, Nathan and Kanyinga 2022). According to Niamir-Fuller (1999), access to land and securing rights of land access, support the pastoralist mode of production. The

focus on boundaries and legal processes that undermine rights of access thus introduce rigid processes, which in turn undermine their mobility (Robinson and Flintan 2022).

The current paper argues that even legal reforms with the declared aim of introducing community land rights and devolution can give rise to conditions that favour the sedentarisation of pastoralists. The finding is that a fundamental 'sedentist bias' continues to shape how land reform is imagined, even when it claims to support pastoralist communities' land needs. This sedentist bias includes nuanced and often overlooked changes in the ways land is defined and divided, such as the parcellation of land and bounding of territory. The argument draws on field research from 2019 and 2021 on the implementation of the Community Land law in Samburu County in Kenya.

The paper starts with a brief background on the land law reforms in Kenya, and a description of Samburu County, followed by a discussion on the sedentist lens through which much development in pastoralist areas has been conceived. The succeeding sections focus on pastoralist communities with the devolved land governance system, State recognition and registration of land rights, which we will refer to as formalisation of community land and bounded territories. This takes us to the discussion and conclusion about how legal land registration and devolution have contributed to sedentarism.

Brief background: land law reforms in Kenya and Samburu County

Kenya introduced a new constitution in 2010 providing for a devolved government system that builds on 47 county governments with elected officials. The county governments are responsible for local land matters and land administration (GOK 2010). The Constitution directs the administration of various categories of land and provides for communities to improve the governance of their land. Moreover, it aims at transferring powers and responsibilities to local people, including in land administration, and recognises their right to manage their own affairs.[1] In particular, the Constitution refers to the rights and interests of minorities and marginalised communities.[2] Pastoralists in Kenya are among such minorities and marginalised communities.

In 2016, the Kenyan government enacted the Community Land Act to secure land rights for various communities (GOK 2016). The law is based on the constitutional requirement that land 'shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest'.[3] Policy and legal recognition of community land is particularly significant for the

1 Government of Kenya (2010) Article 174.

2 Ibid.

3 Ibid. Article 63.

pastoralists, where most land is still communal, and land rights are determined based on non-statutory local institutions and rules (Okoth-Ogendo 2002).

Ecologically, most of Samburu County is classified as low potential rangeland with minimal annual rainfall. Most of the land is used for pastoralism, and the remaining medium potential areas are used for agricultural production (Samburu County Government 2018). Land in Samburu County is mainly collectively owned by registered or unregistered group ranches,[4] thus categorised as community land. There are three constituencies in Samburu. Samburu West, where this research was conducted, mainly comprises group ranches that are either already subdivided into individual parcels or collectively owned, and with a low potential for agriculture.

The implementation of the Community Land Act in Samburu County has been ongoing since 2018. Recent research from Samburu indicates that some community groups are in doubt whether to register their land as community land or subdivide it into individual plots (Hassan, Nathan and Kanyinga 2022). These considerations can best be understood and explained in the perspective of how communal land governance has developed historically, deeply entwined with sedentist biases.

Pastoralism and sedentist bias in land governance

Pastoralism in East Africa has changed over time. The nature of pastoral livelihoods has increasingly been affected by changing land use, fragmentation of rangelands and climate change (Catley, Lind and Scoones 2013; Galvin et al. 2008). In addition, there is increasing pressure on pastoralists' access to land due to large-scale land acquisitions and land grabbing (Fratkin 2001; Lind, Okenwa and Scoones 2020). As argued by Mkutu (2022), large-scale infrastructure projects bring about anticipatory land enclosure, with communities preparing to benefit from compensation. This implies that privatisation happens when investments in infrastructure are expected, in turn hindering pastoralists' mobility. The politics of land reforms have also sparked elite interests in owning land individually (Lind et al. 2020), speculating in land for compensation (Greiner 2016) and investing in land for infrastructural prospects (Akall 2021). This creates avenues to disadvantage local communities. All contribute to the pressure for grazing land for many pastoralists.

While migration over large areas in search for pasture and water has

4 A group ranch is defined as 'a livestock production system or enterprise where a group of people jointly hold freehold title to land (theoretically on an equal basis), maintain agreed stocking levels and herd their individually-owned livestock collectively' (Government of Kenya 1968), Cap. 284 and 2.

remained a dominant feature of pastoralism in Kenya, land policy and law reforms have proceeded with a bias favouring sedentary agricultural communities, therefore tending to prioritise the physical settlement of individuals on private holdings. In some instances, lawmakers have simply failed to understand and recognise pastoralism as a mode of production that suits existing communities' lifestyle and environment. Some scholars explain that these biases arise from nations and states defining themselves and the identity of their citizens by referring to territories and boundaries, which is counter to the unique practices among pastoralists that cross boundaries and are fluid and connected (Semplici 2020). According to Niamir-Fuller (1999), governments and international development organisations have failed to consider and meet pastoral peoples' needs and to accommodate their unique mode of production. In general, there is agreement that policies in Kenya have failed to fully secure pastoralists' access to rangelands and mobility and to support their livestock and by that secure their livelihoods.

The British colonial government's creation of ethnically defined districts between 1912–1917 affected communities living in northern Kenya, including the Samburu pastoralists. The establishment of territories and subsequent restriction of movement of communities and livestock beyond certain areas meant that pastoralists could not anymore move to grazing fields in neighbouring districts in times of drought as they had used to do (Tarus 2004; Simpson and Waweru 2021). These policies continued to hinder the interaction between different pastoralist communities in northern Kenya (Waweru 2012). The efforts to manage this vast region continued to challenge the post-colonial government.

The colonial government tended to view restrictions on pastoralist movements as a solution to many kinds of problems. For instance, the government viewed pastoral lands as degraded, and pastoralists were confined in certain areas in what the colonial government saw as attempts to avoid overgrazing. In 1936 in Samburu, the colonial government introduced the Lorroki Plateau-Grazing Scheme, which it extended to the entire Samburu district in the 1950s. The declared aim of these schemes was to avoid overgrazing of the rangelands (Waller 2012) by creation of paddocks for rotational grazing and limiting herd sizes through obligatory destocking.

According to Simpson and Waweru (2021), the colonial administration found Samburu district less productive and not what they preferred 'government on the cheap'. This then meant there were no substantial development projects, thus further marginalising Samburu and other communities in northern Kenya (Waweru 2012).

The post-colonial government in Kenya faced multiple and protracted land issues in the entire country and concerns about development and marginalisation

in the northern part of the country (Turton 1972). The marginalisation continued after independence (Markakis 1987), as the new government also did not invest in any substantial programmes for education, social amenities or development that would fit the mobile communities like pastoralists (Turton 1972). Further, there were little or no efforts to address land issues in pastoralist areas at least before 1968 when the Land (Group Representatives) Act was introduced (GOK 1968). Sanford (1983) states that the group ranches aimed at securing communal ownership of land. Kimani and Pickard (1998) and Fratkin (2001), however, argue the Act further isolated pastoral communities. The fate of the group ranches as widely documented by Mwangi (2007) and Lenaola et al. (1996) reflects the problems that continued to persist among pastoralist communities. Specifically, the creation of 47 group ranches in Samburu in 1976 supported by the World Bank (Letai and Lind 2013) meant that land was now collectively owned, although under the name of one group representative, and not accessible to other herders (Galaty 2013). Land ownership was seen as important, as it was thought by policymakers that resources would be better managed once secure ownership was established (Musembi and Kameri-Mbote 2013; Odote 2013). The government implemented the group-ranch system to secure pastoralists' decision-making rights over and access to communal land.

As there was little or no effort to support the mobile lifestyle of many pastoralists and safeguard the wellbeing of livestock, access to land for pasture continued to reduce (Waweru 2012). At the same time patronage politics in government extended to non-governmental actors contributing to the blockages in land reform processes (Klopp 2000). This further politicised land rights and land issues with contests over land evolving over the years (Kanyinga 1998). The lack of support for pastoral practices and the exclusion of the region from development projects added to the marginalisation of northern Kenya (Markakis 2004). Subsequent efforts to bridge the gap and address inequalities took the form of replicating land management programmes from other areas in Kenya that did not fit pastoralists' lifestyles.

Yet, pastoralist communities had their own customary practices and norms that governed their access of land and resources (Okoth-Ogendo 2002). While pastoralists relied on reciprocal arrangements of access and negotiated access among their communities and outside their kinship ties (Fratkin 2001), most of the government efforts and policies on land were in line with the land use of settled agricultural communities. What was lacking in many of these instances was a proper understanding of pastoralism as a mode of production suitable for the environment. The independent government pursued the same thinking as the colonial administration – viewing the land occupied by pastoralists as 'devastated by overgrazing' (Simpson and Waweru 2021). Waller (2012) documents the failure of the colonial government to safeguard livestock

production and pastoralists' lifestyle. The effect is seen in the subsequent debates about the viability of pastoralism and suggestions on the need to transform the practice.

While the colonial and early post-colonial governments used to view pastoralism as an unsustainable mode of production, the recent debates are more nuanced. Scholars have increasingly recognised that pastoralism is still the mode of production that is best suited for rangelands in arid and semi-arid lands given the dynamic nature of how it is practised (Scoones 2021). One of the arguments is that since pastoralists have lived in these areas for centuries, their cultural practices and historical memories are particularly well-adapted to the ecosystems and harsh circumstances within which they live, thereby contributing to the health of rangelands. Their traditional ways of life have been environmentally sustainable and enabled them to cope with the variability of weather and high levels of uncertainty (Scoones 1994; Krätli and Schareika 2010). On the other hand, there are also scholars who point to various factors such as population increase, pressure on land and the changing climate (Opiyo et al., 2015) as undermining the viability of the pastoralist mode of production.

The different land needs and differentiated access to land for pastoralists also require the consideration of different community and customary structures in the different pastoralist communities as they determine how such resources are governed (Robinson and Flintan 2022). The implementation of the Community Land Act in Kenya and the effects of the push for legal recognition, including devolution of land governance, thus presents different challenges for interventions aimed at devolving land governance and interacting with pastoralists' customary institutions.

Devolution of land governance and pastoralists' communal land

The Constitution and the Community Land Act introduced devolved governments in Kenya, and thereby a significant shift in the management of land. At the national level, the Ministry in charge of Land (henceforth Ministry of Lands) underwent changes with the establishment of the independent National Land Commission that now oversees public land (GOK 2010). At the local level, the governance structure was reorganised and the Community Land Act established the Community Land Management Committees (CLMCs) to enhance democratic land governance. These committees consist of elected officials, and there must be equitable representation of men and women (GOK 2016).

In spite of the intentions to devolve decisions about land rights to local communities, and to democratise the decision-making processes, this article finds three interconnected ways in which devolved land governance reduces

pastoralists' access to communal land, which again creates barriers to herd mobility and contributes to the settlement of pastoralist households.

First, although the new committees are elected, which can be seen as a step towards democratising land governance, they have been established in parallel to existing customary institutions. For centuries, councils of elders have taken all decisions about pastoralists' access to land, but now government sanctioned committees comprised of a mix of different groups take over from – or overlap with – the traditional authority of the elders' councils. By bypassing pastoralists' customary institutions, 'the process fails to recognise the unique land access rules among the pastoralists'.[5] This complicates pastoralists' access to pasture especially where negotiation and flexible tenure arrangements are common (Lesorogol 2008). It is these flexible rules of access that support mobility and thus in their absence pastoralists' mobility is hindered. Ironically, the committees provided by law to improve land governance thus weaken customary institutions for land governance.

Implementing the Community Land Act complicates tenure considerations for Samburu pastoralists. The Act introduces processes of decision making which are different from customary practices. For instance, the law provides for a community land management committee and community assembly as key structures for decision-making on land governance and in annual general meetings. These structures are established by law and built on the understanding of a sedentary community. Only groups that settle in a particular physical place can establish a committee system to organise governance. A settled community is identifiable for legal and administrative purposes and can assemble to conduct meetings and take decisions as a community. This is more difficult for mobile pastoralists, who move from place to place and come together in different group formations over time. In interviews with Samburu community members, they indicated that there is always a problem identifying a date for the annual general meeting. This is so especially during drought seasons because many families relocate with their livestock in search of pasture. The new law causes anxiety, especially because it requires people to do things differently from their traditions. One elder noted that 'many people are afraid of moving far away with their animals as critical decisions on the future of their group ranch could be made in their absence, so we have settled near a shopping centre to access information on what is happening in the community'.[6]

Community members in Samburu said that there has also been a drive to replace customary institutions because 'they are patriarchal and less inclusive'.[7]

5 Focus group discussion, Community member in Samburu County, Nov. 2019.

6 Interview with a community elder in Samburu, Jan. 2022.

7 Interview with a land official (male) in Samburu County, Dec.2019.

For instance, they shared that the community sees older male pastoralists as the custodians of the community norms and customs. While some of these norms have historically kept women and youth at the periphery of community decision-making processes in pastoralist communities (Lesorogol 2008), community members argued that ongoing processes have weakened the role of older males and elders. For example, one community member explains 'we are being asked to elect officials to manage our group ranch, but we already have the elders who have overseen our community land. The law even says who we should include in the committee. We don't know how they will work without the elders'.[8]

Other community members state that, for instance, teachers and retired public officers are considered eligible because they have good knowledge of what the law requires. However, these individuals are people leading a sedentary life and do not represent the majority relying on pastoralism. They have permanent home structures, and are employed and operate from a physical facility, for example teachers in schools. With these requirements, the law has inadvertently made sedentism an important aspect or even a condition for appointment to these positions. This narrow focus on implementing land policies and side-lining pastoralists' customary institutions is reflected in recent evidence from Kenya,[9] which shows the failure of formal institutions in managing community land and entrenching local accountability (Boone et al. 2016; Gargule and Lengoiboni 2020). Indeed, the lack of recognition of pastoralists' own institutions reflects sedentism biases as the alternatives suggested are based on formal structures that are unsuitable for pastoralists based on how they have lived and organised their livelihoods.

Second, the community land reforms happen amid lack of support for pastoral modes of production by national and county government officials and their bias towards ensuring people have individual holdings on which they can settle or adopt sedentary economic activities. One of the land officials indicated that 'most officials are tired of supporting the community choices to keep animals in these harsh conditions. We do not understand this'. The attitude towards pastoralists' choice of livelihood and their mode of production also implies that most of the interventions developed for these communities are not in tandem with the pastoralist's aspirations and key aspects of their livelihood, like mobility.

Third, there are multiple institutions involved in the management of community land. The national government's roles are handled at the county and local level through different structures. The devolved governments have both

8 Interview with a community member, in Samburu County Dec. 2019.

9 Interview with a land official, in Samburu County, Dec. 2019.

an executive and a legislature. At the county level, the county land boards (formerly the district land boards) have the mandate to assess consent and approve the subdivision of parcels of land when community land is subdivided. At the community level, the Community Land Act creates the Community Assembly, which is the community's voice in decision-making on community land matters. Here, the community assembly elects the Community Land Management Committee to manage community land on their behalf.

Government officials and community members in Samburu find that the multiple layers of responsibilities are a challenge for local communities, who need services closer to them as promised by devolution. The multiple structures, further, point to the administrative burden of devolved land governance. For pastoralists these institutions create confusion in service delivery and they have not been fully devolved in practice. One of the land officials stated that the current devolved structures 'only have ward administrators who are located in centres covering large areas in Samburu'.[10] Government officials indicated that the requirement of having devolved structures of governance to the lowest levels in the community and closer to community had not been implemented. The heavy administrative structures imply that pastoralists closer to centres and towns will have easier access to services and safeguard their land in cases where there is conflict or subdivision. This creates tension for those who are away in far-flung areas. This provides avenues of sedentarisation for pastoralists with services placed as baits and administrative processes happening in earnest. National government officials listen to complaints from the community but indicate that they are not entirely in charge of community decisions.

While the structures of devolved land governance appear to support community participation, the underlying challenges posed by government bureaucracies place difficulty in such reform processes and in turn support sedentarisation (Lechler and McNamee 2017). These together imply that pastoralists will need to move closer to centres to access services.

Securing community land and the implications for pastoralists' sedentarisation

Attempts at securing and managing communal land occupied by pastoralists in Kenya through land law reforms has been ongoing since independence. This includes the 1968 law that led to the establishment of group ranches as mentioned above (GOK 1968). Barely two years later, many group ranches decided to subdivide their collectively owned land into individual privately owned pieces. The reasons for subdivision, especially of Maasai group ranches, have been debated extensively (Mwangi 2007).

10 Interview with land official in Samburu County, Jan. 2022.

There has been an ongoing debate around existing policy directives to safeguard land occupied by pastoralists (Okoth-Ogendo 2000). The review of the land laws and the introduction of the National Land Policy of 2009, for instance, set fresh land law reforms that reflected the need to recognise pastoralists' livelihoods and management of the communal land that they occupied, including recognising community rights over their land, in essence replacing the Land (Group Representative Act) 1968 with the Community Land Act of 2016. The Community Land Act in Kenya promised to recognise communal land rights and safeguard customary tenure and rights, but in some instances during fieldwork, the interviewed community members asked questions about community land rights themselves.

In Samburu, the trend continued over the following decades, especially in the highlands areas where land was fertile and good for agriculture (Fratkin 2001; Lesorogol 2008). According to the Samburu County Government (2022), land adjudication within the then larger Samburu District was initiated in the late 1960s to early 1970s and progressively resulted in the formation of a number of group ranches. According to Samburu County Government (2018), there were 52 group ranches in Samburu by April 2022. Overall, however, there has been an increased tendency for land subdivision over time in Samburu. While the first wave of subdivisions mainly took place in the areas of Samburu with some potential for agriculture (Fratkin 2001; Lesorogol 2008), the question is why there has been this continued drive to subdivide, including what has been the role of different actors at the national and local level (Lesorogol 2008). Our fieldwork points to three complementary explanations.

First, some respondents from the local communities considered subdivision as a way 'to reduce the exploitation by richer pastoralists who have large herds of cattle and therefore benefit more from community land than poor pastoralists with few cattle'.[11] This indicates that there is growing tension between local elites and the ordinary pastoralists around the argument that the individuals who have money and are well educated exploit this advantage to gain more land at the expense of ordinary pastoralists. Pastoralists with smaller or medium-sized herds are concerned that local elites often understand the land subdivision and adjudication process better than they do. Therefore, during the process of subdivision, the elites can influence and take over the most valuable tracts of land, for instance land near urban settlements (Hassan, Nathan and Kanyinga 2022). The local elites include employees of the county government or businesspeople who have invested in the county headquarters. Some community members have settled in the local market centres with 'elites who generate rent through contracts with the county government building to

11 Interview with a community member in Samburu, Jan. 2022.

meet the growing demand'.[12] The settlements in turn support sedentarisation, as more activities attract communities to the market centres.

Second, a recent study of group ranches in Samburu suggests that the implementation of the Community Land Act pushes to subdivision given the way the land registration processes play out, and given the conflicting land claims of the different community groups (Hassan, Nathan and Kanyinga 2022). There are at least three contributing factors. One is that the 'continued need to diversify and include other economic activities to supplement pastoralist livelihoods' has meant that 'more community members will fence their land to protect their crops and thus hinder grazing animals from accessing their fields'.[13] In this way, subdivision addresses individual needs of community members who had turned to agropastoralism. Another factor is that many community members have sought 'to return to their original group ranches where they can claim membership'.[14] The community Land Act requires the group ranches to update their registers to include all adult members. This drives group ranches to subdivide so that families can have their own pieces of land. Some of them fear that those who have large families will be advantaged if adults are continually added in the register. Because of this, they desire to subdivide to avoid reduced family allocation of land when more people are included in the register. As such, community members view subdivision as a step to avoid the crisis of contested ownership. Additionally, some community members indicate that they expect subdivision will help them address the unequal access to land that exists given that those with fewer herds would then use their private plots and sell pasture to those who have more animals. In this case then subdivision is seen as an avenue to open up negotiation for equal access (Jeppesen and Hassan 2022).

Third, different government projects have inspired pastoralists' decisions to have individual plots in Samburu and introduced alternative livelihood strategies for them. Government officials working closely with non-governmental organisations 'have introduced farming, beekeeping and zero grazing among Samburu pastoralists'.[15] The argument favouring livelihood diversification also links to climate change. In reference to climate challenges, some government officials have pointed out that 'irrational movement with animals is no longer feasible'.[16] This reference to mobility as an 'irrational movement' has considerably shaped county and national government thinking, which implies that pastoralism faces challenges that could make it unsustainable. Some

12 Interview with a community member in Samburu, Nov. 2019.
13 Interview with land official in Samburu, Nov. 2019.
14 Interview with a community member in Samburu, Jan. 2022.
15 Interview with a government official in Samburu, Nov. 2019.
16 Interview with a land official in Samburu, Jan. 2022.

government actors see the main solution for pastoralists as subdividing their group ranches with the aim to diversify the pastoralist families' economic activities.[17] Just as in colonial times, subdivision of land constrains mobility for pastoralists by reducing the amount of available communal rangelands, and because many fence off their land to prevent grazing of livestock by others (Weldemichel and Lein 2019).

Overall, increased land sales and growing urban life in Samburu has meant more people settling in town areas, especially near the county headquarters. Community members indicated that land officials were encouraging group ranches bordering these town centres to subdivide their land so members can develop their holdings or sell off to prospective buyers who put up commercial buildings. Indeed, several government officers expressed dissatisfaction with what they considered a 'slowed change process among pastoralists and their inability to think beyond animal rearing'.[18] In their view, pastoralism is unproductive and not economically viable. Similarly, programmes by government and non-governmental organisations provide much needed hay and fodder for livestock to help pastoralists adapt to drought caused by climate change. These programmes contribute to creating sedentary conditions for pastoralists, who increasingly 'buy and feed their livestock at a central place, creating the need for them to settle in these areas'.[19]

In sum, the above examples suggest that the Community Land Act, instead of securing community rights and supporting the pastoralist mode of production, in many ways pushes to processes of sedentarisation. The new legal framework undermines existing community rules and customary practices, government officials lack appreciation of pastoralists' need for rangelands and recommend subdivision, and when one group ranch decides to subdivide, it becomes more difficult for the neighbouring group ranch not to subdivide. All these factors constrain pastoralists' mobility and access to large tracts of common rangelands and instead create conditions that favour sedentarisation. Maybe less surprising, subdivision tends to favour pastoralist elites, who can capture the best land.

Bounded territories and land governance for pastoralists

Establishing bounded and closed territories was a vital feature of colonial rule, which presumed that physical territories should correspond with ethnic groups. This made administration more feasible for the colonial power but started a process of weakening the customary arrangements for pastoralists'

17 Interview with a government official in Samburu, Jan. 2022.

18 Interview with a county government official in Samburu, July 2021.

19 Interview with a community member in Samburu, Jan. 2022.

interrelations and access to land. Indeed, Gargule and Lengoiboni (2020) find that the unique reciprocal arrangements that pastoralist communities rely on have been undermined by the very rules established to govern their mobility. They argue that the conflicts over natural resources among pastoralist communities was further perpetuated by the fixed ethnic boundaries, which also ignore the role of customary institutions in accessing land for pasture.

As mentioned earlier, one of the effects of colonial policies was that the Samburu pastoralists were separated from interacting with other communities. Specifically, the effect of the separation of the Samburu and Turkana pastoralist groups was sometimes forceful, as was the experience of the Turkana when the British removed them from what the latter in 1921 considered part of Samburu. The removal was not entirely successful, and some communities of Turkana pastoralists remained in the northern part of Samburu, which they continue to inhabit to date.[20] Although major changes in infrastructure and social services continued until after independence, most pastoralist areas remained isolated with little or no development compared to other parts of Kenya (Lind 2018).

The post-independence government continued perpetuating boundary creation and individualisation of communal land, further undermining pastoral mobility (Okoth-Ogendo 1991). This process facilitated yet another round of creation of boundaries, territories and immobilism of the pastoralists. The creation of group ranches in communally-owned land altered the meaning of communal grazing because it now meant group ranches were collectively owned only by members of specific group ranches. Furthermore, this also introduced a new interpretation of land ownership: only registered members of group ranches were considered owners of the group ranch. Registration of the group ranch itself required that a few members would be entrusted with the registration process on behalf of the community, but this did not mean they owned the group ranch.

Reciprocity was entrenched among pastoralist communities as a form of mutual access to grazing land and water resources. However, establishing group ranches and introducing boundaries redefined how groups would relate. The boundaries weakened the framework of reciprocity because many pastoralist communities in the past relied on mobility across the vast arid and semi-arid rangelands. The new bounded ranches halted this mobility or constrained mobility by introducing new ways of negotiating access to grazing land.

During interviews in Samburu, some reflected on the changing nature of their mobility routes. They noted that ‘it has become relatively difficult to

20 Interview with a land official in Samburu, Nov. 2021.

move with animals, there is no route for us to follow'.[21] In some instances, some individual members of group ranches also fenced their holdings, and this had the effect of blocking mobility routes. In the end, some members resorted to grazing on roads and sidewalks.

The Community Land Law requires pastoralists to think about boundaries even more than before. They need to define the boundaries of their land holdings when land is unregistered (Samburu County Government 2022). In interviews with land officials in Samburu, some pointed out that communities are 'in the process of identifying the boundaries of their land which is now complicating existing known boundaries due to overlaps in physical boundaries in different group ranches or communities'.[22] Historically, no claims of ownership have been necessary for the pastoralist communities to access land, especially because elders would always negotiate with other elders to access land elsewhere. Negotiations and reciprocity played an important role in access. The implementation of the Act creates conflict within communities having to claim territories vis-à-vis each other. While the idea of identifying and marking boundaries of community land may have come from the idea of safeguarding their community land rights, it is creating new boundaries that hinder the movement of livestock as individualised land plots close off livestock corridors.

The previous provincial administration consisted of districts, divisions, locations, and sub-locations with the sub-location as the lowest administrative unit. The boundaries of these units remain in place. However, under the new devolved system, the county government has its own distinct structure, its boundaries aligned with electoral divisions. This means that the national and county governments' administrative units are not coterminous. This is a challenge for pastoralist communities in Samburu. The communities rely on different administrative offices in different units to access services. Where boundaries of administrative units differ from the boundaries of electoral divisions, such as the wards and parliamentary constituencies, it increases costs for individuals who require different services from these offices. The offices are located in different areas, and therefore the transaction costs increase due to time spent and expenses incurred visiting these offices. This implies that communities will seek to settle near these locations to reduce the costs.

Overall, the system of county governments with its new administrative units has not made it easy for pastoralists. The system requires that pastoralists 'belong' and 'reside' in a particular place for services. In other words, devolution has reinforced the need for one to be a resident of a particular place and, in

21 Interview with community member in Samburu, Jan. 2022.

22 Interview with land official in Samburu, 2019.

the case of Samburu, a resident of a particular group ranch. Membership of a group ranch located in a specific territory has become a central identity marker. This push for communities to claim territories is contrary to pastoralists' needs for mobility and reliance on social ties to access communally owned land.

Bounded territories in pastoral areas and the requirement for registration and demarcation of community land inadvertently creates new pressures towards privatisation of land and the need to formalise community land claims even in places where land was accessed communally for grazing. The focus on community land rights and boundaries through laws and government policy create more interest in privatising land, which will impede pastoralism in Samburu.

3. Conclusion

This paper argues that legal registration of community land comes with certain risks for pastoralist land tenure. On the one hand, the implementation of the Community Land Act, which was intended to secure pastoralists' land rights through collective registration, has imposed a sedentist approach to land ownership that does not easily support the pastoralist mobility upon which many herders in Samburu have long relied. On the other hand, devolved governance structures have consolidated existing land access barriers for pastoralists. They tend to favour individualisation of land and boundary making, which in turn restrict movements in the rangelands. The implementation of the Community Land Act is not fit for dealing with their fluidity and unique reciprocal arrangements. The process of securing communal land rights has thus not been successful. This is mainly because the implementation of the Community Land Laws has not taken pastoralist communities' lifestyles and customary practices into account and does not assign any role to the customary institutions in the management of community land. Yet, pastoralist communities tend to follow customary or informal rules of access, even when government-sanctioned systems have been introduced (Peters 2002; Okoth-Ogendo 2000).

In principle, devolution of land governance and the implementation of the Community Law Act hold the promise to facilitate inclusion and incorporate the voices of local communities. In practice, this article finds that the pastoralist community's voice had been left out of the community land management process in Samburu.

In the case of Samburu, the implementation of the Community Land Act has further marginalised and immobilised pastoralist communities, threatening their entire production system. Any process of supporting pastoralist

communities' rights to access rangelands ought to be cognisant of, and take into account, pastoralists' unique ways of managing land access and management practices.

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